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Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
October 27, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Mayor Adena Ishii (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor), and Councilmember Ben Bartlett (Co-Sponsor)

SUBJECT: Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager

## RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than $100,000.

Further, for the City Attorney's Office (CAO), require development of an Outside Council Selection Protocol whereby the CAO develops an annual report to Council for its pre-qualified list of outside attorneys and law firms based on respondents to the office's ongoing Request for Qualifications process. When outside counsel is required, senior staff in the CAO would choose from pre-qualified attorneys/firms and identify the best candidate based on expertise, quality of work, and cost. This recommendation would allow for a competitive process using the pre-qualified list, thus accommodating the CAO's need to quickly engage outside counsel while preserving best procurement practices. Additionally, request the CAO report to Council on legal services contracts and amendments to City Council quarterly to increase transparency of spending on legal services contracts.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual. Further, refer to the CAO to develop legal services regulations to implement the competitive solicitation process for outside counsel contracts and define circumstances where a sole-source procurement is justified by emergencies, market research, conflicts of interest, or other considerations.

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## POLICY COMMITTEE RECOMMENDATION

On October 5, 2026, the Budget & Finance Committee adopted the following action: M/S/C (Kesarwani/Blackaby) to send the item to Council with a Qualified Positive Recommendation as written and amended during discussion, with additional direction to further consider:

- Specifying the 5-7 year contract rebidding timeframe in the ordinance as well as the purchasing manual
- Authorizing the City Attorney's Office to promulgate legal services procurement regulations and guidelines
- Establishing annual reporting to Council on legal services contracts and amendments
- B.M.C. Section 7.18.010(A) Expenditures pursuant to Charter Article XI, Sections 67 and 67.5 is amended to read as follows:

Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which ~~exceed~~ the initial amount exceeds ~~of~~ $10~~5~~0,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

Vote: Ayes

## CURRENT SITUATION AND ITS EFFECTS

***City Auditor Recommends Competitive Procurement for Service Contracts.*** The City Auditor's report, *City Contracts: Outdated Process Led to Non-Competitive Contracts* (released Feb. 19, 2026) found that in fiscal year 2021-22, Berkeley executed two large recycling contracts with the Ecology Center and Community Conservation Centers for nearly $85 million over ten years without using a competitive procurement process.[1] The Auditor's report also found that the City Council authorized noncompetitive contracts for community-based organizations and amended service contracts that started below the threshold for Council approval of $50,000 that increased by an average of $218,026 per contract without competition. Recommendation 1.2 in the City Auditor's report recommends that Berkeley Municipal Code Chapter 7.18 be amended to explicitly require competition for service contracts.

***City Charter Only Requires Competitive Procurement for the Purchase of Supplies, Equipment or Materials, Not Services.*** Pursuing competitive procurement is considered a best practice in contracting to ensure openness, fairness,

[1] City Auditor Jenny Wong: City Contracts: Outdated Process Led to Non-Competitive Contracts, February 19, 2026: https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf p. 8.

transparency, and competition in the award and use of public funds. However, neither the Berkeley Municipal Code (BMC) nor the City Charter explicitly requires competitive procurement for professional services and other service contracts, such as recycling services. City Charter Section 67 only explicitly requires competitive solicitation for the purchase of supplies, equipment or materials to the "lowest responsible bidder." Updating the BMC to require competitive procurement for all service contracts that exceed $100,000 would ensure that large service contracts would be subject to competitive procurement, as those for construction, equipment, supplies and materials.

***In the Case of Services (Including Professional Services), Competitive Procurement Should Yield A Balanced Consideration of Quality, Experience, and Cost.*** Competitive procurement is the process of acquiring goods, services, or public works by soliciting bids, proposals, or quotes from multiple competing vendors. The primary goal is to ensure that public funds are spent efficiently and transparently, obtaining the "best value"—which is a balance of quality, experience, and cost—while preventing favoritism or corruption. Characteristics of a competitive procurement include the following:

- Openness: The opportunity is publicly advertised (often via a Request for Proposals or Invitation for Bids) so that any qualified vendor can participate.
- Fairness: All bidders are treated equally, receiving the same information and being evaluated against the same predetermined criteria.
- Transparency: The selection process is documented and subject to audit, ensuring the public can see why a specific vendor was chosen.
- Competition: By forcing vendors to compete, the procurement process can drive down costs and encourage innovation or higher-quality service delivery.

Common methods for conducting a competitive procurement include the following:

- Invitation for Bids: Used when requirements are very specific (e.g., office supplies). The contract is typically awarded to the lowest responsive and responsible bidder.
- Request for Proposals: Used for complex projects (e.g., policy analysis or IT systems) where the "how" is as important as the price. Evaluation includes technical expertise, methodology, and cost.
- Request for Qualifications: Focuses strictly on the vendor's experience and "bench strength" before negotiating costs, often used for architectural or engineering services.

***Recommended Amendment to BMC Section 7.18.010 Requires Competitive Procurement for Service Contracts Exceeding $100,000***. The amended language below raises the threshold for Council approval to $100,000 to better reflect costs for services and to explicitly require competitive procurement for service contracts that exceed $100,000:

> Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which ~~exceed~~ the initial amount exceeds ~~of~~ $10~~5~~0,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in

the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

## BACKGROUND

***Other Cities Require Competitive Procurement for Services.*** The proposed amendment to BMC Chapter 7.18 brings the City of Berkeley in line with neighboring jurisdictions that already require competition for service contracts. San Francisco's Municipal Code Section 21.1 states: "All City contracts for Commodities and/or Services shall be procured through competitive solicitation, except as otherwise authorized in this Code."[2] Similarly, the Oakland Municipal Code notes: "The City Administrator or the City Administrator's designee shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars ($50,000.00) and are exempt from bidding under Subsection 2.04.050.1.1. …The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services."[3]

## RATIONALE FOR RECOMMENDATION

As the City Auditor notes in her recent report, "competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices."[4] While no evidence of misconduct was found during the audit, contracting corruption cases do exist and promote a lack of trust in local government. A competitive process can guard against waste and fraud and discourage favoritism for specific contractors. Competitive

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[2] San Francisco Municipal Code Chapter 21.1: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-13403

[3] Oakland Municipal Code Section 2.04.051: https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.04PUSY_ARTIBICOPU_2.04.040COPR

[4] City Auditor Jenny Wong: City Contracts: Outdated Process Led to Non-Competitive Contracts, February 19, 2026: https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf p.2

processes is a good government best practice that highlights transparency and inclusivity while saving taxpayers' money.

## FISCAL IMPACT

Staff time to amend BMC Chapter 7.18.

## ENVIRONMENTAL SUSTAINABILITY

Competition among contractors can help the city procure services for the best fit at the most reasonable price for recycling services and other environmentally sustainable services rendered to the city.

## CONTACT PERSON

Rashi Kesarwani, Councilmember District 1 (510) 981-7110

Attachments

1) BMC Chapter 7.18 tracked changes
2) City Auditor February 19, 2026 Report "City Contracts: Outdated Process Led to Non-Competitive Contracts"
3) City of Berkeley Purchasing Manual

ORDINANCE NO. #,###-N.S.

EXPENDITURE LIMITATIONS; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.18

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 7.18 is amended to read as follows:

## Chapter 7.18

## EXPENDITURE LIMITATIONS

**Sections:**

7.18.010 Expenditures pursuant to Charter Article XI, Sections 67 and 67.5.
7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4--Emergencies.

### 7.18.010 Expenditures pursuant to Charter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which ~~exceed~~ the initial amount exceeds~~of~~ the amount of ~~$50,000~~$100,000, inclusive of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of $200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for Community Development Block Grant funded Community Facility Improvement Projects which exceed the amount of $200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

D. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of $100,000 shall require Council approval.

E. Expenditures for the acquisition and renovation of small multifamily rental properties through the Small Sites Program shall not require Council approval, but shall be approved by the City Manager. Expenditures will comply with the Small Sites Program guidelines, adopted by Resolution.

**7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4--Emergencies.**

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of $100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of $200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Audit Report

February 19, 2026

# City Contracts: Outdated Process Led to Non-Competitive Contracts

BERKELEY CITY AUDITOR

Jenny Wong, City Auditor

Caitlin Palmer, Audit Manager

Katie Wysong, Auditor I

# City Contracts: Outdated Process Led to Non-Competitive Contracts

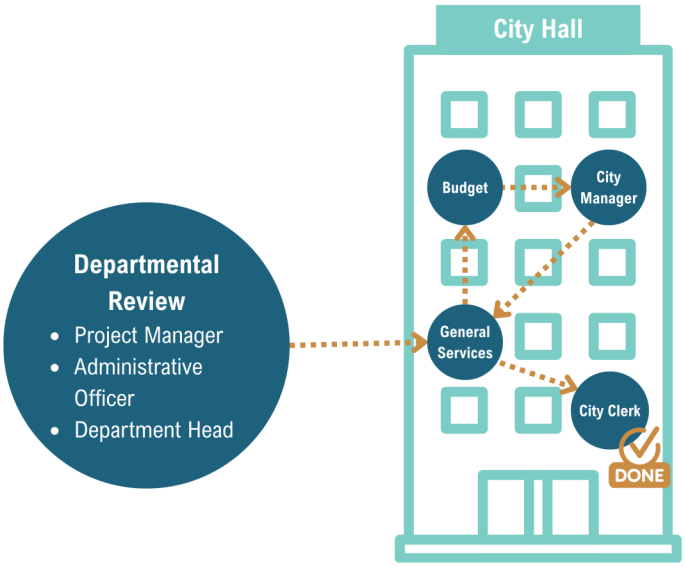
## Report Highlights

February 19, 2026

### Findings

1. In fiscal year 2022, the City authorized nearly $85 million in recycling contracts over 10 years without competition. Inconsistent rules made it difficult for staff to know when to waive competition. Our analysis of fiscal year 2024 waivers found that 38 percent did not clearly meet the Purchasing Manual criteria. City Council authorized additional non-competitive contracts for community-based organizations. Additionally, amended service contracts that started below the threshold for Council approval increased by an average of $218,026 per contract without competition.
2. Berkeley used paper contracts hand-delivered between departments and lacked a centralized digital system, creating delays and misplaced contracts. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contracting process.

**Moving paper contracts throughout City Hall created opportunities for delays.**




Source: Auditor analysis of contract review sheet for new expenditure contracts

### Objectives

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

### Recommendations

We recommend the City add explicit competition requirements to the Berkeley Municipal Code for service contracts. We also recommend the City update the Purchasing Manual and contract forms for consistency and clarity, as well as expand training for staff. We recommend the City continue pursuing a comprehensive, integrated digital contracting system, as budget allows.

### Why This Audit Is Important

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices. However, in fiscal year 2024, Berkeley executed 94 contracts without documented competition for a total value of $43 million. While it is not practical or possible for every contract to go through competition, it is important that the City uses competition when feasible.

BERKELEY CITY AUDITOR

For the full report, visit the City Auditor's website.

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# Introduction

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. Best value may include not only lowest price, but also the quality of the good or service and fit with Berkeley's specific needs. However, Berkeley spends millions of dollars on contracts that are not competitive. While it is appropriate, even necessary, for some contracts to be non-competitive, it is important that the City pursues competition when possible. Although we found no evidence of misconduct in Berkeley during our audit, contract corruption cases in neighboring jurisdictions emphasize the importance of having open, competitive contracting processes. A competitive process can discourage favoritism and guard against waste and fraud.

Competition has additional benefits for equity and fairness. According to a consultant report commissioned by the Berkeley City Council, "minority and women-owned business enterprises" lost out on an estimated $21.7 million in contract dollars with the City of Berkeley between 2016-2019. In general, a fair and open competitive process can encourage additional contractors to seek City contracts, including from historically excluded groups.

This audit focuses on contracts that were not competitive and were subject to the requirements of the Berkeley Municipal Code and the City's Purchasing Manual. We did not evaluate the City's competitive selection processes or staff's compliance with them, nor the management of contracts after execution.

## Objectives

The objectives of this audit are to address the following questions:

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

## Scope and Methodology

We reviewed expenditure contracts executed between July 1, 2023, and June 30, 2024 (fiscal year 2024). We also analyzed subsets of all expenditure contracts active in the City's financial system as of March 6, 2025, including the largest dollar value contracts and service contracts approved at or below the threshold for City Council approval, then later amended to exceed it. Additionally, we reviewed Berkeley's laws, policies and procedures related to contracts, researched best practices and other jurisdictions' policies, and interviewed relevant staff and

leadership. This audit focused on the City's contracting processes, and we did not audit individual contracts or contractors.

# Background

## Berkeley uses formal and informal competition to select contractors depending on the cost and type of purchase.

Depending on the expected cost and type of purchase, the City uses different formal and informal competition to select a contractor (Table 1).

- **Formal competition involves a structured public process.** For supplies, equipment and materials, the City Charter requires the City to select the vendor with the lowest bid that meets the City's criteria after publicly issuing an Invitation for Bids (IFB). For more complex purchases, such as professional services, the City selects the contractor with the best value based on the criteria set in the posted Request for Proposals (RFP).
- **For informal competition,** departments are required to reach out directly to at least three contractors for written quotes and then select the contractor with the lowest cost or best value. Informal competition allows for more flexible timelines and does not require City Council approval.

The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department. The City uses contracts for most services that are not done by City staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods like office furniture and equipment for parks maintenance.

**Table 1: City Purchasing Requirements by Price and Type[1]**

| Purchase Value | Competitive Purchasing Process |
|---|---|
| **Services** | |
| Under $5,000 | Purchase Order with 3 verbal quotes |
| $5,000 - $25,000 | Purchase Order with informal competition (3 written quotes) |
| $25,000 - $50,000 | Contract with informal competition (3 written quotes) |
| Over $50,000 | Contract with formal competition (Request for Proposal or Request for Qualifications) |
| **Goods** | |
| Under $5,000 | Purchase Order with 3 verbal quotes |
| $5,000 - $100,000 | Purchase Order with informal competition (3 written quotes) |
| Over $100,000 | Purchase Order or contract with formal competition (Invitation for Bid) |
| **Construction** | |
| Under $5,000 | Purchase Order with 3 verbal quotes |
| $5,000 - $25,000 | Purchase Order with informal competition (3 written quotes) |
| $25,000 - $200,000 | Contract with informal competition (3 written quotes) |
| Over $200,000 | Contract with formal competition (Invitation for Bid) |

Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

The benefits of competitive contracts are well-established. According to the U.S. Government Accountability Office, competitive contracts can save taxpayers money, improve contractor performance, curb fraud, and promote accountability for results. Competition is a critical tool for achieving the best return on the government's investment. Berkeley's Purchasing Manual requires all purchases to be made through a competitive process unless they meet specific criteria described in the next section.

## In some cases, the City can select a contractor without competition.

Competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. In these cases, non-competitive contracts give the City flexibility to respond quickly to emergencies or meet a need where competition is not feasible or practical.

During the audit period, the Purchasing Manual allowed the City Manager to waive the competition requirement for contracts under the cost threshold for formal competition in specific circumstances (Figure 1). Departments could request waivers of competition if there was only one contractor that provided a good or service, or competition was otherwise found to be inadequate. Waivers were also allowed in emergencies when competition was not feasible or practical. The Purchasing Manual also required departments to conduct market research to

[1] Solicitation is the process of reaching out to contractors, which ideally results in competition among contractors. We use the term competition to refer to competitive solicitation for simplicity.

justify the business case for the waiver, and whenever possible, avoid requesting items that could only be obtained from a sole or single source.

**Figure 1: Purchasing Manual Criteria for Non-Competitive Contracts**

Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

City Council can also waive competition for specific contracts or broader categories of purchases. Once a contract is in place, the City can use amendments to increase the dollar amount and extensions to extend the duration of a contract without new competition. Even if the contractor offered the best value when selected, years later, a different contractor may be more affordable or better suited for the City's needs.

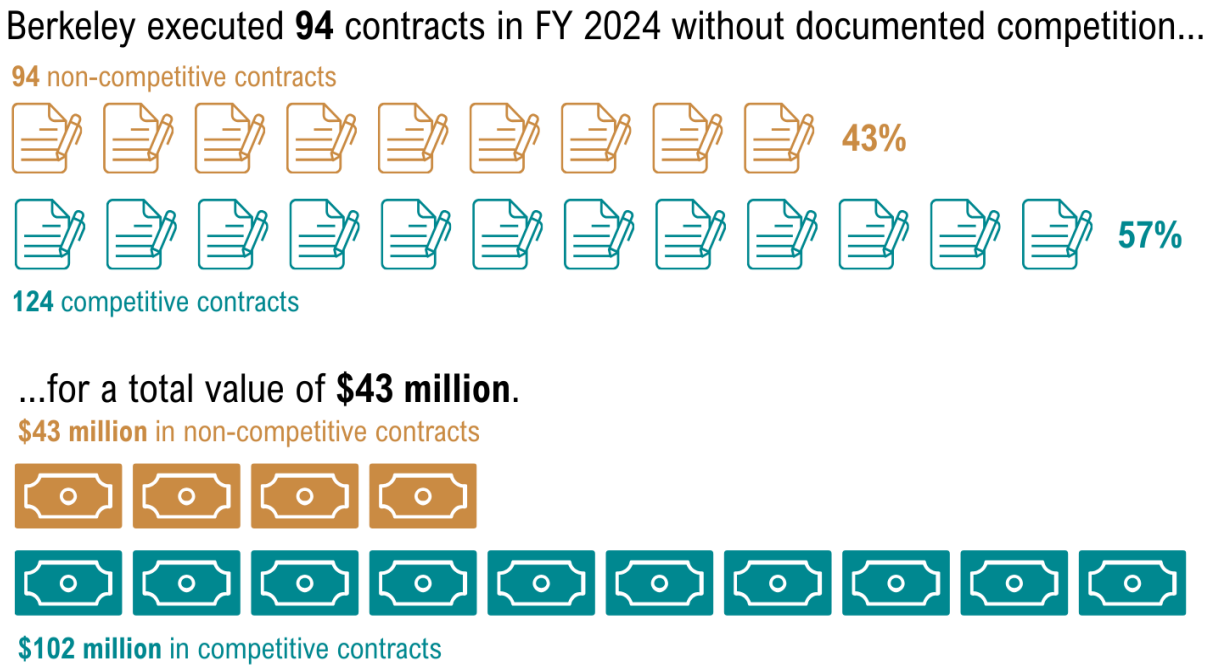
Though non-competitive contracts are sometimes the most appropriate or practical option, if the City over-relies on non-competitive contracts, it runs the risk of:

- Overpaying for services,
- Not getting the best quality service,
- Having fewer opportunities for new and small businesses, including historically marginalized contractors, and
- Creating more opportunities for bribery or corruption between staff, officials, and contractors.

## Over 40% of the contracts executed in fiscal year 2024 did not clearly go through competition.

Ninety-four of the 218 contracts executed, or formally approved, in fiscal year 2024 did not have documented competition (Figure 2). The total value of these contracts was approximately $43 million compared to $102 million in competitive contracts. Competitive contracts include both those with formal and informal competition, as well as contracts that piggybacked on other jurisdictions' contracts.

**Figure 2: Berkeley executed 94 contracts in fiscal year (FY) 2024 without documented competition for a total value of $43 million.**



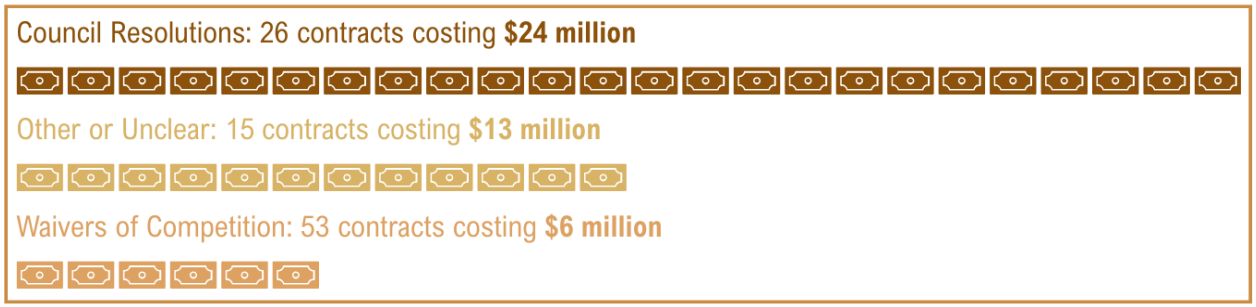

Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley's financial system

Berkeley awarded 30 percent of contract dollars without competition in fiscal year 2024. According to a recent benchmarking survey of public procurement entities from NIGP: The Institute of Public Procurement (NIGP), Berkeley was similar to the median responding jurisdiction, which awarded 30 percent of contract dollars without competition.

City Council authorized 26 non-competitive contracts through Council Resolutions, which made up the majority of the cost associated with non-competitive contracts (Figure 3). The group of non-competitive contracts with the second highest total cost were 15 "other or unclear" contracts. These included contacts that were missing in Records Online, the City's electronic document repository, or where competition was marked as "not required" on the contract review

form, such as leases or the City Attorney's contracts for legal services.[2] Most of the non-competitive contracts executed in fiscal year 2024 had a waiver of competition, but that group had the lowest total cost.

**Figure 3: Breakdown of non-competitive contracts**




Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley's financial system

Note: "Other or unclear" include contracts missing from Records Online, leases, license agreements, contracts with no evidence of competition, or where marked as not required. The dollar amounts for the contracts missing from Records Online are based on data in the City's financial system.

[2] The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements.

# Berkeley spent millions of dollars on non-competitive contracts when competition was likely possible.

We found that most of the City's largest active expenditure contracts had evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but two non-competitive recycling contracts totaling nearly $85 million did not. Additionally, inconsistent rules may have made it difficult for staff to know when it was appropriate to waive competition. As a result, 38 percent of waivers in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual. City Council authorized additional non-competitive contracts with community-based organizations. Furthermore, service contracts that started at or below the $50,000 formal competition threshold and were later amended increased by an average of $218,026 per contract. We did not audit individual contracts or contractors.

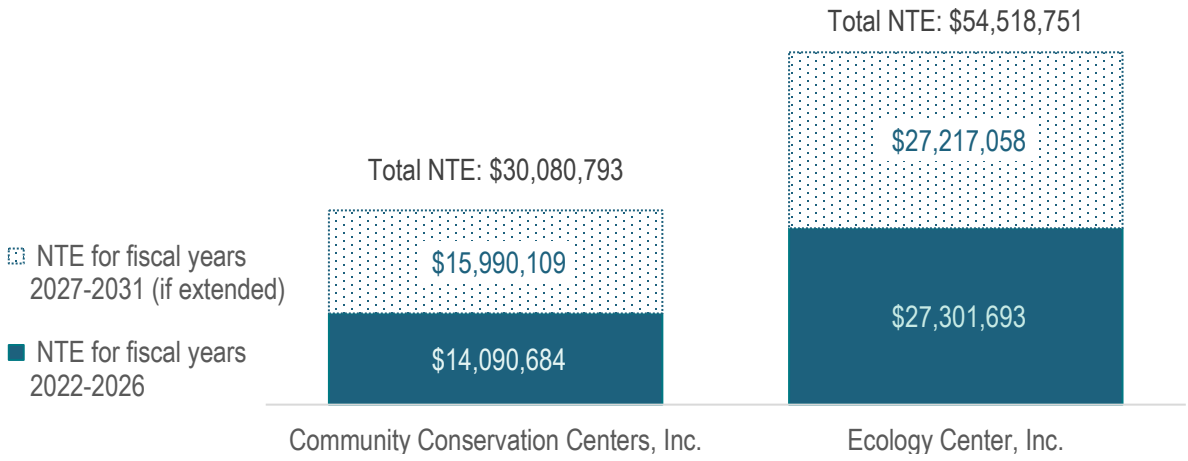
## The City authorized nearly $85 million in recycling contracts over 10 years without competition.

In fiscal year 2022, Berkeley executed recycling contracts with the Ecology Center, Inc. and Community Conservation Centers, Inc. for nearly $85 million over ten years without seeking bids from other contractors. Together, the contracts have a not-to-exceed amount of $41,392,377 for fiscal years 2022 through 2026, with optional five-year extensions which would bring to total not-to-exceed amount to $84,599,544 (Figure 4). We found that most of the City's 100 largest contracts had documented evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but these two recycling contracts did not.[3]

Berkeley has contracted with the Ecology Center and Community Conservation Centers for recycling services since the 1980s (Appendix 1). A review of public City records since the 1980s found no documented evidence of competition. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but did not audit these individual contracts or contractors. While these contracts may offer the best value or best fit for Berkeley, it is difficult for the City to determine that without open competition among all potential contractors.

[3] We reviewed the 100 largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date before June 30, 2025 in the City's financial system. The remaining 78 contracts also included one legal services contract, one lease, and one settlement agreement that fell outside the City's standard expenditure contract process.

**Figure 4: The recycling contracts will have a total not-to-exceed (NTE) of nearly $85 million dollars if the City takes the optional five-year extensions.**




Source: Auditor analysis of current recycling contracts

Note: NTE stands for "not-to-exceed." City Council authorizes the City to spend up to that amount on the contract. We did not assess how much the City has spent on each contract.

Prior to authorizing these non-competitive contracts, there were proposals to pursue competition for the City's recycling services. In 2011, an outside consultant recommended that the City issue an RFP for the recycling materials processing operations performed by Community Conservation Centers, and end the contract with the Ecology Center to have the City take over recycling pick-up. The Zero Waste Commission disagreed with the report's recommendations citing incomplete and missing information and cost-benefit analyses, and a lack of an adequate and inclusive process. In 2020, Public Works staff requested that City Council authorize an RFP for the recycling processing operations done by Community Conservation Centers, but City Council voted to remove it from the list of proposed RFPs. According to Public Works staff reports to Council in 2021, third-party reviews found both contractors' costs reasonable when compared to surrounding communities. The report also stated that both contractors received mostly "satisfied" or "very satisfied" responses to a third-party customer satisfaction survey. Ultimately in 2021, City Council voted to authorize new sole source contracts with both contractors without issuing RFPs.

Although pursuing competition is an established best practice, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive (Table 2). The City Charter required purchases of supplies, equipment, and materials above a dollar amount set by the Municipal Code to be awarded to the lowest responsive bidder. It also required City Council to authorize these purchases. The language in the corresponding Municipal Code section only discusses the thresholds for Council approval.

The Purchasing Manual states service contracts above $50,000 must go through formal competition. However, this policy was not included in the City Charter and Berkeley Municipal Code. In other jurisdictions like Oakland and San Francisco, city codes explicitly require competition for service contracts with some exceptions. During the audit, Berkeley's Purchasing Manual also said only City Council can waive competition for contracts over the Council approval threshold. However, there was no guidance on how City Council should decide and document these decisions.

**Table 2: Neither the City Charter nor the Berkeley Municipal Code explicitly requires service contracts to be competitive.**

| City Charter | Berkeley Municipal Code |
|---|---|
| Discusses purchases of **supplies, equipment or materials** above BMC threshold but does not specifically require competition for service contracts. | Sets thresholds for Council Approval, but does not discuss competition:<br>• Public Projects and Facility Improvements - $200,000<br>• Supplies, Equipment and Materials - $100,000<br>• Other Expenditures, which includes services - $50,000 |

Source: Berkeley City Charter, Article XI and Berkeley Municipal Code 7.18

It may be reasonable for City Council to waive competition in unique circumstances, but the lack of clear standards allows large contracts to be awarded without competition when they could have been opened to competition. Overusing non-competitive contracts may make it difficult to assess if the City is getting the best value or best fit for goods and services. Berkeley may also be perceived as operating on favoritism.

## City management approved some waivers that did not meet the Purchasing Manual criteria.

Thirty-eight percent of waivers City management approved in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual at the time, meaning the City could likely have pursued competition under the current policy. For example, Human Resources used six waivers in a month and half, including three for classification and compensation studies. There may have been an urgent need for these services, but the form did not document that this was an emergency. By requesting three waivers for the same service from three different contractors, this indicated that it would have been feasible to request quotes from at least three contractors (Table 3).

In another example, a waiver for drug and alcohol testing cited immediate need because the previous contract had already been expired over two years. However, the long timeframe

indicates that it was not an emergency. The waiver form even states that the lack of advanced planning does not constitute an immediate need.

Finally, a department requested a waiver for legislative services because the contractor previously worked effectively with the City and had knowledge of the region and the City's lobbying. However, the rationale did not explain why another firm would be unable to provide the same or better services. The General Services Manager at the time noted on the waiver that the department should consider competing soon.

There were also many cases when the rationale for waivers did meet the Purchasing Manual's criteria, according to our assessment. For example, the City's labor contracts require the City to provide staff memberships to the YMCA, therefore the City must contract with the YMCA specifically.

We also found cases when departments unnecessarily completed and attached the waiver of competitive solicitation. In several cases, contract packets included both waivers of competition and City Council approval of the sole-source negotiations of contracts. In another example, a department had already done informal competition. In this case, General Services staff explained that the department already had the necessary documentation and did not need to complete a waiver, creating additional work and confusion.

**Table 3: Many waivers met the Purchasing Manual criteria, but 38 percent did not.**

Examples that Likely Met the Purchasing Manual Criteria

| Purchase | Department Rationale | Why Likely Eligible |
|---|---|---|
| Hazardous Vegetation Treatments & Removal | The previous RFP only resulted in one response. The City needed three vendors, so awarded two additional single source contracts while preparing a new RFP. | **Competition inadequate:** The RFP did not attract sufficient interest. The City needed to continue the work while taking steps to attract more responses. |
| Transfer Station Rain/Stream Gauge | The City needs equipment in place at the transfer station within three months to comply with a legal mandate. | **Emergency:** The City had a limited time to make the purchase before facing legal consequences. |
| Employee Fitness Memberships | Labor contracts require the City to provide staff memberships to the YMCA. | **One viable source**: There was only one source the City could provide the fitness memberships that complied with the labor contracts. |

Examples that Likely Did NOT Meet the Purchasing Manual Criteria

| Purchase | Department Rationale | Why Likely Ineligible |
|---|---|---|
| Classification & Compensation Studies | Human Resources had six waivers in a month and half, including three for classification and compensation studies.<br><br>All cited a “dire situation” and the fact that “an informal or formal RFP process would be further detrimental” to addressing the situation. | There may have been an urgent need for these services, but there was no documented evidence that it was an emergency. By requesting three waivers for the same service from three vendors, they indicate that it would have been feasible to request quotes from at least three vendors. |
| Drug & Alcohol Testing Services | The previous contract expired over two years earlier. Publicly competing these services would create a gap in services and negatively impact multiple operational processes. | Since the contract had already been expired for two years, the long timeframe indicates it was not an emergency. |
| Tailored Legislative Funding & Advocacy Strategy | The vendor has previously worked effectively with the City and has knowledge of the region and the City’s lobbying. | This does not explain why another firm would not be able to provide these services. Familiarity is not a sufficient reason for a sole source contract and can be seen as favoritism. Additionally, the General Services Manager noted on the waiver, "Consider competing in near future.” |

Source: Auditor analysis of contracts with waivers of competitive solicitation in fiscal year 2024 from Records Online

A potential cause of the inconsistent use of waivers is the fact that, during the audit period, the City's Purchasing Manual and waiver of competition form had different criteria for when waivers are justified (Table 4). For example, the waiver form had categories for "specialized service" and "immediate need," which were different than the categories specified in the Purchasing Manual. As a result, inconsistent criteria may have made it difficult for staff to understand when it is appropriate to use a waiver of competitive solicitation. According to the Procurement Excellence Network, document consistency can reduce review time.

**Table 4: The categories on the form staff use to request approval for a waiver did not match the criteria in the Purchasing Manual.**

| Purchasing Manual | Waiver of Competition Form |
|---|---|
| Sole or single source procurement, or non-competitive solicitation, may only be used following informal or formal solicitation when:<br>• Only one viable source is found for the needed product or service;<br>• Competition is found to be inadequate; or<br>• There is an emergency and it is impractical for the City to seek competitive bids. | Explanation must clearly state why this exception meets the required criteria.<br>• Service is very specialized;<br>• This product or service can only be provided by this contractor (sole source);<br>• This service and/or product must be provided immediately; or<br>• Other category. *Note: The lack of advanced planning does not constitute an immediate need.* |

Source: Berkeley's Purchasing Manual and Waiver of Competitive Solicitation form as of the end of fiscal year 2024

## City Council authorized additional non-competitive contracts for community-based organizations.

Beyond waivers of competition approved by the City Manager, City Council also authorized non-competitive contracts for community-based organizations through a separate process. In fiscal year 2024, we found three instances where City Council awarded new contracts totaling $417,400 to community-based organizations through budget referrals without any competition. According to an April 2025 Council item for Resolution 71,719, community-based organizations seeking one-time financial assistance have historically appealed directly to councilmembers to sponsor a budget referral outside of the City's established procurement process. While it is appropriate for the City to contract with community-based organizations, it is important that the process is open and transparent for all community-based organizations and does not privilege certain organizations above others who may be equally or more deserving of financial support. To help address this issue, City Council passed a resolution to establish a more open

and transparent application process for community-based organizations to apply for emergency funding.

To promote fair and transparent procurement, it is important that decisions about contracts meet ethical standards to prevent conflicts of interest, but Berkeley's process to do that was limited. Berkeley requires certain employees and officials to complete the Form 700 financial interest disclosure form to comply with California state law, which includes disclosure of involvement in non-profit organizations. However, the Form 700 does not collect information about other relationships that may exist, such as friendships, that may bias a decision. In Berkeley, the only contractors required to complete a Form 700 were consultants that make government decisions or act in a staff capacity that would require a Form 700 if that role was held by a City employee. Berkeley's RFP and RFQ boilerplates also required interested contractors to disclose potential conflicts of interest, but these do not apply to non-competitive contracts.

In comparison, a best practice analysis from Atlanta's Ethics Office found that requiring potential contractors, in addition to City officials and employees, to continuously disclose relationships, serves as a checks and balance system between the two groups. It also helps maintain compliance and transparency in the government procurement process. In addition to the Form 700, San Francisco requires City officers and employees to publicly disclose any personal, professional, or business relationships with anyone involved in a government decision they make.

## Contracts starting below the formal competition threshold were amended by an average of $218,026 per contract without additional competition.

As of March 2025, the City had 95 active service contracts that began at or below the formal competition threshold of $50,000 but were later amended above the threshold. On average, these amendments added $218,026 in total to each contract. Since these service contracts started below $50,000, they did not require City Council approval or formal competition. The contracts then increased without meeting the requirements for competition that apply to larger dollar values. We found some contracts which originally had waivers of competitive solicitation and were later amended by large amounts. For example, one contract that started at $50,000 was amended to $737,092 over 6 years, nearly 15 times the original cost. All of the service

contract amendments over $50,000 in our sample received City Council or Board approval,[4] as required by the Finance Department. According to Finance staff, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

While Berkeley's policy sets dollar thresholds for when a new contract must go through a formal competitive process, there was no documented citywide guidance for when existing contracts should be re-competed rather than amended. According to the U.S. Government Accountability Office, competitive contracts can help save taxpayers money. When Berkeley relies on existing contractors without competition, the City may lose out on the potential financial benefits of competition. In a sample of 23 amended contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Standard guidance on when amendments are appropriate and when contracts need to be re-competed could help address confusion about the amendment process that staff shared. Clear expectations may help reduce use of amendments instead of competition.

We also identified three City Attorney contracts for legal services which grew by over 20 times their original amount, including one which started at $50,000 in 2018 and grew to $4,167,000 as of August 2025. Because the City Charter and Berkeley Municipal Code give the City Attorney the authority to enter into legal services contracts,[5] the amendments do not require City Council approval unlike other City contracts above the Council approval threshold. This different process for the City Attorney's Office does not provide the same level of public oversight and transparency compared to new contracts and contract amendments that are reviewed by City Council at public meetings.

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[4] In our sample, contracts from the Library and the Rent Board received authorization from their boards rather than City Council.

[5] The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements. We did not evaluate best practices for competition of legal services contracts.

## Recommendations

1.1. To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.

1.2. To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.

1.3. To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.

1.4. To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.

1.5. To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.

1.6. To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.

# Paper contracts, unclear guidance, and short staffing led to delays and overuse of non-competitive contracts.

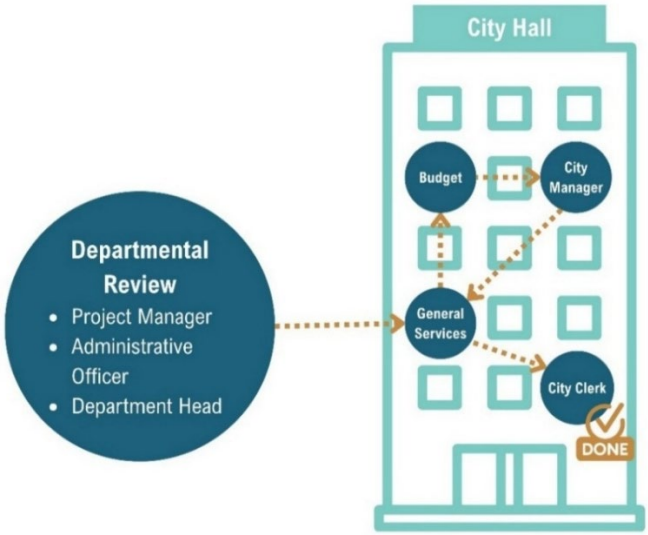
During our audit period, Berkeley used paper contracts that needed to be hand-delivered between departments, creating some delays and misplaced contracts. Lack of electronic tracking of waivers or the type of competition used for contracts made it difficult for management to analyze or monitor the use of waivers or analyze competition citywide. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contract process. Together, these conditions caused delays, errors, and greater reliance on non-competitive contracting to keep City services running.

## Berkeley used paper contracts that need to be hand-delivered between departments.

In fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals (Figure 5). During the scope of our audit, Berkeley did not have a comprehensive digital contract management system. In fiscal year 2024, it took an average of 37 days between when the contract was dropped off to General Services and when it was given to the City Clerk's office, according to an internal tracking spreadsheet. Departments conducted additional levels of review prior to it arriving at General Services, meaning the entire process took even longer.[6]

[6] This does not include the City Attorney review, which is only required when not using a pre-approved contract boilerplate, according to the Purchasing Manual and review form. However, the City Attorney has said they should review all contracts.

**Figure 5: Moving paper contracts throughout City Hall created opportunities for delays.**




Source: Auditor analysis of contract review sheet for new expenditure contracts

Some department staff said this outdated process created delays, so they had to use the shorter non-competitive contract process to maintain City services. Some staff stated that they needed to amend a contract or use a waiver of competition for a contract that could have been competed because they needed additional time to complete the full RFP and contract review processes, especially if they were short staffed. One General Services staff member also said that many of the waivers of competition they reviewed came from a lack of planning for future contracts. However, the waiver form specifically notes that the lack of advanced planning does not constitute an immediate need. If the City continuously amends contracts instead of going out to competition, it could potentially miss out on new contractors and savings. According to the Procurement Excellence Network, streamlining the procurement process is essential to freeing up staff time to focus on improving the performance of programs and services and, in turn, results for residents.

Staff also explained that it was hard to track where a contract was in the review process. Figure 6 shows some locations where staff dropped off paper contracts throughout the routing process. Contracts awaiting signatures could sit unsigned at staff members' desks for days while they were out of the office, or could even be misplaced or lost. During our audit, General Services staff found four unsigned contract amendments for $500,000 each sitting in a box under a desk. The contracts were approved, and the department could spend the money. However, the contracts were not formally amended, so the liability terms of the contract were not finalized.

**Figure 6: Staff had to deliver paper contracts between departments.**

Source: Auditor photos of Finance Department and the City Clerk contract locations

Since the City's financial system did not track the contract review process, General Services staff created a separate spreadsheet to give departments some insight into where the contract was in the approval process. However, at the start of the audit period, any Berkeley staff member could edit the sheet, leading to the potential for intentional or accidental changes to the information. This has since been addressed.

While waivers of competition were available in the individual contract file, the City did not centrally track waivers overall in an electronic format nor the type of competition used for contracts, making it difficult for management to understand the use of waivers across all city departments or identify trends over time. Berkeley's current system makes it very time-consuming to conduct this analysis, especially determining how much money is spent competitively versus non-competitively. For this report, we manually reviewed hundreds of contract PDFs to assess if they were competitive or not. Regular analysis of the City's spending on purchases is important for supporting management decisions and better oversight of contractor relationships.

The City has begun to explore options for digitizing the contracts process. During our audit, Berkeley adopted DocuSign, a more efficient and trackable digital signature software for some parts of the City's contracting process, such as approving waivers of competition and extension letters. However, various General Services staff members explained that the software is not set up to effectively manage the full contract review process. Additionally, a cross-departmental team led by the City Manager's Office is looking into purchasing a digital contract management system to improve the contracting process. However, given the City's current budget limitations, they want to make sure it provides significant value to the City.

## The Purchasing Manual was missing key guidance and training for staff was limited.

Berkeley's Purchasing Manual was missing sixteen of the minimum necessary parts of a procurement policy manual defined as industry best practices during the audit (Table 5). For example, Berkeley's Purchasing Manual did not have a definitions section to help ensure that all staff understand the terms referenced in the manual and how they are used in the City of Berkeley. It also did not include a process for suspending or debarring contractors who violate City law or fail to meet contract obligations.

The Purchasing Manual also had limited or conflicting guidance on key purchasing topics. Information on sole or single-source contracts was separated across three different sections and did not align with the information on the required waiver form itself, making it difficult for staff to know how to use them correctly. There was also no written guidance on amendments or extensions, in the Purchasing Manual or elsewhere, including when they should go back out to competition. There was also very limited guidance on piggybacking or cooperative agreements, which allow staff to use a competitively bid contract from another jurisdiction. Piggybacking could be a way to save staff time while ensuring the best price, but only if staff have appropriate guidance. In our analysis of fiscal year 2024 contracts, departments used different procedures for piggybacked contracts from waivers of competition to authorizing Council Resolutions to no contract at all.

**Table 5: Berkeley's Purchasing Manual was missing key elements, as defined by industry best practices.**

| Element | Element Aspects that are Missing or Incomplete | Element Aspects that are Included |
|---|---|---|
| **Definitions** - Defines key terms | 1 | 0 |
| **Organizational Structure** - Establishes roles and responsibilities | 2 | 1 |
| **Vendor Selection** – Provides guidance for evaluating vendor proposals and developing a contract | 1 | 5 |
| **Specifications** – Provides guidance for drafting specifications to ensure maximum competition | 1 | 0 |
| **Ethics –** Includes guidelines to ensure the procurement process is fair and resolve violations to stated policy | 5 | 2 |
| **Personnel** – Outlines required qualifications and training for procurement staff | 3 | 0 |
| **Other Initiatives** – Provides guidance for procurement-related initiatives, such as prioritizing minority and women-owned businesses or local businesses | 3 | 3 |
| **TOTAL** | 16 | 11 |

Source: Auditor analysis of NIGP: The Institute for Public Procurement's Principles and Practices of Public Procurement and the City of Berkeley's Purchasing Manual as of the end of fiscal year 2024.

Staff in each City department have responsibilities related to purchasing goods and services for their department, but the City did not have clear policies and procedures so that staff could easily navigate the purchasing process. In a listening session hosted by the City Manager in February 2025, some staff members representing most City departments shared that they did not understand the rules of purchasing. This confusion can end up requiring more General Services staff time to either individually walk staff through the process or correct errors once submitted. According to best practices, the Purchasing Manual should simplify, clarify, and reflect the laws governing purchasing in way that is useable for staff across the City. To fill in the gaps from the citywide Purchasing Manual, some departments have created their own manuals to support their staff.

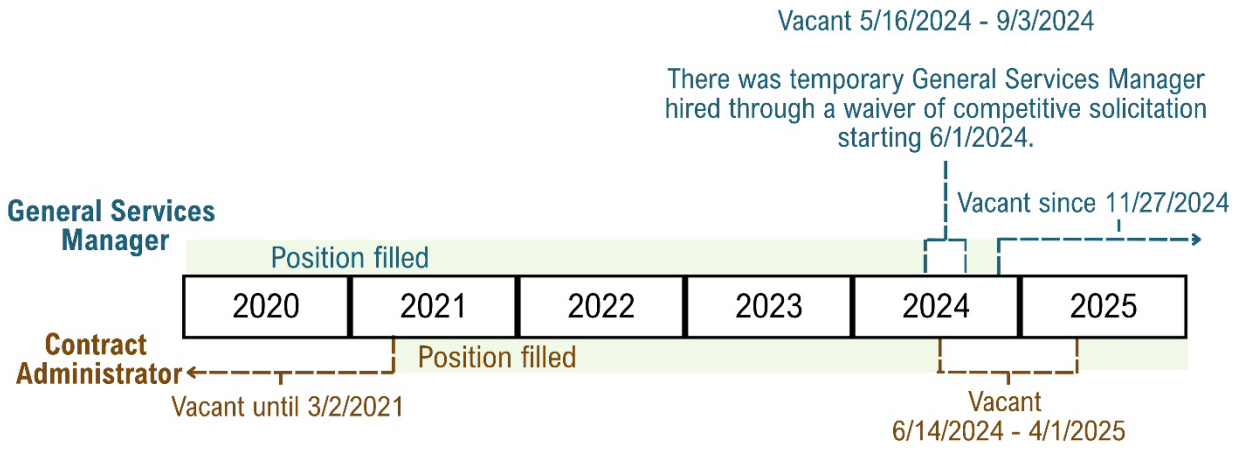
Staff also shared that there were few training opportunities or resources for department staff to learn about the contract process. In addition to a clear Purchasing Manual, it is important that all staff with a role in procurement have a clear and consistent understanding of the rules. Prior to May 2025, contract training was inconsistent. However, between May and July 2025, the Finance Department conducted five contract trainings. The Procurement Excellence Network recommends continuous training and coaching of staff on procurement best practices. Having

clear, documented policies and procedures also increases consistent application of purchasing rules during times of transition or understaffing.

## Short staffing and turnover made it more difficult to improve the contract process.

The General Services Division has had repeated vacancies in key positions in the past five years making it difficult to improve the contract process. The General Services Manager position leading the division has been vacant since November 2024 (Figure 7). The Director of Finance is primarily acting in that role after the previous General Services Manager left the City after less than three months. Previously, the Finance Department used a waiver of competition to contract a consultant to cover the position while they hired a full-time staff member. Another key position, the Contract Administrator, was vacant for almost a year until April 2025, and for substantial time prior to 2021. Government finance departments across the country have also struggled to fill purchasing positions. According to a 2022 report from the Government Finance Officers Association, procurement clerks, buyers and purchasing agents are in high demand and have a high ratio of job postings per filled positions. Positions with a relatively higher ratio will take longer to fill since competition for candidates is higher.

**Figure 7: Key General Services positions have been repeatedly vacant, especially in the last two years.**




Source: Finance Department and auditor review of employee data

These Finance Department vacancies strained General Services staff capacity, and they reported taking on the work of these vacant positions in addition to their own responsibilities. The turnover and understaffing made it difficult for General Services staff to review and provide substantive feedback on contract documents, and delayed contracts during our audit period,

according to staff. Overworked staff may also not be able to appropriately prioritize procurements and focus resources on the highest risk purchases, including non-competitive contracts. Short staffing and turnover made it difficult for the division to make changes to improve the contracting process that could limit non-competitive contracts, such as implementing additional training and updating manuals.

Limited General Services staff capacity also means that while the City has started to collect contractor demographic information, they have not had the capacity to complete a formal analysis of this data. City leadership has not determined responsibility for managing demographic data from potential contractors to facilitate data analytics. The analysis could inform changes to the City's policy to promote fairness and increased competition.

## Recommendations

2.1. To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.

2.2. To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.

2.3. To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.

2.4. To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.

2.5. To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.

2.6. To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.

2.7. To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

# Management Response

We provided a draft of this report to the City Manager, the Finance Department, and the City Attorney for review and comment. City management agreed or partially agreed with our findings, conclusions, and recommendations. We generally expect the City to implement audit recommendations within two years of report issuance. City management provided the implementation dates and corrective action plan below. We will be conducting our standard recommendation follow-up process after the audit is issued. We have not yet confirmed to what extent any recommendations may have been implemented prior to the audit release date.

**Recommendation 1.1:** To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.

**Management Response:** Agree

**Implementation Date:** To be determined

**Corrective Action Plan:** Will assess and develop timeframe for 2026

**Recommendation 1.2:** To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.

**Management Response:** To be determined

**Implementation Date:** To be determined

**Corrective Action Plan:** To be determined

**Recommendation 1.3:** To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.

**Management Response:** Agree, this was completed in November 2025

**Implementation Date:** November 2025

**Corrective Action Plan:** The language in both the Competitive Solicitation Waiver form and the Purchasing Manual has been updated to be consistent.

**Recommendation 1.4:** To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.

**Management Response:** Partially agree

**Implementation Date:** To be determined

**Corrective Action Plan:** Will incorporate into guidance for staff. Will work on solutions for contractor disclosures but need to determine how best to incorporate given potential enforcement challenges.

**Recommendation 1.5:** To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.

**Management Response:** Agree

**Implementation Date:** November 2025

**Corrective Action Plan:** This information is in the updated purchasing manual and the contract training class.

**Recommendation 1.6:** To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.

**Management Response:** Agree

**Implementation Date:** April 30, 2026

**Corrective Action Plan:** The City Attorney's Office will report new legal services contracts and amendments to the City Council on an annual basis beginning with contracts entered into Q1 2026. The reports will not include any confidential or attorney-client privileged information.

**Recommendation 2.1:** To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.

**Management Response:** Agree

**Implementation Date:** Partially implemented July 2025

**Corrective Action Plan:** Several departments have implemented Docusign for the full contract routing process (about 65% of city contracts). Citywide, Docusign has been adopted for all extension letters and waivers. There are budget and resource constraints to purchasing software that would integrate with the City's current financial system. However, a multi departmental work group has been working for several months on bringing electronic contracts management system recommendations to the City Manager for a new system.

**Recommendation 2.2:** To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.

**Management Response:** Partially Agree

**Implementation Date:** July 2025

**Corrective Action Plan:** By implementing Docusign for all waivers, the process itself has all the necessary information to track quantity, date, and all approvals. This solution will not add additional steps, time or expense which is helpful given limited resources and financial constraints. We continue to assess for use in potential new systems.

**Recommendation 2.3:** To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.

**Management Response:** Agree

**Implementation Date:** November 2025

**Corrective Action Plan:** The updates have been made.

**Recommendation 2.4:** To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.

**Management Response:** Agree

**Implementation Date:** Partially implemented

**Corrective Action Plan:** Ongoing process to improve guidelines and process flows.

**Recommendation 2.5:** To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.

**Management Response:** Agree

**Implementation Date:** May 2025

**Corrective Action Plan:** We have already had several sessions of Contract Training classes and will continue them in 2026.

**Recommendation 2.6:** To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.

**Management Response:** Agree

**Implementation Date:** In process

**Corrective Action Plan:** All vacancies in the Finance Department are in the process of being filled including the General Services Manager and Buyer.

**Recommendation 2.7:** To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

**Management Response:** Agree

**Implementation Date:** September 24, 2025

**Corrective Action Plan:** This was assigned to the DEI Officer.

# Methodology and Compliance

To gain an understanding of General Services operations and internal controls, and to achieve our audit objectives, we used the following methodology:

- We reviewed the City Charter, Berkeley Municipal Code, Purchasing Manual, other internal policies and procedures, review forms, and past reports and audits. We also attended one of the contract training sessions offered by the Finance Department.
- We compared Berkeley's practices against published best practices and guidance from organizations such as NIGP: The Institute for Public Procurement, the Procurement Excellence Network, and the U.S. Government Accountability Office. We also reviewed related audits from other jurisdictions and spoke with the auditors.
- We interviewed a range of stakeholders to understand how the contract process works both within General Services and from the perspective of other departments. This included General Services staff and staff from six other city departments regularly involved in the contracts process

Our scope focused on two datasets from the City's financial system: (1) all expenditure contracts marked as posted in the City's financial system as of March 6, 2025 and (2) expenditure contracts executed in fiscal year 2024. Since the City's largest contracts often last years, they likely would not have been captured in our dataset of contracts executed in fiscal year 2024, even though these contracts were active in this year. Therefore, we also reviewed 100 of the City's largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date in the City's financial system before June 30, 2025. We did not verify if there were cases when the contracts were extended, but the expiration date in the City's financial system had not been updated. We included only the remaining 78 active contracts in our analysis. Additionally, we identified the largest contracts based on the revised total in the City's financial system. It is possible the not-to-exceed written in some contracts was greater than what was listed in the financial system depending on variations in how the amount is entered, such as entering only one year's worth of funds at a time for a multi-year contract. We did not include purchase orders in our definition of contracts.

We performed a risk assessment of the City's contract practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. This included a review of selected policies and procedures, as well as interviews with internal staff.

The City's financial system does not indicate the type of competition the City used for each contract. Therefore, we used the publicly available contract information in Records Online to determine the competition for all expenditure contracts executed in fiscal year 2024 and the 100 largest active contracts. We reviewed the contract packet for each contract to assess if it was competitive or not, as well as to ensure consistency in contract information between the City's financial system and the contract itself. We validated the determination of the non-competitive contracts with the responsible department. We did not assess the effectiveness of the competition – i.e., if they received multiple bids – only if the department reported using competition.

We did additional testing of a subset of the contracts identified above. For example, among the contracts from fiscal year 2024 that used waivers of competitive solicitation, we also assessed if they met the Purchasing Manual criteria for waivers. We also analyzed the active service contracts that began at or below $50,000 and were later amended above that threshold. We tested a sample of 25 contracts amended under the City Manager, as well as five additional amended City Attorney contracts, for competition and compliance with policy requirements for review and approval. We also reviewed the Contracts Log spreadsheet managed by the General Services team. For specific contracts, we also reviewed additional documentation from Council Resolutions, Council Items and other documentation.

## Data Reliability

We assessed the reliability of the City's financial system and Records Online data by reviewing it for reasonableness and completeness. We also interviewed staff responsible for managing the systems and inputting the data. We were also able to validate the information across the two systems to ensure the data matched. We identified a few instances of incomplete data, however, we determined that the data is sufficiently reliable to address the audit objectives.

## Independence

According to Article XI of the Berkeley Charter, the City Auditor is responsible for countersigning, numbering and registering all contracts for the City of Berkeley. Given updates in technology, in recent years, this responsibility involved no actual oversight as contracts were already executed by the time they reached the City Auditor's office. The City Auditor's Office assigned the executed contract a number and recorded it. The City Auditor's Office did not have a role in reviewing or approving contracts, or ensuring that contracts followed City policy.

In November 2018, the City began using the ERMA financial system, which automatically numbered all contracts. To reduce redundant steps, the City Auditor officially designated responsibility to countersign contracts as registrant to the Finance Department. In 2024, the City updated the Berkeley Municipal Code (2.24.050.C) to reflect this change.

To reduce the threat to our independence, we limited our work by excluding areas overseen by our office.

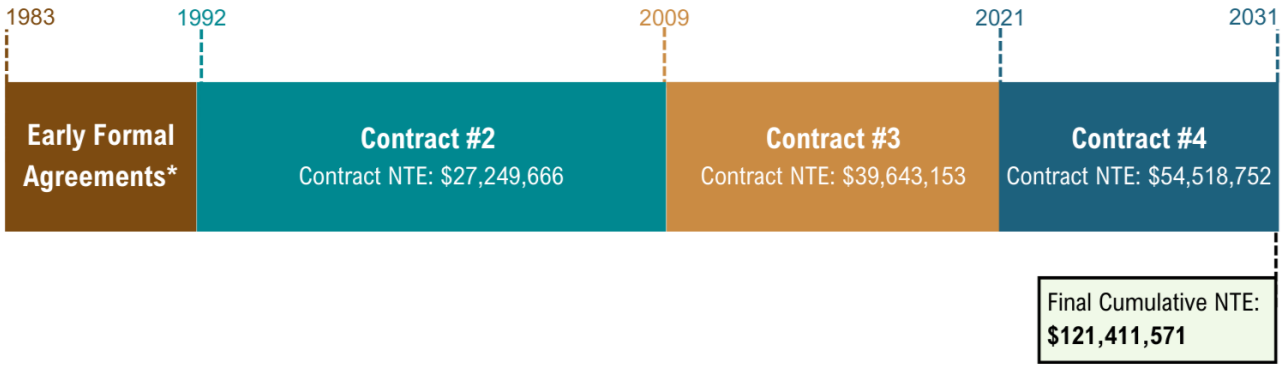
## Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix 1: Timelines of the City's Recycling Contracts

Figure 8 and Figure 9 show the history of the City's contracts with the Ecology Center and Community Conservation based on review of authorizing Council Resolutions and other related documents. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but we did not audit these individual contracts or contractors.

**Figure 8: Berkeley has contracted with the Ecology Center since the 1980s.**




Source: Auditor analysis of Council Resolutions and contract documents on Records Online

*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed amount for these contracts.

Note: NTE stands for "not-to-exceed." City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

**Figure 9: Berkeley has contracted with Community Conservation Centers (CCC) since the 1980s.**

Source: Auditor analysis of Council Resolutions and contract documents on Records Online

*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed (NTE) amount for these contracts.

**We were unable to calculate the contract NTE prior to 2005 due to inconsistent reporting and documentation.

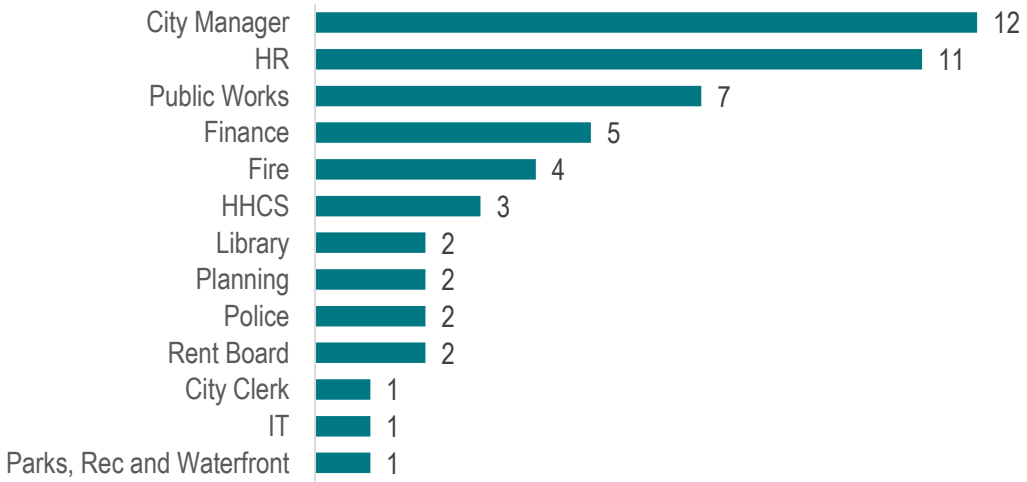
***This is an underestimate of the total cost of this contract, as the original not-to-exceed was the total gross receipts resulting from the sale of the City's recyclable materials minus 7.5 percent of those gross receipts which was to be paid to the City annually. Later amendments added additional one-time payments which account for the reported NTE. We did not analyze or calculate the total gross receipts for this report.

Note: City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

# Appendix 2: Contracts with Waivers Executed in Fiscal Year 2024

Figure 10 shows the total number of contracts executed in fiscal year 2024 that used a waiver of competition, broken down by department.

**Figure 10: Number of non-competitive contracts executed via waiver in fiscal year 2024 by department.**




Source: The City's financial system and auditor assessment of contracts in Records Online

# Appendix 3: Largest Active Non-Competitive Contracts

In Table 6, the term "active" refers to the contract's status in the City's financial system. The contractor and description also come from the City's financial system. The contract length in years is based on the expiration date in the City's financial system as of September 29, 2025. The total contract amount is based on the contract itself and any subsequent amendments as of September 29, 2025.

**Table 6: List of non-competitive contracts among the City's 100 largest active contracts, largest to smallest**

| Contractor | Description | Total Contract Length (in years) | Total Contract Amount | Met PM Criteria? |
|---|---|---|---|---|
| **ECOLOGY CENTER, INC** | RESIDENTIAL RECYCLING COLLECTION SERVICES | 5 | $54,518,752 | NO |
| **COMMUNITY CONSERVATION CENTER, INC** | RESIDENTIAL & COMMERCIAL REYCYCLING OPERATIONS | 5 | $30,080,783 | NO |
| **BAY AREA COMMUNITY SERVICES** | PATHWAY STAIR CENTER | 8 | $15,168,616 | YES |
| **EVICTION DEFENSE CENTER** | HOUSING RETENTION PROGRAM | 5 | $8,294,683 | YES |
| **BERKELEY CONVENTION & VISITOR** | TOURISM BSNSS IMPROV DIST MKTG SVCS | 8 | $7,966,000 | YES |
| **TELEGRAPH PROPERTY & BUSINESS** | TELEGRAPH BUS. IMPROVE DIST. | 10 | $7,410,024 | YES |
| **INSIGHT HOUSING** | INTERM HOUSING AT SUPER 8 MOTEL | 5 | $7,295,634 | YES |
| **DOWNTOWN BERKELEY ASSOCIATION** | PROPERTY BASE BID ASSESSMENT (DPBID) | 5 | $7,285,257 | YES |
| **EBMUD** | EBMUD PW SEWER BILLING SERVICES / COLLECTIONS | 10 | $6,100,000 | YES |
| **MOTOROLA SOLUTIONS INC** | MUNICIPAL LEASE - RADIO & EQUIPMENT LEASE | 7 | $5,818,116 | YES |

| Contractor | Description | Total Contract Length (in years) | Total Contract Amount | Met PM Criteria? |
|---|---|---|---|---|
| **RENNE PUBLIC LAW GROUP** | MISCELLANEOUS SERVICES, NO. 1 - Legal Services | 7 | $4,167,000 | N/A* |
| **SENTRY CONTROL SYSTEMS, INC** | PARKING ACCESS & REVENUE COLL | 9 | $2,915,355 | YES |

Source: The City's financial system and auditor assessment of contracts in Records Online

* N/A indicates that we did not assess whether this contract met the Purchasing Manual criteria for competition because the City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services.

# Appendix 4: Active Service Contracts Amended Over the Threshold for Competition

The contracts listed in Table 7 are the top 10 active service contracts by total dollar value that began at or below the formal competition threshold of $50,000 and were later amended to increase the cost of the contracts. The term "active" refers to the contract's status in the City's financial system.

The contractor, department, description, and revised total come from the City's financial system. The original total is based on the contract posted in Records Online. The revised total includes any amendments recorded in the financial system as of March 2025.

We did not review the contract file for every contract nor determine which ones were initially competitive. This list is intended to highlight that the amendment process can lead to increases for contracts with no guidance for when competition may be needed.

**Table 7: List of ten largest service contracts which began at or below $50,000 and were amended above $50,000 as of March 2025, largest to smallest**

| Contractor | Department | Description | Original Total | Revised Total |
|---|---|---|---|---|
| **RENNE PUBLIC LAW GROUP** | City Attorney | MISCELLANEOUS SERVICES, NO. 1 - Legal Services | $50,000 | $4,167,000 |
| **BURKE, WILLIAMS & SORENSEN, LLP** | City Attorney | EXTERNAL LEGAL COUNSEL | $10,000 | $1,208,266 |
| **L.J. KRUSE CO** | Library | BPL HVAC Building Maintenance | $16,000 | $843,020 |
| **YOUTH SPIRIT ARTWORKS** | Health, Housing, and Community Services | TAY CASE MANAGEMENT & LINKAGE SVCS. | $50,000 | $737,092 |
| **BRISCOE IVESTER & BAZEL LLP** | City Attorney | Outside Legal Counsel re: Ruegg & Ellsworth v. COB | $30,000 | $725,000 |
| **CIVICMAKERS, LLC** | IT | Coaching & Training Svcs | $35,000 | $529,025 |
| **SLOAN SAKAI YEUNG & WONG LLP** | HR | LEGAL SVCS-LABOR NEGO SUPPORT | $45,000 | $484,587 |
| **MSR MECHANICAL, LLC** | Public Works | ON-CALL HVAC SVCS | $50,000 | $448,515 |
| **ATTHOWE FINE ART SERVICES** | City Manager | As-Needed Fine Art Services | $49,950 | $400,000 |

| Contractor | Department | Description | Original Total | Revised Total |
|---|---|---|---|---|
| **ACCUTITE ENVIROMENTAL ENGINEER** | Public Works | STORAGE TANK MAINT & TESTING | $50,000 | $382,496 |

Source: Records Online and the City's financial system

## Mission Statement

Promoting transparency and accountability in Berkeley government.

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Copies of our audit reports are available on our website.

Cover photograph by the City Auditor's Office.

BERKELEY CITY AUDITOR

BERKELEY CITY AUDITOR

CONSENT CALENDAR
March 10, 2026

**To:** Honorable Mayor and Members of the City Council

**From:** Jenny Wong, City Auditor

**Subject:** City Contracts: Outdated Process Led to Non-Competitive Contracts

RECOMMENDATION

We recommend City Council request that the City Manager report back by Fall 2026, and annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Finance Department and other relevant departments. The audit includes 13 recommendations to clarify for staff when non-competitive contracts and amendments are appropriate, as well as to improve transparency and efficiency in the contracts process overall. The City management agreed or partially agreed to our findings and recommendations. Please see our report for their complete response.

FISCAL IMPACTS OF RECOMMENDATION

Reducing the use of non-competitive contracts could help the City ensure it is not overpaying for services. As the City faces a budget deficit, it is important that the City gets the best value for the goods and services it purchases. Updating the Purchasing Manual and related training and procedures will likely take an upfront investment of staff time but could reduce the workload for General Services and staff in the long run. Getting a comprehensive and integrated electronic contract management system, as recommended by the audit, would require financial investment, but could address the challenges we identified related to current paper contract process, including delays and lost contracts.

CURRENT SITUATION AND ITS EFFECTS

In fiscal year 2024, 94 of the 218 contracts executed did not have documented evidence of competition. The total value of these contracts was approximately $43 million compared to $102 million in competitive contracts. The non-competitive contracts included 26 authorized by Council Resolution, 53 through waivers of competition approved by the City Manager, and 15 through other or unclear means.

Most of the City's largest active contracts had documented evidence of going through competition or meeting the Purchasing Manual criteria for exceptions, but two recycling contracts did not. In fiscal year 2022, Berkeley executed contracts for recycling services for nearly $85 million over ten years without seeking bids from other contractors. Although pursuing competition is an established best practice and the City's Purchasing Manual states that service contracts above $50,000 must go through formal competition, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive.

Of the 53 approved waivers of competition, 38 percent did not clearly meet the criteria in the Purchasing Manual, meaning the City could likely have pursued competition. For example, while waivers for classification and compensation studies were used, there was no documentation that this was an emergency. By requesting waivers for the same service from different contractors in a similar time period, this indicated that it would have been feasible to request quotes instead.

Once a contract is in place, the City can use amendments to increase the dollar amount. Our audit found the City had 95 active service contracts that began at or below the formal competition threshold of $50,000 but were later amended above the threshold. On average, these amendments added $218,026 in total to each contract. According to Finance, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

Paper contracts, unclear guidance, and short staffing led to delays and the overuse of non-competitive contracts. For example, in a sample of 23 amended service contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Additionally, in fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals. During our audit, the City adopted DocuSign for some parts of the contracting process and an interdepartmental team was looking into purchasing a digital contracting system. However, short staffing and turnover in General Services and across the City made it more difficult to improve the contract process.

## BACKGROUND

The City uses contracts for most services that are not done by city staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods, like office furniture and equipment for parks maintenance. The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department.

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. However, competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. This primarily occurs through either Council authorization or a waiver of competition approved by the City Manager.

## ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will decrease reliance on non-competitive contracts. Additionally, they will improve the contracting process overall through clearer, more consistent guidance and improved systems.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Audit Report: City Contracts: Outdated Process Led to Non-Competitive Contracts

# City of Berkeley Purchasing Manual

## Section I – General Policy, Responsibilities, and Requirements

### *1. General Purchasing Policy*

All City of Berkeley (the "City") purchases, unless they qualify for petty cash exceptions (Section II.1) or sole/single-source contracts (Section III.7.E) must be made through a competitive process. Regardless of the value of the purchase, more than one (1) quotation, bid, or proposal is encouraged. The City Council establishes the limits for City Manager authority to approve contracts, the level of expenditure requiring Council approval, and parameters for the documented competitive processes. See Section II for current competitive thresholds, and Council approval requirements.

For **goods**, the City seeks to obtain either:

1. Lowest price or lowest total cost – through quotes or an Invitation for Bid (IFB)
2. Best value – through quotes or IFB with multiple factors

For **services** (non-trades), the City seeks to obtain:

1. Best value – through a Request for Proposals (RFP) process

For **trades**, the City seeks to obtain:

1. Lowest quote for the scope – through multiple quotes or IFB
   From a firm:
   - with a valid CSLB
   - registered with CA DIR
   - bonded/insured *as required*

### *2. Responsibility for City Purchases*

The City maintains a centralized General Services Division in the Department of Finance through which all purchases of goods and services are reviewed and processed. Each department originates Purchase Requisitions (PR) or specification requests to pursue formal bidding procedures. The PRs and specification requests are sent to General Services, where they are reviewed to ensure adequate information is provided, and best practices are followed and PRs are developed, as appropriate, into Purchase Orders (PO). See City Purchasing Procedures (Section III.4) for instructions and information for developing PRs and detailed instructions for developing RFP and IFBs (Section VIII.9).

Departments are responsible for requesting the type and quality of product or service required. In situations where a department or division is submitting a PR for another Department or division (e.g., fleet orders for vehicles and heavy equipment) the department/division submitting the order must have a specification signed off by appropriate personnel from the end user department/division. The requisitioned products or services should be described as completely as possible, without regard to manufacturer (except when applicable), to ensure that as many vendors as possible may respond to the City's needs. A manufacturer's part number may be cited by the

requisitioner, to assist the Buyer in sourcing the correct product. Sole/single source contracts should be avoided. The City's financial system maintains lists of vendors, cross-referenced to commodities and services (Section VIII.4). General Services staff is available for advice in the choice and applicability of vendors.

General Services is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases specifically for supplies, equipment or materials are to be awarded to the lowest responsible bidder, but must be of a quality consistent with the ultimate use intended. The Council may reject any and all bids. If all bids are so rejected or if no bids are received, the Council may re-advertise for new bids, or authorize the City Manager to negotiate in the open market. (See Charter Section 67.) General Services may require up to one (1) week to process a routine PR that is under the formal threshold amount ($50k-service, $100k-goods, $200k-trades), and issue the PO. The time required to process the PR is directly related to the complexity of the item, and to the extent that the end user documents the quotes. Exceptions to the one-week (1) lead time will be at the discretion of the General Services Manager, Finance Director, or the City Manager.

Only the City Manager has authority to enter into a contract/agreement with a vendor. The authority to enter into a PO has been delegated to the General Services Manager. All contracts, agreements and purchase orders are subject to the limits outlined in Section II.

### *3. Non-Competitive Solicitation*

Whenever possible, multiple quotes for goods and services must be obtained and documented using either a *Formal or Informal Solicitation*. Non-competitive solicitations may only be used in the following circumstances:

1. Sole Source
    - Only one (1) viable source is found for the needed product (i.e. through copyright/trademark or single distributor )
    - It is a specialized service that is provided by a single, responsible source. The Project Manager must search for providers beyond the City in order to claim this.
2. Emergency
    - There is an emergency and it is impractical for the City to seek competitive bids (Section I.4, following).
3. Other
    - The City is required by an outside agency to use a product or service (i.e. a specific software being required for reporting taxes to the County)
    - The product or service is deeply embedded in the City’s infrastructure and it is impractical to change every 5-7 years (i.e. The City’s Enterprise Resource Planning- ERP).

In these circumstances, either a *Waiver of Competitive Solicitation* must be signed by the General Services Manager and the City Manager or prior approval must be received

from the City Council. If there is only a single response after a Formal or Informal Solicitation, no waiver is required since the solicitation process was completed.

Another way to procure goods/services without a solicitation is by piggybacking off an existing, competitively bid contract from another public agency. This saves time and resources by leveraging the original contract's scope of work, pricing and schedule as long as the original contract allows for it. The existing contract/agreement must be vetted to ensure it complies with City of Berkeley purchasing policies and procedures and the new contract must have an identical scope of work. Otherwise, the contract process proceeds like any other contract and requires all the same boilerplates, attestations, insurance and signatures.

Regardless of whether or not a contract qualifies for a waiver of solicitation, most contracts should be re-bid every 5-7 years.

### *4. Emergency Procedures*

Special procedures must be followed to obtain goods or services in the event of any emergency. City Charter Section 67(a) governs emergency purchases:

The provisions of Section 67 of this Charter shall not apply to work done or purchases made for that which is deemed by the City Manager to be an actual emergency and of urgent necessity for the preservation of life, health or property; provided, that any such expenditure in excess of an amount set by ordinance, as provided for in Section 67.4(b), must be authorized by resolution of the Council.

The City Manager will determine whether a situation constitutes an emergency. The end user department will be responsible for preparing the Information or Consent Report to submit to the City Council at the next available opportunity. In all cases, General Services shall be given a copy of the Council Report on the reasons for the emergency procurement, which will be filed with the PO.

### *5. Public Assistance from Federal, State or County Funding Sources Including Grant Contracting and Emergency Contracting*

When the City of Berkeley receives outside funding it must use its own procurement procedures which reflect applicable State and local laws and regulations. It must also, however, meet the minimum procurement standards for the funding agency where those standards are more onerous (Federal, State, and County). Failure to follow outside agency's procurement standards could result in a contract being deemed in violation of the funding source's procurement rules, and requests for reimbursement could be denied. All contractual provisions from outside funding sources must be incorporated by reference in contracts using outside public funds.

It is the responsibility of the department requesting outside funding to work with the outside agency and familiarize itself with the requirements before going out to bid, contracting and receiving outside funding.

### *6. Departmental Communication with Vendors*

Whenever a department desires information regarding the use, description, or availability of a specific product or type of product, a written request should be addressed to the General Services Division. Such information should include price quotations, catalogs, samples and/or demonstrations. Whenever vendor catalogs are requested or received by General Services, the interested departments will be sent the information or given notice of their availability for inspection.

General Services should be informed before departments contact any suppliers or their representatives with regard to pricing, product availability or technical information. In addition, General Services must be informed before the contact is made. ***No commitment to purchase a product or service offered may be made by anyone other than General Services staff – except when following emergency procedures*** (Section I.4). No particular supplier will receive preference for the order under discussion. It should be made clear to all vendors contacted by departments that competition will be required. The end user must retain copies of all correspondence with outside vendors or contractors in case of audit.

City employees must keep themselves free of any obligation to vendors by refusing to accept entertainment or gifts offered by, or on behalf of, suppliers currently or potentially serving Berkeley. See Employee Ethical Standards (Section I.6, following) for details about City employee-vendor contact.

### *7. Employee Ethical Standards*

City Charter Section 72 prohibits certain behavior detrimental to the fair, impartial, and cost-effective procurement of goods and services.

Any officer of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material, or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office.

Inappropriate behavior can be grounds for immediate termination of an employee. It is every employee's responsibility to act in an ethical manner.

### *7. Restrictions on use of Public Funds*

The City does not allow the use of public funds for any items for personal consumption or use, including but not limited to the following:

A. Employee coffee, tea, hot chocolate or related items, such as cups, creamer, sugar,

etc. Only the CMO, as the official City host center, is permitted to purchase these items on a regular basis and charge a City account.

B. Any type of food/candy for department/division staff. See AR 3.27 for allowable food/beverage purchases.

C. Catered or other food (such as donuts, sandwiches, pizza, etc.) for employee events, including and not limited to birthdays, going-away parties, etc. See AR 3.27 for allowable food/beverage purchases

D. Bottled water at any of these sites: Civic Center, 1947 Center Street, Public Safety Building, Permit Service Center, or Main Library. Bottled water may be purchased at outlying locations with the approval of the Director of Public Works, provided there is a finding that the tap water does not meet the same standards as the above-named facilities.

E. Pens, paper, or other office supplies NOT associated with work performed specifically for the City of Berkeley.

F. Any items that are ***not needed*** to perform duties specifically for the City of Berkeley.

In accordance with AR 3.17 if the item is not needed to perform work for the City of Berkeley, it should not be purchased with public funds.

**8. Requirements on Contracting with Certain Entities**
Prior to contracting for services or commodities, the following restrictions must be observed. See specific Berkeley Municipal Code and Ordinance sources and citations in Section VI.

**A. Oppressive States Business Policy:** Resolutions 60,382-N.S., and 59,853-N.S. – 59,857-N.S. (1999) prohibit City contracts or purchases with companies that do business, or produce commodities, in the listed areas. As of June 1, 2002, the affected areas are the Tibet autonomous region and Provinces of Amdo, Kham, and U-Tsang. All contracts entered into by the City of Berkeley must stipulate that the contractor is subject to this policy.

**B. Nuclear Free Policy:** Ordinance 5,784-N.S. (1986) prohibits contracting with any person or business that engages in “work for nuclear weapons” – defined as “work the purpose of which is the development, testing, production, maintenance, or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management, or administration of such work.”

**C. Living Wage Policy:** Ordinance 6,548 N.S. (2000) requires specified employers to pay a “living wage” and benefits to qualifying employees, as follows: for-profit contractors that receive more than $25,000 in City funding in a year, or non-profits receiving more than $100,000; employers in the Marina Zone that have (6) six or more employees and generate $350,000 or more in annual gross receipts; and financial aid recipients receiving more than $100,000 in a 12-month period.

Compliance is required by employers with employees who spend 25% or more of their compensated time on the City for-profit contract or in the Marina Zone. For non-profit contractors, compliance is required by employees who spend 50% or more of their compensated time on the contract.

Living wage rates are adjusted annually and posted on the City of Berkeley website at: https://berkeleyca.gov/doing-business/operating-berkeley/workforce-standards-and-enforcement. Additional requirements are 22 days per year of sick leave, vacation, personal necessity (12 of the 22 days must be compensated time).

**D. Prevailing Wage:** Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq., including decisional authority interpreting these code sections. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, for all contracted work (including design, construction, certain maintenance activities, or any other contracted services), Contractor is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the applicable prevailing wage. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

**E. Equal Benefits:** Ordinance 6,623-N.S. (2001) requires that public funds be expended in a manner to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. This policy applies to for-profit entities where the contract exceeds $25,000; non-profit entities where the contract exceeds $100,000; and entities that generate $350,000 or more in annual gross receipts and, by written agreement, have exclusive use or occupancy of City property for a term exceeding 29 days in any calendar year.

**F. Non-Discrimination:** Ordinance 5,876-N.S. (1988) prohibits City contractors from discriminating against any employee or applicant for employment on any grounds specified in any State, Federal, or municipal law; and to require that any existing discrimination be remedied by appropriate methods including establishment of an approved affirmative action program that is consistent with State and Federal law.

**G. Disclosure of Historical Commerce in Slavery:** Ordinance 6,855-N.S. (2005) mandates that any contractor providing insurance or financial services (including any bank in which the City deposits public funds) to the City must disclose in writing whether they, directly or through its parent entities, subsidiaries or predecessors in interest, engaged in commerce in slavery, including: bought or sold slaves, used

slaves as collateral, provided loans to purchase slaves, insured such transactions or the slaves, or provided any other services to aid in such transactions.

**H.** **Sweatshop-Free Procurement:** Ordinance 7,099-N.S. (2009), and 7,378-N.S. (2014) mandates that vendor that provides apparel to the City of Berkeley must provide an affidavit which discloses the physical address and phone number of the production facility. The production facilities must also adhere to or exceed the practices and policies regarding workers as outlined in the Ordinance. It applies to any procurement of apparel of any dollar value.

I. **Community Workforce Agreement:** Resolution No. 65,157-N.S. (2011) requires that City construction projects whose value, as estimated by the city, exceeds $1 million is subject to the Community Workforce Agreement (CWA). All contractors, including subcontractors at any tier, shall sign an Agreement to be Bound. Contractors working on covered projects must utilize and be bound by the registration facilities and referrals systems established or authorized by the Unions who are signatory to the CWA. The agreement contains provisions regarding local hire goals, apprenticeships, prevailing wages, hiring of core workers, monitoring of good faith efforts, implementation fees and certified payrolls.

### *9. Restrictions on Procurements*

The City restricts purchases of the following commodities under the Environmentally Preferable Preference Policy (**see specific Ordinance and Resolution sources and citations in Section VII**):

**A.** **CFC-Processed Food Packaging:** Ordinance 5,867-N.S. (1988) prohibits both the purchase of all CFC-processed food packaging, and the use of such packaging at any City-sponsored event.

**B.** **Non-Polystyrene Foam Food Packaging:** Ordinance 5,888-N.S. (1990) prohibits the purchase of all polystyrene foam food packaging.

**C.** **Tropical Hardwood:** Resolution 58,291-N.S. (1995) prohibits the purchase or use of tropical hardwoods and products. RFP/IFB responses containing such products are deemed non-responsive.

**D.** **Redwood Products:** Resolution 58,704-N.S. (1996) prohibits the purchase of virgin redwood products, and allows the purchase of certified sustainable harvested redwood.

**E.** **Arsenic, Pentachlorophenol, and Creosote Treated Wood:** Resolution 61,724-N.S. (2002) prohibits the purchase of all wood treated with arsenic, pentachlorophenol, or creosote.

### *10. Preferences on Procurements*

City procurement has preferences for the following (**see specific Ordinance and Resolution sources and citations in Section VII**):

**A.** **Local Business Preference Program:** Resolution 69,890-N.S. (2021) sets forth the City's local business preference program, in which departments must include local Berkeley businesses when seeking vendors for purchases of up to $100,000 for goods, and up to $250,000 for non-professional services. The purpose of this program is to provide local businesses with the opportunity to sell goods and non-professional services to the City, and to stimulate the local economy in general. It establishes a 5% differential for local purchases that do not exceed $100,000 for goods, or $250,000 for non-professional services. For professional services, local firms may earn additional points in RFP evaluation depending upon the length of time they have been a local business. This program is not applicable to public facility improvement (construction), or purchases over $100,000 for goods, or for $250,000 for services.

**B.** **Recycled Products:** Resolution 55,286-N.S. (1990) established a preference to use recycled products. The City will cooperate to the greatest extent feasible with neighboring City and County governments in an effort to develop a comprehensive, consistent and effective procurement effort intended to stimulate the market for recycled products, reusable products, and products designed to be recycled.

**C.** **Recycled Paper:** Resolution 55,327-N.S. (1990) established a preference to use 100% recycled paper, and to utilize white paper whenever possible.

**D.** **Certified Sustainable Wood and Wood Products:** Resolution 59,595-N.S. (1998) established a preference for the City to purchase certified sustainable wood and wood products; to stimulate a market for certified sustainable wood and wood products; and to encourage members of the logging industry to have their practices certified.

**E.** **Eliminate Anthropogenic Sources of Dioxin Pollution:** Resolution 60,196-N.S. (1999) established a purchasing practice that promotes the use of less toxic, non-chlorinated, sustainable alternative products and processes, such as chlorine free paper and PVC free plastics.

**F.** **Environmental Preferable Purchasing Policy:** Resolution 62,693-N.S. (2004) established an environmental purchasing policy charging the City with protecting the public health and welfare of its residents and workers, as well as the health of the environment, including: minimizing health risks to City staff and residents; minimizing the City's contribution to global climate change; improving air quality; protecting the quality of ground and surface water; and minimizing the City's consumption of resources.

**G.** **Fair Trade: Resolution** 64,974 (2010) supports Fair Trade initiatives consistent with all of the City's progressive purchasing policies and that when purchasing goods, the City it will commit to procuring Fair Trade products when those products are readily available, meet applicable City standards, are competitively priced, are of comparable quality, and procured in accordance with all of the City's existing procurement policies and Berkeley City Charter requirements.

### *11. Administrative Regulations*

All Administrative Regulations (AR) must be followed for procurement of goods and services. The following ARs specifically apply to all procurements: AR 3.17 Fraud, Abuse, and Misuse of City Resources; AR 3.3 Petty Cash and Change Accounts; AR 3.14 FN-024 Voucher Processing. AR 1.5 Printing Services applies to any requests for outside purchase of reprographic services, which should be brought to the General Services Manager before any action is taken with outside vendors. AR 3.26 for Credit Card Use. AR 3.27 for Food and Beverage Purchases. All ARs are online on the City's intranet.

### *12. Evidence of Insurance*

When determined to be required by the City Attorney, ***and prior to commencing any work***, a vendor contracting with the City must furnish evidence of general liability, workers compensation, and, if applicable, professional liability insurance, with liability limits approved by the City Attorney. Insurance is required in most cases where the vendor is performing work on City of Berkeley property or for the City of Berkeley. When insurance is required, the policy must name "City of Berkeley, its Officers, Agents, Employees, and Volunteers" as additional insured.

### *13. Service Providers not City Employees*

In order for the City of Berkeley to comply with Federal, State, and local rules and regulations concerning employment, contracts for services must not create an employer–employee relationship between the City and the service provider: all service providers must be independent contractors. An independent contractor is a service provider who controls where, when, and how he/she works. If the City controls where, when, and how services are provided, the service provider may be considered an employee of the City, and the City would be responsible for compliance with all Federal, State, and local rules and regulations concerning an employment relationship.

Therefore, in order to avoid the possible application of employment rules and regulations to service contracts in contracting for services, the City should generally determine only what the product of the services will be, and when the specific product components must be ready. The independent contractor controls where, when, and how he/she works. All service contracts must contain mandatory language establishing that the contractor is an independent contractor and not an employee of the City of Berkeley. If there is any question about determination in this section, Human Resources should be consulted.

### *14. Business License*

All Contractors doing business with the City must obtain a City of Berkeley business license per B.M.C. sections 9.04.010 and 9.04.035.

If a Contactor is exempt from the provisions of B.M.C. sections 9.04.010 and 9.04.035, the specific B.M.C. section under which it is exempt must be stated.

## II – Purchasing Requirements by Price[1]

### *1. Purchases Not Exceeding $100*

*Out of pocket, reimbursement, petty cash, departmental p-card, if available.*

Items with a total value (per order) of $50.00 or less may be procured using petty cash procedures. Generally, minor office supply needs and transportation reimbursements may be initiated and paid within the Department structure using this provision. This is not to be used for reoccurring type purchases. See Administrative Regulation 3.3 Petty Cash and Change Funds (Section I.11).

### 2. Purchases from $100 to $5,000

*Single vendor, local. PO. Possible blue-back requirement.*

The purchase of goods or services costing more than $1,000 but not exceeding $5,000 must be initiated and processed by General Services using the Requisition tool on the City's financial system. The Department using the Requisition tool on the City's financial system must enter a PR for items required. If a service could cause the City of Berkeley liability, a blue-backed contract may be required. A written quote for goods or services is to be attached to the PR.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (Section VII.6). Quotes are to be documented on the on-line PR in the City's financial system (Section VIII.1).

### 3. Purchases from $5,000 to $50,000 (Services)

*Multiple written proposals, local. PO to $25k, blue back above $25k.*

The purchase of a service costing more than $5,000 but not exceeding $50,000 requires informal competition. Low-risk services (typically those under $25,000) will use a PO as contract. High-risk contracts (typically those over $25,000) require a blue back contract. General Services will advise. A PR will be entered by the Department on the City's financial system. Three (3) written proposals are to be documented on the on-line PR in the City's financial system (Section VIII.1). Proposal should be specifically referenced on the PR by the department and show vendor, contact person, date, and cost.

1 The value of a purchase is determined by adding the base amount of the purchase and any addition amount that will be paid on the purchase agreement. If together these totals exceed any threshold, then the policies and procedures for the determined amount shall be followed. Sales tax and shipping charges ARE included in this total.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor for non-professional services per the requirements of the Local Business Preference policy (Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).

Obtain informal proposal procedures, list of potential bidders, and a proposal template from General Services intranet.

### 4. Purchases from $5,000 to $100,000 (Goods)

*Multiple written quotes, local.*

The purchase of a good or goods costing more than $5,000 but not exceeding $100,000 must be initiated and processed by General Services using the PR tool on the City's financial system. The department using the Requisition tool on the City's financial system must enter a PR for items required. Three (3) written quotes are required and are to be documented on the on-line the City's financial system PR (Section VIII.1). The quotes should be in writing and must be specifically referenced on the PR showing vendor, contact person, date, and cost.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (see Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).

Obtain informal proposal procedures, list of potential bidders, and a quote template from General Services intranet.

### 5. Purchases from $5,000 to $200,000 (Trades, aka, licensed contractors)

*Multiple written quotes, local. PO up to $25k, blue back above $25k.*

The purchase of trade services costing more than $5,000 but not exceeding $200,000 must be initiated and processed by General Services using the PR tool on the City's financial system. The department using the Requisition tool on the City's financial system must enter a PR for items required. Three (3) written quotes are required and are to be documented on the on-line the City's financial system PR (Section VIII.1). The quotes should be in writing and must be specifically referenced on the PR showing vendor, contact person, date, and cost.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (see Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).

Obtain informal proposal procedures, list of potential bidders, and a quote template from General Services intranet.

**6. The following purchases require a Formal Request for Proposal ("RFP"), or Invitation for Bid ("IFB") process:**

- **Services over $50,000**
- **Goods over $100,000**
- **Public Construction / Playground (design/build & equip) over $200,000**

Allow at least 60 days for this process to be completed.

Breaching those thresholds requires approval by Council before the RFP/IFB can be released to vendors for bid, and requires Council to award the resultant contract.

Berkeley law (Ordinance 6,875-N.S.) requires City Council approval of all purchases exceeding the above limits. No waivers are available except by the Council or during an emergency as defined by Section I.4. Section 67(a) of the City Charter requires that:

"Each specific improvement and each purchase of supplies, equipment or materials the expenditure for which exceeds an amount set by ordinance, as provided for in Section 67(b) hereof, shall be done by contract authorized by resolution of the Council and said contract shall be let to the lowest responsible bidder after advertising for sealed proposals for five (5) consecutive days as required by this Charter. "

The Departmental Representative (Project Manager) requiring goods or services over the formal competitive threshold must first complete the designated form (see Section X). The project manager identifies funding within the Department's budget and sends to the Budget Division. The Budget Division approves specification requests which prompts General Services to assign a Specification umber to the project. Once the number is assigned, the Project Manager develops the RFP or IFB from the boilerplate (See Section VIII) and forwards it to General Services for review. For specific instructions on boilerplates, conditions, and required attachments (See Section VIII.9).

Once completed and ready for release General Services will post the RFP/IFB on the City of Berkeley web site and coordinate its distribution to identified vendors. If advertisement in another medium is required the Project Manager will place the advertisement and give that information to the General Services Division to be documented in the file. General Services is designated as the only office authorized to receive all vendor responses to RFP/IFB released by the City.

Opening of bids and proposals occurs on Tuesdays and Thursdays at 2:00 p.m. Bids are opened at 2180 Milvia St., 3rd floor, Finance Department (or other designated room or location at 2180 Milvia), unless exigent circumstances arise. RFPs are opened online by the team. General Services will notify the Project Manager when bids are available after they are documented on a bid abstract and stored in a shared project folder.

It is up to the Department to determine the successful vendor proposal (see Section III.8) and enter a Requisition on the City's financial system (See Section VIII.1) and/or develop a blue-backed contract (using the procedures available on the City's intranet – Contracts Online).

### *7. Federal Funds Requirement*

It is a requirement that when any federal money has been awarded to the City of Berkeley, the City's policy is not to procure goods or services or make contract purchases from an entity or individual included on the federal debarment list. Any purchase or contract greater than $50,000-services, $100,000-goods, $200,000-trades, shall not be made from or with an entity or individual included on the debarment list.

The project manager must verify vendor status by checking the debarment list before a purchase is made or entering into contract.

To check for debarment, go to the federal government's current web page(s) for listing of debarred firms:

1. https://sam.gov/content/exclusions

Include the documentation of this review with your contract when required.

## III – City Purchasing Procedures

### *1. Introduction*

This section of the manual describes common City of Berkeley Purchasing procedures. All employees who initiate or approve the procurement of goods and services for the City must be familiar with these procedures.

### *2. Responsibilities of the General Services Division*

It is the responsibility of General Services to process PRs into POs. GS staff process PRs into POs using the City's financial system. The PO is then sent to the vendor to obtain the needed goods or service. If the order is under $50k-services, $100k-goods, $200k-trades, PRs will be processed from one (1) to five (5) days after approval, depending on the complexity of the order. Purchases exceeding those thresholds must go through the formal bid process. See Section II for Bid and Council requirements. General Services is responsible to ensure all Council directed requirements and Administrative Regulations are followed during the procurement process. Buyers are responsible for following all requirements and are ultimately responsible for the procurements they process.

For blue-backed contracts General Services will require five (5) days for review of contracts.

### *3. Responsibilities of the Operating Departments*

It is the responsibility of the operating departments to determine which goods and services are required for the proper operation of their respective departments. The department inputs a PR into the City's financial system after verifying funds are available in the appropriate budget code. Staff should provide a clear, concise, and complete description or specification to General Services on the PR. The operating departments must approve PRs, and ensure funds are being used correctly. The individual approving a PR should not be a relative or near relative as outlined in AR 2.12 of the person who entered the PR to ensure an appropriate segregation of duties.

All department staff have a fiduciary duty to spend the public’s money in a way that is consistent with the City Charter, Resolutions, Ordinances, and Administrative Regulations. Documentation of all purchases made with City funds are subject to the California Public Records Act.

### *4. Purchasing Requisitions*

The procurement of all goods should be initiated through the City's financial system on-line PR preparation and submittal process. The department or division making the request must submit and approve the PR. (See Section VIII for instructions on entering and approving PRs on-line).

- **Services less than $25,000**
  For the procurement of low risk **services**, e.g., a performer at a festival, the risk of the service is to be determined by the General Services Manager or Contract Administrator. If the low-risk service is under $25,000, it can be initiated through the on-line PR preparation and submittal process, and an authorized City PO will govern the transaction. The department or division making the request must submit and approve the PR.

- **Services in excess of $25,000**
  The procurement of **services** over $25,000 is to be completed through the blue-backed contract (See the intranet for "Contracts Online") process. A PR for services on a blue-backed contract is a payment mechanism.

Certain engagements under $25,000 may require a blue back based on risk level as determined by the City Attorney and/or General Services.

The path of procurement for a combination of goods and services is determined by whether the preponderance of what is being provided by the vendor is a good or a service.

When initiating an on-line requisition, staff must provide a specific description of what is needed. A manufacturer and a manufacturer part number when available should be provided on the PR. This allows General Services to ensure the end user gets the product they need. However, General Services may make suggestions for alternate products with the same specifications to an end user if appropriate. General Services staff is available to help in this process or provide additional ideas for finding a needed commodity, service, or potential vendors. As the price of the good or service rises (see Section II requirements), the requirements for the procurement become more restrictive and time consuming.

Applicable freight, shipping, and handling charges should be included on the PR. In general, freight and shipping costs are not taxable (although handling charges are taxable). Consult the General Services division for questions on taxes and shipping. In general, most purchases of goods are subject to current sales tax. However, some purchases (such as prescription drugs bought by the HHS Department) are not taxable.

All items requisitioned should be required to meet the current operating needs of the department.

The following information should be known before beginning a requisition:

1. A description of the good or service needed, or a thorough scope of work;
2. The quantity needed;
3. The business reason for the purchase;
4. Where, when, risk of loss and title transfer for goods;
5. A reasonable delivery period and/or project schedule;
6. The correct budget code; (Look up available in the City's financial system. Funding must be currently available for each item on the requisition. If these requirements are not meet, the Purchase Requisition cannot be processed);
7. The commodity and sub commodity code for the item; (Look up available in the City's financial system);
8. Quotes or Proposals from vendors who can provide the required goods or services;
    a. Quote(s)/Proposal(s) from local Berkeley-based vendors;
    b. Use of the central bidders list from General Services;
    c. Application of the 5% local preference to compare quotes; and
9. The preferred vendor; (may be changed by General Services if the Buyer deems the price is not fair and reasonable.)

### *Approval of Purchase Requisitions*

All Requisitions must be approved within the department (authorized personnel are designated by the department Director) before processing by the General Services Division. The approving personnel cannot be the same person as the requisition's originator, nor can the approver be a near relative as outlined in AR 2.12. For step-by-step instructions see the PR Entry and Requisition Approval Procedures in Section VIII. In some cases, other departments must approve certain commodity groups before General Services will issue a PO, e.g., computers, software, and peripherals need to be approved by IT prior to being requisitioned.

### *Pre-encumbrance/Encumbrance*

Immediately following the approval of a requisition, funds are pre-encumbered against the budget code for the amount of the PR. The amount of the pre-encumbrance does not include tax. Pre-encumbered funds render the budgeted funds unavailable for additional purchases. The pre-encumbered funds remain pre-encumbered until the PR is canceled, or the Buyer prepares the purchase order. If the PR is canceled the funds are released back into the budget code from which they were pre-encumbered. When the Buyer prepares the PO, the pre-encumbrance is liquidated, and the funds are then encumbered. The amount of the encumbrance includes tax. See the Outstanding Pre-Encumbrance Report Procedure in Section IX to track encumbered amounts.

### *Budget Codes*

The correct budget code must be used on PRs. If you are purchasing office supplies, object code -641110 should be used. There is a look up feature in the City's financial

system to identify the correct budget code. Fixed Assets must use budget codes with object code -66xxxx. Fixed assets are items which have an individual total cost of $5,000 or more (including tax and shipping) *and* have a useful life greater than one year. There is an exception for fixed assets individual costs if items must be used together and each component is less than $5,000 but the total cost for the units will be over $5,000. For example, Herman Miller Office Furniture where each panel is less than $5,000, but to create a cubical, five (5) panels are required and the cost of five (5) panels is above $5,000. If you have any questions about what object code to use, please contact General Services.

### *5. Receipt and Invoice Processing*

All invoices are to be emailed to:

Accounts Payable Dept. at accountspayable@cityofberkeley.info.

For those that cannot be emailed, use **P.O. Box 700, Berkeley, CA 94701**.

Departments are responsible for the timely review and approval of invoices. Invoices that are accurate, complete, and thorough are to be approved and processed so that the City can and will pay within the agreed upon terms. Net 30 is standard, though other terms may be mutually agreed upon.

If an invoice is for a blue-backed contract the invoice should be sent to the address above referencing the name of the project manager. Following delivery of the requisitioned good or service, the originating department/division must formally “receive” it using the City's financial system. See the Receiving Procedures (See Section VIII.6). When the department/division receives a final invoice from the vendor mark the invoice “FINAL INVOICE” in red pen and Accounts Payable will electronically close the PO.

### *6. Liquidation of Remaining Funds on a PO*

To liquidate any remaining funds on a PO a “Change Order Request” form must be submitted to General Services. (See Section X). To avoid the need to submit a “Change Order Request,” final invoices should be marked in red ink “Final Invoice” and AP will liquidate any encumbered amount after payment of that invoice.

### *7. Purchases Requiring Special Handling*

Certain types of requests for goods and services either are not made through the PR procedure at all or are made through a modified PR procedure.

- **Petty Cash Procedures.** Items with a total value (per order) of $100.00 or less may be procured using petty cash procedures. Generally, minor office supply needs and transportation reimbursements may be initiated and paid within the Department structure using this provision. An item that is purchased on a regular basis should not be procured using this procedure. See AR 3.3 (See Section I.11), "Petty Cash Revolving Accounts".

- **Blanket Orders (BPO).** BPOs for goods are used to establish an overall spending limit for goods that will be needed in small amounts though the fiscal year. BPOs are established for one year. A standard PR process is required, and Section II Purchasing limits apply to the entire blanket order (i.e., BPO's in excess of City Manager's expenditure authority ($100,000) must go to City Council). It is the responsibility of the division to ensure authorized releasers on BPOs are kept current throughout the fiscal year. Additional PRs are required to add monies to BPOs and the BPO number should be noted on the new PR. If the BPO is going to exceed the City Manager's authority, City Council must approve increase. The quote process is not required for BPOs as prices are as billed by the vendor. Discounts are documented by General Services. BPOs where specific prices have been negotiated will remain stable through the term of the BPO. No individual order should exceed $5,000 and Fixed Assets should not be ordered on a BPO, as the object code is not correct on a BPO and instead needs to be expensed from object code -66xxxx series.

- **Emergencies.** In extreme circumstances, a "Field PO" may be issued by the Purchasing Division with approval of the City Manager. This situation requires the establishment of an "actual emergency and of urgent necessity for the preservation of life, health or property" (City Charter Section 67.4). Emergency purchases may not exceed the City Manager's authority limits as set by Council (Ordinance 6875-N.S., 2005). Whenever possible, the Purchasing Division will continue to seek as many quotes or bids as would otherwise be required if the emergency did not exist. If a purchase order will be generated using the City's financial system, purchasing staff will notify the selected vendor of the PO number and provide a department contact or delivery address for the emergency item(s).

- **Warehouse Items.** Certain public works and electrical items are regularly maintained and warehoused by the City. The standard requisition format on the City's financial system is used.

- **Sole/Single-Source Procurements.** Any procurement established by a project manager and approved by the City Manager that is considered Sole/Single-source will be processed without a competitive bid process. When feasible the department should conduct market research to ensure the prices proposed are fair and reasonable, or request assistance from General Services.

- **Formal RFP or IFB.** Purchases expected to exceed $50,000 for services, $100,000 for goods, and $200,000 for construction must follow a strict path to ensure a valid, fair and impartial selection process. Allow at least 60 days for this process to be completed and a vendor selected. Before initiating the standard PR process, an originating Department (through a Project Manager) will send a request for a specification number (on a "Formal Bid Solicitation and RFP/IFB to be issued within 30 Days" form (See Section X) via an email to the Budget Division, with a copy to General Services (purchasing@cityofberkeley.info). The funds must be available in the budget code identified or no number will be issued. If General Services staff has no questions, a Specification Number will be provided to the Project Manager via email. General Services will then submit their report to City Council based on the City Clerk's Council Meeting Timeline. It takes approximately 35 days from the time the report is submitted until City Council reviews it. The bid *should not* be released to vendors until after City Council has reviewed the General Services report. The Project Manager will develop the elements of an RFP or an IFB. The following information is required before beginning this process:

    - Thorough description of the goods, services, or scope of work required;
    - Approximate bid or proposal opening date (this must be at least 7 days after the item has been on the 30-day report to Council);
    - Intended use of the goods or services;
    - Estimated cost;
    - Confirmation of AB 339 compliance from HR;
    - Budget code (ensure that funds are available); and
    - Project Manager's contact information (for questions or consultation).

When the purchase is sufficiently described and contract elements are defined (See the "Contracts Online" Manual), the full RFP/IFB may then be developed using the City of Berkeley boilerplate based on individual departmental processes.

When completed, the completed RFP/IFB is forwarded to General Services for review (if necessary, the City Attorney may be consulted at this time) and when the item has been reviewed by City Council on the "Formal Bid Solicitations and RFP/IFB Scheduled for Possible Issuance within 30 Days" report, it will be released to begin the bid process. In cases where there are very tight time constraints and, through no fault of the end user, a bid needs to be released before approval by Council, the opening date of the bid will be at least one (1) week after review by Council.

General Services staff releases the RFP/IFB to designated vendors, posts the RFP/IFB on the City website and in designated area(s), arranges a location to physically open

the sealed bids or proposals, and invites designated city employees (as needed). This process is to ensure that all vendors who wish to bid have the opportunity to bid in a fair and open environment. As with all detailed procurements, General Services staff is available for consultation in identifying potential vendors.

Any and all questions posed to the Project Manager need to be submitted in writing. The Project Manager then gathers all the questions and answers and submits the information to General Services. General Services then posts the Q&A to the city's website as an addendum to the IFB/RFP. This ensures all vendors receive the exact same information at the same time and no vendor is given an advantage over another.

After receiving vendors' proposals, General Services will open the sealed bids or proposals submitted by vendors. Bids are only opened on Tuesdays and Thursday at 2:00 p.m. Sealed bids are opened at 2180 Milvia Street. RFP responses are opened by General Services staff (in person or online). All IFBs and RFPs must be received prior to 2:00 p.m. or they will be rejected. There is no exception to this time. General Services will fill out a bid abstract at the bid opening. This form documents the vendors who responded in a timely manner to the RFP/IFB. IFB openings are open to the public. RFP openings are not open to the public.

Sealed bid proposals are scanned and stored in the shared project file. RFP responses are stored in the shared project folder. If a contract is required for this type of procurement information to complete this process is provided on "Contracts Online" (on the City's intranet).

### *8. Competitive Formal Bid Evaluation*

The criteria for selection of a vendor are dependent on the type of solicitation issued. An IFB is awarded to the lowest responsive/responsible bidder. RFP criteria selection needs to be outlined in the RFP. Proposals are evaluated on selection criteria established in the RFP. A selection committee makes the evaluation based on the criteria set forth in the RFP. (For detailed information regarding IFB/RFP, see Section VIII.9). Evaluations can include product demonstrations, a vendor conference, and reference verification. All evaluation committee member should score vendor proposals independently. Committee members then rank vendors according to all evaluation criteria as outlined in the RFP. It is very important that all vendors receive the same information. No vendor can be given an unfair advantage in submitting bids to the City. All vendors must be treated fairly.

Local, Berkeley-based firms, are either provided pricing consideration or the ability to earn extra evaluation points as stated above.

### *9. Contracts – Blue-Backed*

Blue backed contracts are required for services where the expenditure exceeds $25,000. Unless a pre-approved boilerplate is used, all contracts must be provided to the City Attorney for review and approval. All contracts must go through the City Manager and City Clerk. Exceptions are outlined in Section III.4 (Low-dollar, low-risk types of services.) Instructions for initiating contracts are on the City's intranet under "Contracts Online." The Contracts Online Manual outlines the different types of City contracts and summarizes compliance procedures. Contracts are formal written legal agreements between two or more parties, which must be written in accordance with established City procedures. These procedures should be followed for all contracts, whether the contractor is selected through the formal bid process, the RFP process or informal solicitation. Purchases of goods or supplies are made through purchase orders.

The most frequently used standard City contract is the Personal Services expenditure contract. "Personal services" primarily refers to "direct services". "Direct services" means services, other than "professional services", which cannot be provided through the Civil Service system, such as maintenance, gardening, linen and security services. "Professional services" means services which are of an advisory or artistic nature, require advanced knowledge and personal expertise in a field of science or learning or originality and creativity in a recognized field or art, and require consistent exercise of personal discretion and independent judgment, including, but not limited to, accounting, legal, architectural, or engineering services, economic, market and systems analysis, program evaluation, operations research, development of unique computer programs, training, medical service, and legal advice or representation. Those engagements utilize a "Professional Services Contract".

Certain engagements under $25,000 may require a blue back contract based on risk level as determined by the City Attorney and/or General Services.

*Contracts General Services will require five (5) days for review.*

### 10. Piggyback and Cooperative contracts

One way to procure goods/services without a solicitation is by piggybacking off an existing, competitively bid contract from another public agency. This saves time and resources by leveraging the original contract's scope of work, pricing and schedule as long as the original contract allows for it. The existing contract/agreement must be vetted to ensure it complies with City of Berkeley purchasing policies and procedures and the new contract must have an identical scope of work. Otherwise, the contract process proceeds like any other contract and requires all the same boilerplates, attestations, insurance and signatures.

## 11. Sole Source and Single Source

Should a procurement be needed through use of a sole source (only one true provider), or single source (multiple providers, but not amenable for competition), departments should conduct market research to justify the business case for such an action. A waiver is required and should be based upon the market research and reasonable conclusion to only use one source.

## 12. Protest of Award

Anyone may protest a decision to award a bid. The protesting party must first submit a letter to the Project Manager describing the basis of the protest. The Project Manager then reviews the basis of the protest, sends a copy to the apparent low bidder for comments/rebuttal and then reviews the protest with Legal and General Services before making a determination on the validity of the protest. If necessary and at the City's sole discretion, the Project Manager and/or Department Director may hold an informal hearing with all interested bidders prior to making a decision. If the contract is a City Council approved contract, the matter is then brought before Council as part of the award process along with a recommendation for disposition of the protest.

General Services Division - Purchasing

**Procurement Ethics Policy**

The Purchasing Staff in the General Services Division subscribe to the following procurement ethics policy as administered by California Association of Public Procurement Officials (CAPPO):

To regard public service as a sacred trust, giving primary consideration to the interests of the public agency that employs us,
To purchase without prejudice, seeking to obtain the maximum value for each dollar expended,
To avoid unfair practices, giving all qualified vendors equal opportunity,
To honor our obligations and require that obligations to our public agency be honored,
To accord vendor representatives courteous treatment, remembering that these representatives are important sources of information and assistance in solving our procurement needs,
To refuse to accept any form of commercial bribery, and prevent any appearance of so doing,
To be receptive to counsel from our colleagues, and to cooperate with them to promote a spirit of teamwork and unity,
To conduct ourselves with fairness and dignity, and to demand honesty and truth in the procurement process,
To strive for greater knowledge of procurement methods and of the materials we purchase,
To cooperate with all organizations and individuals involved in activities designed to enhance the development of the procurement profession, remembering that our actions reflect on the entire procurement profession.

Darryl Sweet, MSCM, CPSM
General Services Manager
City of Berkeley

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Revisions in this version:

- Section 1.3 – Rewritten for clarity and consistency with waiver form. Added recommended re-bid schedule for contracts
- Section 3.10 – Rewritten for clarity