

months are covered by this Article. Construction contracts are covered by this Article without regard to contract amount and term.

(c) “**Contractor**” means any person, firm, corporation, partnership, association or any combination thereof, which enters into a Contract with any awarding authority of the City of Los Angeles and includes a recipient of City financial assistance and a public lessee or licensee.

(d) “**Subcontractor**” means any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to City purchasing contractors, unless the purchasing contract is for the purchase of garments such as uniforms or other apparel.

(e) “**Bidder**” means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications or other procurement process.

(f) “**Bid**” means any application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications or other procurement process.

(g) “**Invitation for Bid**” means the process through which the City solicits Bids including Requests for Proposals and Requests for Qualifications.

(h) “**City Financial Assistance Recipient**” means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

(i) “**Public Lease or License**” means a lease or license of City property as defined in the Living Wage Ordinance, Section 10.37 et seq. of Article 11, Chapter 1 of Division 10 of the Los Angeles Administrative Code.

(j) “**Designated Administrative Agency (DAA)**” means the Department of Public Works, Bureau of Contract Administration who shall bear administrative responsibilities under this article.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (j), Ord. No. 176,155, Eff. 9-22-04; Subsec. (j), Ord. No. 176,283,

Sec. 10.40.2. Determination of Contractor Responsibility.

(a) Prior to awarding a contract, the City shall make a determination that the prospective contractor is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. Responsibility will be determined by each awarding authority from reliable information concerning a number of criteria, including but not limited to: management expertise; technical qualifications; experience; organization, material, equipment and facilities necessary to perform the work; financial resources; satisfactory performance of other contracts; satisfactory record of compliance with relevant laws and regulations; and satisfactory record of business integrity.

(b) Every bidder for a City contract must complete and submit with its bid a questionnaire developed by the DAA which will provide information the awarding authority needs in order to determine if the bidder meets the criteria set forth in Paragraph (a) of this section. If no bid is required, the prospective contractor must submit a questionnaire. The response to the questionnaire must be signed under penalty of perjury. If, after execution of a contract, the City learns that the contractor submitted false information on the questionnaire, the City may terminate the contract and pursue the remedies set forth in Section 10.40.6 of this article. The contractor shall be obligated to update its responses to the questionnaire during the term of the contract within thirty calendar days after any change to the responses previously provided if such change would affect contractor's fitness and ability to continue performing the contract. The City may consider failure of the contractor to update the questionnaire with this information as a material breach of the contract and invoke the remedies set forth in Section 10.40.6 of this article.

(c) Questionnaires will be public records and information contained therein will be available for public review, except to the extent that such information is exempt from disclosure pursuant to applicable law. The awarding authority may rely on responses to the questionnaire, information from compliance and regulatory agencies and/or independent investigation to determine bidder responsibility.

(d) Before being declared non-responsible, a bidder shall be notified of the proposed determination of non-responsibility, served with a summary of the information upon which the awarding authority is relying and provided with an opportunity to be heard in accordance with applicable law. At the responsibility hearing, the bidder will be allowed to rebut adverse information and to present evidence that it has the necessary quality, fitness and capacity to perform the work. The bidder must exercise its right to request a hearing within five calendar days after receipt of such notice. Failure to submit a written request for a hearing within the time frame set forth in this section, will be deemed a waiver of the right to such a hearing and the awarding authority may proceed to determine whether or not the award of the contract should be made to another bidder or whether or not the bidder is non-responsible for this and future contracts. The determination by an awarding authority that the bidder is non-responsible shall be final and constitute exhaustion of the bidder's administrative remedies.

(e) A list of individuals and entities which have been determined to be non-responsible by the City shall be maintained by the DAA. After two years from the date

the individual or entity has been determined to be non-responsible, the individual or entity may request removal from the list by the awarding authority. If the individual or entity can satisfy the awarding authority that it has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Paragraph (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the awarding authority, names shall remain on the list for five years from the date of being declared non-responsible.

(f) Contractors shall ensure that their subcontractors meet the criteria for responsibility as set forth in Paragraph (a) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (c), Ord. No. 176,292, Eff. 1-1-05.

Sec. 10.40.3. Compliance with All Laws.

(a) Contractors shall comply with all applicable federal, state and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.

(b) Contractors shall notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the contractor is not in compliance with Paragraph (a) of this section. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

(c) Contractors shall notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the contractor has violated Paragraph (a) of this section.

(d) Upon award of a contract, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section. Whenever any contract, which was not initially subject to this article is amended, the contractor shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section.

(e) Contractors shall ensure that their subcontractors complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section, unless the subcontract is below the threshold requirements for Contracts contained in Section 10.40.1(b).

(f) Contractors shall ensure that their subcontractors comply with Paragraphs (b) and (c) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.4. Exemptions.

(a) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from its application:

(1) Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such public status.

(2) Contracts for the investment of trust moneys or agreements relating to the management of trust assets.

(3) Banking contracts entered into by the Treasurer pursuant to California Government Code Section 53630 *et seq.*

(b) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from application of Section 10.40.2 of this article:

(1) Contracts awarded on the basis of exigent circumstances whenever any awarding authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of Section 10.40.2 of this article. This finding must be approved by the DAA prior to contract execution.

(2) Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

(3) Contracts entered into pursuant to Charter Section 371(e)(6).

(4) Contracts entered into pursuant to Charter Section 371(e)(7).

(5) Contracts entered into pursuant to Charter Section 371(e)(8).

(6) Contracts where the goods or services are proprietary or only available from a single source.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.5. Administration.

(a) The DAA shall promulgate rules and regulations for implementation of this Article.

(b) The DAA shall develop a questionnaire to be used by awarding authorities for determining bidder responsibility within sixty days after the effective date of this Ordinance.

(c) The DAA shall monitor compliance with this article including investigation of alleged violations.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (a), Ord. No. 176,292, Eff. 1-1-05.

Sec. 10.40.6. Enforcement.

(a) Contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(b) Compliance with Section 10.40.3 of this article shall be required in contract amendments, if the initial contract was not subject to the provisions of this article. Contract amendments shall provide that violation of Section 10.40.3 shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(c) Violations of this article may be reported to the DAA which shall investigate such complaint. Whether based upon such complaint or otherwise, if the DAA has determined that the contractor has violated any provision of this article, the DAA shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the DAA may:

1. Request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.

2. Request the awarding authority to declare the contractor to be non-responsible in accordance with the procedures set forth in Section 10.40.2 of this article.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.7. Application of This Article.

(a) This article shall be applicable to Invitations for Bids issued after the rules and regulations have been adopted by City Council.

(b) This article shall be applicable to contracts entered into after the rules and regulations have been adopted by City Council, unless the contract is awarded pursuant to an Invitation for Bid issued prior to adoption of the rules and regulations by City Council.

(c) Section 10.40.3 of this article shall be applicable to contract amendments, entered into after the rules and regulations have been adopted by City Council if the initial contract was not subject to the provisions of this article.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.8. Consistency with Federal or State Law.

The provisions of this article shall not be applicable to those instances in which its application would be prohibited by federal or state law or where the application would violate or be inconsistent with the terms or condition of a grant or contract with an agency of the United States, the State of California or the instruction of an authorized representative of any such agency with respect to any such grant or contract.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.9. Severability.

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

ARTICLE 14

CONTRACTOR RESPONSIBILITY PROGRAM

Section

- 10.40 Purpose.
- 10.40.1 Definitions.
- 10.40.2 Determination of Contractor Responsibility.
- 10.40.3 Compliance with All Laws.
- 10.40.4 Exemptions.
- 10.40.5 Administration.
- 10.40.6 Enforcement.
- 10.40.7 Application of this Article.
- 10.40.8 Consistency with Federal or State Law.
- 10.40.9 Severability.

Sec. 10.40. Purpose.

Each year the City spends millions of dollars contracting for the delivery of products and services from private sector contractors. The prudent expenditure of public dollars requires that the City's procurement process result in the selection of qualified and responsible contractors who have the capability to perform the contract. Further, many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for a variety of purposes. The City expends grant funds under programs created by federal and state government. The City intends that the procurement procedures set forth in this article guide the expenditure of federal and state grant funds to the extent permitted by federal or state procurement regulations.

SECTION HISTORY

Article and Section Added by Ord. No. 173,677, Eff. 1-14-01.

Sec. 10.40.1. Definitions.

(a) **"Awarding Authority"** means any Board or Commission of the City of Los Angeles, or any employee or officer of the City of Los Angeles, that is authorized to award or enter into any contract as defined herein, on behalf of the City of Los Angeles, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of this article.

(b) **"Contract"** means any agreement for the performance of any work or service, the provision of any goods, equipment, materials or supplies, or the rendition of any service to the City or to the public, or the grant of City financial assistance or a public lease or license, which is let, awarded or entered into by or on behalf of the City of Los Angeles. Contracts for services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars (\$25,000) and a term in excess of three