

ORDINANCE NO. 6-2007

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
REPEALING THE PROVISIONS OF PURCHASING ORDINANCES 04-2001
AND 24-2005 AND ADOPT A NEW ORDINANCE TITLED PURCHASING
ORDINANCE**

THE CITY COUNCIL OF THE CITY OF ELK GROVE DOES ORDAIN AS
FOLLOWS:

Section 1: Purpose:

The purpose of this chapter is to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Section 2: Application:

Ordinances 04-2001 and 24-2005 are hereby repealed.

Except as otherwise provided in this chapter, this chapter applies to contracts for the procurement of supplies and services, entered into by the City. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with the law.

Section 3: Definitions:

As used in this chapter:

- A. "Architect-engineer and land surveying services" means those professional services within the scope of practice of architecture, professional engineering, or land surveying as defined by laws of the state.
- B. "Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements and which provides for the submission of equivalent products.
- C. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

- D. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
- E. "City" means the City of Elk Grove.
- F. "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- G. "Person" means any business, individual, union, committee, club, other organization or group of individuals.
- H. "Procurement" means the buying, purchasing, renting, leasing or otherwise acquiring of any supply or service. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and awards of contracts and contractual administration.
- I. "Services" means the furnishing of labor, time or effort, not involving the delivery of a specific end product, other than reports that are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- J. "Specification" means any description of the physical or functional characteristics or the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply or service for delivery.
- K. "Supplies" means all property (including, but not limited to, equipment and materials) except as otherwise provided in this chapter.
- L. "Surplus supplies," means supplies that are worn out, obsolete or unsuitable for city use.

Section 4: Purchasing Officer – Office established:

There is established for the city a position denominated Purchasing Officer, said position may be combined with those of any other office or position or may be determined by the City Manager. The City Manager shall appoint the City's Purchasing Officer.

Section 5: Purchasing Officer – Duties:

- A. In accordance with this chapter, the Purchasing Officer shall:

1. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided in this chapter.
 2. Sell, trade or otherwise dispose of surplus supplies belonging to the City: and
 3. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies and services.
 4. May call for bids or give notice to any and all persons whatsoever or publish in any case where the same is not required by the terms of this chapter, and is empowered to invite bids by telephone, telegraph, FAX or by mail when deemed in the best interests of the city: and
 - i. Shall keep a record of all purchases made and the bids, if any, submitted thereon. Said records shall be open to public inspection at all times during regular business hours.
- B. Direct supervision over the City's central supplies and general supervision over all other inventories of supplies belonging to the City shall be assigned to an individual, or individuals other than the Purchasing Officer.

Section 6: Operational procedures: Consistent with this chapter, the Purchasing Officer may adopt operational procedures relating to the execution of duties.

Section 7: Delegation: The City Manager may delegate to other city officials the authority to purchase supplies or services, and to dispose of surplus supplies, to other city officials, if such delegation is deemed necessary for the effective procurement or disposal of those items.

Section 8: Consideration of bids and basis of awards: Purchases shall be awarded on the basis of the bid or bids most advantageous to the City. In determining whether a bid is most advantageous to the City, in addition to price, the Purchasing Officer, the City Manager or City Council may consider the following:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with the laws and ordinances;
6. The sufficiency of the financial resources and the ability of the bidder to perform the contract or provide the service
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
9. The number and scope of conditions attached to the bid.

Section 9: Justification for acceptance of a high bid: In cases where the Purchasing Officer makes the purchase and, in the opinion of the Purchasing Officer, the most advantageous bid is not the lowest bid, the Purchasing Officer shall prepare and place on file with the department a written statement of his opinion and the reason therefore. Such statement shall be open to public inspection at all times during regular business hours.

Section 10: Preference given to bidder within the City when bids are equal: A bidder with a permanent place of business within the City shall be preferred over a bidder without a permanent place of business within the City, in cases where two or more bids are judged to be equal on the basis of price, quality and service.

Section 11: Purchase of five hundred dollars or more must be in writing: No award for supplies or services or the disposal of personal property where the total expenditure or value is five hundred dollars or more shall be deemed to be an acceptance of any offer or bid unless and until the same is reduced to writing and signed by the Purchasing Officer and dispatched to the vendor or purchaser.

Section 12: Brand names or equal specification:

- A. Brand names or equal specification may be used when the Purchasing Officer determines that:
 1. No other design or performance specification or qualified products list is available;

2. Time does not permit the preparation of another form or purchase description, not including a brand name specification;
3. The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
4. Use of a brand name or equal specification is in the City's best interests.

B. Brand name or equal specification shall state that substantially equivalent products to those designated will be considered for award.

Section 13: Purchase of less than twenty thousand dollars may be informal: Where the amount, or value is less than twenty thousand dollars, the purchase or disposal may be made by the Purchasing Officer without written bid and by informal price checking through telephone, or mail inquiry, comparison of prices on file or otherwise.

Section 14: Purchase of twenty thousand dollars or more – Not greater than fifty thousand dollars – Made by City Manager through competitive bid: Where the amount, or value involved, is at least twenty thousand dollars, but does not exceed fifty thousand dollars, the purchase, or disposal, shall be made by the City Manager through competitive bid, upon notice as required by Section 19 of this chapter. Every exercise of this purchase authority shall be reported by the City Manager in writing to the City Council at a City Council meeting within 30 days of the exercise of the authority, or the next City Council meeting if such meeting does not occur within 30 days.

Section 15: Purchase of fifty thousand dollars or more made by competitive bid: Where the amount, or value involved, is over fifty thousand dollars, the purchase, or disposal, shall be made by the City Council through competitive bid, upon notice, as required by Section 19 of this chapter, provided, however, the City Council may elect to make any purchase in any amount (except as the laws of the state otherwise require) in the following cases:

- A. With approval of City Council, upon a determination that competitive bids, upon notice would not be likely to result in a lower price to the City from a responsible bidder, or would cause unnecessary expense or delay under the circumstances;
- B. By approval of the City Council that said purchase may be made through a governmental entity, as provided in Section 18 of this chapter, upon a determination that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder, or would cause unnecessary expenses or delay under the circumstances;

- C. By approval of the City Council that the immediate preservation of the public peace, health or safety requires said purchase to be made without competitive bids, upon notice;
- D. By approval of the City Council that there is only one source for the required supply or service based on a review of available sources by the Purchasing Officer and written recommendation therefore.
- E. By approval of the City Council that it is in the City's best interests to suspend competitive bidding.

Section 16: Emergency Purchasing Authority:

- A. In an emergency requiring the immediate preservation of the public peace, health and safety, and precluding action by the City Council:
 1. The Purchasing Officer may purchase supplies or services up to twenty thousand dollars (\$20,000) without competitive bids.
 2. The City Manager may purchase supplies or services up to fifty thousand dollars (\$50,000), without competitive bids, upon notice.
- B. At the next succeeding City Council meeting, the Purchasing Officer and/or City Manager shall submit to the City Council a written statement of the circumstances of such emergency, a description of the supplies or services purchased, and the prices thereof.

Section 17: Waiver of informalities – Rejection of bids: Where the Purchasing Officer, City Manager or City Council are required to make purchases upon competitive bids, said Purchasing Officer, City Manager or City Council may waive any informalities or minor irregularities, or may reject any and all bids (anything contained in this chapter to the contrary notwithstanding) if said Purchasing Officer, City Manager or City Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Purchasing Officer, City Manager or City Council, as the case may be. Upon rejection of bids, the Purchasing Officer, City Manager or City Council, as the case may be, may:

- A. Give subsequent notice for new competitive bids; or
- B. Postpone said purchase or disposal definitely or indefinitely; or

- C. Elect to make the purchase without competitive bids, upon notice (as if competitive bids had not been required in the first instance) in accordance with the authority granted by this chapter.

Section 18: Purchase through a governmental entity: Purchases may be made on behalf of the City through any governmental entity (including, but not limited to, the state or the county) pursuant to authority granted by any statute or ordinance or pursuant to contractual arrangement between the City and said governmental entity. The City is authorized and empowered to enter into contracts with other governmental entities providing for purchases to be made on behalf of the City.

Section 19: Competitive bids – Notice: Where notice is required, notice shall be given as follows:

- A. For purchases under Sections 14 or 15, by publishing notice in a newspaper of general circulation within the City on at least one occasion at least ten days prior to the date set for the final receipt of bids; provided that publication may be made in any newspaper of general circulation in the county which the Purchasing Officer shall select if the publication schedule of all newspapers of general circulation in the City are such that notice by publication cannot be given in time.
- B. The notice shall give such information as to the proposed purchase, or disposal, as the Purchasing Officer deems sufficient but shall include the following:
 - 1. A general description of the supplies or services to be purchased or personal property to be disposed,
 - 2. Date, time and place of bid opening, and
 - 3. Whether bid deposits or bonds and faithful performance bonds will be required.

Section 20: Competitive bids: Where competitive bids are required, they shall be submitted in writing, in a sealed envelope to the office of the City Clerk not later than the final time and date for receipt of bids as set forth in the notice of publication. Bids may be submitted by FAX, provided, however, that the entire document is received no later than the final time set for receipt of written bids. Any bid may be withdrawn by a written request signed by the bidder and received by the City Clerk prior to the final time and date for the receipt of bids

- A. Opening Bids shall be opened in public at the time and place stated in the public notices.

- B. Tabulation. A tabulation of all bids received shall be posted for public inspection.

Section 21: Bid deposits: When deemed necessary by the Purchasing Officer, City Manager or City Council, any bidder may be required to submit a bid proposal, or bond in an amount determined by the Purchasing Officer, City Manager or City Council. A successful bidder (and his surety, if a bond is furnished) shall be liable for all damages upon said bidder's failure to enter into a contract with the City, or upon said bidder's failure to perform his bid.

Section 22: Faithful performance deposits: When deemed necessary by the Purchasing Officer, City Manager or City Council, any person entering into a contract with the City, may be required to furnish a faithful performance and/or a time and materials deposit, or bond, in an amount determined by the Purchasing Officer, City Manager or City Council. Said person (and surety, if a bond is furnished) shall be liable for any damages upon said person's failure to faithfully perform the terms of his contract.

Section 23: Purchasing Officer – Additional powers and duties:
The Purchasing Officer shall establish and maintain procedures and specifications for the purchase of paper and paper products that give preference, whenever feasible, to the purchase of recycled paper and paper products containing recycled paper.

Section 24: Consultants:

- A. The City Council finds and declares that in conformance with Government Code Section 37103 and case law, that the competitive bid process is ill suited for highly and technically skilled consultants who are needed for professional or technical expertise and for matters requiring specialized abilities or a high degree of skill.
- B. The City Manager or designated representative shall be empowered to engage a consultant (including, but not limited to, material testing service, construction inspection services, architectural, engineering, testing, land surveying, appraising, environmental, planning, financial, legal, development processing, governmental operations, special studies, construction project management and other services related thereto) without the necessity of competitive bid or notice hereof:
 - 1. Without City Council approval if the consultant's total fee for services and materials under the contract by which the consultant is engaged does not exceed fifty thousand dollars; and funds have been appropriated for said purpose.

Section 25: Request for sealed proposals: The Purchasing Officer shall be empowered to utilize the notice inviting proposals for purchase of supplies or services upon the following conditions:

- A. With City Manager approval if the amount, or value, involved is more than twenty thousand dollars, but less than fifty thousand dollars; or
- B. With City Council approval if the amount or value, involved is more than fifty thousand dollars.

Section 26: Notice: For purchases in excess of fifty thousand dollars, notice shall be given as required in Section 19 of this chapter.

Section 27: Receipt of proposals: A register of proposals shall be prepared containing the name of each offeror and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

Section 28: Discussion with responsible offerors – Revisions to proposals: As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors, or of any information derived from proposals submitted by competing offerors.

Section 29: Award: Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

Section 30: Rejection: Without limitation to the applicability of any other provisions of this chapter, the Purchasing Officer, City Manager or City Council may reject any and all proposals if said rejection is deemed in the best interests of the City. Upon rejection, the Purchasing Officer, City Manager or City Council may request new sealed proposals or utilize any alternative method set forth in this chapter.

Section 31: Preparation of purchase orders: Upon ascertaining the price to be paid for supplies, the Purchasing Officer shall prepare a purchase order. The Purchasing Officer shall forward the original purchase order to the vendor, retaining one copy for his purchase order file. He/she shall likewise forward one

copy of the purchase order to the department for whose benefit the purchase is being made to be used as a receiving report and permanent department file copy.

Section 32: Sufficient funds must be available: No purchase order shall be issued until it has been ascertained that there is to the credit of the department of the City for whose benefit such purchase is to be made, a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order.

Section 33: Department responsible for checking quality: Upon receipt by any department of supplies, the department shall be responsible for the making of a careful check of the quality, condition and quantity received as against his copy of the purchase order and the packing lists. The department shall fill out the receiving report copy of the purchase order, attaching thereto the packing lists, if any, and return the same to the accounts payable clerk.

Section 34: Finance Department: The Finance Director or his/her designee, upon receipt of the vendor's invoice, shall compare the same with the copy of the purchase order and the receiving report, and shall check the invoice for correctness of unit prices, discounts, transportation allowances, et cetera, and with reports of quality and quantity of goods received.

Section 35: Purchasing Officer's inspection: The Purchasing Officer shall inspect, or cause to be inspected, all deliveries of supplies or services to determine their conformance to specifications. The Purchasing Officer shall have the authority to require chemical, physical or other tests of samples submitted with bids and samples and deliveries which are necessary to determine quality and conformance to the specifications. In the performance of such tests, the Purchasing Officer shall have the authority to make use of laboratory facilities of any department of the City or any outside laboratory.

Section 36: Disposals of less than five hundred dollars: Except as otherwise provided by state law or city ordinance, the Purchasing Officer shall, with the approval of the City Council, be empowered to dispose of personal property of the City which cannot be used by any department of the City, at public or private sale, or by renting or destroying the same (all with or without notices, competitive bid or necessity of posting bid bonds, at the Purchasing Officer's discretion, and upon such terms as said officer deems best), provided any single item of property involved does not exceed five hundred dollars in current market value.

Section 37: Employees not eligible: No employee of the City, City official or contractor of the City is eligible to purchase surplus City property.

Section 38: Deposits: The Purchasing Officer may, in said officer's discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon disposal of personal property.

Section 39: Disposals of more than five hundred dollars: In the event any single item of property exceeds five hundred dollars in current market value, the City Council may empower the Purchasing Officer to dispose of it (in accordance with the same terms and conditions, and subject to the same discretion and limitations as if it were under five hundred dollars in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever terms and conditions the City Council may, in its discretion elect.

Section 40: Filing of claims: Claims for loss, damage, breakage, shortage or otherwise, claims for refunds, claims for adjustment and claims for insurance or other indemnity shall be made promptly by the Purchasing Officer.

Section 41: Exclusions from chapter: The provisions of this chapter shall not apply:

- A. To public projects (governed by the provision of the California Public Contract Code);
- B. To franchises governed by the provisions of the California Public Utilities Code or other statutes of the state;
- C. Where state or federal law requires a different procedure;
- D. To franchises, rights and privileges as may be granted exist for refuse disposal or cable or telecommunications franchise;
- E. To the purchase of insurance;
- F. To the leasing, purchase or sale of land or any interest therein;
- G. To the hiring of, contracting for, personnel (whether as temporary, seasonal or permanent employees, agents or independent contractors);
- H. To construction contracts other than public projects;
- I. To the purchase of utilities including, but not limited to telephone service, gas, electricity and sewer.

Fiscal Year End Procedure

In order to close the City's books in a timely manner in accordance with generally accepted accounting principles, these procedures must be followed:

1. After June 1 of each fiscal year, purchase orders for the old fiscal year may be created only if there are reasonable expectations that the goods or services will be received and paid for by the first of July.
2. After June 15 of each fiscal year, no more purchase orders for the old fiscal year shall be created unless approved by the Director of Finance.
3. Beginning July 1 of each fiscal year, purchase orders for the new fiscal year may be created. No purchase orders for the new fiscal year can be created prior to July 1.

Section 42: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 43: Severability.

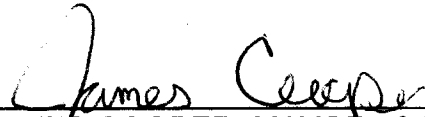
If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 44: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

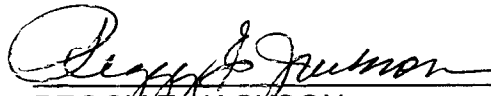
ORDINANCE NO. 6-2007

INTRODUCED: January 24, 2007
ADOPTED: February 14, 2007
EFFECTIVE: March 16, 2007



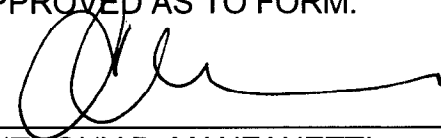
JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON
City Clerk

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
City Attorney

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 6-2007**

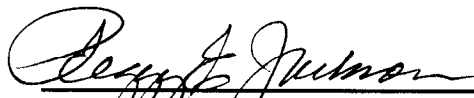
STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance was duly introduced on January 24, 2007 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 14, 2007 by the following vote:

AYES :	COUNCILMEMBERS:	Scherman, Cooper, Hume, Davis, Leary
NOES:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None



A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Peggy E. Jackson, City Clerk
City of Elk Grove, California**