AGENDA

CITY COUNCIL - SPECIAL MEETING (WORKSHOP)
CITY OF BANNING, CALIFORNIA

March 25, 2025
4:00 p.m.
In Chambers

Council Chambers
99 E. Ramsey Street
Banning, CA 92220

The following information comprises the agenda for the regular meeting of the Banning City Council, a joint meeting of the City Council and Banning Utility Authority, and the Banning City Council sitting in its capacity as the Banning Successor Agency Board.

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Meeting ID: 820 1264 4588
Password: 92220

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1. CALL TO ORDER

2. PUBLIC COMMENTS - *Agenda Items Only*

3. WORKSHOP

3.1 Presentation - Overview of the City of Banning Procurement Policies for Newly Elected Members
Recommendation: Review City of Banning's purchasing policies.

4. ADJOURNMENT

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Caroline Patton, Administrative City Clerk
Secretario adjunto de la ciudad

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Agenda Items

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Any member of the public may address this meeting of the City Council on any item which does not appear on the regular meeting agenda but is of interest to the general public and is an item upon which the City Council may act. A three-minute limitation shall apply to each member of the public and no member shall be permitted to share their time with any other person. No action shall be taken, nor discussion held by the City Council, on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of §54954.2 of the Government Code.

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99 East Ramsey Street, Banning, California 92220

CITY OF BANNING
STAFF REPORT

TO:	**CITY COUNCIL**
FROM:	**Robert Fisher, Acting City Manager**
PREPARED BY:	**Barbara Mason, Chief Procurement Officer** **Lincoln Bogard, Administrative Services Director**
MEETING DATE:	**March 25, 2025**
SUBJECT:	**Presentation - Overview of the City of Banning Procurement Policies for Newly Elected Members**

RECOMMENDATION:

Review City of Banning's purchasing policies.

BACKGROUND:

The City of Banning has adopted Municipal Code 3.24 and Procurement Policies & Procedures (B-30) through various ordinances and resolutions (see attached policies footnotes). The Municipal Code 3.24 was established to provide regulations regarding the purchase of supplies, services, and equipment, and to exercise positive financial control over purchase through the adopted centralized purchasing system and purchasing officer vested with the authority to purchase City supplies, services, and equipment (Ord. No. 1604). The B-30 is authorized by Municipal Code 3.24 and provides the City of Banning a means of assuring continuity and uniformity in its purchasing operation, and to define the responsibilities for purchasing supplies, services, tools, equipment and installation for the City of Banning. These guidelines are not intended to address every issue, exception, or contingency that may arise in the course of purchasing activities. The basic standard that should always prevail is to exercise good judgement in the use and stewardship of City resources, including keeping within the budget authorized by the City Council, and to be certain of quantity, quality, cost, delivery date, warranty and applicable insurance coverage before accepting the purchase.

JUSTIFICATION:

The objective of this Workshop item is to provide information to the new council on the established procurement policies and procedures for an enhanced understanding.

FISCAL IMPACT:

None

ALTERNATIVES:

None

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. Procurement Administrative Policies_202503111653038103.pdf

City of Banning

Administrative Procedures

POLICY NO. B-30

PROCUREMENT POLICIES & PROCEDURES

Administrative Services Department

Purchasing Division

99 East Ramsey Street

Banning, California 92220

Amended: 01/28/2025
Amended: 10/08/2019

Amended: 02/26/2019

Effective: 06/27/2017

ADMINISTRATIVE PROCEDURES
City of Banning

ADOPTION DATE 06/27/17	FINANCE POLICIES	POLICY NO. B-30
APPROVED BY City Council	POLICY TITLE PROCUREMENT POLICIES & PROCEDURES	AMENDMENT DATE 01/28/2025 (Revision 3)

Table of Contents

ARTICLE 1 – PURCHASING POLICY INTRODUCTION 8

SECTION 1 – PROCUREMENT SUMMATION 8

1-1-100 Preface 8

1-1-101 Purpose 8

ARTICLE 2 – PURCHASING POLICY 10

SECTION 2 – OBJECTIVE OF THE PURCHASING POLICY 10

2-2-100 Procurement Policy 10

SECTION 3 – ROLES, RESPONSIBILITIES AND SCOPES OF AUTHORITY 10

2-3-100 Responsibilities 10

2-3-101 Delegation of Authority 11

2-3-102 Purchasing Officer 11

2-3-103 Departments 13

2-3-104 Authority and Thresholds 13

2-3-105 Notes and Exceptions 15

2-3-106 Violations of Purchasing Policy and Municipal Codes 18

ARTICLE 3 – ETHICS AND PURCHASING 19

SECTION 4 – PURCHASING CODE OF ETHICS 19

3-4-100 Ethical Requirements of Department Heads and Purchasing Liaisons 19

3-4-101 Policy 20

3-4-102 "Arm's Length" Principle 20

3-4-103 General Standards of Ethical Conduct 20

3-4-104 Conflicts of Interest 20

3-4-105 Contracts with City Employees or Family of City Employees 22

3-4-106 Professional Service Contracts with Former City Employees 22

3-4-107 Use of Confidential Information 23

3-4-108 Equal Opportunity 23

3-4-109 Conflicts of Interest – Contractors/Vendors 23

ARTICLE 4 – PURCHASING METHODS AND PROCEDURES 25

SECTION 5 – COMPETITIVE BID PROCESS 25

4-5-100 Competitive Sourcing 25

4-5-101 Types of Solicitations 25

4-5-102 Differences Between an IFB and an RFP 26

4-5-103 Overview of the Bid Process 26

4-5-104 Developing a Scope of Work 27

4-5-105 Evaluation of Proposals 28

4-5-106 Pre-Proposal Conference 28

4-5-107 Proposal Opening 29

4-5-108 Proposal Evaluations 29

4-5-109 Negotiation 29

4-5-110 Contract Coordination 29

4-5-111 Monitoring Performance 30

4-5-112 Dealing with Poor Performance of Vendor/Contractor 30

4-5-113 Terminating Without Penalty 30

SECTION 6 – PROTESTS AND APPEALS PROCESS 30

4-6-100 Policy 30

4-6-101 Procedure 30

4-6-102 Protest of Bid/Proposal Specifications 31

4-6-103 Protest and Appeal of Award of Contract – Invitation for Bid (IFB) 31

4-6-104 Protest and Appeal of Award of Contract – Request for Proposals (RFP) 31

4-6-105 Protest Process 31

4-6-106 Appeal Process 32

SECTION 7 – HOW TO PURCHASE 32

4-7-100 Policy 32

4-7-101 Procedure 32
4-7-102 Process 33
SECTION 8 – SOLICITATION PROCESS 33
4-8-100 Definitions 33
4-8-101 Prequalification of Bidders 34
4-8-102 Requests for Information 34
4-8-103 Invitation for Bid (IFB) Document 34
4-8-104 Vendor Advisory 36
4-8-105 Pre-Bid Conference 36
4-8-106 Acceptance of Bids 36
4-8-107 Waivable Informalities 36
4-8-108 Correction, Clarification, or Withdrawal of Bids 37
4-8-109 Tied Bids and Local Preference 37
4-8-110 Cancellation of Invitations for Bid and Reservation to Reject All Bids 38
4-8-111 Public Bid Openings 38
4-8-112 Protest, Grievances, Appeals – Invitation for Bid 38
SECTION 9 – REQUEST FOR PROPOSAL (RFP) 39
4-9-100 Definitions 39
4-9-101 Requests for Information 39
4-9-102 Request for Proposal (RFP) Process 39
4-9-103 Prequalification of Proposers 40
4-9-104 Vendor Advisory 41
4-9-105 Pre-Proposal Conference 41
4-9-106 Receipt and Acceptance of Proposals 41
4-9-107 Confidentiality 42
4-9-108 Proposer Interviews 42
4-9-109 Proposal Questions, Amendments, Extensions, Cancellation 42
4-9-110 Scope of Work Revisions 42
4-9-111 Evaluation Scores 43

4-9-112 One Proposal Received 43
4-9-113 Errors in Proposals 43
4-9-114 Award 43
4-9-115 Protests, Grievances, and Appeals – Request for Proposals 44
4-9-116 Evaluation Committee 44
SECTION 10 – MULTI-STEP SEALED BIDDING 44
4-10-100 Definitions 44
4-10-101 Multi-Step Bidding Process 45
4-10-102 Requests for Information 46
4-10-103 Vendor Advisory 46
4-10-104 Protest, Grievances, and Appeals – Multi-Step Bidding 47
SECTION 11 – SOLE SOURCE; PROPRIETARY REQUESTS; INNOVATION 47
4-11-100 Policy 47
4-11-101 Sole Source Justification 47
4-11-102 Proprietary Source Requests 48
4-11-103 Emergency Purchase Requests 49
4-11-104 Commodities – Sole Source Requests 49
4-11-105 Services contracts (includes A&E) – Sole Source Requests 49
4-11-106 City Council Agenda Report 49
4-11-107 Negotiation 49
4-11-108 Innovative Procurement 49
SECTION 12 – COOPERATIVE PURCHASING 50
4-12-100 Definitions 50
4-12-101 Policy 50
4-12-102 Responsibility 50
4-12-103 City Requirements 51
4-12-104 No Usage Guarantees 51
4-12-105 City Council Approval 51

4-12-106 Term of Cooperative Contract 51
4-12-107 Collaborative Purchasing 51
SECTION 13 – EMERGENCY PURCHASING 52
4-13-100 Emergencies 52
SECTION 14 – GRANTS AND AGREEMENTS 52
4-14-100 Grant and Agreement Regulations 52
SECTION 15 – COMPLIANCE MONITORING 52
4-15-100 Scope 53
4-15-101 Specific Duties 53
ARTICLE 5 – PURCHASING CONTRACTS – GOODS AND/OR SERVICES 54
SECTION 16 – TYPES OF CONTRACTS 54
5-16-100 Definitions 54
5-16-101 Solicitation Considerations 55
5-16-102 Terms of Contract 56
5-16-103 Contract Pricing 56
5-16-104 Vendor Selections 56
5-16-105 City of Banning Business Preference 57
5-16-106 Contract Increases 57
5-16-107 Change Orders, Modifications to Professional Services and Capital Projects 57
5-16-108 Multiple Awards 59
5-16-109 Secondary Awards 59
5-16-110 Multi-Department Contracts and Cooperative Contracts 59
5-16-111 Approval of Non-Standard Contract Terms 60
5-16-112 Opportunity Buy 60
5-16-113 Service Contracts 60
5-16-114 Architect-Engineering Service Contracts 61
5-16-115 Public Works Contracts 64

ARTICLE 6 – MISCELLANEOUS PROCUREMENT PROCEDURES; GUIDELINES AND REFERENCES 65

SECTION 17 – RECEIVING PROCESS 65

6-17-100 Product Delivery 65

6-17-101 Signing for Deliveries 65

6-17-102 Refusing Delivery 65

6-17-103 Record Retention 65

6-17-104 Inspecting the Shipment 65

6-17-105 Matching the Packing List to Purchase Order 66

6-17-106 Product Substitutions and Over-Shipments 66

6-17-107 Failed Inspections 66

6-17-108 Testing 67

6-17-109 Acceptance Determining 67

6-17-110 Product Returns for Credit/Refund 67

6-17-111 Financial Information 67

6-17-112 Payment Terms 68

6-17-113 Invoice Approval 68

6-17-114 Payment Methods 68

SECTION 18 – SURPLUS CITY PROPERTY 69

6-18-100 Definition 69

6-18-101 Policy 69

6-18-102 Disposal of Surplus City Property 69

6-18-103 Receipt for Fair Market Value 70

6-18-104 City Council Approval 70

SECTION 19 – COMPUTER PURCHASES 70

6-19-100 Computer Purchases 70

SECTION 20 – LEASING 70

6-20-100 Lease/Lease Purchase/Rental Orders (Equipment) 70

SECTION 21 – PURCHASING CARDS 71

6-21-100 Definition 71

6-21-101 Authorized Use 71

6-21-102 Responsibilities 71

6-21-103 Controls 72

6-21-104 Adherence to Purchasing Policy 72

SECTION 22 – PETTY CASH DISBURSEMENTS & REPLENISHMENT 72

6-22-100 Petty Cash Fund 72

6-22-101 Reimbursement of Funds 73

SECTION 23 – VENDOR COMMERCIAL LIABILITY INSURANCE 73

6-23-100 Definitions 73

6-23-101 Policy 75

6-23-102 Minimum Scope and Limit of Insurance 75

6-23-103 Waiver of City Insurance Requirements 76

6-23-104 Special Event Insurance Requirements 76

SECTION 24 – STANDARD FORMS 78

6-24-100 Standard Forms 78

ARTICLE 7 – GLOSSARY 79

SECTION 25 – DEFINED TERMS 79

ARTICLE 1 – PURCHASING POLICY INTRODUCTION

SECTION 1 – PROCUREMENT SUMMATION

1-100 Preface

(1) Open and Transparent

a. The City of Banning is committed to transparency and accountability to strive to make businesses aware of all procurement opportunities available to them.

(2) Core Philosophy and Values:

a. Conduct our business to the highest standards of ethics, integrity and compliance.

b. Provide outstanding customer service through proactive listening, planning and communication pertaining to the needs of our customers and vendors.

c. Provide expert knowledge and advice of procurement policies, and processes.

1-101 Purpose

(1) The purpose of this policy is to provide the City of Banning a means of assuring continuity and uniformity in its purchasing operation, and to define the responsibilities for purchasing supplies, services, tools, equipment and installation for the City of Banning. These guidelines are not intended to address every issue, exception, or contingency that may arise in the course of purchasing activities. The basic standard that should always prevail is to exercise good judgement in the use and stewardship of City resources, including keeping within the budget authorized by the City Council, and to be certain of quantity, quality, cost, delivery date, warranty and applicable insurance coverage before accepting the purchase.

(2) Support management in cooperatively developing and executing sourcing strategies with the City's departments for products and services that meet or exceed the City's requirements and to perform these services to the highest ethical and professional standards.

(3) Provide leadership through contract negotiation, and vendor management.

(4) Promote the use of small, disadvantaged and minority-owned businesses when possible.

(5) Support the City's commitment to environmental responsibility.

(6) Support the City's commitment to the local business community by supporting use of local businesses when possible.

(7) Assist departments involved in Federal and State grant agreements in maintaining compliance to applicable regulations.

(8) Assist departments in maintaining compliance to all City policies regarding contracting and purchasing.

(9) Provide a proactive purchasing environment by studying the market trends, examining procurement laws and educating the City end users of such information through purchasing policy and procedure revisions and training. City Council approval of the purchasing policy and procedures are required every 5 years at minimum.

ARTICLE 2 – PURCHASING POLICY

SECTION 2 – OBJECTIVE OF THE PURCHASING POLICY

2-100 Procurement Policy

(1) In accordance with the policies adopted by the City Council of the City of Banning ("City"), all purchases, regardless of sources of funds will be governed by the California Government Code Section 54202 as referenced below:

"Every local agency shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency. Purchases of supplies and equipment by the local agency shall be in accordance with said duly adopted policies and in accordance with all provisions of law governing same. No policy, procedure, or regulation shall be adopted which is inconsistent or in conflict with statute."

(2) It shall be the procurement policy of the City to obtain all supplies, equipment and services at the lowest cost to the City that meet or exceed the City's specifications for performance, quality and availability at the time of purchase. In conforming to this policy, the capability, capacity and historical performance of the supplier will be considered and weighed in the decision process. Sourcing decisions will also be tempered by supplier diversity and the environmental impact considerations. Competitive bids or pricing will be solicited, unless a sole source provider is specified, in compliance with all applicable Federal and State regulations, California Government Code and City policies.

(3) In accordance with Chapter 3.24 of the Banning Code, City purchases and contracts will be made pursuant to these guidelines. Applicable competitive bidding categories, authorization limits, or contract award procedures will be based on unit cost, total purchase cost for consolidated bid items, or fiscal year aggregates in the case of blanket purchase orders or similar ongoing purchasing arrangements. Staging of purchases in order to avoid these competitive bidding procedures or authorization limits are prohibited.

SECTION 3 – ROLES, RESPONSIBILITIES AND SCOPES OF AUTHORITY

3-100 Responsibilities

(1) The responsibility for the purchase of all products, materials, supplies, furniture, equipment, vehicles and services is divided between the Purchasing Officer and each department. Although assigned different responsibilities, all core systems, methods, policies and procedures remain common. Shared responsibilities include overseeing the professional relationships between City of Banning and its vendors and contractors and insuring the highest ethical and professional standards.

(2) It is the obligation and the responsibility of every procurement decision-maker to represent the City in a professional and ethical manner. As a procurement decision maker, you must:

a. Follow the lawful instructions, policies and procedures of the City, City Council, City Manager, director, manager, supervisor or any person in a higher-level position of authority within your organization.

b. Obtain the maximum benefit for funds spent as an agent for the City.

c. Refrain from engaging in any procurement activity in which you have a personal or indirect financial interest.

d. Avoid engaging in personal business with any company that is a supplier to the City.

e. Avoid lending money to or borrowing money from any supplier.

3-101 Delegation of Authority

(1) The City Manager has been granted the authority and the responsibility of procurement of all materials, equipment, supplies, and services necessary for operations of the City. The City Manager has delegated specific authority and further delegate's authority to others prior to the execution of all contracts and agreements for procurement of all materials, equipment, supplies and services necessary for the day-to-day operations of the City. Therefore, a centralized purchasing system is adopted and the Purchasing Officer is vested with the authority for the purchase of all city supplies, services and equipment, (Banning Municipal Code 3.24.010).

3-102 Purchasing Officer

(1) The Purchasing Officer reports directly to the Administrative Services Director of the City, or his or her designee.

(2) Except where statutes or ordinances dictate otherwise, the City Purchasing Officer is to carry out the specific duties listed in this Policy, plus any additional duties as provided by resolution of the City Council, Codified Municipal Ordinances of the City of Banning, or the laws of the State of California and the United States of America. Subject to the supervision of the city manager, the purchasing officer shall have the authority to:

a. Negotiate contracts on behalf of the city for the purchase of supplies, equipment and services in accordance with this chapter, which contracts will be subject to award by the city council or city manager and execution by the mayor or city manager;

b. Negotiate and execute purchase orders on behalf of the city, for the purchase of supplies, equipment and services required by the city in accordance with this chapter;

c. Prepare, and implement city council approved policies and procedures governing the purchase, bidding, contracting, storing, distribution and disposal of supplies, services and equipment for the city;

d. Prescribe and maintain such forms as may be reasonably necessary to the implementation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter;

e. Review the working details, drawings, plans and specifications pertaining to procurement compliance and bidding processes for any projects or purchases requiring such review in this chapter;

f. Inspect or supervise the inspection of purchased supplies, services and equipment to ensure conformity with any specifications established or required by the city;

g. Transfer among departments any supplies, services and equipment not needed by one such department, but which are necessary for the operations of one or more other departments;

h. Sell any supplies and equipment not needed for public use or that may become unsuitable for their intended use;

i. Develop and maintain any bidder's list, contractor's list or vendor's catalog file necessary to the operation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter;

j. Approve and confirm emergency purchases;

k. Identity and pursue cooperative agreement with the State of California, Counties, other Cities and other governmental agencies and organizations in order to obtain cost savings for the City;

l. Be authorized in the absence of the Administrative Services Director to allow a budget over-ride for purposes of timely completion of a purchase transaction as long as such action would not put the fund over-budget when reasonably projected to the end of the fiscal year, and when the requesting department has submitted a Budget Transfer Form.

m. Ensure full and open competition on all purchases as required by this policy;

n. Review and process Purchase Requisitions;

o. Prepare and issue informal and formal bid documents for all departments, (i.e., Requests for Quotations, Invitation for Bids, Requests for Proposals and Statements of Qualifications);

p. Make purchase award recommendations to the appropriate authority;

q. Notify vendors of purchase award;

r. Assist in audits and reviews;

s. Encourage City involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking.

3-103 Departments

(1) Departments are charged with the following responsibilities in the purchasing process:

a. To provide the Administrative Services Director, at the beginning of each fiscal year, an updated authorized signature list designating those individuals who are delegated the authority to make purchases per the policies and procedures as described herein;

b. To anticipate requirements sufficiently in advance to allow adequate time to obtain goods in accordance with the best purchasing practices;

c. To prepare purchase requisitions in accordance with instructions so as to minimize the processing effort;

d. To provide detailed accurate specifications to ensure goods obtained are consistent with requirements and expectations;

e. To inform Purchasing of any vendor relations' problems, shipping problems, (i.e., damaged goods, delivery issues and/or order discrepancies, etc.) and any situations that could affect the purchasing function;

f. To assist Purchasing with the review of all bids received for compliance with specifications, and provide Purchasing with written documentation regarding their findings;

g. To not "split" orders for the purpose of avoiding procurement requirements;

h. To provide on all new vendors a completed vendor packet;

i. Purchasing Liaisons shall follow the Purchasing Policy set forth herein, as well as, those procedures established by the City Purchasing Officer to ensure a procurement system that is fair, transparent, effective, efficient, and compliant with legal requirements and City Policy.

3-104 Authority and Thresholds

(1) All purchasing requests, regardless of dollar amount, must first be reviewed and approved by the respective Department Head.

(2) All items, regardless of amount - quantity or dollar - shall be provided to the City Purchasing Officer to review, provide guidance, and for processing.

(3) The Authorization Table outlines who may approve contracts and legally binding agreements with external parties that obligate the City and shall apply to all purchases, including Capital Projects and Professional Services Contracts.

City of Banning Purchasing Authorization Table

Purchase Type	Purchase Amount	Procurement	Contract Type	Internal Approval	Vendor Requirements
Goods, Widgets, Equipment	$0.00 - $5,000.00	1 Quote	Purchase Order	1. Department Head/Manager or Above	N/A
	$5,000.01 - $25,000.00	3 Quotes	Purchase Order	1. Department Head/Manager or Above 2. City Manager if > 10k	N/A
	$25,000.01 +	Formal Bidding	Purchase Order	1. Department Head/Manager or Above 2. City Manager 3. City Council	N/A
Services, including Professional (non-public works)	$0.00 - $5,000.00	1 Quote	Purchase Order	1. Department Head/Manager or Above	1. Insurance 2. City Business Tax 3. CA Business License
	$5,000.01 - $25,000.00	3 Quotes	Formal Agreement & Purchase Order	1. Department Head/Manager or Above 2. City Manager if > 10k	
	$25,000.01 +	Formal Bidding	Formal Agreement & Purchase Order	1. Department Head/Manager or Above 2. City Manager 3. City Council	
Services, Public Works only	$0.00 - $75,000.00	1 Quote	Purchase Order	1. Department Head/Manager or Above	1. Insurance 2. City Business Tax 3. CA Business License 4. CSLB 5. DIR
	$75,000.01 - $220,000.00	3 Quotes	Formal Agreement & Purchase Order	1. Department Head/Manager or Above 2. City Manager	
	$220,000.01 +	Formal Bidding	Formal Agreement & Purchase Order	1. Department Head/Manager or Above 2. City Manager 3. City Council	

3-105 <u>Notes and Exceptions</u>

(1) In the absence of the approver for a given request, authorization will be obtained by his/her appointee or the next highest authority in accordance with the Authorization Table.

(2) At no time can purchases be “split” or otherwise billed separately to circumvent the spending authority.

(3) Purchase orders shall be issued prior to ordering supplies, tools and equipment, services and installations, and not "after the fact" for work already done or materials already ordered.

(4) With the exception of City Council authorized procurements, increases to previously authorized procurements are permitted if the increased procurements remain within the approver's limit. Freight and sales tax are a cost of doing business and shall be included in the total cost of the procurement.

(5) Written notification by the Purchasing Officer of all City Manager approved contracts will be provided quarterly to the City Council for review by the Purchasing Officer.

(6) Exceptions to standard purchasing methods and spending authorities are specifically limited to the following:

Advertisement and Notices (Per CA PCC 20169).	City Debt Service and Loans.
Conference registration, subscriptions, membership dues, educational seminars and training.	When no bids are received on formal or informal solicitations.
Emergencies endangering the health and safety of City staff, customers and residents.	Gasoline credit card purchases (should be issued a blanket Purchase Order), gasoline, diesel or aviation fuel.
Insurance premiums (worker's compensation, general liability, etc.).	Payments to Department of Water Resources and related expenses (State Water Contractors, Inc., etc.) and to other governmental units.
Utility Bills (phone, gas, electric, etc.).	Payroll disbursements, payroll checks, deductions, deposits and tax payments that are supported by a payroll report.
Permitting and other regulatory fees (construction permits, LAFCO payment, etc.)	Petty Cash Replenishment, refunds and travel expenses/advances
Postage/Delivery/Messenger Services	Professional Legal and Human Resources Confidential Consultant Services
Real Property/Easement Acquisition and Rental Property	Purchases that meet sole source procurement requirements.

Requisitions for products or services less than $5,000.	Software license maintenance
When the Purchasing Officer determines the commodity can be procured using a cooperative purchasing agreement.	Trade Circulars, Books or CD's
Staffing, temporary services	Special instructors for community centers and events.
When the purchasing officer identifies a Piggyback Agreement being prepared by and processed through another local, state, or federal governmental agency. Under such circumstances, the Purchasing Officer may join into an existing written purchase contract obtained within the last 24 months through a competitive bidding process prepared by and awarded by another local, state or federal governmental agency. City Council consent is required for such arrangements where the estimated value of the supplies is $25,000 or more.	When the City Council determines, in accordance with applicable law that a competitive market does not exist, and no competitive advantage will be gained by the bidding process.
Purchase of power for Public Utilities	

(7) Public Utilities Exception. The Water, Electric and Sewer Utilities have a need for compatibility within their respective systems for uniform operation, maintenance and replacement, and this need can be met by procuring certain supplies, equipment, and materials supplies through Informal Bidding or Negotiations. Such procurements may be exempted from formal competitive procurement requirements if the City Council so determines.

a. If it appears to the Purchasing Officer to be in the best interest of overall economy and efficiency of the City to do so, and it is within existing budget appropriation, the following supplies, equipment, and materials are determined to be peculiar to the needs of the Water Utility, the Electric Utility, and the Sewer Utility and may be acquired by and under the provisions of Informal Bidding or Negotiations (Art. 4, Sec. 5, Sub. 5-103 (5) and 5-109 (2)), regardless of their estimated procurement expenditure amounts, provided that the City Council shall have approved the proposed acquisition if required

under the provisions of the Municipal Code, either by approval of the procurement contract, approval of annual purchase orders, or approval within thirty (30) days of any emergency acquisition(s) made in excess of $25,000.00:

Automatic Reclosers with associated controllers and communications equipment	Power Generation Materials, Equipment, Parts and Repair
Batteries and Chargers	Pipe and Pipe Fittings
Blower Equipment, Parts and Repair	Pole Line Hardware
Bus and Bus Support	Poles, Utility
Capacitors	Mobile Substation
Chemicals	Prefabricated Electrical Enclosures
Circuit Breakers	Pumps and Repairs
Circuit Switcher	Regulators
Conduit and Duct	Relaying and Protective Devices
Connectors	Road and Backfill Materials
Dewatering Equipment, Parts and Repairs	SCADA Equipment
Electric Motor Controls	Substation and Distribution Automation Equipment
Electrical Motors, Panels, Panel Equipment, Materials and Repairs	Substation Online Monitoring Equipment and Devices
Electrical Line Devices	Substation Supervisory Equipment
Fiber Optics Equipment and Materials	Surge Arrestors
Transformers and Accessories Treatment Equipment	Switches, Switchgear, and Accessories Testing Equipment
Fittings, Electrical, Water, and Sewer	Fire Hydrants
Insulators and Bushings	Tubing, Copper and Plastic
Luminaries	Valves and Operators
Meter and Metering Devices	Vaults and Accessories
Wire and Cable	Uninterruptable Power Supplies
Well Equipment (including incidental labor to install, which labor shall not exceed the amount set by state law for which bids are required for public works projects of a general law city)	Such other supplies and materials peculiar to the needs of the Public Utilities Department, which are carried as inventory items

3-106 <u>Violations of Purchasing Policy and Municipal Codes</u>

(1) Employees with purchasing authority will be held accountable for the actions they take while operating in their granted fiduciary purchasing authority, in accordance with, Government Code §36900*, et seq.*.

(2) Any individual committing City funds without proper authorization does so at his or her own financial risk and cofnsequence. City may consider the purchase void and decline to pay the invoice. In such a case, the individual has acted at his or her personal financial risk and the supplier may look for payment from the individual who placed the order. The individual may risk being suspended or immediately terminated.

(3) Employees shall avoid the intent and appearance of unethical or compromising practice in purchasing relationships, actions, and communications; employees shall do what is in the best interest of the City.

(4) If a purchasing violation has occurred, employee will receive Notice of Investigation and will be required to cooperate.

(5) Risk/Legal or independent consultant will conduct an investigation to determine cause(s), effect(s), act(s), occurrence(s), and to provide recommendations on remedies. Dependent upon the discovered violation(s), event(s) and occurrence(s), Risk/Legal will forward the report to the City Manager, City Purchasing Officer, City Attorney and the City Council with the investigation findings, suggestions, and recommendation pertaining to future prevention.

(6) Dependent upon the investigative findings:

a. Employee's purchasing authority may be suspended or revoked;

b. Employee may be fined for violations and infractions;

c. Employee's employment with the City may be suspended and/or terminated; and

d. Employee may be fined, prosecuted, and found guilty before a criminal court.

ARTICLE 3 – ETHICS AND PURCHASING

SECTION 4 – PURCHASING CODE OF ETHICS

4-100 Ethical Requirements of Department Heads and Purchasing Liaisons

(1) Any person employed by the City of Banning who purchases goods and services, or is involved in the purchasing process for the City, shall be bound by this Purchasing Code of Ethics and shall:

a. Work closely with the Purchasing Officer on all purchases, regardless of amount – quantity or dollars;

b. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;

c. Demonstrate loyalty to the City by diligently following all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;

d. Conduct all purchasing activities in accordance with federal and state laws and the City's Purchasing Policy;

e. Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the City;

f. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;

g. Never solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts (of any amount), entertainment, favors, gratuities or services from present or potential suppliers which might influence or appear to influence purchasing decisions;

h. Promote positive supplier relationships through impartiality in all phases of the purchasing process;

i. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;

j. Strive to obtain the maximum value and of best quality for each dollar of expenditure;

k. Provide an environment where all business concerns, large or small, disabled, majority- or minority-owned, are afforded an equal opportunity to compete for City business;

l. Enhance the proficiency and stature of the purchasing profession by adhering to the highest standards of ethical behavior; and

m. Consistently stay updated on the City's Purchasing Policy.

4-101 Policy

(1) Public employment is a public trust. Public employees must discharge their duties impartially to assume fair, competitive access to government procurement by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement process.

(2) The Purchasing Code of Ethics is maintained and enforced by the City Purchasing Officer.

4-102 "Arm's Length" Principle

(1) All procurements must be "Arm's Length" transactions; meaning that the City and vendor to the transaction have no conflict of interest in the transaction. Arm's length transactions are made by two parties freely and independently of each other, and without some special relationship, such as being a relative, having another deal on the side or one party having complete control of the other. An "Arm's Length" can create an equitable agreement that will stand up to legal and public scrutiny.

4-103 General Standards of Ethical Conduct

(1) Any attempt at personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust.

(2) Violation of the City's receipt of donation and gifts policy may constitute a misdemeanor, and any employee found in violation shall be subject to discipline, including, in appropriate cases, termination of employment and criminal prosecution.

(3) To the extent that violations of the ethical standards of conduct constitute violations of the State of California Government Code, employees shall be punishable as provided therein and to the fullest extent by law. Such sanctions shall be in addition to any other remedies, which the City may pursue in its interest.

4-104 Conflicts of Interest

(1) To avoid any real or perceived conflict of interest, all proposals or contracts for professional services should, to the extent possible, identify any relative of the contractor of his/her employees who are presently employed by the City.

a. In an effort to avoid any real or perceived conflict of interest, all proposal and contractual language for professional services shall include a clause requiring prospective and/or current vendors to notify the City of any such relationship between the vendor and the City.

b. Upon notification, the manager or responsible party of Purchasing shall notify the Administrative Services Director, Deputy City Manager, or City Manager of the City for further review and action, as deemed appropriate.

c. Notification of the relationship between the vendor and any City employee shall be placed in the Purchasing contract file for future reference, as deemed necessary.

(2) The Political Reform Act, Government Code Section §87100-87105; addresses conflicts of interest as follows:

a. "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he has a financial interest."

b. Upon discovery of an actual or potential conflict of interest, a City employee shall promptly file a Written Statement of Disqualification with the City Purchasing Officer and shall withdraw from further participation in the transaction involved. The City employee may, at the same time, request through his or her Department Head an advisory opinion from the City Attorney and/or the delegated legal affairs officer, if applicable, as to what further participation, if any, the City employee may have in the transaction.

c. No agent or representative, serving as a purchasing evaluator or otherwise, shall make, participate in making, or in any way attempt to use his or her delegated volunteer position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest and/or will have a material financial effect on the delegated volunteer or a member of his or her immediate family, or on:

i. Any business entity in which the volunteer agent or representative has a direct or indirect investment worth two thousand dollars ($2,000.00 USD) or greater.

ii. Any real property in which the volunteer agent or representative has a direct or indirect interest worth two thousand dollars ($2,000.00 USD) or greater.

iii. Any source of income, gifts, gratuities, and loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500.00 USD) or more in the value provided to, received by or promised to the volunteer agent or representative within twelve months prior to or after the time when the decision is made.

iv. Any business entity in which the volunteer agent or representative is a director, officer, partner, trustee, employee, or holds any position in management.

v. Any donor of, or any intermediary or agent for a donor of, gift(s) or gratuities aggregating two hundred fifty dollars ($250.00 USD) or greater in value provided

to, received by, or promised to the volunteer agent or representative within twelve months prior to or after the time when the decision is made.

vi. For the purposes of this sub-section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a ten percent interest or greater."

d. Agents, representatives, and/or volunteers of the City of Banning shall not be financially interested in, and be purchasers at any sale of, any City of Banning contractual relationship.

4-105 Contracts with City Employees or Family of City Employees

(1) No contracts shall be entered into between the City, including all departments thereof, and any employee or officer of the City who is paid for working for the City. No employee or officer shall directly or indirectly solicit any contract between him or herself and the City.

(2) In the event that a City employee enters into a contractual agreement, in violation of this policy, the person or persons having obtained knowledge that a contractual relationship exists between the City and a City employee shall make immediate notification to the manager or responsible party of Purchasing.

(3) The manager or responsible party of Purchasing shall make immediate notification to the Administrative Services Director, Deputy City Manager, or City Manager as well as the Director of Human Resources for action as deemed appropriate.

(4) No contracts shall be entered into between the City, including all departments thereof, and any family member of an employee or officer of the City without disclosure of the relationship to the City Manager, Deputy City Manager, and Administrative Services Director AND written approval by the City Manager.

4-106 Professional Service Contracts with Former City Employees

(1) To avoid the potential for conflict of interest, or any appearance thereof, the City requires that all requests for entering into professional service contracts with former employees separated for less than one year be approved by the City Council.

(2) Under emergency circumstances, the Budget and Finance Committee is authorized to give preliminary approval to such contractual arrangements and report such preliminary approval to the City Council for final approval or denial at their next scheduled meeting.

(3) All Purchasing Division policies and procedures, or portions thereof, related to the administration of professional services contracts, and not conflicting with this resolution, shall remain in effect.

(4) All contracts shall contain language that states that the contract is contingent upon final approval by the City Council.

4-107 Use of Confidential Information

(1) Confidential Information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of patrons and residents, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the City's ability to obtain such information as is necessary to perform its functions, or causing substantial harm to a person, firm, partnership, corporation, or other organization from which the information was obtained, unless the City is required by law to disclose such information. Employees are prohibited from disclosing any confidential information.

(2) Any and all information that is deemed "confidential" shall be provided to the City Purchasing Officer who shall then review, seek Legal guidance, and possibly disclose the information that may or may not be confidential.

4-108 Equal Opportunity

(1) City employees shall ensure that all vendors receive an equal opportunity to do business with the City. This opportunity is to be provided without regard to race, religion, sex, age, national origin, or physical disability.

(2) The City of Banning is committed to the principle of diversity and equal opportunity in all of its endeavors and applies this principle in its procurement activity with the objective of encouraging participation by qualified vendors categorized as small, disadvantaged, veteran, minority or women-owned enterprises. The City believes that strengthening and expanding its supplier base in these business classifications not only contributes to lowering our operational costs, but also improves the overall health of the business community within which we exist. It is a practice of the City to actively identify and solicit qualified small, disadvantaged, veteran, minority or women-owned businesses and to provide and promote equal opportunities for such vendors within the City in order to promote vendor diversity.

4-109 Conflicts of Interest – Contractors/Vendors

(1) Purchasing liaisons shall complete the Conflicts Check of potential vendors.

a. May be detrimental to the City's interest and, therefore, would cause the City not to enter into a contract; or

b. May arise during the performance of the required services and, therefore, would provide reason for termination with cause.

(2) The City Purchasing Officer, and any legal guidance sought by the City Purchasing Officer, will be the decision maker in determining if such a conflict would preclude the City from entering into a contract or possibly be reason for termination with cause. Disputed Purchasing Officer decisions will be re-evaluated and resolved by the City Manager.

ARTICLE 4 – PURCHASING METHODS AND PROCEDURES

SECTION 5 – COMPETITIVE BID PROCESS

5-100 Competitive Sourcing

(1) It is the policy of City of Banning to obtain competitive pricing, proposals or quotations on all products and services over $5,000 used by the City. All proposals and quotations received will be evaluated based on quality, service, compliance to specifications and price. All awards will be made in the best interest of the City. Any or all proposals may be rejected at the discretion of City of Banning's City Council.

(2) The competitive sourcing process is required where the product or service can be obtained from more than one source. Unless approved for sole source procurement or otherwise covered under existing contracts, all requisitioned products or services totaling over $5,000 individually, or as a system including multiple components, will be competitively sourced.

(3) While participation in the competitive sourcing process by as many qualified vendors as possible, at least three proposals are required for purchases over $5,000.

(4) The requirements of this Section 5 shall not apply to contracts subject to Section 5-16-115.

5-101 Types of Solicitations

(1) When seeking information from vendors, it is important for Purchasing to realize the specific type of goods and/or services required and to use the appropriate type of solicitation document. There are important differences among various documents used to solicit responses from vendors:

a. *Request for Information (RFI)* – An RFI is used when you're not certain what you want or you don't know what is available in the marketplace. The information received as a result of the RFI may assist in determining whether a formal request for bid or proposal is necessary.
b. *Invitation for Bid (IFB)* - An IFB is used when you know precisely what you need and have precise requirements and specifications, (see 5-102 below). Formal bid process over $25,000 (except when subject to section 5-16-115).
c. *Request for Proposal (RFP)* - An RFP is a hybrid of these documents. An RFP is used when you have a general idea with some specifications and/or it's a large, complex project with potential for multiple solutions, (see 5-102 below). Informal or formal bid process.
d. *Request for Quotation (RFQ)* – An RFQ is a standard business process used to invite suppliers into a bidding process to bid on specific products or services. Informal bid process, $5,001 - $25,000 (except when subject to section 5-16-115).

e. *Request for Statement of Qualifications (SOQ)* – An SOQ is often distributed before initiation of the RFP process. It is used to gather vendor information from multiple companies to generate a pool of prospects. This eases the RFP review process by preemptively short-listing candidates, which meet the desired qualifications.

5-102 Differences Between an IFB and an RFP

Invitation for Bid (IFB)	Request for Proposal (RFP)
Used to acquire goods or services that can be touched, counted or measured	Used to acquire services or goods where the expertise and knowledge from the vendor are more critical and not as simple to measure or quantify
Strong emphasis on specifications and requirements	Strong emphasis on qualifications, skills, expertise and experience
Very little subjectivity in evaluation	Greater subjectivity in evaluation
Designed to select the lowest priced bid that meets the minimum requirements and is both responsive and responsible	Designed to select the best value or approach for the agency as evaluated by the review committee
No negotiations are allowed	Negotiations are allowed
Evaluate against written specifications	Evaluated against criteria in the RFP and against other proposals

5-103 Overview of the Bid Process

(1) A "kick-off meeting" should be held with the Purchasing Officer to establish a time line and approval process. It will be determined at that time what the process shall be, who will approve, and if Risk will need to determine if insurance requirements are applicable.

(2) The purchasing process begins with the submission of the "Purchase Requisition," and "Scope of Work," (SOW), which is a description of services, specifications, description of goods, proposal evaluation criteria, and a recommended sources list.

(3) The SOW is submitted to the Purchasing Officer, which is used in the development of a complete IFB or RFP including contract clauses, special clauses, instructions to prospective vendors, and any requisite technical exhibits or attachments.

(4) The bid document states a specific date and time deadline for proposal receipt and often has mandatory pre-proposal meetings for vendors to attend. This meeting offers the opportunity to ask questions and gives the City a chance to determine whether any changes need to be issued (addenda) to the request. This is also an excellent time to conduct any requisite site visits to familiarize vendors with the project site(s), if applicable.

(5) Informal bids may be posted at City Hall, posted on the City's Web site, E-mailed, mailed or solicited over the phone to prospective bidders. Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site. The date of publication shall be at least 10 days before the due date. All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice. Alternatively, electronic transmissions including, but not limited to, the issuance of solicitation documents and the receipt of responses thereto are permitted as specified, PCC [1600 – 1601].

(6) Prior to proposal deadlines, an evaluation team will be chosen.

(7) After proposals are received, the committee will be provided the evaluation criteria, conflict of interest documents and tentative interview schedule. The proposals are then evaluated against evaluation criteria, which were stipulated in the bid documents.

(8) Purchasing and the requesting Department then agree on the awarded vendor.

(9) Once approved, a purchase order and/or contract are processed.

(10) After award, the Department monitors the contractor's performance, approves invoices, and notifies Purchasing if any problems are encountered with vendor's performance.

5-104 <u>Developing a Scope of Work</u>

(1) The SOW is the core of any request. A well-written SOW can do more for the success of a contract than any other part of the contracting process. A good SOW is clear, complete, and logical enough to be understood by the vendor and Department. Because it describes the details of performance, it is the yardstick against which the vendor's performance is measured. Enhancing a vendor's ability to read and understand the needs articulated in the IFB/RFP is critical to success. The request must be concise and clear. The structure of the document is used to keep your thoughts on track and to organize a vendor's response. Emphasize points that you feel are especially important. Organize the bid document in numbered sections, and require the vendors to use this same numbering/sectioning format in their responses. This ensures clarity and consistency in the request and in the vendors' responses, and will make the evaluation and selection process easier.

a. Suggested Content – Introduction, general information, length contractor is needed, task description, constraints on the contractor, contractor personnel requirements and

responsibilities (performance), City responsibilities (payment(s)), special conditions, evaluation criteria, and material specifications.

5-105 Evaluation of Proposals

(1) A prerequisite for award is that the vendor must be responsible and must submit a responsive offer.

(2) To be "responsible" means the vendor has the requisite business integrity, as well as financial and organizational capacities, to ensure a good faith performance.

(3) To be "responsive" is to make an offer must conform in all material respects to the RFP. Beyond these two basic criteria, the only method we have of selecting the offer most advantageous to the City is through the proposal evaluation criteria, which is published in the RFP.

(4) Because of the nature of most goods and/or services purchased and the sealed competitive bid procedure, the City must make objective comparative analyses of different vendor's proposals in justifying our recommendation for award. The recommendation for award must be defensible. This makes the drafting of reasonable and definitive evaluation criteria very important to the IFB/RFP and source selection process.

(5) Some evaluation criteria to consider for inclusion in the RFP are as follows:

a. Performance record of the contractor;

b. Safety record;

c. Relevant experience in providing comparable services on projects of similar size and scope;

d. Overall quality of proposal; and

e. Pricing.

(6) The IFB/RFP must contain a cost proposal format that allows the vendors to explicitly identify their charges for the deliverables identified in the project. Deliverables must be well defined so that all vendors can respond to the same deliverables thus allowing the City to make comparative analyses of the vendors' costs.

5-106 Pre-Proposal Conference

(1) While a pre-proposal conference is not always required, it is highly recommended. If one is conducted, vendors are required to attend, or attendance may be by "invitation and urge to attend", so that the City can be sure that all vendors receive the same information and we receive constructive feedback about the RFP.

a. Although a representative from the Purchasing Office leads the conference and answers any contractual questions, the department must be represented to answer any questions about the technical aspects and performance anticipated in the scope of work detailed in the RFP.

b. During the conference, City employees must not discuss the merits of a vendor's question, and it must be clear that nothing discussed that materially affects the RFP can be relied upon unless it is documented in a written addendum to the RFP. The City will not be bound by oral discussion surrounding a bid document.

c. If a site visit is needed to familiarize vendors with the project, it is typically conducted following the pre-proposal conference job walk.

5-107 Proposal Opening

(1) Proposal openings are open to the public and are scheduled two to four weeks after the pre-proposal conference. This may vary depending on the complexity of project that is being bid.

(2) Late proposals are marked with the time and date received; however, they are not opened or read and will not be considered.

5-108 Proposal Evaluations

(1) After the Purchasing Officer has reviewed each vendor's proposal to determine that they are complete, the proposals are then forwarded to the Department and/or committee members for evaluation.

(2) During the period of evaluation and prior to Award, possession of proposals and accompanying information is limited to personnel responsible for participating in the evaluation.

(3) Any communications with vendors must be approved in advance through the Purchasing Officer handling the bid process.

(4) Recommendation for Award must be in written form and must address how each vendor has met or failed to meet the evaluation criteria stated in the RFP. All areas of non-conformity with any terms, conditions, or listed specifications must be clearly stated in the evaluation.

(5) The proposal evaluation scores shall be a part of the final record.

5-109 Negotiation

(1) When all proposals are determined to be non-responsive, all must be rejected and a new RFP shall be issued.

(2) Negotiation is permitted during an informal quote process and when only one bid resulting from an IFB is received during the competitive bid process. The negotiation process is also permitted during the RFP process. When written evaluations support it, the Purchasing Officer may

authorize negotiation with each vendor whose proposal can reasonably be expected to be amended to meet the needs of the City.

5-110 Contract Coordination

(1) Contracts will be received or created, reviewed, redlined and placed into a final draft for execution to ensure that the terms and conditions between the City and awarded vendor are accurately and lawfully set forth.

5-111 Monitoring Performance

(1) After award, the project coordinator, who is usually named in the contract document, monitors the vendor's performance, approves invoices, and notifies the Purchasing Office if any problems are encountered.

(2) Depending on the type of service, the manner in which performance is monitored may involve any number of procedures including regular and unscheduled inspections, complaints brought to management's attention, and reports or surveys of consumers of the services.

5-112 Dealing with Poor Performance of Vendor/Contractor

(1) The key to rectifying poor performance is keeping good documentation. Each contract contains provisions for dealing with poor performance. While the project coordinator may initially deal with minor issues verbally, a written record is required when the contractor's performance deteriorates to the point where is becomes necessary to cancel the entire contract or parts of it.

(2) Contact the Purchasing Office for guidance and solutions when you have repeated and uncured issues with the contractor, for whatever reasons.

5-113 Terminating Without Penalty

(1) Under a standard termination clause in most contracts, the City has the option of terminating the contract without penalty for any reason with an advance written notice to the contractor.

(2) Contact the Purchasing Office for guidance and solutions when you have repeated and uncured issues with the contractor, for whatever reasons.

SECTION 6 – PROTESTS AND APPEALS PROCESS

6-100 Policy

(1) Any actual or prospective bidder, proposer or contractor who alleges an error or impropriety in the solicitation or award or a contract may submit a grievance to the appropriate departmental designee and the assigned Purchasing Officer.

6-101 Procedures

(1) All grievances shall be typed under the complainant's letterhead and submitted in accordance with the provisions stated herein. All grievances shall include at a minimum the following information:
   a. The name, address and telephone number of the complainant;
   b. The signature of the complainant or the complainant's representative;
   c. The solicitation or contract number;
   d. A detailed statement of the legal and/or factual grounds for the grievance;
   e. The form of relief requested.

6-102 Protest of Bid/Proposal Specifications

(1) All protests related to bid or proposal specifications must be submitted to the Purchasing Officer no later than five (5) business days prior to the close of the bid or proposal. Grievances received after five (5) business day deadline will not be considered by the City.
(2) In the event the grievance of specifications is denied and the complainant wishes to continue in the solicitation process, the complainant must submit a bid prior to the close of the solicitation in accordance with the bid/proposal submittal procedures in the bid/proposal.

6-103 Protest and Appeal of Award of Contract – Invitation for Bid (IFB)

(1) Protests related to the award of a contract based on the Invitation for Bid (IFB) or Statement of Qualification (SOQ) process must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Purchasing Officer or the departmental Designee.
(2) Protests relating to a proposed contract award which are received after five (5) business day deadline will not be considered by the City.

6-104 Protest and Appeal of Award of Contract – Request for Proposals (RFP)

(1) Immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of a City Council Agenda Report for award of contract, the Purchasing Officer shall send a Notice of Intent to Award of Contract to all participating vendors.
(2) Vendors will have five (5) business days from the date of the notice in which to file a protest or grievance concerning the award of the Contract.
(3) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the City.
(4) During the five (5) business day period or proper resolution of a protest or appeal, the department may move forward with the contract award or if necessary, filing the item for approval by the City Council.
(5) Upon expiration of the five (5) business day period or proper resolution of a protest and appeal, the department may move forward with the contract award or if necessary, filing the item for approval by the City Council.

6-105 Protest Process

(1) In the event of a timely protest, the City shall not proceed with the solicitation of award of the contract until the assigned City Purchasing Officer, and in some instances, the City Manager renders a decision on the protest and appeal.
(2) Upon receipt of a timely protest, the Purchasing Officer will within ten (10) business days of the receipt of the protest and appeal, issue a decision in writing which shall state the reasons for the actions taken.
(3) The City may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the City. The award of a contract shall in no way compromise the complainant's right to the protest and appeals procedures outlined herein.
(4) If the complainant disagrees with the decision of the City Purchasing Officer, the complainant may submit a written notice to Administrative Services Director/Deputy City Manager requesting an appeal to the City Manager and City Council.

6-106 Appeal Process

(1) If the complainant wishes to appeal the decision of the Purchasing Officer, the complainant must submit, within three (3) business days from receipt of the decision, a written appeal to the Finance Department, Office of the Administrative Services Director/Deputy City Manager.
(2) Within fifteen (15) business days, the Administrative Services Director/Deputy City Manager will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the City Manager.
(3) The decision of the Deputy City Manager on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

SECTION 7 – HOW TO PURCHASE

7-100 Policy

(1) In compliance with City of Banning Municipal Code and Administrative Regulations, each of the following provisions shall apply:

a. All purchases, rentals, and contracts shall be made only upon receipt of proper written/authorized requisitions, the required forms of which shall be supplied Citywide by the Purchasing Officer and placed on the Purchasing Portal on the City's Intranet.

b. No purchase order shall be issued unless approved budget appropriation is shown according to the budget procedure established by the Administrative Services Director/Purchasing Officer, City Manager, and City Council.

c. All purchases must be accomplished through the Purchasing Department, regardless of amount – quantity or dollars.

7-101 Procedure

(1) Purchase Requisitions - An approved and signed purchase requisition shall be forwarded to the Purchasing Officer for processing in accordance with this Purchasing Policy and its procedures.

a. Purchase Requisitions are required for all purchases and used by the departments to request services, order supplies and/or equipment. Vendor information, budget general ledger account number and approval are required to create and issue Purchase Requisitions to vendors/contractors.

b. Upon receipt of a properly prepared requisition by Purchasing Officer, a requisition meeting all City requirements will normally be processed and completed within 10 business days for routine and 15 business days for complex acquisitions, (excluding purchases requiring formal bid procedures). It is the responsibility of the requisitioning department to adequately plan in advance for their procurement needs and/or requirements.

(2) The cancellation of a departmental requisition shall require department's notification to Purchasing Officer.

a. Cancellation by the Department: Cancellation of a requisition by the department should be based on a written cancellation notice. Verbal cancellation may be accepted by Purchasing in order to suspend the purchasing process but should be followed up by written cancellation notice from the department.

b. Cancellation by Purchasing: Cancellation of a requisition initiated by Purchasing requires the written notification and concurrence of the department.

c. Cancellation by Purchasing as a "last resort": A last resort example would be the failure of department to respond to an inquiry for additional information in a timely manner (failure to obtain a response after multiple attempts). Last resort cancellations do not require the department's concurrence.

7-102 Process

(1) Purchasing Officer/Project Manager are to discuss proposed purchase with Department Head.

(2) Purchasing must receive requisitions that have sufficient funding in a referenced account.

(3) Finance will confirm funding and/or will work with the Department on budgetary transfers, if necessary.

(4) Any delays in processing submitted purchase requisitions due to lack of funding are the Department's responsibility.

SECTION 8 - SOLICITATION PROCESS

8-100 Definitions

(1) Invitations for Bids (IFB) are competitive bidding documents used for acquiring supplies, services, or equipment for which clear specifications can be written and contract award is made generally to the lowest responsive, responsible bidder.

8-101 Prequalification of Bidders

(1) The City reserves the right to prequalify bidders when deemed to be in its best interest. Prequalification may be done as the first step in a two-step bidding process. Bidders will be prequalified by responding to a Request for Qualification (RFQ), which will include a request for information related to the bidder's ability to fulfill the contract conditions. Qualification criteria may include financial capacity and stability, company history, capacity to perform, relevant experience, and other criteria relevant to the acquisition being bid.

(2) Prequalification requirements will be reasonable and will be the minimum requirements necessary to carry out the contract.

8-102 Requests for Information

(1) When required by the City and determined to be in its best interest, a general request for information sent to vendors may precede the IFB process. The request for information will be a way of determining appropriate bidders.

8-103 Invitation for Bid (IFB) Document

(1) The IFB shall include a purchase description and all contractual terms and conditions applicable to the procurement. All invitations for bid will include the following:

a. Adequate Public Notice – Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.

i. General Specifications – Clear, concise specifications must be included in all bid documents. The specification is a description of the physical or functional characteristics of the commodity, equipment, or services desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose will be included in all specifications and only those characteristics essential to the final performance of the product or service will be included. Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in

the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.

ii. Proprietary Specification (no substitute) – Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. Proprietary items will be competitively bid whenever there is more than one supplier from whom the product is available.

b. Terms and Conditions – All IFB's will include terms and conditions, which will become part of the contract. The City Purchasing Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these departments for inclusion in the contracts they request.

c. Bid and Performance Surety – When determined to be in the best interest of the City, the City Purchasing Officer may include in the terms and conditions a requirement for a bid and/or payment and performance surety. A bid surety of ten percent (10%) of the total bid will guarantee that a bidder enters into the contract per its bid. A payment and performance surety of a sum being not less than one-hundred percent (100%) of the total contracted amount will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set out by the City. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the City. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

d. Indemnification – Where the City may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the City harmless from such risk.

e. Insurance – The City may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the City and will name the City as an additional insured.

f. Criteria for Award – The IFB will include criteria for award. Award will be based on the lowest responsive and responsible bidder.

g. Responsiveness – A bidder's responsiveness will be judged according to requirement set forth in the invitation to bid. No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. In order to determine the lowest responsive bidder, criteria, which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum

required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the Invitation for Bid (IFB).

h. Responsibility – A bidder's responsibility will be judged according to the bidder's ability to successfully carry out the proposed contract. Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. The City may also consider any of its own past dealings with bidder. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsibility" made by the City Purchasing Officer.

8-104 Vendor Advisory

(1) All Invitations for Bid (IFB) will include as part of their language the following vendor advisory, "The City of Banning does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

8-105 Pre-Bid Conference

(1) When it is in the City's best interest, a pre-bid conference may be held. The purpose of the conference will be to further discuss or illustrate the City's needs and/or to answer any questions which may exist on the part of the bidders. The conference shall be hosted by the City Purchasing Officer. Any changes, deletions, additions or clarification to the bid solicitation shall be issued as an addendum and sent to all prospective proposers. Pre-bid conferences shall not be mandatory for potential bidders unless it is clearly in the City's best interest.

8-106 Acceptance of Bids

(1) Except as noted below, bids must be received no later than the time specified in the IFB. Bids shall be unconditionally accepted without alteration or correction. Late bids shall not be considered and shall be returned to the bidder unopened unless authorized for acceptance and approval by the City Purchasing Officer with written justification. All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt. All bids must be kept in a secure, locked location for access by personnel so authorized by the Department Head. Bids become public information immediately after the closing date and time.

8-107 Waivable Informalities

(1) When considered in the best interest of the City, and when bidder is deemed responsible as defined in the Public Contract Code §1103, certain proposal requirements may be waived by the City Purchasing Officer. Such waivers will be only for minor requirements, which will not provide a material advance for one proposer over another. Examples of waivable informalities are:

a. Failure of a proposer to submit information due to oversight;
b. Failure of a proposer to sign or date a bid document; and

c. Failure of a proposer to submit the requested number of proposal copies; and

(2) Waivable informalities will be considered on a case-by-case basis and will occur only when in the City's best interest.

(3) [A] bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.[1]

(4) The rule of strict compliance with bidding requirements does not preclude the contracting entity from waiving inconsequential deviations.[2] These kinds of errors can be ignored by a public agency, provided they give the bidder no advantage in price or otherwise over other bidders.

8-108 Correction, Clarification, or Withdrawal of Bids

(1) Correction, clarification, or withdrawal of erroneous bids before or after awards shall be permitted by the City Purchasing Officer under the following circumstances:

a. Where there is a mistake evident from examining the bid document, such as an extension of unit pricing or error in addition, the bidder should be permitted to correct the error and the bid remain valid.

b. Where a bidder alleges a material mistake of fact and there is reasonable proof a mistake was made and the intended bid cannot be ascertained with reasonable certainty, the bidder shall be permitted to withdraw the submitted bid without penalty.

c. Where a bidder fails to supply information requested in the IFB due to oversight, the bidder should be permitted the opportunity to furnish the information. This shall be permitted so long as the information does not affect the bidders' submitted price, specifications or substantive obligations and does not affect the position of his bid relative to other properly submitted.

(2) Where a bidder committed errors in judgment, the City will not permit withdrawal of the submitted bid without penalty, unless it is determined to be in the best interest of the City.

(3) Nothing in this section is intended to prohibit the City from accepting a voluntary reduction in price or more favorable terms from a successful bidder after award, provided that such is not conditioned on a modification or deletion of any conditions required in the IFB, which would result in a contract less favorable to the City.

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[1] [Citations.] (47 Ops.Cal.Atty.Gen. 129, 130 (1966), italics added, quoted with approval in Ghilotti, supra, 45 Cal. App.4th at pp. 904-905, Valley Crest, supra, at pp.1440-144, Konica, supra, 206 Cal.App.3d 449, 454, and National Identification Systems, Inc. V. State Bd. of Control (1992) 11 Cal.App.4th 1446, 1453 [15 Cal.Rptr.2d 257].)

[2] (Ghilotti, supra, at p. 908, italics added.) MCM Const., Inc. v. City & County of San Francisco (1998) 66 Cal.App.4th 359, 373-374.

8-109 Tied Bids and Local Preference

(1) When all other factors are determined to be equal, preference shall be given to firms having a bona-fide place of business within the City of Banning (except when subject to section 5-16-115). Local Vendor Purchasing Preference is the practice of procurement from certain suppliers/contractors because they are also local taxpayers. Local preference is desirable because it stimulates the local economy. All orders/contracts are awarded based on quality, previous performance, ability to meet the contract requirements, availability of service and parts, delivery schedule, and payment terms/discounts and all of the factors particular to the award. When all these factors are equal except price, a preference will be given to local vendors equal to 5% of the quoted price. The City Purchasing Officer has the right to award tie bids by performing a re-solicitation of the tied providers.

8-110 Cancellation of Invitations for Bid and Reservation to Reject All Bids

(1) An IFB may be canceled and any or all bids may be rejected in whole or in part as specified in the solicitation if it is for good cause and in the best interest of the City. The reasons for such cancellation or rejection shall be made part of the contract file. Reasons for cancellation or rejection shall be provided upon request to bidders.

8-111 Public Bid Openings

(1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding $25,000, subject to the guidelines for each contract type as detailed in this Policy.

a. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

b. In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as individual bids are electronically accessible after the bids close.

8-112 Protest, Grievances, Appeals – Invitation for Bid (IFB)

(1) Protest of Bid/Proposal Specifications – All protests and grievances related to bid or proposal specifications must be submitted to the City Purchasing Officer no later than five (5) business days prior to the close of the bid or proposal. Protests received after the five (5) business day deadline will not be considered by the City.

(2) In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid/proposal submittal procedures provided in the bid/proposal.

(3) Protest of Award of Contract – Protests related to the award of a contract based on the Invitation for Bid (IFB), must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the City Purchasing Officer.

(4) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the City.

SECTION 9 – REQUEST FOR PROPOSAL (RFP)

9-100 Definition

(1) When it is not in the City's best interest to acquire goods or services through normal competitive bidding, a contract may be solicited using the Request for Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:

a. The City's requirements are not well defined.
b. The City is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place.
c. Factors such as availability, expertise, and quality override price as criteria for award.

9-101 Requests for Information

(1) When required by the City and determined to be in its best interest, a general Request for Information may be sent to vendors preceding the RFP process. The Request for Information will be a way of determining appropriate proposers.

9-102 Request for Proposal (RFP) Process

(1) Requests for Proposals will be issued with the intent of providing a competitive process from which the City may select a vendor to satisfy its requirements. The RFP will consist of the following:

a. Adequate Public Notice – Adequate public notice shall be given to provide potential proposers sufficient time to prepare and submit proposals by the due date specified in the RFP.
b. Requirements Statement – This will be a statement of the City's objectives in issuing the request. It shall explain the City's need as clearly as possible. It shall include any special requirements which the City may have in regard to its overall objectives. Included may be requests for special reports, critical timelines, unique items or services to be provided, cost or pricing data required, duration of service, etc.
c. Qualification Statement – If necessary, the City may include minimum qualification criteria in the RFP. These criteria shall not be used to limit competition but may be used to assure a certain level of expertise and quality of service.
d. Terms and Conditions – The terms and conditions that are intended to become part of the final contract shall be included in the RFP. Included in the terms and conditions are

such items as indemnification, contract termination, payment terms, applicable laws, etc. The City Purchasing Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.

e. Instructions – These are items, which related directly to the procedures on how the proposal must be submitted. Included in the instructions are items related to the number of submittals required, format, procedure for information clarification, etc.

f. Bid and Performance Surety – When determined to be in the best interest of the City, the City Purchasing Officer may include in the terms and conditions a requirement for bid and/or performance surety. A bid surety will guarantee that proposers enter into the contract as agreed upon, and a performance surety will guarantee that the proposer will carry out the contract requirements according to specifications and terms and conditions set out by the City. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the City's interest. Proposers shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the City. Upon execution of the contract with the successful proposer, all such sureties will be returned to the unsuccessful proposers.

g. Indemnification – Where the City may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the City harmless from such risk.

h. Insurance – The City may also require that the successful proposer submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the City and will name the City as an additional insured.

i. Liquidated Damages – When determined to be appropriate by the City Purchasing Officer, a provision for liquidated damages may be included in the contract terms and conditions. Liquidated damages may not be a penalty, but must be an approximation of the City's actual damages.

j. Evaluation Criteria – The RFP will list the criteria which will be used to evaluate submitted proposals. The factors shall relate to the proposer's ability to satisfy the City's requirements as specified in the proposal. Evaluation criteria may be weighted by having specific values assigned to each criterion. Evaluation criteria may also be listed in order of importance without including values. Only the factors listed as part of the evaluation criteria may be used to determine the successful proposer. Values/weights for evaluation criteria must be established and submitted to the City Purchasing Officer prior to distribution of the proposals to the evaluation committee. Where cost is a factor in the evaluation criteria, costs analysis must be conducted and recorded in the evaluation process.

9-103 Prequalification of Proposers

(1) The City reserves the right to prequalify proposers when deemed to be in the best interest of the City. Prequalification may be done as the first step in a two-step bidding process. The process for selection shall be conducted in a competitive manner using the City's standard solicitation methods, to ensure participation by all interested vendors.

(2) Proposers will be prequalified by responding to a Statement of Qualifications (SOQ) or equivalent solicitation, which will include a request for information related to the proposers' ability to fulfill the contract terms and conditions.

a. Qualification criteria may include:

i. Financial capacity and stability,
ii. Company history;
iii. Capacity to perform;
iv. Relevant experience; and
v. Any other criteria relevant to the goods and services being sought by the City.

(3) Prequalification requirements will be reasonable and will constitute the minimum requirements to full the terms and conditions of the contract.

9-104 Vendor Advisory

(1) All RFP's will include as part of their language the following vendor advisory – "The City of Banning does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

9-105 Pre-Proposal Conference

(1) When it is in the City's best interest, a pre-proposal conference may be held. The purpose of the conference will be to further define or illustrate the City's needs and/or to answer any questions which may exist on the part of the proposers. The conference shall be hosted by the City Purchasing Officer. Any changes, deletions, additions, or clarification to the RFP shall be issued as an addendum and sent to all prospective proposers. Pre-proposal conferences shall not be mandatory for potential proposers unless it is clearly in the City's best interest.

9-106 Receipt and Acceptance of Proposals

(1) Proposals are to be received by the date and time specified in the RFP's. Proposals shall be unconditionally accepted without alteration or correction. All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All proposals must be kept in a secure, locked location for access by only those personnel involved in the proposal evaluation process.

(2) Late proposals may be accepted or rejected depending on the best interest of the City. No proposal will be accepted which is received by the City Purchasing Officer after the due date and time specified in the solicitation.

9-107 Confidentiality

(1) Proposals are not to be marked as confidential or proprietary. Proposals submitted in response to a RFP are subject to public disclosure as permitted by the California Public Records Act. Additionally, all proposals shall become the property of the City. The City reserves the right to make use of any information or ideas in the proposals submitted.
(2) Regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in proposals shall become a part of the public record and subject to disclosure without further notice to the proposer.
(3) The City shall not in any way be liable or responsible for the disclosure of any such records.

9-108 Proposer Interviews

(1) After reviewing submitted proposals, the evaluation committee may conduct interviews with responsible proposers who have submitted proposals determined to be acceptable and within competitive range. The purpose of these interviews will be for clarification to assure full understanding of and responsiveness to the solicitation requirements.

a. Proposers shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals.
b. Discussions with proposers will be recorded either in writing or on tape, and that record will become part of the contract file.
c. In conducting interviews, there shall be no disclosure of any information derived from proposals submitted by competing proposers.
d. All members of the evaluation committee must sit in on the interviews with all proposers. If in the best interest of the City, an exception may be made with the approval of the City Purchasing Officer.

9-109 Proposal Questions, Amendments, Extensions, Cancellation

(1) When questions are received from potential offerors that involve clarification or interpretation of the RFP, the Purchasing Officer shall provide a written explanation of the RFP to all potential offerors. If questions are received over the telephone, keep a record of all questions asked and answers given. Advise all potential offerors to put their questions in writing and confirm telephone conversations in writing. Addendums may be requested after submissions and prior to award for the purpose of obtaining best and final offers. Late best and final offers will not be accepted.

9-110 Scope of Work Revisions

(1) If discussions reveal the need to change the original scope of work prior to the bid/proposal due date, an addendum in which details the revised scope will be sent to all those submitting proposals. Upon issuance of an addendum, the vendor is required to acknowledge receipt and understanding by signing where designated and return the executed copy with submissions of the bid/proposal. If appropriate, the City will issue a revised RFP and begin the solicitation process again. The City Purchasing Officer will be the final authority as to which process will be used.

9-111 Evaluation Scores

(1) Evaluators shall initially score proposals individually. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied. The final scores will be recorded on an individual finalized score sheet. To ensure the integrity of the procurement process and the protected privacy afforded by the Public Records Act, Section 6255, the initial score sheets containing the evaluators notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent purchasing file or retained as City record.

9-112 One Proposal Received

(1) If only one (1) proposal is received in response to an RFP, the City Purchasing Officer may either recommend award, or, if time permits, re-solicit – whichever is in the City's best interest.

9-113 Errors in Proposal

(1) Prior to the time and date set for the receipt of proposals, any proposer may withdraw the proposal or correct any errors in their previously submitted proposal.
   a. After the time and date set for the receipt of proposals, proposers may not make any changes to their submitted proposals.
   b. After the receipt of best and final offers, a proposer may be permitted to withdraw its proposal without penalty if evidence is provided of a material error and the fulfillment of the contract by the proposer would create unconscionable hardship or financial loss.

9-114 Award

(1) Award of contract will be made to the responsible proposer whose proposal best meets the City's requirements as determined by the evaluation committee using the evaluation criteria, which should include proposed cost.
(2) Should the City Purchasing Officer fail to concur with the recommendation submitted by the evaluation committee, the City Purchasing Officer would meet with the evaluation committee members to discuss the reasons for the difference in opinion.

a. No recommendation shall go forward to the City Council from the City Purchasing Officer unless there is concurrence between the City Purchasing Officer and the evaluation committee.

9-115 Protests, Grievances, and Appeals – Request for Proposals

(1) Any actual or prospective proposer or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Purchasing Liaison and the City Purchasing Officer who is administering the RFP.

(2) Release of Proposal Information – Immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of a City Council Agenda Report for award of contract, the City Purchasing Officer shall send a "Notice of Intent to Award" to all participating vendors and a copy to the City Clerk.

a. Vendors will then have five (5) business days from the date of the notice in which to obtain proposal documents that are available for disclosure, including final score sheets with the names and notes of individual evaluators redacted.

b. Upon expiration of the five (5) business day period, the City Purchasing Office shall inform the department that the contract may be awarded, or as necessary, submit the item for review and approval by City Council.

9-116 Evaluation Committee

(1) All proposals shall be evaluated by an evaluation committee comprised of three (3) or more members, (preferably two (2) internal staff members and one (1) external professional). Evaluators must have no conflict of interest with the selection process, members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter.

a. It is City policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.

b. The composition of the selection committee will be determined by the using department or by the City Purchasing Officer for those contracts issued by the Office of Finance, Purchasing Department.

c. All members of the evaluation committee must sign a form certifying, under penalty of perjury, that they have no conflict of interest with the selection process.

d. During the proposal evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any proposed contractors or their advocates, except in scheduled proposer interviews as discussed below.

SECTION 10 – MULTI-STEP SEALED BIDDING

10-100 Definitions

(1) Multi-step sealed bidding is a method of soliciting bids, which permits preliminary evaluation based on a proposal's technical merit and the qualifications of the bidder/proposer and a final evaluation based on price.

(2) Multi-step sealed bidding may be used when it is determined that:

a. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the City of Banning;

b. Definite criteria exist for evaluation of technical offers;

c. More than one technically qualified source is expected to be available; and

d. A fixed price contract will be used.

10-101 Multi-Step Bidding Process

(1) Phase One:

a. Multi-step sealed bidding shall be initiated by the issuance of an invitation to submit technical offers. A technical offer is a document that lists and defines all of the technical requirements of the project and explains the approach and plan to address the City's needs. The invitation to submit offers shall be issued in a manner which provides adequate public notice allowing bidders sufficient time to prepare and submit responses. The invitation to submit technical offers shall contain the following information:

i. Notice that the procurement shall be conducted in two phases;

ii. A description of the material or service desired using the best information available to the City;

iii. A statement that unpriced technical offers only shall be considered in Phase One;

iv. The requirements for the technical offers, such as drawings and descriptive literature;

v. The criteria for evaluating technical offers;

vi. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed;

vii. A statement that discussions may be held; and

viii. A statement that only bids based on technical offers determined to be acceptable in Phase One shall be considered for award.

b. The City Purchasing Officer may hold a conference with the potential bidders before submission of the technical offers or at any time during the evaluation of unpriced technical offers.

c. The invitation to submit technical offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers or to amend offers already submitted. If an amendment materially changes the intent of the procurement, the invitation to submit technical offers shall be canceled or reissued.

d. Unpriced technical offers shall be due at the time and date specified. The contents of unpriced technical offers shall be disclosed only to City personnel having a legitimate interest in them or persons assisting in their evaluation.

e. Late technical offers may be accepted or rejected depending upon the best interest of the City. No technical offer will be accepted which is received later than 24 hours from the original due date. The City Purchasing Officer will have sole discretion in deciding which late technical offers will be accepted or rejected.

f. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers. Offers shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be stated in writing explaining the basis for the determination. A record of the rejection will be retained in the procurement file. Unsuccessful bidders shall be notified in writing by the City Purchasing Officer, and the bidder shall not be afforded the opportunity to amend its technical offer.

g. Discussions may be held with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, there shall be no disclosure of any information derived from one unpriced technical offer to another bidder. After discussions, the City Purchasing Officer shall establish a closing date for receipt of final technical offers and shall notify, in writing, bidders submitting acceptable or potentially acceptable offers of the closing date. A record will be kept of discussions and made part of the contract file.

h. At any time during Phase One, offers may be withdrawn without penalty.

(2) Phase Two:

a. Upon completion of Phase One, the City Purchasing Officer shall issue an Invitation for Bid (IFB). The invitations for bid shall be issued only to bidders whose technical offers are determined to be acceptable in Phase One.

b. Award will be made to the lowest responsive and responsible bidder.

10-102 <u>Requests for Information</u>

(1) When required by the City and determined to be in its best interest, a general request for information sent to vendors may precede this process. The request for information will be a way of determining appropriate bidders and will be considered as part of the multi-step procurement process.

10-103 Vendor Advisory

(1) All invitations for bid will include as part of their language the following vendor advisory – "The City of Banning does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

10-104 Protest, Grievances, and Appeals – Multi-Step Sealed Bidding

(1) Refer to Section 6 – Protest, Grievances, and Appeals.

SECTION 11 – SOLE SOURCE; PROPRIETARY REQUESTS; INNOVATION

11-100 Policy

(1) It is the policy of the City of Banning to solicit competitive bids and proposals for its procurement requirements. Sole Source procurement shall not be used unless there is clear and convincing evidence that only one source exists to fulfill the City's requirements.

11-101 Sole Source Justification

(1) Formal justification for Sole Source procurement is required when competitive bid guidelines require pricing from competing proposers. A Sole Source justification form will be prepared by the department and approved by Department Head or designee. The City Purchasing Officer shall retain a copy of this justification as part of the contract file. As part of the Sole Source justification, the requestor shall clearly provide:
   a. A detailed description of the type of contract to be established;
   b. A detailed description of services and/or commodities to be provided by the vendor;
   c. An explanation of why the recommended vendor is the only one capable of providing the required services and/or commodities and include back-up information to support the justification;
   d. The identity of other sources that have been contacted and explain in detail why they cannot fulfill the City's requirements;
   e. An explanation of how the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available (limited competition);
   f. An explanation of how the City would accomplish this particular task if the recommended vendor could not provide the product or service.

(2) Valid Sole Source justification requires strong technological or strong programmatic justifications. Sole Source justifications are not required for purchases where no competitive solicitation is required.

(3) If a contractor develops a particular expertise through demonstrated past performance which has been investigated and determined to be satisfactory in this area of expertise, then such contractor may be awarded a subsequent contract for related work, provided that the Sole Source justification requirements outlined in this Section are satisfied. Such contractor may be

designated as an exclusive contractor if the City would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.

(4) Instances when sole source purchasing may be applicable include the following:

a. Property or services can be obtained only from a specific vendor (i.e., materials or equipment; one of a kind items, etc.).

b. Competitive sourcing is precluded because of the existence of patents, copyrights, and special processes, control of raw materials by vendors or similar circumstances.

c. Procurement of water, power or other utility services where it would not be practical or feasible to allow other vendors to provide such services.

d. Procurement of support services in connection with the assembly, installation or servicing of equipment or software of a highly technical or specialized nature.

e. Procurement of parts or components to be used as replacements in support of equipment manufactured by a particular supplier.

f. Procurement involving construction where a contractor is already at work on the site and it would not be practical to engage another contractor.

g. Procurement where only a single supplier in a market is licensed or authorized to service or sell a specific product line.

h. Procurement of compatible additions to existing equipment where a different manufacturer's equipment would be impractical for the specific need.

i. The supplier or products are specified and required by the funding agency of a grant or Federal/State contract.

11-102 Proprietary Source Requests

(1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The party owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the goods or services.

a. Determining if an item is proprietary rests with the City Purchasing Officer and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the City Purchasing Officer shall endeavor to negotiate a price that is most advantageous to the City.

b. Proprietary Specifications – A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., "Brand X Computers – no substitutions". A detailed description of the proprietary

specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.

(2) City Manager – City Manager approval is required for all sole source and proprietary requests in accordance with applicable policy as provided in this Section.

11-103 Emergency Purchase Requests

(1) Sole Source requests may be approved based upon emergency situations in which there is not adequate time for competitive bidding. For additional policies regarding Emergency Requests, refer to Section 13 of this Policy.

11-104 Commodities – Sole Source Requests

(1) Approval by City Council is required prior to the execution of a Sole Source commodity contract costing more than $25,000 annually.

11-105 Service Contracts (includes A&E) – Sole Source Requests

(1) Approval by City Council is required for the following:
   a. Sole Source service contracts that exceed the total annual amount of $25,000,
   b. Sole Source service contracts that exceed a two (2) year consecutive term, regardless of dollar amount. Contracts may not be intentionally split to avoid this Policy,
   c. Renewal of Sole Source service contracts where the annual costs exceeds $25,000.

11-106 City Council Agenda Report

(1) Prior to the submittal of a City Council Agenda Report, all Sole Source justifications requiring City Council approval shall first be reviewed and approved by the Department Head, City Purchasing Officer and City Manager.

(2) City Council Agenda Reports shall clearly state that the procurement is a Sole Source purchase; and
   a. A signed copy of the Sole Source justification, as described above, shall also be attached to the City Council Agenda Report.

11-107 Negotiation

(1) With approvals as required, a contract shall be negotiated with the designated sole source to achieve a contract that is advantageous to the City of Banning.

11-108 Innovative Procurements

(1) Procurement of new or unique technologies, commodities, supplies and services can require an innovative process of procurement be utilized to competitively source for an award. When the City Purchasing Officer determines in writing that it is advantageous to the City to use an innovative competitive procurement process to achieve best value; the City Purchasing Officer shall provide such information in writing to the City Manager, Risk Manager and/or the City

Attorney's Office for review and approval as to form before issuing a public notice and solicitation.

SECTION 12 – COOPERATIVE PURCHASING

12-100 Definitions

(1) The Cooperative Purchasing Program authorizes departments to purchase products and services from contracts awarded by and through another City, County, State or Federal entity.

12-101 Policy

(1) With the exception of Architectural-Engineering projects, goods and services may be acquired through cooperative contracts that can involve one or more public entities. Such cooperative purchasing may include public procurement contracts, which are made available to other local public entities.

12-102 Responsibility

(1) The City Purchasing Officer is responsible for identifying and executing all cooperative contracts for use by City departments. The City Purchasing Officer may authorize and make use of cooperative agreements, including the pricing, and terms and conditions of the contract of another public entity provided that:

a. The initial procurement the City is relying upon is consistent with City purchasing rules and requirements.
b. The vendor holding the contract extends the same pricing, terms, and conditions to the City.
c. Before deciding whether or not to use the contract of another public entity, City Purchasing Officer will conduct an analysis of the contract to determine that the use of the contract serves the best interest of the City of Banning and that minimum City procurement requirements have been followed with respect to competitive bidding.
d. The City may also allow local schools and other public entities to take advantage of contracts the City has competitively bid, although the City shall not be a signor on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including but not limited to:
    i. Issuing their own contract purchase documents,
    ii. Providing for its own acceptance of the terms and pricing of the contract,
    iii. Obtaining required certificates of insurance and bonds, and
    iv. Making any payments due to the vendor.
    v. Limitation of Liability – The contracting entities shall hold the City of Banning harmless from all claims, demand actions, or causes of actions of every kind, known or unknown, resulting directly or indirectly, allegedly arising out of, or in any way connected with the use of City issued cooperative agreements.

12-103 City Requirements

(1) The City Purchasing Officer is required to maintain a list of the cooperative agreements that the City has joined. The list shall report dollar volumes, contracts' terms, type of contract, expiration or renewal date, and all other pertinent information.

12-104 No Usage Guarantees

(1) While cooperative entities may use these agreements, they City of Banning makes no guarantee of usage.

12-105 City Council Approval

(1) Individual entities and departments utilizing cooperative agreements to purchase goods and services, by and through the City Purchasing Officer, are required to receive City Council approval on individual purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this Policy.

12-106 Term of Cooperative Contract

(1) The duration of a City cooperative contract will depend upon the City's needs, prevailing market conditions, contract start-up costs, and the City's best economic interest.
(2) In no case will a City cooperative contract exceed five (5) years in duration, unless specifically approved by City Council.
(3) City cooperative contracts issued by the City Purchasing Officer that are subordinate to State and/or Federal government contracts and programs may be executed in accordance with the term of the overriding contract and where appropriate, may extend beyond five (5) years, without further approval by City Council.

12-107 Collaborative Purchasing

(1) The City Purchasing Officer has authority to identify and make use of governmental agency cooperative agreements that would be beneficial for City use.
    a. The City Purchasing Officer may pursue both competitive and negotiated cooperative agreements executed by City, County, State and/or Federal governments.
    b. May pursue contracts with other governmental entities in order to obtain cost savings for the City.
    c. Shall make available City cooperative contracts to other governmental entities and pursue opportunities for collaboration in purchasing.
(2) In the event a cooperative agreement identified for use by the City Purchasing was awarded by a method other than a competitive bid, the City Purchasing Officer is required to seek review from the Office of the City Attorney and City Risk Manager, where appropriate, prior to authorizing the use of the cooperative contract.

SECTION 13 – EMERGENCY PURCHASING

13-100 Emergencies

(1) Emergencies are defined as those situations where the safety and/or welfare of City residents or employees is at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the City. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the City Manager or his designee.

(2) No later than two (2) business days from the emergency request date, a Notice of Emergency Purchase(s) Form by the Department Head should detail the emergency situation. This justification should become a permanent part of the purchasing file.

(3) This Notice of Emergency Purchase(s) will be accompanied by all supporting documentation of the purchase(s) and a summary detailing the emergency situation, which caused the emergency purchase(s). All documents will become a permanent part of the purchasing file.

(4) Emergency purchases shall be subject to the approval of the City Manager, or his designee. City Council approval and/or notification on the Agenda Consent Calendar will be within 30 days of an emergency expenditure that exceeds the City Manager's approval limit of $25,000.

(5) In many cases, emergency orders may be made using either Online Purchasing or the Procurement Card methods.

(6) For emergency purchases related to an emergency/disaster incident outside of normal business hours, a log of present employee(s), date(s) and hour(s) spent on such incident must accompany the Notice of Emergency Purchase Form.

SECTION 14 – GRANTS AND AGREEMENTS

14-100 Grant and Agreement Regulations

(1) When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by Section §200.326 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow the procurement provisions contained in the Code of Federal Regulations (2 CFR §200.318 through §200.326) Contract provisions.

(2) See Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Code of Federal Regulations, Title 2, Subtitle A, Chapter 2, Part 200, Subpart A-F for specified guidelines.

(3) When procuring property and services under a state or other local award, see the granting agencies regulations and requirements for specified guidelines.

SECTION 15 – COMPLIANCE MONITORING

15-100 Scope

(1) It shall be the duty of the City Purchasing Officer to review, on an annual basis, the purchasing records and processes of all the City departments. This monitoring will be done on a sample basis. The monitoring of the department purchasing records will be conducted to facilitate the purchasing process and will not be construed to place responsibility for department purchasing on the City Purchasing Officer.

15-101 Specific Duties

(1) The City Purchasing Officer shall select purchasing records from each department on regularly scheduled basis for compliance monitoring. Selected records will span the range of the purchasing process. Records will be monitored using the following performance measures:

a. Compliance with legal and purchasing processes outlined in this Policy;
b. Compliance with Council policy set forth in this Policy;
c. Cost-effectiveness of goods and services acquired;
d. Timeliness of the purchasing process;
e. Operational efficiencies of processes used; and
f. Other measures as determined by the City Purchasing Officer

ARTICLE 5 – PURCHASING CONTRACTS – GOODS AND/OR SERVICES

SECTION 16 – TYPES OF CONTRACTS

16-100 Definitions

(1) Purchase Orders (PO) are formal contractual documents, and required for all purchases. Once sent to and accepted by a vendor bind the performance of both parties to the transaction. PO's created from requisitions are processed using the City's accounting software. Once a PO has been approved, it is transmitted either by secure electronic means or by email or fax to the vendor.

(2) Blanket Purchase Orders (BPO) are contractual documents and should be issued for recurring purchases, such as office supplies, not valid for longer than one year, and shall always expire at the end of the fiscal year in which they were initiated.

a. Blanket purchase orders are used for the acquisition of assorted commodities or services from a known vendor for departments that have predictable but varied program needs. The range of commodities or services covered by the blanket purchase order should be defined as narrowly as possible. Blanket purchase orders may not be used for the acquisition of equipment or appliances.

b. Blanket purchase orders are established with a maximum commitment dollar value. Requests for modification of this amount must be made in writing using the "Request to Increase the Dollar Amount of a Standard or Blanket Purchase Order" Form. Note that requests for increases will be reviewed by Purchasing and by the Chief Finance Officer, Deputy City Manager, or City Manager, as appropriate to ensure that funds are available before approval for the increase will be given.

(3) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than $5,000 per unit, including tax and freight, and those costing $5,000 or more with a useful life expectancy of less than one year. Included in the definition of commodity contracts covered in this Section are the following:

a. Equipment – Operating Rental/Lease – These contracts are in essence an extended rental agreement under which the owner of the equipment allows the City to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are "Operating Leases" and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating Leases are generally preferable when the City benefits from such agreement financially or when consistent product changes occur, such as for minor

office equipment, printers, copiers and technology related equipment. Not included in the definition are long-term, "capital," and/or non-terminable leases.

b. Publications/Newsprint – Contracts to receive periodicals, magazines, trade journals, etc., either in print of electronic/digital subscriptions.

c. Software/Licenses (Retail) – Contracts for proprietary software licenses where the software publisher grants the use of one or more copies of software under the end-user license agreement (EULA), but ownership of those copies remains with the software publisher. These types of purchases typically include terms and conditions, which define the uses of the software and number of users allowed.

d. Subscriptions/Databases – Contracts for access to online information or databases used to enhance or support a City program or project. Contracts of this type involve no onsite visits or work by a contractor and are limited to the digital exchange of information for a predetermined fee.

(4) Professional Services are defined as a service that requires specialized knowledge and training (often through long and intensive academic preparation) or in-depth experience in a particular field or discipline. Professional services are professional, technical, or consultant services predominantly intellectual in character. They include analyzing, evaluating, predicting, planning, or recommending and usually result in the producing of a report or completing a task.

(5) When a proposed procurement consists of both professional and goods and/or other services, determine if it is reasonable to separate the procurement, then decide if the procurement will be made as a professional service or not. A general rule of thumb that should be applied is:

a. If seventy-five percent (75%) or more of the cost of procurement consists of professional services, then procure it as a professional service. If less is a professional service, the procurement should be made by competitive sealed bids. If competitive sealed bidding is impracticable under the circumstances, an exemption will be considered.

16-101 Solicitation Considerations

(1) Solicitations of commodities shall be written so that critical factors associated with the acquisition shall be considered. These facts may include, but are not necessarily limited to the following:

a. Item capabilities – Will it carry out the functions for which it is being acquired?

b. Size, dimensions – Will it fit within the space where it is to be used?

c. Power requirements – Does the City possess the necessary mechanisms for powering the item as it requires?

d. Safety – Does the item meet all local, state, and federal safety requirements?

e. Pollution – Can the item be used without unnecessarily harming the environment? Does it require special air quality management permits?

f. Maintenance – Is there a reasonable on-hand inventory of service or spare parts readily available for use? Are maintenance contracts available?
g. Life Cycle Cost – What is the total cost of ownership including initial acquisition cost, cost of maintenance, cost of required space, residual value, etc.?
h. Liability Insurance – If the item is being installed by a vendor, what is the cost of liability insurance if the vendor does not name the City as an additional insured?

16-102 Term of Contract

(1) The length of all contracts for commodities shall be based upon the City's best interest. Consideration will be given to product availability, price volatility, and expectation of need. In no case shall a commodity contract exceed five (5) years in duration, unless the contract is temporarily extended for the original contract term by six (6) months to allow time for re-bidding the project.
   a. All contracts will include a provision for cancellation by the City due to lack of liquidity or funds, termination of requirement, or prices which no longer reflect reasonable market prices.
   b. Once a contract has expired, it is no longer valid and cannot be used, extended, or renewed through a Change Order or an Amendment.

16-103 Contract Pricing

(1) Contracts will be written so that pricing is controlled and monitored during the contract period. This may be done in several ways, including but not limited to:
   a. A contract may show a firm price for the contract period.
   b. A contract may show a percentage increase which will occur during the contract period.
   c. A contract's prices may be tied to an index, such as the Consumer Price Index, during the contract period.

16-104 Vendor Selection

(1) General Information - The Purchasing Officer maintains a list of known prospective suppliers who are available to furnish materials, professional and consultant services, and supplies that can meet the City's needs. In the case of written formal bids and informal quotations and for most transactions, the list (or record) of those bidders solicited will be in the solicitation file. In most cases, lists are maintained on a computer that enables identification of those suppliers that provide the item or service in question.

(2) New Suppliers - From time to time, purchases are made from suppliers whose names are not on existing bid lists and may never be on a list (because of infrequency of purchases, specialty items, etc.). As frequency increases or the demand requires, a new list may be established by the Purchasing Officer.

(3) Requests to be added to bid lists - Companies may be added to existing or new bid lists based on requests from departments or by the Purchasing Officer. All requests from suppliers may not necessarily result in being added to a bid listing.

(4) Deletions from Bid Lists - Companies may be deleted from bid lists. Reasons for deletion are: out of business, continual poor service, poor quality of goods furnished; default on previous purchase; failure to respond to three consecutive bid or quote invitations, or a supplier's request to be removed for any reason.

(5) Official Record of Bidders - The master supplier number list and bid list is the reference resource used to prepare each record of bidders.

16-105 <u>City of Banning Business Preference</u>

(1) Banning businesses are given a five percent (5%) preference on their quoted price. A Banning business:

a. Holds a current City of Banning business license;
b. Submits a bid for goods, services, or construction under the name that appears on the entity's current City of Banning business license; and
c. Same business has maintained its place of business located within the Banning city limits for the six (6) month period immediately preceding the date of the bid.

16-106 <u>Contract Increases</u>

(1) A contract's total expenditure may not increase by more than thirty percent (30%) of the original estimate upon which it was bid, unless it is demonstrated to be in the best interest of the City and reflective of good purchasing practices and is approved by City Council.

16-107 <u>Change Orders, Modifications to Professional Services and Capital Projects</u>

(1) Definitions:

a. Extra Work: Additional work that is unrelated to or significantly adds to the design intent and/or functionality of the original plans and specifications. This work is not necessary to complete the project and is typically requested by staff.

b. Plan Changes: Work differing from the scope of work which is set forth in the plans and specifications which is necessary to complete the project. The intent of the additional work is to 1) facilitate ongoing work when differing site conditions occur; or 2) conformance with the original design intent; or 3) take advantage of construction cost efficiencies.

c. Emergency Work: Work that is determined to be beyond the scope of work set forth in the plans and specifications which is necessary and essential to proceed with to avoid project delays or potential additional costs if work is not commenced as soon as practical.

Authorization must come from the owner's construction management representative and the respective Division Director or his/her designee. Authorization will be reported to the Council at their next regularly scheduled meeting.

(2) All Change Orders for existing contracts for commodities, professional services and construction, entered into by the City, shall be subject to the modification procedures contained in this policy. All Change Order approvals shall be in writing.

a. Department Head approval is authorized for any Change Order up to $5,000, or 1% of the original contract amount, whichever is greater.

b. The City Manager may approve modifications to the plans and specifications and contract documents by means of a Change Order if the cost or estimated costs of such Change Order does not exceed $25,000.00 or 10% of the original contract, whichever is less.

c. Any Change Order in excess of $25,000.00 or 10%, whichever is less, shall require Council approval.

d. The cumulative dollar amount of all change orders for a particular Public Project may not exceed 25% of the original contract price. Should it become necessary to exceed this limitation, the change shall be by written supplement agreement between the contracting parties.

e. When the Notice of Completion is submitted to the City Council for approval, a summary of total project cost listing all change orders, their purpose and amount, shall be included.

f. The City Manager's authorized representative, (Resident Engineer or Engineering Manager) may approve plan changes (but not extra work items) up to $10,000.00, within the limits of the City Council approved contingency amount. The representative would authorize work in writing to the contractor. All recommended plan changes must be reviewed and approved by the Deputy City Manager. Contractor would proceed with work and identify percent complete in the next partial payment. Payment would be identified as pending Council approval; however, the amount of work completed would be included in the partial payment total.

(3) Report to the City Council:

a. The City Manager, or his designated representative, shall make a monthly written report to the City Council as to all Change Orders approved by the City Manager during the month, and of all possible future Change Orders that may appear probable prior to the next monthly report. At a minimum, the City Manager shall provide the Council with the name and nature of the contract, all Change Orders approved during that month, the reason for the Change Orders, the cumulative amount of the Change Orders for that contract, and any additional information the Council requests.

(4) Authorization:

a. The authority contained in this policy binds the City Council, and it is recognized that subsequent Council refusal to ratify a change order would subject the City to damage claims.

16-108 Multiple Awards

(1) Awards of commodity contracts may be on an individual basis, a group basis, or on a low total bid basis for the total contract amount, whichever is determined to be in the City's best interest.

16-109 Secondary Awards

(1) Awards may be made to secondary, and, in some cases, tertiary vendors when there is a reasonable possibility of supply disruption and having an alternate source is clearly in the City's best interest.

a. Primary award will go to the lowest responsive and responsible bidder; secondary award will go to the second lowest responsive and responsible bidder, etc.

b. For any commodity requirement, the primary bidder will always be contacted first and, only if that bidder is unable to provide the required commodity within the time required, will the secondary bidder, etc., be contacted.

16-110 Multi-Department Contracts and Cooperative Contracts

(1) Multi-Department Contracts are those which are issued for use by multiple City departments which use like commodities and would benefit from the contract pricing resulting from economies of scale. City departments listed on the contracts may order directly through multi-department contracts. This is accomplished through the City Purchasing Department.

a. Cooperative Contracts are used by various public agencies and entities to jointly exercise certain powers common to each, including among other things, the right to exercise their power to purchase. (Cal. Gov. Code §6500 through §6512)

b. Cooperative Contracts are executed by the Office of the City Purchasing Officer and are available for use by City departments. Terms and conditions are established under a cooperative contract and departments may issue individual purchase documents and orders through the cooperative contract, identifying the goods the department wishes to purchase.

c. The City Purchasing Officer and Department Head or delegated person(s) shall be responsible for the use of all cooperative contracts and all multi-departmental contracts with four (4) or more users for use by City departments. These contracts shall be available for use by all City departments at the discretion of the Department Head. Department Heads must work closely with the City Purchasing Officer.

16-111 Approval of Non-Standard Contract Terms

(1) If Risk Management, City Manager and City Attorney agree in writing that the risk to the City is minimal, approval by City Council is required prior to the execution of any commodity contract that includes non-standard terms in the following contract provisions:
   a. Indemnification, and
   b. Limitation of liability provisions.

16-112 Opportunity Buy

(1) An "Opportunity Buy" is a situation where necessary goods are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents a minimum cost savings of 20% to the City. In the event this situation arises, the Department Head or authorized designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent purchasing file. The justification shall include:
   a. A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved.
   b. Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification.
   c. Comparison of the recommended vendor's prices or fees to the general market with price and attached quotes for comparable items provided, if available.

(2) City Council Approval – Opportunity Buy
   a. In the event that the "opportunity buy" exceeds $25,000, approval by City Council is required prior to the purchase.

16-113 Service Contracts

(5) Service contracts encompass all contracts for services either with or without materials. Included in the definition of service contracts covered in this Section are the following:

   a. Professional Services – Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, appraisal, consulting, adjusting, risk management, insurance, engineering, architectural, selling agents and brokerages, auditing, information technology related services that may or may not include software, and software license or other types of end-user agreements.
   b. Facilities and Equipment Services – Services that provide maintenance to existing facilities or equipment, including such services as janitorial and grounds maintenance, equipment maintenance and repair, software maintenance, etc.
   c. Personnel or Employee-related Services – Services that provide benefit or assistance directly to employees, including such services as vending machines, security, etc.

d. Consultant Service Contracts – Services that provide an advisory nature which include a recommended course of action or personal expertise, and have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise that will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision that prohibits "follow-on" projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.

e. Revenue Generating Agreements (non-real estate) – An agreement for contractor-provided services on City premises in which the City does not pay a fee, but instead receives a portion of the revenues that are generated from the services.

f. Capital Leases (non-real estate) – A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.

(1) Not included in the definition of service contracts for City procurement purposes are contracts for public works, architects and engineers, real property contracts, and human services.

16-114 <u>Architect-Engineering Service Contracts</u>

(1) Architect-Engineer (A&E) service contracts or agreements include, but are not limited to: architectural, engineering, environmental, and land surveying services, as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.

(2) Services which are considered A&E services may include but are not limited to: investigations, developing designs, plans and specifications, reports, cost estimates, show drawings, review, supervision of construction, land surveying, environmental documentation required by the California Environmental Quality Act, Public Resources Code §21000*, et seq*. (CEQA), and other regulatory permits.

(3) A&E services may also include other related services, where needed, in support of an A&E project, including but not limited to, archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consultants, material testing and inspection, real estate appraisal and other property acquisition services.

(4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying or construction project management, the contract or agreement shall meet the requirements set forth in this Section.

(5) Limits On Architect-Engineer Contracts:

a. A&E contracts shall not be awarded to the same A&E (or affiliated firms) who provided design services in the situations listed below:
   i. A&E who prepared plans and specifications may not bid on the project as a construction contractor except as otherwise provided by state law (Design and Build Exceptions);
   ii. Any A&E representing a private sector client with an interest in a City project may not also represent the City on the same project. Exceptions to this may be made if the Department Head discloses the relationship to the City Council with a determination that using that particular A&E will provide a substantial benefit to the City;
   iii. It is prohibited to use cooperative contracts, to procure A&E Services; and
   iv. The above list is not exclusive. Other situations where conflicts might exist should also be considered.

(6) Basis for Selection of Architects and Engineers:
   a. California Government Code §4526 reads in pertinent part, "Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required."
   b. Selection of Architects and Engineers for On-Call A&E Services:
      i. Definition – For purposes of this Section, "on-call" A&E Services are for projects that are routine in nature, and encompass a predefined category of work as defined by the executing department.
   c. Each department shall follow these procedures for selection of A&E firms to perform on-call A&E Services:
      i. Architect-engineer firms shall file applications with individual departments delineating their qualifications, including experience, expertise for project magnitude in which they are capable of handling. A&E firms shall identify the on-call A&E services they are qualified to provide in accordance with departments' predefined categories;
      ii. Departments shall maintain a list of qualified architects-engineers from the applications received, in accordance with this Section;
      iii. Departments shall then turn over the list of qualified architects-engineers to the City Purchasing Officer.
   d. Statements of qualifications will be ranked by the City staff using the following criteria:
      i. Technical experience; Key personnel; Availability of adequate staff; and; other criteria determined necessary for and appropriate to the project.

ii. After evaluating the qualifications using the established criteria, the department shall submit a ranked slate of the most qualified A&E firms to the City Council for selection and approval. City Council-approved slates for specific categories of services shall be valid for a period of no more than three (3) years, unless otherwise directed by City Council.

e. Departments will then select from City Council-approved slates of A&E firms for on-call A&E services and negotiate contracts or agreements as needed for final approval by the City Manager, Risk Manager, and the City Purchasing Officer.

f. Once an A&E on-call contract or agreement has been approved and executed, the departments may utilize the on-call A&E without additional City Council approval for as needed tasks, which shall be identified in writing in a subordinate agreement (or "Task Order") with the A&E, with final approval by the City Purchasing Officer.

g. While remaining consistent with qualification-based selection, an effort shall be made to produce an equitable distribution of contracts among the best-qualified firms and to provide fair opportunities to small businesses.

(7) Selection of Architects and Engineers for Project Specific A&E Services

a. Each department must issue, to the City Purchasing Officer, a Request for Proposal for all architect-engineer projects valued annually at over $25,000. The process shall consist of evaluation of written proposals and oral presentations. Evaluation criteria shall be as follows:

Written Proposals	**Oral Presentations (if needed)**
Technical expertise	Presentation
Key personnel	Technical content
Approach/understanding of project	Project manager
Control of cost and schedules	Key team members
References (written and verbal)	Communication skills
Availability/staff devoted to project	Project understanding
Insurance and good standing entity	Project schedule
Other – reserved	Other – reserved

(8) Evaluation shall be based on a scoring system from 0-5, with 0 being unacceptable and 5 being excellent. Weighting of evaluation criteria shall jointly be determined by the Department and the City Purchasing Officer.

(9) After evaluating the proposals using the above criteria, the City Purchasing Officer shall submit, or the City Purchasing Officer may delegate the Department to submit, a ranked slate of the most qualified A&E firms to City Council for selection and approval. Any member of City Council who recommends the selection of an A&E provider other than the top-ranked providers shall publicly disclose his or her reason for recommendation.

16-115 Public Works Contracts

(1) All contracts for Public Projects shall be awarded consistent with and pursuant to the provisions of the Uniform Public Construction Cost Accounting Act (UPCCAA), Public Contract Code (PCC) Section 22000 et seq.), Banning Municipal Code Section 3.24.100, and other applicable requirements of State law.

(2) To the extent permissible by the Public Contract Code, the City will consider Design-Build as an alternate method of procurement for Public Projects.

(3) The definition of a Public Project shall be the same definition that are included in the Public Contract Code §22002

(4) Bonds: A bid bond in a value not less than 10% of the total bid price shall be required on all projects of more than $75,000.

(5) Award of all contracts for Public Projects up to $220,000 may be approved by the City Manager.

(6) Award of all contracts for Public Projects over $220,000 must be approved by City Council.

ARTICLE 6 – MISCELLANEOUS PROCUREMENT PROCEDURES; GUIDELINES AND REFERENCES

SECTION 17 - RECEIVING PROCESS

17-100 Product Delivery

(1) Delivery of requested products or services marks a transition in the purchase-to-pay process from a purchasing activity to a payables activity. All purchases must be "received" to release payment to the vendor. The "receiving" staff must determine if the products or services received are acceptable and conform to the City's requirements. The entire receiving process consists of the following:

17-101 Signing for Deliveries

(1) Whenever possible, the person receiving the product should sign the receiving documents provided by the vendor or shipping company. The person receiving the delivery should preferably inspect the delivery before signing the delivery receipt and should also initial the packing list. Then, submit the packing list to the appropriate person for financial reconciliation.

17-102 Refusing Delivery

(1) Whenever possible, departments should refuse to accept shipments if they are unable to confirm that the order was placed by their department, if the packaging appears sufficiently damaged to warrant concern or does not meet the required specification.

17-103 Record Retention

(1) During the receiving process, the department takes physical possession and legal ownership of the shipment. Therefore, it is important for the vendor to provide the department with a packing list for all shipments delivered to the department. If the vendor fails to provide the packing list, the department should contact the vendor to request that copies be sent for its files. The need for saving receiving documents is particularly important when accepting any partial or staggered deliveries over a period of time.

17-104 Inspecting the Shipment

(1) Persons receiving shipments should, upon acknowledging receipt of an order, conduct an inspection to verify the following minimum conditions:
   a. The products conform to the PO/BPO requirements and other relevant documents (for example: correct model number, description, size, type, color, ratings, etc.)
   b. The quantity ordered against the quantity shipped or delivered.

c. There is no damage or breakage

d. The unit of measurement count is correct (e.g. if the unit of measurement on the purchase order is one dozen, there should be 12 in the package).

e. Delivery documentation (packing list, certifications, etc.) is acceptable

f. Products are operable or functional.

17-105 Matching the Packing List to Purchase Order

(1) During the inspection process, the department should compare the vendor's packing list to the purchase order to determine if there are any discrepancies between the documents. At a minimum, the following information should be the same on both the packing list and purchase order:

a. PO number

b. Item or Manufacturer's part number

c. Quantity and unit of measure

d. Description of the products

(2) Once the invoice has been entered by the department representative, the department should determine if the invoice charges are correct. In case of any invoice discrepancies, the Accounting department should be notified to place a "hold" on the invoice until further notified.

17-106 Product Substitutions and Over-Shipments

(1) Vendors are not allowed to substitute products or deliver more than the amount ordered without prior approval from either the department representative of Purchasing Officer.

17-107 Failed Inspections

(1) Departments are advised to notify in writing any failed inspection results discovered during inspection and provide the results to the vendor and the Accounting department for appropriate action. When receiving items from freight companies, the number of packages received should match exactly the number on the freight bill. If not, the department should require the driver to write the number of packages received on the bill before signing. Inspect all packages for damage to the outside container. Any visual damage should also be noted on the freight bill before signing.

(2) In cases of concealed damage, a report should be made by the department immediately to the delivering carrier. The report should include the following information: Freight Bill Number, PO/BPO number, the date of delivery, supplier, and the extent of damage or shortage. In the

event of damage, it is essential that the department retain all the original shipping cartons for inspection by a claims adjuster.

17-108 Testing

(1) Testing may be performed by the department to ensure that the products substantially conform to the specifications documented in the PO/BPO, contract, or vendor's proposal. Acceptance testing is highly recommended for complex, expensive capital equipment prior to approving final payments to the vendor.

(2) An acceptance testing period may occur as a single instance or over a period of time, but should be performed as quickly as possible following the receipt of the product.

(3) For major capital equipment purchases, specific acceptance testing criteria should be developed and incorporated into the contract. Departments must perform the testing according to the criteria established in the agreement for the results to be considered valid and legally enforceable in the event the product is rejected and payments are to be refunded.

17-109 Acceptance Determining

(1) Departments are required to contact the vendor in a timely manner when rejecting products that are over-shipments, defective or for any other non-conformance. Failure to notify the vendor in a timely manner will mean the shipment will be considered "accepted."

17-110 Product Returns for Credit/Refund

(1) When a vendor has shipped items as specified on a purchase order, they have legally complied with their part of the contract and are under no obligation to accept returned items for credit or refund.

(2) When a product is damaged, or is rejected for failing acceptance testing or is not as specified on the PO/BPO, the department should request a Return Authorization Number from the vendor. The shipping label on the returned package must be marked with the Return Authorization Number. Other identifying information should be placed on the outside of the returned package for easy identification.

17-111 Financial Information

(1) The Finance department is responsible for establishing general ledger account numbers, which represent the source of funds (department or function). Account numbers represent the type of revenue or expense to be transacted to each department.

(2) Each department is assigned a general ledger account number(s) in order to detail and control expenditure activity for their area(s) of responsibility. All Purchase Requisitions

must carry the complete account number to be charged in order that required approvals may be obtained prior to its receipt and for proper encumbrance and payment once the process is complete.

17-112 Payment Terms

(1) The City's standard payment terms for purchase orders and demand checks are Net 30 Days from the date of the invoice.

(2) The City's payment terms are determined by the City Manager and Administrative Services Director. Departments do not have authority to change or otherwise accept different payment terms from vendors and contractors. Non-standard payment terms must be reviewed and approved by City Manager prior to entering into any contracts.

17-113 Invoice Approval

(1) Invoices must be approved by the authorizing individual, or his/her designee, for the items invoiced. The authorization requires validation of the correct general ledger account charged for the payment.

(2) Payments must be issues from original invoice, and not a copy or statement. If a copy is all that is provided to accounts payable, it must be stamped "ONLY COPY AVAILABLE" with a reason as to why it is the only copy.

(3) The Accounting Department encumbers all proper purchase orders into the City's Accounts Payable System for matching and payment of invoices. Vendors and contractors are directed to send their invoices either specifically by email or mail to the City's mailing address.

(4) Invoices are entered into the Accounts Payable system upon approval. If the purchase order and corresponding invoice systematically match within predefined tolerances, the invoice will be scheduled for payment in accordance with the payment terms.

(5) Should there be a problem regarding the item or services received under the purchase order, the department is to be notified by the Accounting department to withhold payment until the problem is reconciled.

(6) Since the credit standing of the City is dependent upon its ability to pay its obligations on time, communications between the department and the Accounting Department must be done in a timely manner.

17-114 Payment Methods

(1) The purchase of products and services is accomplished through a variety of different procedures. These procedures are designed to address the great differences in complexity, value, risk and

transaction volumes associated with City purchases. The list below describes the current payment methods:

a. Petty Cash – a fund which supports petty cash disbursements for authorized cash advances and for limited cash reimbursement.

b. City Check – a draft drawn on a City bank account for the procurement of goods and services.

c. Electronic Funds Transfer (EFT) Payments – an electronic payment made directly to a designated vendor account.

d. Procurement Cards (i.e.: Visa, Staples, Costco) - for single transactions in accordance with the individual procurement card for the purchase of discretionary transactions with local retailers, internet companies and travel related services.

SECTION 18 – SURPLUS CITY PROPERTY

18-100 Definition

(1) Surplus City Property is defined as all tangible supplies, materials or equipment to which the City acquired title by means of purchase, donation, grant, or any other lawful means of acquisition that is determined to no longer be used or required by the department in possession.

18-101 Policy

(1) City of Banning, Administrative Policy, requires that Surplus City Property to be reported to the Finance Department, Purchasing Officer, who may then transfer such an item to a surplus pool to be maintained under the supervision of the City Purchasing Officer for reassignment and reuse by City departments.

18-102 Disposal of Surplus City Property

(1) The method used by departments to dispose of Surplus City Property must be approved and coordinated with the City Purchasing Officer. Internal reuse of Surplus City Property by City departments is the preferred method of disposal.

(2) Disposition Methods – Surplus City Property shall be disposed of in one of the following preferred methods:

a. Internal transfer to a claiming department;
b. Sale by City Purchasing Officer;
c. Documented donation of technology and related equipment with a fair market value less than $5,000 per lot to the Department of Education and non-profit organizations;
d. Auction (material value);
e. Recycling; and
f. Waste.

18-103 Receipt for Fair Market Value

(1) In the event that property is not transferred within the City and must be disposed of in another manner, every attempt will be made to receive fair market value for the property.

18-104 City Council Approval

(1) Approval from City Council is required prior to the donation of any Surplus City Property with an estimated market value that exceeds Five Thousand Dollars ($5,000 USD).

SECTION 19 – COMPUTER AND SOFTWARE PURCHASES

19-100 Computer Purchases

(1) For initial personal computer purchases, the following items will be considered as one unit: System unit including disk-drive(s), emulation board, internal/external modems, memory expansion board, co-processor, expansion chassis, cables, additional chips, keyboard monitor and operating system software.

(2) If the following items are acquired at an individual cost of $5,000 or more after the initial purchase of a computer, they will be considered ENHANCEMENTS and coded as equipment:

a. additional disk drives (including replacements if they provide enhancement)

b. emulation board

c. internal/external modems

d. memory expansion board

e. co-processor

f. expansion chassis

g. keyboard

h. monitor

(3) Software will be considered Capital Equipment if it is customized for the City and acquired at a cost of $5,000 or more per unit and has a useful life of more than 3 years.

(4) All requests to purchase electronic equipment, hardware, and software shall be reviewed by the City's Information Technology Division to be vetted for the purpose of determining if the products are supported and/or compatible with the City's pre-existing structures prior to any purchase.

SECTION 20 – LEASING

20-100 Lease / Lease Purchase / Rental Orders (Equipment)

(1) A lease is an agreement conveying the right to use property for a specified time and for a specific amount of money. In a true lease, the property being used remains the sole property of the lessor

(vendor), and the lessee (City) builds no equity in the leased property. A lease/purchase agreement allows the lessee to build equity and purchase the property from the lessor for a nominal amount at the completion of the lease. The term of a lease is fixed in duration and generally not cancelable. A rental agreement is similar to a lease in that the user does not build ownership in the asset. A rental agreement differs from a lease in the length of the agreement (usually less than one year) and the agreement can usually be cancelled by the renter prior to the end of the agreement without penalty.

SECTION 21 – PURCHASING CARDS

21-100 Definition

(1) With the approval of the City Council and under the direction of the City Manager, the City Purchasing Officer shall oversee and administer the City's Purchasing Card Program. Purchasing Cards are City credit cards issued to City of Banning employees authorized by Department Heads to make purchases on behalf of the department in accordance with Purchasing Card Program Policy and Procedures.

21-101 Authorized Use

(1) The Purchasing Card may be used to purchase goods and services for City use only. Using the Card for personal purchases is strictly prohibited. Any employee who willingly uses the Card for personal purchases shall be subject to:
   a. Reimbursing the City for all costs associated with personal purchases;
   b. Having the card immediately revoked;
   c. Possible referral to the City Attorney for collection and prosecution; and
   d. Further disciplinary action and possible termination of employment.

21-102 Responsibilities

(1) Program Administrator – Each department shall have a Purchasing Card Program Administrator. The Program Administrator is responsible for all aspects of their department's participation in the Purchasing Card Program. The Program Administrator works closely with the City Purchasing Officer or designee to answer questions, perform contract administration, account application coordination, card issuance and cancellation, ensure timely monthly submission of receipts and purchase documentation, and administrative training.
(2) Authorized Signer - Department employee authorized to request new cards, modifications to card limits, cancel cards, and assign Approving Officials.
(3) Billing Officials – Department employees responsible for managing the billing, payment and approval processes for department purchases. Billing Officials cannot also be cardholders.
(4) Approving Officials – Department employees authorized to approve payment for purchases made by department cardholders.

(5) Cardholders – City of Banning employees authorized to make Purchasing Card purchases on behalf of their assigned department in accordance with established program policy and procedures and applicable procurement policies and procedures.

21-103 Controls

(1) In addition to the other internal controls and procedures as detailed in the Purchasing Card Program Policies and Procedures, use of City-issued Purchasing Cards are subject to the following controls:

a. 30-Day Purchase Limit per Card – Each card is established with a monthly, not-to-exceed amount predetermined by the Cardholder's department and approved by the City Purchasing Officer and delegated Agents.
b. Single Purchase Limit per Card – Each card is established with a single transaction limit to ensure adherence to competitive billing requirements.
c. Merchant Code Blocking – Every City-issued Purchasing Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.
d. Department Heads may impose additional restrictions on goods or services that may not be purchased using the Purchasing Card.

21-104 Adherence to Purchasing Policy

(1) City purchasing policies, as delineated in this Manual, may not be circumvented when using the Purchasing Card. In accordance with City policies and procedures outlined herein, where appropriate, Cardholders are required to obtain the appropriate number of price quotes before making purchases and must document the quotes received with the transaction information and invoice.

SECTION 22 – PETTY CASH DISBURSEMENTS & REPLENISHMENT

22-100 Petty Cash Fund

(1) The petty cash fund in the amount not-to-exceed $250; is established to make low value and urgent need purchases. A custodian of the fund, who is directly responsible for the safekeeping and disbursement of cash, must be appointed by the Administrative Services Director. The original check written to establish the fund, and checks written to replenish it, are made payable to the custodian of the fund. Written instructions detailing the procedures that must be followed in using petty cash funds should be provided to the custodian.

(2) Petty Cash Disbursements – All disbursements must be authorized by the designated authority and indicated by approval signature. Expenses paid from a petty cash fund can only be made for the purpose(s) for which the fund was authorized and must be supported by receipts, which should contain the following information:

a. Date of purchase or payment;
b. Name of vendor or other payee;

c. Evidence that a payment was made, i.e., a cash register receipt or an invoice which the indicates that it was "Paid";
d. Amount paid;
e. Description of the goods purchased or of the services provided and
f. Signature indicating receipt of purchases or services.

22-101 Reimbursement of Funds

(1) Reimbursements made to a fund custodian for petty cash expenditures are based on a Check Request which must be supported by purchase receipts.

(2) Such requests must be approved for payment by someone with signature authority who is neither the petty cash fund custodian nor an employee who reports to the fund custodian.

(3) Reimbursement should be requested as needed, but the fund should always be reimbursed by the end of the fiscal year or when it falls below 60% of the total fund.

COMMERCIAL LIABILITY INSURANCE

23-100 Definitions

(1) Commercial General Liability - A broad form of liability insurance usually covering business organizations to protect them against liability claims arising out of their operations. This is a standard insurance requirement with fundamental coverage for bodily injury, property damage, products & completed operations, and personal injury arising from the contractor's activities. CGL policies typically exclude liabilities arising out of professional services and some other risks such as the use of automobiles.
(2) Commercial Automobile Liability - Important for any work or service involving the use of motor vehicles, and a legal requirement for all vehicle owners. If contractors use an automobile in any phase of the work performed for the City, evidence of automobile liability insurance is required. In some cases, consulting firms will not own automobiles and therefore may not purchase automobile liability coverage. However, the firm should obtain coverage for their non-owned and hired automobile exposure. This coverage protects them for claims arising from use of personal or rented vehicles by its principals or employees.
(3) Workers Compensation Liability - All employers must provide this insurance or be registered as a Self-Insured entity with the State. This is not required for sole proprietors or companies that have no employees. Some contractors may be exempt from purchasing workers' compensation insurance. If the City contracts with a sole proprietor of a business, the workers' compensation insurance requirement may be waived by completing the appropriate waiver form.
(4) Professional Liability or Errors and Omissions Liability - Professional liability insurance protects against losses that occur when a "professional" fails to practice his or her art to the usual and customary standards of that profession. There can be risks to the City associated with errors (or

allegations of errors) in the professional's work product or judgment. The types of losses that can occur under such circumstances are often excluded under general liability policies. As an example, if a contractor is merely following blueprints in constructing a building, it would involve only physical work and a general liability policy will suffice. However, if the contractor is a "design-build" firm, or decides that it knows of a better way to construct part of the building, and it alters the blueprints accordingly, then it has crossed the line over into providing "professional" service and would then need Professional Liability coverage to cover a subsequent loss.

(5) Installation Floater Liability - In construction contracts, if the project scope includes construction work other than vertical construction or renovation/addition to a previously existing structure, evidence of Installation Floater Insurance is required. Installation Floaters are similar to Builder's Risk Insurance policies in that they are designed to cover damage to material and equipment to be installed in an 'existing building'. Installation floaters are required from contractors performing a specialized job on an existing building or installing equipment or materials. An example would be a contract to replace the plumbing/fixtures in a bathroom of an existing building. The Installation Floater must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.

(6) Builder's Risk Liability - In construction or remodeling contracts, the contractor is responsible for direct physical damage to the construction project as well as to construction materials in transit, stored at off-site storage locations and stored at the project site. The contractor, at their own cost and expense, must provide and maintain the applicable property insurance until the work is accepted by the City of Banning. This is done through a specialized property insurance form known as "Builders' Risk Insurance". The City requires evidence of Builder's Risk insurance anytime a contractor is doing vertical construction or renovation/addition to a previously existing structure. Said coverage of Builder's Risk Insurance must be written for 100% of the contract value. Builders' risk insurance is designed to cover buildings and construction materials while in the course of construction against loss or damage caused by a variety of perils, i.e. fire, wind, hail, etc.

(7) Contractors' Pollution Legal Liability or Asbestos Legal Liability - Environmental remediation, asbestos abatement, and other hazardous material operations involve exposures that require pollution legal liability coverage. Some contracts have pollution exposures that are not in the primary scope of work. For example, materials recovery/recycling facilities are rife with hazardous materials exposures, as are landfill operations. Road construction can also include risks of contamination to waterways from runoff or accidents involving hazardous substances. The California Water Bill defines hazardous material as "any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant presence or potential

hazard to human health and safety, or to the environment." Hazardous materials include, but are not limited to, hazardous substances and hazardous wastes.

(8) Railroad Protective Liability - Required for construction or demolition operations within 50 feet of railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossings. Contractor's railroad protective liability insurance policy should cover both bodily injury and property damage.

(9) Cyber Liability - Cyber and privacy policies cover a business's liability for a data breach in which the firm's customers' personal information, such as Social Security or credit card numbers, is exposed or stolen by a hacker or other criminal who has gained access to the firm's electronic network.

(10) Additional Insured - (required for General Liability & Auto Liability policies): an endorsement to the Commercial General Liability (CGL) policy or Business Auto Liability policy will name the City as an additional insured under the contractor's policy for covered claims arising from their work or activities on our behalf. This status gives the City direct rights under the Contractor's insurance and greatly increases our chances of recovery, especially for our legal defense. This is not required under the WC policy and is not available under E&O policies.

(11) Primary Coverage - for all the insurance policies, the City requires the Contractor's insurance to be the first to cover any claim, with the City's coverage applicable only if the Contractor's is exhausted. An endorsement is generally not required for the standard Business Auto policy as primary insurance language is written into the standard policy form but is recommended for the CGL policy, especially for high risk activities.

(12) Waiver of Subrogation - if an insurer pays a claim, any rights their insured may have to recover all or part of the payment from someone else are transferred to the insurer. That process and the insurer's attempts at reimbursement are called subrogation. The City's insurance requirements should contain a waiver of the Contractor's rights to recover such payments and an endorsement to the WC policy is recommended in most cases.

23-101 <u>Policy</u>

(1) Applicable vendor insurance requirements shall be provided to and approved by the City Manager or his/her designee Prior to the commencement of any services performed by a vendor contracted with the City. Vendors performing services for the City shall provide adequate insurance coverage meeting the minimum obligations required by written contract, or purchase order

(2) Vendors not under contract with the City who are providing on-site services shall meet the City's standard minimum scope and limits of insurance requirements listed herein.

(3) The City Manager or his/her designee reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

23-102 Minimum Scope and Limit of Insurance

(1) Coverage shall be at least as broad as the following for all on-site services:

a. Commercial General Liability "CGL" (required):

Coverage must include products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence and $2,000,000 aggregate. The City must be listed as additional insured via endorsement.

b. Automobile Liability (required):

Limits no less than $1,000,000 per accident for bodily injury and property damage. The City must be listed as additional insured via endorsement.

c. Workers' Compensation (required):

As required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.

(2) Coverage shall be at least as broad as the following for all on-site or off-site professional services:

a. Professional Liability / Errors & Omissions Insurance:

Required if contractor is expected to provide "professional" services. Limits no less than $1,000,000 per occurrence.

b. Cyber Liability (applicable for certain technology and software services only)

Required if vendor, through its service has access to confidential and sensitive data. Limits no less than $1,000,000 per occurrence.

(3) Insurance requirements are subject to be added, or removed by the City Manager or his/her designee for contracted and non-contracted work performed by any vendor.

23-103 Waiver of City Insurance Requirements

(1) Insurance requirements for vendors providing goods and services may be waived by the City Manager or his/her designee on a case-by-case basis if the vendor establishes to the satisfaction of the City Manager or his/her designee that the cost of obtaining insurance is financially prohibitive, it is impossible to obtain insurance coverage or other justifiable circumstances.

(2) Justification to waive any insurance policy shall be provided in the form of a written request by the requesting City department or vendor, and shall be subject to the review and approval of the City Manager or his/her designee.

23-104 Special Event Insurance Requirements

(1) Applicable vendor insurance requirements shall be provided to and approved by the City Manager or his/her designee Prior to the commencement of any special event.

(2) Low risk event vendors, coordinators, and exhibitors not under contract with the City who are commencing in event related activities on-site shall meet the City's standard minimum scope and limits of low risk event insurance requirements listed in each category herein. Vendors not listed in any of the following categories are still subject to special event insurance requirements at the discretion of the City Manager or his/her designee.

a. Standard minimum scope and limits of low risk vendor event insurance requirements:

i. Category 1 vendors - Coverage shall be at least as broad as the following:

- Commercial General Liability "CGL" (required):

  Coverage must include products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence and $2,000,000 aggregate. The City must be listed as additional insured via endorsement.

ii. Category 2 vendors - Coverage shall be at least as broad as the following:

- Commercial General Liability "CGL" (required):

  Coverage must include products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence and $1,000,000 aggregate. The City must be listed as additional insured via endorsement.

iii. Category 3 vendors - Coverage shall be at least as broad as the following:

- No insurance required.

Category 1	Category 2	Category 3
• Alcohol providers • Bleachers • Emergency services • Event organizers • Fencing • Haunted houses • Ice skating rink • Inflatable structures • Mechanical rides • Petting zoo animals (pigs, goats, lambs, etc.) • Portable restrooms	• Commercial vendors • Food booths on-site food preparation • Food trailers on-site food preparation • Food trucks on-site food preparation • Retail vendors • Sponsors with retail products/services • Waste removal	• Arts & crafts vendors • Balloon artists • Bands • Disc jockeys • Entertainment • Individual artists • Informational (only booths • Magicians • Marketing (only) booths • Mimes • Musicians • Performance artists (dance) • Photographers

• Rock walls • Security • Shuttle/bus services • Staging tents • Traffic control companies (barricades)		• Potluck items • Prepackaged food/beverage vendors • Produce vendors (farmers market) • Professional catering • Sponsors marketing purposes (only) • Visual artists (painting) • Other governmental agencies

(3) High risk event vendors, coordinators, and exhibitors not under contract with the City who are commencing in event related activities on-site shall meet the City's special high risk event insurance requirements.

a. Special high risk vendor event insurance requirements:

i. Pyrotechnics, explosive devises, fireworks

- Commercial General Liability "CGL" (required):

  Coverage must include products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $5,000,000. The City must be listed as additional insured via endorsement.

ii. Carnivals and zoo animals (elephants, tigers, bears, etc.)

- Commercial General Liability "CGL" (required):

  Coverage must include products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $5,000,000. The City must be listed as additional insured via endorsement.

iii. If vehicles are needed/used as part of the event (shuttle/bus, car shows, etc.)

- Automobile Liability (required):

  Limits no less than $1,000,000 per accident for bodily injury and property damage. The City must be listed as additional insured via endorsement.

SECTION 24 – STANDARD FORMS

24-100 Standard Forms

(1) Most recently updated standard purchasing forms can found on the City's intranet.

ARTICLE 7 – GLOSSARY

SECTION 25 – DEFINED TERMS

- **(Using) Department** – A City department that utilizes any supplies, services, or construction procured by City Purchasing Officer.
- **Agent** – An individual authorized by a superior, i.e., principal or officer, to act for him, her, or in his or her authority. In public purchasing, this designation is usually incorporated into policy, statute and ordinance law.
- **Agreement** – Synonymous with Contract. See Contract.
- **Alternative Bid** – A bid submitted in knowing variance from the specifications, terms, conditions or provisions of the solicitation.
- **Amendment** – Synonymous with Modification. See Modification.
- **Arbitration** – A process, non-binding or binding, by which a dispute between two or more contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement may be resolved.
- **Architect or Engineer** – Persons or firms providing professional services of an architectural or engineering nature, as well as those providing incidental services that members of these professions and those in their employ may logically or justifiably perform. (Refer to California Government Code §4525).
- **Auto Liability Insurance** – All contractors engaged in services on City property are required to maintain minimum automobile liability insurance of $1 million for each occurrence, naming the City of Banning as an additional insured. Certain high-risk activities require higher limits.
- **Award** – The presentation of a purchase agreement or contract to a bidder or proposer.
- **Best Interest** – The discretionary rationale used by purchasing officials in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.
- **Bid** – The offer submitted by a bidder in response to an Initiation for Bid (IFB), a request for quotation, or a multi-step bidding procedure. A bid includes a cost for goods and services to be provided per the specifications included in the bid solicitation issued by the City.
- **Bid Bond** – An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.
- **Bid Opening** – The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders, and usually, to the public.
- **Bid Surety** – A surety bond ensures contract completion in the event of contractor default. City hired contractor (principal) to fulfill a contract and if defaults, the surety company (insurer) is

obligated to find another contractor to complete the contract or compensate the City for the financial loss incurred.

- **Bidders List** – Same as Vendor List; a list maintained by the City Purchasing Officer setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.
- **Blanket Purchase Order** - A purchase order permitting the buyer to place individual orders or releases to a particular supplier for goods/services for a specified period of time using the same purchase order number.
- **Brand Name** – A name that serves to identify a product of a particular manufacturer; a trade name.
- **Change Order** – Synonymous with Modification.
- **City Council Agenda Report** – A document by which matters are submitted to City Council for consideration during its regular meetings.
- **City Purchasing Officer** – An employee of the City of Banning who is appointed by, trained, and certified under the direction of the Deputy City Manager to act in the capacity to procure goods and/or service Citywide.
- **Collusion** – A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful act.
- **Commercial General Liability (CGL)** – All contractors engaged in services on City property are required to maintain minimum liability insurance of $1 million per occurrence naming the City of Banning as an additional insured. Certain high-risk activities require higher limits.
- **Commodities** – All supplies and all equipment.
- **Competitive Process** – The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.
- **Compliance Monitoring** – A process whereby the City Purchasing Officer selects and reviews procurement transactions conducted by departments for the purpose of ensuring that the City purchasing process is fair, equitable, effective, lawful, and efficient.
- **Confirming Order** – A purchase order written and sent to a vendor to verify that an order which was transmitted orally is authorized.
- **Conflict of Interest** – A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appears to be, at odds with the interests of the jurisdiction.
- **Consent Agenda Items** – Those agenda items, as identified by the City Manager, which are placed in the Section of the City Council agenda for review and approval as a group. Items on the Consent Calendar may be pulled by City Council, City staff, or a member of the public for discussion and individual Council action.
- **Consultant** – A person or firm who provides professional or expert advice and/or recommendations.

- **Contingency** – City Council authorized percentage or specific amount of money which can be added to the base contract amount to provide for small changes to the contract without returning to Council for approval. The percentage granted will not be based on the total amount of the contract, as it may accumulate in subsequent term years, etc., of the contract but will be based on the initial contract amount.
- **Contract** – A written agreement between two or more competent individuals and/or corporate entities to perform or not perform a specific act(s) for compensation. Contract includes all types of government agreements, regardless of what they may be titled for the procurement of supplies, services, or construction.
- **Contract Administration** – The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual terms and conditions for all parties thereto.
- **Contractor** – Any person or corporate entity having a contract with a governmental entity.
- **Cooperative Purchase Agreement** – the purchase of goods or services utilizing a form of intergovernmental cooperative purchasing in which one government agency or jurisdiction performs the solicitation and award process for several agencies or jurisdictions, but separate contracts or purchase orders are executed between each participating agency and the vendor.
- **Consulting Services** - Purchase of Service for the purpose of obtaining an intellectual product, e.g. asbestos survey, audit reports, investigative reports, plan reviews, photos, advice, training, parking ticket processing.
- **Debarment** – A shutting out or exclusion, through due process and for cause, e.g., a bidder from a list of qualified prospective bidders.
- **Designated Employees** – Those employees of the City of Banning who are required to file conflict of interest statements because those employees, in the course of their employment make, or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.
- **Discount** – An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.
- **Discussion Agenda Items** – Those agenda items, as identified by the City Manager, which are placed in the section of the City Council agenda for discussion and individual Council action. All items requiring the Council to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.
- **Dispute** – A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.
- **Electronic Waste (e-waste)** – An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals

and components, hard drives, CD-DVD drives, printers, facsimile machines, copiers, and wireless phones and devices.

- **Emergency** – Situations where the welfare of the City residents are at stake and/or immediate purchasing action is required to prevent serious economic or other hardship to the City; requires a timely decision that must be made to prevent loss of life, damage to property or facilities, or to mitigate an imminent threat to public health, welfare, or safety.
- **Equal or Equivalent** – A phrase used to indicate the acceptability of products of similar or superior function.
- **Equipment** – Property of a durable nature which retains its identity throughout its useful life.
- **Evaluation Committee** – A committee comprised of three or more individuals that advises and assists in proposal evaluation and award of contract.
- **Evaluation Criteria** – Criteria set forth in the Request for Proposal (RFP) and used by the evaluation committee to score and rank proposers who respond to the procurement solicitation.
- **Express Warranty** – Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.
- **Firm Bid** – A bid that binds the bidder until a stipulated time of expiration of the bid.
- **Fixed Assets** – All tangible property costing $5,000 or more per item, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.
- **Fixed Price Contact** – A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
- **Force Account** – Use of internal (City) labor.
- **Formal Advertising** – The placement of a notice in a newspaper or other publications according to legal requirements to inform the public that the government is requesting bids on a specific purchase it intends to make.
- **Formal Bid Process** – The competitive bid process requiring a public bid opening with the date, time, and location set forth in the bid solicitation.
- **Gratuity** – A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a purchasing decision or recommendation.
- **Guarantee** – To warrant, stand behind, or ensure performance and quality.
- **Incremental Contracting** – Contracting in small segments to avoid competitive bid requirements or City Council approval.
- **Indemnification** – Other party waiver and party protection against incurred loss, damage, or hurt, usually by monetary compensation.
- **Informal Bid** – An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.

- **Insurance** – A contract between a certified insurance firm and the City that provides for monetary payment(s) in the event of damage, loss, accident, or death; also, a contract between a contractor, naming the City as an Additional Insured (AI), for the purpose of reimbursing the City for any loss incurred due to the nature of the work being performed by the contractor.
- **Invitation for Bid (IFB)** – The solicitation document used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.
- **Lead Time** – The period of time from date of order to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; the period of time needed to process purchase requisitions for bid/proposal solicitation and award of contract.
- **Liquidated Damages** – Parties designate the amount of damages during the formation of a contract for possible injury to collect as compensation upon a specific breach of contract (e.g., late or partially breached performance).
- **Modification** – A written document signed by the City Purchasing Officer that directs the contractor to make or that the City is making changes to the originally signed contract between the parties.
- **Multi-Departmental Contracts** – Contracts issued by the City Purchasing Officer for the purchase of goods and services, which may be used by more than one City department under the condition that the department is named on the contract as an authorized user.
- **Negotiation** – The discussion or correspondence between City and the preferred contractor in order to develop a contract with terms and conditions that serve the best interests of the City and is fair and equitable to the contractor.
- **One-Time Purchases** – Purchases for particular goods or services which cover a particular need. These types of purchases are distinguished from annual or blanket contracts which cover a continuing need of an item or service.
- **Performance Surety** – Synonymous with Bid Surety. See Bid Surety.
- **Petty Cash** – Funds set aside as a cash reserve in a revolving fund for single expenditures of limited nature.
- **Piggy-Back Agreement** - The form of intergovernmental cooperative purchasing in which a public agency requests competitive bids, enters into a contract and arranges, as part of the contract for other public agencies to purchase from the selected vendor under the same terms and conditions as itself. This process eliminates the need to competitively bid the particular item again. May only be used if the public agency received the competitive bids within two years prior to the award of contract under piggy-back.
- **Pre-Bid/Pre-Proposal Conference** – A meeting set up between the City parties issuing a bid/proposal solicitation and the potential bidders/proposers for the purpose of clarifying the bid/proposal solicitation and answering any questions the bidders/proposers may have.

- **Prequalification** – A process used prior to solicitation of bids to determine if potential bidders have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential bidders' products will meet the cost and performance criteria required to meet the City's needs.
- **Prevailing Wage** - Payment of prevailing wages, shall be required on all public works and maintenance contracts of $1,000 or more. When a contract requires this, notification will be included in the call to bid. For purposes of prevailing wage, the applicable definition of "public works" is set forth in Labor Code Section 1720 *et seq*. Note: the definition of "public works" subject to prevailing wage is broader then the definition of "Public Project" for purposes of bidding requirements under the UPCCAA and the Public Contract Code.
- **Professional Services** - All services performed by persons in a professional occupation, including but not limited to, consulting and performance services for accounting, auditing, computer hardware and software support, engineering, architectural, planning, environmental, redevelopment, financial, economic, personnel, social services, legal, management, communication and other similar professional functions which may be necessary for the operation of the city.
- **Proposal** – The executed document submitted by a proposer in response to a Request for Proposal (RFP). A proposal includes a detailed description of the goods and/or services to be provided to the City per the scope of work included in the RFP, including but not limited to cost, time frame for completion of work or delivery of goods, and method of accomplishment of services.
- **Proprietary Product** – An item or service that must meet particular restrictive specifications, but may be available from multiple sources.
- **Public Works Contract** – An agreement for a "Public Project", as that term is defined in Public Contracts Code, §22002 and Banning Municipal Code Section 3.24.020.
- **Purchase Order** - Formal, contractual documents requesting the delivery of specific goods, equipment, or services and promising payment therefor. They are issued by the purchasing officer and must be used in conjunction with formal contracts or else as provided in this chapter as stand-alone documents for all city purchases with the exception of purchases made pursuant to short form purchase orders or other methods consistent with the policies and procedures.
- **Rejection of Bid** – The non-acceptance of submitted bid(s).
- **Request for Proposal (RFP)** – The solicitation document which includes a scope of work and terms and conditions used to secure proposals for services or goods not clearly defined by the City in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.
- **Request for Qualifications (RFQ)** – A document that describes the project or services required and solicits qualifications for potential vendors or contractors for purposes of evaluating those qualifications for screening purposes or for award of contract.

- **Responsible Bidder** – A bidder who has the capability in all respects to perform in full the contract requirements and who has the integrity and reliability which will assure a good faith performance.
- **Responsive Bidder** – A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and all other requirements of the respective solicitation.
- **Services** – The furnishing and delivery of labor, time, or effort by a contractor/consultant involving specific performance.
- **Short Form Purchase Orders** - Formal documents that provide a method whereby department directors, or designee may purchase non repetitive, low volume, low-cost goods or services valued at less than five thousand dollars.
- **Sole Source** – An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.
- **Solicitation** – A good faith effort to obtain a bid or proposal for the provision of goods and/or services.
- **Specification** – A description of what the purchaser seeks to buy, and consequently, what a bidder/proposer must be responsive to in order to be considered for award to a contract.
- **Standard** – A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the items as a requested characteristic of all items for the designated purpose.
- **Subcontractor** – Any person undertaking part of the work under the terms of the contract, by virtue of the agreement with the contractor.
- **Supplier** – An actual or potential contractor; a vendor.
- **Terms and Conditions** – A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most purchase contracts.
- **Terms of Payment** – Methods and timelines by which the City must render payment under a purchase agreement.
- **Waiver of Bid** – A process authorized by law or rule whereby the City Purchasing Officer may procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement.
- **Waiver of Mistake or Informality** – The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/proposers.
- **Warranty** – A representation of utility, condition, and durability made by a bidder or proposer for a product offered.
- **Worker's Compensation Insurance** - All contractors engaged in service on behalf of the City are required to maintain Worker's Compensation Insurance in accordance with the provisions of the State of California, including a waiver of subrogation rights against the City.