



City of Aliso Viejo

COUNCIL POLICY

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PURPOSE

Purchasing procedures provide a process for the purchase of goods and services used for the operation of City programs. These procedures and guidelines enable the Financial Services Department to coordinate the City's purchasing process and to establish a system of financial controls for the efficient use and expenditure of public funds. These procedures and guidelines have been developed not only to document the procedures, but to also provide a tool for training staff, increasing standardization, clarifying responsibilities and promoting consistent application of management procedures.

POLICY

I. OVERVIEW OF THE PURCHASING PROCESS

- A. The purchasing process is decentralized. The person requesting the merchandise (other than office supplies and general printing) or service ("Initiator") is responsible for contacting potential contractors, consultants, or vendors (collectively referred to as "vendor" or "vendors") to solicit bids, proposals, quotes, or estimates and interacting with the vendor.
- B. If required, a Purchase Requisition is prepared. A Purchase Requisition is not required for purchases of \$1,000 or less, unless the purchase or contract is of a continuing nature and includes a commitment or term of 12-months or more, in which case a Purchase Requisition is required regardless of the dollar amount. The Initiator is responsible for assuring that adequate funds are budgeted for the requested merchandise or service and that any bidding and contract approval requirements are satisfied. Bidding requirements and contract approval levels are set forth in Chapter 3.02 of the Aliso Viejo Municipal Code, a copy of which is attached hereto.
- C. The Purchase Requisition is entered into the Financial System by the Initiator. The Initiator's Department Head approves the purchase requisition on-line and notifies the Accountant of the requisition by electronic-mail, providing both the packet number and status of the Purchase Requisition. If bidding is required for the merchandise or service, the appropriate paperwork is forwarded to the Financial Services Department for review and approval.
- D. After review of a properly completed Purchase Requisition by the Director of Financial Services, a Purchase Order is prepared. The preparation of a Purchase Order encumbers the necessary funds from the department's budget.



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- E. The Purchase Order is comprised of three parts, a white vendor copy, a goldenrod receiving department copy, and a pink Finance copy. The Purchase Order is not valid unless signed by the approving official. The signed Purchase Order is sent to the Initiator who transmits the original to the vendor and retains the goldenrod colored department copy.
- F. Upon receipt of the merchandise or service, the invoice is checked and approved by the Initiator.
- G. The Initiator prepares a warrant request, which is forwarded, along with the supporting documents (including the goldenrod copy of the Purchase Order), to the Financial Services Department for payment. If it is an open Purchase Order, then the Purchase Order number should be noted on the warrant request, a copy of the open Purchase Order Log should be attached to the warrant and forwarded to the Financial Services Department for payment.
- H. The check is prepared, authorized by City Council, signed and sent to the vendor. The encumbrance is liquidated.

II. PURCHASE REQUISITION

A. Purchase Requisition

- 1. The Purchase Requisition is a form designed to document vendor and ordering information, approvals and budget compliance.
- 2. A complete and accurate Purchase Requisition contains all of the information necessary to allow a Purchase Order to be generated.
- 3. When requesting a Purchase Requisition, the account(s) from which the funds will be drawn must have an available fund balance greater than or equal to the amount of the Purchase Order requested. If there is insufficient funds in the account to cover the amount of the Purchase Order requested, a Budget Adjustment Form must be submitted **prior to** submitting the Purchase Requisition.

B. When Required

- 1. A Purchase Requisition is required when goods and services are purchased and cost more than \$1,000.



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2. If formal bidding is required, the Purchase Requisition is prepared after the bidding process is complete and a contract has been executed.
 3. If, due to the nature of the service, no bidding is required, the Purchase Requisition is prepared after the contract has been executed.
- C. Additional Documentation Required
1. If the Purchase Requisition is for a vendor that is providing merchandise or services to the City for the first time, a completed "Request for Taxpayer Identification Number and Certification" (IRS form W-9) must accompany the request for the Purchase Requisition. The W-9 form should be forwarded to the attention of the Accountant for processing. Checks cannot be issued to a new vendor until the form is completed and received by the Accountant.
 2. Grant expenditures may be subject to different and stricter rules. Grant documents are to be reviewed by the Director of Financial Services and the appropriate Department Heads to ensure compliance with such rules prior to preparing a Purchase Requisition. The acceptance of a grant may require City Council approval. All grant requests must be reviewed and approved by the City Manager.
- D. Internal Review
1. *Financial Services Department Review:* The Director of Financial Services is responsible for administering the financial policies and procedures of the City and provides a supportive role in assuring budget accountability. In addition, the Director of Financial Services has an obligation to conduct a "reasonableness review" to make sure that all the pieces of a transaction come together and make sense.

If a Purchase Requisition has missing or, what appears to be, incorrect information, Finance personnel will use their judgment in handling these issues.
 2. *Department Head Review:* Budget accountability rests primarily with the operating departments of the City. In accomplishing the programs and objectives for which the budget was authorized, Department Heads are responsible for ensuring that their expenses stay within the prescribed funding levels set forth in their respective budgets.



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III. **CONTRACTS FOR NON-PROFESSIONAL SERVICES, EQUIPMENT, SUPPLIES AND PUBLIC WORKS**

A. Bidding Requirements

The bidding requirements and levels of approval set forth in Chapter 3.02 of Title 3 of the Aliso Viejo Municipal Code shall apply to all contracts for services, equipment, supplies and public works. Depending upon the estimated value of the contract, informal or formal bidding requirements may apply. Contracts that may include computer equipment (hardware and software) must be reviewed and approved by the Director of Financial Services. The Initiator is responsible for satisfying all bidding and contract approval requirements for any contracts for services, equipment, supplies and public works. If a contract is required to be awarded through the formal bid process, the following guidelines will generally apply:

- a. Specifications, which include standard “boilerplate” & technical requirements, are generally used.
- b. Contract award is based on lowest responsible bidder.
- c. Negotiation of contract terms is generally not permitted without the approval of the City Attorney.
- d. Vendor may be required to provide Performance and/or Payment Bonds.
- e. General liability and workers’ compensation insurance may be required, as set forth in the City’s standard contracts.

B. Responsibilities

Responsibilities for completion of the formal or informal bid process are shared by the City Clerk and the Initiator.

Initiator:

- a. Determines that sufficient funds are available for the proposed purchase prior to initiating the bid process.
- b. If formal bid process is required, prepares a notice inviting sealed bids, and mails to all prospective vendors. If the informal bid process is used, obtains at least three



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written quotations, as required by Section 3.02.050 of the Aliso Viejo Municipal Code.

- c. If formal bid process is required, prepares a Bid Information Sheet, including detailed specifications for the item to be purchased, the work to be performed or the services to be provided.
- d. Sends the notice to the City Clerk for publication, if publication is required.
- e. Reviews qualifications and references of the low bidder(s).
- f. Complies with requirements of the City's Debarment and Suspension Policy.
- g. After opening of sealed bids by the City Clerk (if formal bid process is used) or review of written quotations and selection of a vendor (if informal bid process is used), Initiator completes contract with the apparent lowest responsible bidder or the selected vendor, as applicable, and secures vendor's signature(s).
- h. If City Council approval is required, prepares the staff report for presentation to City Council with a recommendation on award of the contract, which includes the proposed contract.
- i. Obtains certificate of insurance from the selected vendor. If required, also obtains performance and payment bonds from the vendor. Initiator sends these documents and two original contracts signed by the vendor to the City Clerk.
- j. After City Clerk has secured the City's signatures on the contract, Initiator prepares and processes the Purchase Requisition to record the encumbrance.
- k. Sends the Financial Services Department a copy of the signed contract, W-9 and a copy of the certificate of insurance if required.
- l. Deals with the vendor on a day-to-day basis for completion of the contract and processing of payments.
- m. Monitors certificates of insurance and follows up on expiration of coverage.

City Clerk:



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- a. If formal bid process is required, publishes the notice in a newspaper and/or posts the notices in three places (one of which must be the public bulletin board at City Hall) at least ten (10) days before the scheduled bid opening date.
- b. If formal bid process is required, opens the bids at the time and place stated in the public notice.
- c. If formal bid process is required, prepares a tabulation of all bids and makes the tabulation available for public inspection for at least thirty (30) days after the bid opening.
- d. Notifies vendors whose bids were not accepted and returns bid bonds.
- e. Maintains copies of all bids received, in accordance with the City's retention schedule.
- f. Obtains the Mayor's or the City Manager's signature with Council approval on the contract, as required, with an attest by the City Clerk and approval as to form by the City Attorney.
- g. Sends a copy of the contract to the Initiator, sends an original to the vendor and retains one original contract in file.

Financial Services:

- a. Monitors contract expiration and follows-up with Initiator as appropriate.

IV. PROFESSIONAL SERVICES: REQUEST FOR PROPOSAL(RFP) REQUIREMENTS AND PROCEDURES

Professional services are those activities to be performed by specially trained persons or firms who provide services in connection with financial, economic, accounting, engineering, administrative or other matters involving specialized expertise or unique skills. Contracts for professional services need not necessarily be awarded to the lowest bidder since the person or firm is selected based on their qualifications. The price, however, must be reasonable. An open Purchase Order must be established for professional services, provided such services are rendered within the fiscal year for which they are budgeted.



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All consultants must execute an agreement with the City. Any professional service agreement submitted to the City Council for approval must provide sufficient background analysis to support the recommendation. Each agreement needs to be properly executed and retained on file by the City Clerk and a copy forwarded to the Financial Services Department.

A. Procedures

Three written proposals, qualifications and/or quotations responding to an RFP issued by the Initiator pursuant to Section 3.02.060 of the Aliso Viejo Municipal Code, obtained by mail, e-mail or fax, are *attached* to the RFP. It is important that the specifications are accurate and comprehensive, including a detailed scope of services. Additional information/quotations received by telephone calls are to be described and attached to the RFP. Quotations or proposals must have been obtained within the past sixty (60) days to be considered.

B. The Proposal Process

Responsibilities

The responsibilities for completion of the proposal process are shared by the City Clerk and the Initiator.

Initiator:

- a. Determines that sufficient funds are available for the proposed purchase prior to initiating the proposal process.
- b. Prepares a Request for Proposal (RFP). The RFP shall specify that proposals shall be valid for sixty (60) days.
- c. Mails the RFP to all prospective vendors.
- d. Sends the notice to the City Clerk for publication, if applicable.
- e. Reviews qualifications and references of the proposers. Completes the form evaluating the proposals, including the pricing, and submits such form to the Financial Services Department with the Purchase Requisition.
- f. Complies with requirements of the City's Debarment and Suspension Policy.



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- g. After reviewing proposals and selecting a vendor in accordance with Section 3.02.060(B) of the Aliso Viejo Municipal Code, Initiator negotiates and completes contract with the selected vendor and obtains vendor's signature(s).
- h. After City Clerk has secured the City's signatures on the contract, prepares and processes the Purchase Requisition to record the encumbrance.
- i. Sends the Financial Services Department a copy of the signed contract, W-9 and a copy of the certificate of insurance if required.
- j. Deals with the vendor on a day-to-day basis for completion of the contract and processing of payments.
- k. Monitors certificates of insurance and follows up on expiration of coverage.

City Clerk:

- a. Publishes the notice in a newspaper, if applicable.
- b. Opens the proposals, including the envelopes containing the pricing if sealed pursuant to the directions of the RFP, at the time and place stated in the RFP.
- c. Maintains copies of all proposals received in accordance with the City's retention schedule.
- d. Obtains the Mayor's or the City Manager's signature on the contract, as required, with an attest by the City Clerk and approval as to form by the City Attorney.
- e. Sends a copy of the contract to the Initiator, sends an original to the vendor and retains one original contract in file.

Financial Services:

- a. Monitors contract expiration and follows-up with Initiator as appropriate.
- C. On-call List for Professional Services



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The Initiator may use the process set forth in this Section IV to establish an on-call list of professionals for a particular category of services. The selection process should include a review of the proposals received, interviews (if necessary) and reference checks. Consultants selected to be on the on-call list must execute an agreement with the City. Consultants on the on-call list may be selected on an as-needed basis to perform the particular category of services specified in the consultant's proposal at the rates specified in the agreement with the City. The on-call list should be updated every five (5) years.

V. ISSUING PURCHASE ORDERS

A. Preparation and Processing

1. After the review of the Purchase Requisition for completeness and accuracy, the Purchase Order is generated by the Financial Services Department. All requests for purchase orders should be submitted by Monday 2p.m. to ensure the receipt of an approved and signed purchase order by Friday.

The Purchase Order is a *three-part document* distributed as follows:

- White: Returned to the Initiator who transmits it to the vendor.
- Goldenrod: To Initiator who attaches it to the invoice for payment, when goods or services are received. In the event of an open purchase order, it should be attached to the final invoice paid to the vendor.
- Pink: To Accountant. This is attached to the warrant requisition payment. A copy of the Purchase Order is also filed chronologically.

The *Initiator reviews the Purchase Order* for accuracy and completeness. Any problems must be reported immediately to the Accountant for correction.

B. Encumbering/Un-encumbering Funds

Definition of an Encumbrance

An encumbrance is a commitment related to unperformed contracts for goods and services for which a portion of the Budget appropriation is reserved in the amount of the Purchase Order. Encumbrances help to ensure budgetary compliance.

Encumbering



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When the Purchase Order is printed by Financial Services, the funds are encumbered.

Un-encumbering

If the invoice presented for payment is equal to (or is in partial payment of) the amount of the Purchase Order, the encumbrance will automatically be un-encumbered by the invoice amount, upon payment of the invoice. However, if the invoice is less than the Purchase Order, and represents final payment, it is the Initiator's responsibility to notify the Accountant of this so that the remaining encumbrance can be un-encumbered.

C. Year End Process for Encumbrances/Purchase Orders

Due to year-end procedures and audit requirements, open Purchase Orders cannot be carried forward to the next fiscal year. Open Purchase Orders that have been encumbered in the current year, but will not be expended by fiscal year-end, should be voided and the funds should be encumbered in the new fiscal year budget. Initiator should ensure that adequate funds have been appropriated in the new fiscal year budget to accommodate these expenditures.

D. Receipt of Merchandise or Service

1. The Initiator is responsible for receiving incoming goods or services, inspecting them as to quality and condition, and confirming the quantities received by counting, measuring or weighing. The goldenrod copy of the Purchase Order may be used to document the receipt of the merchandise.
2. The goldenrod copy of the Purchase Order (if used as a receiving document), or other similar documentation noting receipt and inspection of the merchandise, should accompany the invoice when it is sent to the Financial Services Department for payment.
3. If there is a *partial* delivery, its receipt is documented on the open Purchase Order Log and a copy is made to accompany the invoice for payment. The Initiator keeps the original goldenrod copy to document later receipts of merchandise. All dates of receipt are noted on the open Purchase Order Log to avoid confusion.
4. If merchandise is not acceptable, the Initiator arranges for replacement or return for credit of the defective items. Financial Services should also be notified.



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5. Many vendors will not give credit for returned merchandise unless a return authorization is obtained prior to returning items. Initiator should contact the vendor for vendor's specific requirements to expedite the return and credit or replacement.
6. When the Purchase Order has been issued for services, the Initiator approves the invoice for payment denoting that the services were provided in a satisfactory manner.

VI. SPECIAL PURCHASING TRANSACTIONS

- A. The cost of *standard* office supplies is budgeted by individual departments. It is the City's policy to encourage the use of recyclable material at all times.
- B. *Other office supplies* not available through the City's contract may be purchased at a local store. A warrant request or petty cash reimbursement should be submitted to Financial Services. All orders must be approved by the requesting Department Head.
- C. There may be times when a Department finds the need to obtain an office supply item before the next delivery. In that case, petty cash or the Cal-Card credit card may be used. Please refer to the credit card policy for detailed clarification on use of the Cal-Card credit card.
- D. Business cards are ordered by written request of the Department Head with a sample of how the cards are to read. The request is given to the Director of Administrative Services. Delivery times vary.
- E. Petty Cash Reimbursement: The Petty Cash fund is used to reimburse purchases, which were originally paid out-of-pocket by a City official or employee. Reimbursements will either be paid in cash or check, depending on the amount. If the amount is \$50.00 or less, the reimbursement will be paid in cash. A "Petty Cash Request Form" must be completed by the person requesting petty cash and approved by a Department Head. Purchases or advances in excess of \$50 shall be submitted to Accounts Payable. The Accountant maintains the petty cash fund.

1. Procedures (under \$50.00)

Code the petty cash form with the appropriate General Ledger account number and have it approved by the Department Head and Financial Services Department.



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Submit the form and the original receipt to the Accountant for reimbursement from the petty cash box.

2. Procedures (over \$50.00)

Complete a Warrant Request, including the account number to be charged, description, date requested and amount. Attach supporting documentation. Obtain Department Head approval. Submit the documents to the Accountant for processing.

F. Environmentally Preferable Purchasing: To reduce the environmental and air quality impacts of materials used in the operations and maintenance of City facilities, the City has adopted the "Sustainable Purchasing" strategies set forth below. The following sustainable purchasing practices shall be used by all City departments engaging in the purchasing process:

- Evaluate the items to be purchased, identify any alternatives that are more environmentally friendly, and select the more sustainable alternatives when economically feasible.
- Work with suppliers to identify environmentally preferable products that meet the needs of the department or building.
- Evaluate items to be disposed of, identify possible reuse or recycling of items, and select the most environmentally preferable disposal method.

1. Sustainable Purchasing of Ongoing Consumables:

- a. "Ongoing Consumables" include low-cost items that are regularly used and replaced through the course of business, such as:
 - Paper (printing or copy paper, notebooks, notepads, envelopes, etc.).
 - Toner cartridges.
 - Binders.
 - Batteries.
 - Desk accessories.



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b. Sustainable Purchasing of ongoing consumables requires that all Departments strive to achieve the minimum goal of 60% of their total purchases of these products meet one or more of the following criteria:

- Purchases contain at least 10% postconsumer and/or 20% postindustrial material.
- Purchases contain at least 50% rapidly renewable materials.
- Purchases contain at least 50% materials harvested and processed or extracted and processed within 500 miles of the City.
- Purchases consist of at least 50% Forest Stewardship Council (FSC)-certified paper products.
- Batteries are rechargeable.

2. Sustainable Purchasing of Durable Goods:

a. "Durable Goods" include higher-cost per item goods that are replaced infrequently and/or may require capital program outlays to purchase, such as:

- Electric-powered equipment including, but not limited to:
 - Office equipment (computers, monitors, copiers, printers, scanners, fax machines).
 - Appliances (refrigerators, dishwashers, water coolers).
 - External power adapters.
 - Televisions and other audiovisual equipment.
- Furniture.

b. Sustainable Purchasing of Electric-powered equipment and products requires that all Departments strive to achieve the minimum goal of 40% of their total purchases of these products (by cost) meet one or more of the following criteria:

- The equipment is ENERGYSTAR® qualified.
- The equipment is Electronic Product Environmental Assessment Tools (EPEAT)-rated (for electronic equipment such as desktop computers, monitors and notebooks).
- The equipment (either battery or corded) replaces conventional gas-powered equipment.



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c. Sustainable Purchasing of furniture requires that all Departments strive to achieve the minimum goal of 40% of their total purchases of furniture (by cost) meet one or more of the following criteria:

- Purchases contain at least 10% postconsumer and/or 20% postindustrial material.
- Purchases contain at least 70% material salvaged from off-site or outside the organization.
- Purchases contain at least 70% material salvaged from on-site, through an internal organization materials and equipment reuse program.
- Purchases contain at least 50% rapidly renewable materials.
- Purchases consist of at least 50% Forest Stewardship Council (FSC)-certified wood.
- Purchases contain at least 50% materials harvested and processed or extracted and processed within 500 miles of the City.

3. Sustainable Purchasing for Facility Alterations and Additions:

a. Applies to the purchase of materials for renovations, demolitions, refits and new construction additions for facilities owned or operated by the City, including base building elements that are permanently or semipermanently attached to the building. Furniture, fixtures and equipment (FF&E) and mechanical, electrical and plumbing components and specialty items such as elevators are excluded.

b. Sustainable Purchasing of materials for facility alterations and additions requires that all Departments strive to achieve the minimum goal of 50% of their total purchases (by cost) meet one or more of the following criteria:

- Purchases contain at least 10% postconsumer and/or 20% postindustrial material.
- Purchases contain at least 70% material salvaged from off-site.
- Purchases contain at least 70% material salvaged from on-site through an internal materials and equipment reuse program.
- Purchases contain at least 50% rapidly renewable materials.
- Purchases contain at least 50% materials harvested and processed or extracted and processed within 500 miles of the City.
- Purchases consist of at least 50% Forest Stewardship Council (FSC)-certified wood.



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- Adhesives and sealants have a VOC content less than the current VOC content limits of South Coast Air Quality Management District (SCAQMD) Rule #1168.
- Paints and coating have VOC emissions not exceeding the VOC and chemical component limits of Green Seal's Standard GS-11 requirements.
- Noncarpet finished flooring is FloorScore-certified and constitutes a minimum of 25% of the finished floor area.
- Carpet meets the requirements of the CRI Green Label Plus Carpet Testing Program.
- Carpet cushion meets the requirements of the CRI Green Label Testing Program.
- Composite panels and agrifiber products contain no added urea-formaldehyde resins.

a.

The City recommends that any proposal submitted to the City be printed two-sided on recycled and recyclable paper with removable, reusable bindings or staples. This shall include, but is not limited to, drafts, reports, training manuals, bids, responses to inquiries and permit applications. The City will also engage in the practice of two-sided copies for all City memos and mailings.

It is the City's policy to recycle a variety of commonly used materials such as plastic bottles, glass bottles, aluminum cans, newspaper, mixed paper, corrugated cardboard, and phone books. Green waste recycling is among the several new programs offered by the City's franchise hauler to assist residents and businesses with their recycling needs. In addition, the City periodically makes available resources to recycle e-waste items such as computers, monitors, televisions, printers, network equipment, cables, telephones, video games, cell phones, radios, stereos and electronic toys.

VII. GENERAL REQUIREMENTS FOR COMPLETING CONTRACTS

A. To ensure that the City is receiving the most qualified professional services at a competitive rate, the term for contracts for professional services shall not exceed five (5) years and the RFP procedures set forth in Section IV of this Policy shall be initiated every five (5) years for professional services unless the City Manager determines that compliance with said RFP procedures is not in the best interest of the City. The five year term may consist of a three year initial term with an option to extend the term for no more than two additional one-year extensions. Notwithstanding the foregoing, the following contracts shall be exempt from this requirement:



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1. Professional service contracts with consultants who report directly to the City Council and regularly provide updates to the City Council on the progress of the professional services, provided that such services are shown as a line item in the fiscal year budget.

2. Professional service contracts with consultants who provide a distinctive service for which there is not a competitive market if the City Manager determines it to be in the best interest of the City.

3. Professional service contracts with consultants who perform a traditional staff function as an independent contractor if the Initiator provides current and relevant survey data demonstrating that the rates specified in the professional service contract remain reasonable and competitive.

B. The City's model agreements shall be used unless approved otherwise by the City Attorney. Any changes to the City's model agreements shall be in red-line form and shall be submitted to the City Attorney for review and approval prior to approval of the agreement by the appropriate approving authority as specified in Section 3.02.040 of the Aliso Viejo Municipal Code (i.e., Department Head, City Manager, or City Council). The Initiator shall ensure that all blanks in the model agreements are completed and all exhibits are attached to the agreement.

C. The total compensation amount, including any extra work or contingency amounts specified in the agreement, shall be used to determine the appropriate approving authority for an agreement, as specified in Section 3.02.040 of the Aliso Viejo Municipal Code. If an amendment to an agreement that increases the total compensation amount specified in the contract/agreement results in the total compensation exceeding the dollar amount that the person signing the original agreement has the authority to approve, the amendment shall be approved by the person or entity that has the authority to approve an agreement for the total compensation amount, including the increase to be approved by the amendment. For example, if an agreement with a total compensation amount of \$20,000 that was approved by the City Manager is amended to increase the total compensation to \$35,000, the amendment shall be approved by the City Council. Amendments that do not affect compensation (i.e., term, scope of services, etc.) can be approved by the person/entity that approved the original agreement.

D. Contracts should be executed by the vendor prior to review and approval by the appropriate approving authority, as specified in the Section 3.02.040 of the Aliso Viejo Municipal Code. All contracts should be approved as to form by the City Attorney and approved for compliance with the budget by the Financial Services Director. The Initiator shall ensure that the contract is executed by authorized representatives for the vendor according to the following signature requirements:



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Corporation:

Two signatures required, one from each category as follows:

- (1) Chairman of the Board, President or Vice President; and
- (2) Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Limited Liability Company:

Two signatures required, one from each category as follows:

- (1) Chairman of the Board, President or Vice President; and
- (2) Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Partnership: One signature from any partner of the Partnership

Limited Partnership: One signature from one of the General Partners of the Limited Partnership

Sole Proprietorship: One signature from the individual doing business under a fictitious name

E. There is no rule delineating when a contract is required and when a purchase requisition/purchase order, alone, is sufficient, or when a shorter letter agreement, as opposed to a professional services agreement, can be used. As a general rule, any transaction that requires the expenditure of considerable funds (\$1,000 or more), exposes the City to liability, or involves services or purchases of a continuing nature should be set forth in a contract. The City's model letter agreement should generally be used for transactions involving the expenditure of \$5,000 or less and limited exposure to liability for the City. Questions concerning whether a contract is required and the appropriate contract form to use should be directed to the City Attorney.

F. To ensure that individual contractors and consultants are properly classified as independent contractors, as opposed to employees of the City, the following factors should be considered and incorporated into the contractual relationship when possible:

1. No Instructions. Independent contractors do not typically take instruction on how to perform the work or services. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee.

2. No Training. Independent contractors typically do not receive training by the hiring party. Periodic or on-going training provided by the City about procedures to be followed and methods to be used would be evidence of an employer-employee relationship.



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3. Services Do Not Have to Be Rendered Personally. Independent contractors are hired to provide a particular result and have the discretion to hire others to do the actual work. Therefore, a contract should not insist on a worker having to perform the services personally (unless the worker's personal services are central to the agreement).

4. Work Is Not Essential To The City. The City's success or continuation should not depend on the service provided by an independent contractor. When the success or continuation of a service recipient depends to an appreciable degree upon the performance of certain services, the worker who performs them must necessarily be subject to a certain amount of control by the hiring party. Thus, independent contractors normally provide services that are tangential or supplemental to the main work of the City.

5. Work Hours. an independent contractor normally sets his or her own hours, whereas the hours of work for an employee are usually set by the hiring party.

6. Not a Continuing Relationship. A continuing relationship between a hiring party and a worker indicates that an employer-employee relationship exists. Therefore, to the extent it is possible to do so, continuing relationships should be avoided unless the City desires to classify the consultant or contractor as an employee. Each contract should end on completion of the task at hand. A worker should not be put on call or be responsible for reporting whenever work is available.

7. Control Own Assistants. An Independent contractor hires, supervises and pays his or her own assistants under a contract which provides both that the worker is to supply materials and labor and that the worker is responsible only for the attainment of a result. The agreement should disavow that the worker is acting in the capacity of the City's representative when he or she hires, supervises and pays his or her own assistants.

8. Time To Pursue Other Work. An independent contractor is free to work when and for whom he or she chooses.

9. Job Location. To the extent that it is possible, an independent contractor should be required to perform the work at his or her own office or other workplace, rather than being allowed to use the City's premises. If the independent contractor must occasionally use the service recipient's premises, the independent contractor should be required to maintain a separate address and provide his or her own materials.

10. Order Of Work Set. The City should try to avoid requiring an independent contractor to perform services in an order or sequence. The independent contractor should have the freedom to follow his or her own routines and schedules.



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11. No Interim Reports. A requirement that a worker submit regular reports indicates a degree of control over the worker. Consequently, an independent contractor should not be required to submit regular reports.

12. Payment Timing. Payment by the hour, week or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

13. Working For Multiple Companies. Independent contractors can and do work for more than one firm or company at a time. Thus, if a worker performs more than minimal services for a number of unrelated businesses at the same time is typically considered an independent contractor.

14. Business Expenses. An independent contractor's usually pays for his or her own business and/or traveling expenses. If a contractor wants to bill for expenses, they should be incorporated into the contract price.

15. Own Tools. Independent contractors furnish their own tools, materials and other equipment.

16. Significant Investment. Independent contractors often invest in facilities or items that are used in performing services and that are not typically maintained by employees (such as the maintenance of an outside office).

17. Services Available To The General Public. Independent contractors make services available to the general public by maintaining a separate corporate identity, having an office, business signs, business license, listing their services in a business directory, advertising, etc.

18. Possible Profit Or Loss. Independent contractors can suffer a profit or loss. In an employer-employee relationship, the employer bears the risk. Thus, a worker who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, but a worker who cannot is an employee..

19. Limited Right To Discharge. An independent contractor cannot be fired so long as he or she produces a result that meets contractual specifications. The right to discharge a worker is a factor indicating that he or she is an employee, and a hiring party that possesses that right is an employer.

20. Worker's Right To Terminate Relationship. If a worker has the right to end his or her relationship with a hiring party at any time he or she wishes without incurring liability, this factor



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indicates an employer-employee relationship. By contrast, an independent contractor who walks off the job could forfeit his or her fee and/or be sued for nonperformance.

G. All contracts shall include a provision requiring the vendor to submit a written disclosure to the City declaring any political contributions of money, in-kind services, or loans made to any member of the City Council within the previous 12-month period. Vendors shall submit the written disclosure prior to the contract being approved, renewed or extended by the City. It shall be the responsibility of the Initiator to ensure that the written disclosure is submitted by the vendor prior to approval, renewal or extension of the contract. In the event that a vendor declines to submit the written disclosure, this fact should be noted in the City's files and in any staff report to the City Council requesting approval, renewal or extension of the contract.

QUESTIONS AND ANSWERS

Why do we need to create a Purchase Order if the vendor I select does not require one?

There are several reasons, but two main ones. First, purchases should be pre-approved. After a vendor has supplied a service or merchandise, it would be inappropriate to not pay them. If a Purchase Order is generated, then we know that the prescribed procedures were followed and that the purchase is authorized by management. Second, when a Purchase Order is created, an encumbrance is recorded on the General Ledger. Thus, a Department Head can know what he/she has committed to spend so he/she is able to better manage his/her budget even though the monies may not yet have been released.

What constitutes a bid? Sometimes it is difficult to find more than one or two vendors who supply an item or service. If I call a potential vendor and they cannot provide the item, does that count as a bid?

To be considered a bid, the vendor must be able to supply the item or service and give a price for it. If an item or service is truly unique or only one vendor supplies it, then multiple bids may not be required. This is a rare situation and should be explained in detail in writing before requesting a Purchase Requisition.

Is it okay to get more than the required number of bids?

If you believe that the quotations you have received are out of line, it is certainly acceptable to get more quotations. Remember that your time costs money too, so only continue to seek more quotations if you have reason to think you can get a significantly better price or service.



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What is the Taxpayer Identification Number Sheet (W-9) and what am I supposed to do with it?

The Internal Revenue Services (IRS) requires us to get this information from all individuals and companies with which we do business. From the information they provide us on this form, we can make a determination of whether or not we need to send the vendor a 1099 at year-end. The sheet is to be sent to the vendor's accounting department for completion and returned to us. Remember, we cannot issue a purchase order or a check to a new vendor until we receive this information.

What do you mean by a "contract"? Do I have to have legal counsel create such a document if I need to make a large dollar purchase?

A contract is required for all professional/contractual services. Use the City's standard contracts provided by legal counsel whenever possible and always have legal counsel approve the contract.