

ORDINANCE NUMBER 1348

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, AMENDING ORDINANCE NO. 1341 OF THE CITY OF PERRIS MUNICIPAL CODE RELATING TO THE CITY OF PERRIS PURCHASING SYSTEM

WHEREAS, on March 14, 2017, the City Council adopted Ordinance No. 1341, which repealed and replaced Chapter 3.32 of Title 3 of the City of Perris Municipal Code; and

WHEREAS, the Federal Office of Management and Budget (“OMB”) requires local governments and other not for profit entities to adhere to procurement policies outlined in the OMB Circular A-110 - Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, when federal grant monies are used; and

WHEREAS, OMB Circular A-110 has been updated and new procurement procedures are required to be adopted by federal grant award recipients.

THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals Incorporated. The foregoing Recitals are incorporated herein by reference as if set forth in full.

Section 2. No Repeal of other Provisions. Ordinance 1341 is hereby amended to include the new chapter shown in “Exhibit A.” Unless expressly modified or added herein, all provisions of Title 3 remain in full force and effect.

Section 3. Effective Date. This Ordinance shall take effect 30 days after its adoption.

Section 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

Section 5. Certification. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Perris.

ADOPTED, SIGNED and ***APPROVED*** this 29th day of August, 2017.

Michael M. Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I, Nancy Salazar, City Clerk of the City of Perris that the foregoing Ordinance Number 1348 was duly introduced by the City Council of the City of Perris at a regular meeting of said Council held on the 11th day of July, 2017 and duly adopted by the City Council of the City of Perris at a regular meeting of said Council held on the 29th day of August, 2017, and that it was so adopted by the following vote:

AYES: BURKE, CORONA, RABB, ROGERS, VARGAS
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Nancy Salazar, City Clerk

Exhibit “A”

City of Perris, California

Chapter 3.32 Purchasing System

Sections

3.32.500 – Federal Grant Procurement Guidelines

Effective July 1, 2017, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified under Title 2, Subtitle A, Chapter 2 of the Code of Federal Regulations (“2 CFR 200”) have been updated to include new procurement requirements for non-federal entities expending federal awards.

When appropriate, the City of Perris (“City”) requests Federal grant monies for projects that benefit its citizens. This Ordinance serves to outline the City’s procurement policy for all federally-funded projects and purchases. These policies and procedures reflect applicable state and local laws and their conformity to the applicable Federal laws and standards identified in 2 CFR 200.318-326.

The new uniform guidance is designed to better mitigate the risk of waste, fraud, and abuse of federal funds. Non-federal entities are required to have certain written policies and procedures surrounding the management of their award funds. Although the City of Perris already has a procurement ordinance in place, as outlined in Chapter 3.32 of the Perris Municipal Code, this new section is meant to append that ordinance and maintain federal compliance. The policies outlined in these sections may be applied to any related entities to the City to the extent that entity does not have a separate policy.

3.32.510 – General Federal Grant Procurement Policy and Requirements

All requesting departments shall consult this ordinance when dealing with any procurements in which federal funds are contemplated or used.

3.32.511 – Delegation of Responsibility

All federally-funded procurements shall be overseen by the applicable Department Head or City Manager appointed Purchasing Officer. Refer to Section 3.32.100 through 3.32.165 of the City’s Municipal Code for delegation of responsibility, contract authority, and other general purchasing procedures.

3.32.512 – Code of Conduct

1. No employee, officer, or agent of the City shall participate in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is or would be involved. Such a conflict could arise if the employee, officer, or agent; any member of his/her immediate family; his/her partner; or an organization which employs (or is about to employ) any of the above, has a financial or other interest or a tangible personal benefit from a firm considered for a contract. **CFR Reference: 2CFR 200.318(c)(1)**
2. No employee, officer, or agent of the City shall solicit or accept gratuities, favors, or anything of monetary value from contractors or firms, potential contractors or firms, or parties to subagreements, except where the financial interest is not substantial. This restriction not only applies to the City employee, officer, or agent, but also to that person's spouse or any entity in which that person or their spouse own at least 25%. **CFR Reference: 2 CFR 200.318(c)(1)**
3. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every written contract and solicitation. It shall be a breach of ethical standards for any public employee or former employee, officer, or agent knowingly to use confidential information for his actual or anticipated personal gain or the actual or anticipated personal gain of any other person. **CFR Reference: 2 CFR 200.318(c)(1)**
4. When federal funds are utilized, the City Purchasing Officer (City Manager designee or Department Head) shall check the potential vendor list against SAM.gov to verify that the potential awardee is not subject to federal debarment or suspension status. Additionally, vendors are required as a part of their response to a solicitation to attest to the fact that they have not violated any standards in their submission to the City. If the City determines that there is a federal debarment, the City will not award a contract to the entity. **CFR Reference: 2 CFR 200.318(c)(1)**
5. All employees, department heads, and consultants are required to report any alleged violations of this established code of conduct to the City Manager immediately. Where violations appear to have occurred, the offending employee, officer, or agent may be subject to disciplinary action as outlined in the Personnel Rules and Regulation document. **CFR Reference: 2 CFR 200.318(c)(1)**

3.32.513 – Federal Purchasing Guidelines

The uniform guidance outlines five methods of procurement: micropurchases, small purchases, sealed bids, competitive proposals, and noncompetitive (sole source) proposals. The table below shall be used to identify bidding requirements for each of the five methods of procurement:

Purchase Type	Characteristics & Requirements
Below simplified acquisition threshold of \$150,000	
Micropurchases	<ul style="list-style-type: none"> • Under the micropurchase threshold (currently \$3,500 and recently adjusted from \$3,000) • No bid or quote process required • No cost or price analysis required • Should be distributed among a range of qualified vendors • Use interentity agreements where applicable
Small purchases	<ul style="list-style-type: none"> • Under \$150,000 • Price or rate quotes required from an adequate number of sources • Should be distributed among a range of vendors • Use interentity agreements where applicable
Above simplified acquisition threshold of \$150,000	
Sealed bids	<ul style="list-style-type: none"> • Typically used for construction contracts • Bids must be publicly solicited • Two or more bidders are willing and able to compete and qualified to do the work • Complete, adequate, and realistic specification or purchase description is available • Firm fixed-price contract is feasible; a bidder can be selected based on price
Competitive proposals	<ul style="list-style-type: none"> • Requires request-for-proposal process and solicitation of an adequate number of bidders • Written method of evaluation, considering price as well as other factors advantageous to the program
Above or below simplified acquisition threshold	
Noncompetitive proposals	<p>Falls into one or more of these four circumstances:</p> <ul style="list-style-type: none"> • Item available only from a single source • Public exigency or emergency won't permit a delay resulting from competitive solicitation • Expressly authorized by the awarding agency or pass-through entity • Competition is determined to be inadequate after solicitation

Bid Amount

The purchasing thresholds shown in the table differ from the City's procurement policy and shall be used when considering or using federal grant funds for the procurement of services and/or goods.

Bid Solicitation

The City's approved procedures for specific types of bidding are outlined in Perris Municipal Code Sections 3.32.25 Informal Bid Process, 3.32.26 Formal Competitive Sealed Bid Process, and 3.32.27 Competitive Sealed Proposal Process for Professional Services. The City's current procedures for the applicable type of bid solicitation (per the table above) shall be followed.

The Purchasing Officer is responsible for identifying the requirements of both the City's procurement ordinance and the federal guidelines above, as well as adhering to both when applicable.

Positive efforts shall be made by the City to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. The City shall take all of the following steps to further this goal.

- (i) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (ii) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (iii) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (iv) Encourage, when practical, contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (v) Use the services and assistance, as appropriate and practical, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
- (vi) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the City but shall be appropriate for the particular

procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of- cost" or "percentage of construction cost" methods of contracting shall not be used.

- (vii) The City is prohibited from using statutorily or administratively imposed state or geographical preferences (unless mandated by federal statute, or in cases where a state license, such as architectural or engineering, may be required to perform a project in California)

3.32.514 – Allowable Costs

Uniform guidance requires written procedures for determining whether a cost is allowable in accordance with Subpart E (**CFR Reference: 2 CFR 200.032(b)(7)**). Internal control procedures for making that determination is outlined in Perris Municipal Code Section 3.32.515. The following criteria summarizes the key points that must be considered when determining whether a cost is allowable **CFD Reference: 2 CFR 200.403**:

1. Be necessary and reasonable for the performance of the federal award (and be allocated to that use)
2. Conform to limitations or exclusions regarding type or cost
3. Be consistent with the policies and procedures the organization would apply to non-federally financed work
4. Be treated consistently with other comparable costs – for example, a cost may not be treated as a direct cost if a cost incurred for the same purpose in similar circumstances was allocated as an indirect cost
5. Be determined in accordance with US generally accepted accounting principles except as otherwise provided in 2 CFR 200
6. Not be used to meet cost-sharing or matching requirements of any other federally financed program (see also 2 CFD 200.306(b))
7. Be adequately documented (see also 2 CFD 200.300 through 200.309)

3.32.515 – Internal Control Procedures

Per Perris Municipal Code Section 3.32.010, the City Manager, or his/her designee, serves as Purchasing Officer for all City procurements. Responsibilities of the Purchasing Officer are outlined in Section 3.32.010 and shall apply for federal procurements. Initially, it is the Purchasing Officer's responsibility to determine if costs are allowable for a federal grant. The City's Finance Department will regularly monitor all expenditures and report any concerns to the Purchasing Officer and City Manager.

Some form of cost or price analysis shall be made by the Purchasing Officer or Department Head, and documented in the procurement files in connection with every procurement action above \$500 in value. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is

the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

3.32.516 – Advance Payments & Reimbursements

On a bi-monthly basis, the City's Finance Department will review all grant expenditures for allowable costs and applicable funding.

If the grant is a reimbursement grant, the Purchasing Officer and the Finance Department will review the total expenditures not covered in prior reimbursement requests. If there are no non-allowable costs that must be researched or reported, a reimbursement request will be created on the appropriate grant website (or on forms provided by the grant agency if applicable) by the Finance or Grant Manager. Only those expenditures deemed allowable will be part of the total reimbursement request, and if any questionable purchases have occurred an immediate investigation into the item(s) will be done by the Finance Manager. A grant that utilizes advanced payments will also be reviewed bi-monthly to determine only allowable costs are charged to the grant fund. Any items that are improperly charged to a grant will be reclassified to another budget line item with available budget only in the instances that general accepted accounting principles and City budget procedures permit the movement of the expenditure to a new budget line item. The new location of the expenditure will be determined by the Purchase Officer or applicable Department Head. If there is not another budget line with available budget to charge the non-allowable expenditure to, the Purchasing Officer will be required to report the expenditure to the City Council and request additional budget in a non-grant fund be added to cover the cost.

3.32.517 – Contract Provisions

The City shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by the City, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) For contracts dealing with construction or facility improvements the City shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) with regard to construction bid guarantees, performance bonds, and payment bonds.

(d) All negotiated contracts (except those for less than the Simplified Acquisition Threshold) awarded by the City shall include a provision to the effect that the City shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by the City and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the following procurement provisions as applicable.

(i). Equal Employment Opportunity - All contracts, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(ii). Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of \$2000 for construction or repair, when funded in whole or part by monies derived from the Federal government (either directly or indirectly) shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

(iii). Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - **When required by Federal program legislation**, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the

Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

(iv). Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - All contracts in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

(v). Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(vi). Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000, **when funded in whole or part by monies derived from the Federal government** (either directly or indirectly), shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(vii). Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contracts for an amount above \$100,000, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a certification by the contracting parties that they have not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. and to further require disclosure of any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

3.32.518 – Recordkeeping

Procurement records and files for purchases in excess of the small purchase threshold as fixed at 41 U.S.C. 403(11) (currently \$25,000) shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price. Procurement records shall be held by the applicable Purchasing Officer or Department Head for at least three year following the close of the grant award period.