



CITY OF KIRKLAND

Department of Finance & Administration

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MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Barry Scott, Purchasing Agent

Date: June 7, 2007

Subject: Staff Recommendation for Revisions to Purchasing Ordinance (KMC 3.85)

RECOMMENDATION:

City Council consider the revised purchasing code language (KMC 3.85) and provide direction for a revised ordinance.

BACKGROUND DISCUSSION:

The purchasing ordinance provides the legal framework for all City procurement. The last major revision to the purchasing ordinance was completed over fifteen (15) years ago. Current limits require oversight by the central purchasing staff for any purchase over \$1,000. In addition, a formal bid or request for proposal (RFP) process is required for most purchases over \$20,000.

Certain components of the purchasing regulations are required by state law. Other components are in place to provide the best possible balance between ensuring the lowest prices and efficient business operations. The current limits lean heavily toward centralized control and have become increasingly inefficient and impractical under our current purchasing model.

The City currently operates a limited-centralization purchasing model. Two staff members are dedicated to supporting purchasing throughout the city. The Purchasing Agent assists City staff with conducting formal Request for Proposal (RFP) and Invitation for Bid processes as well as sole source, emergency and cooperative purchasing processes. The Buyer supports departments by assisting in making purchases to meet day-to-day maintenance and operations needs (tools, parts, furniture, printed materials, etc.). Both of these staff members provide general support and oversight for small purchases made directly by authorized department representatives.

Proposed Changes

The proposed ordinance allows for purchases up to \$7,500 to be made at the department level. Department directors may delegate individuals authorized to approve purchases. Purchases between \$7,500 and \$50,000 would require at least 3 written quotes and be subject to review by purchasing. A formal competitive process would be required for most purchases over \$50,000.

State law provides considerable flexibility in the provision of professional services other than Architecture and Engineering (A&E). In an effort to provide consistency and clear expectations, additional guidelines for a non-A&E professional service process are included as part of the proposed ordinance revisions. The guidelines recommend a competitive process for contracts under \$50,000, but leave the decision on process to the department director's discretion, although the rationale for the decision should be documented. Contracts over \$50,000 would require a formal RFP or RFQ process unless waived by the City Manager.

There are several other changes in addition to updating the dollar limits and incorporating guidelines for the procurement of professional services. The revised ordinance: (1) eliminates the requirement for Council action to

authorize calls for bids, (2) includes improved language regarding bonding requirements and cooperative purchasing; and (3) adds new language regarding bid protests, contract amendments and purchases from U. S. government contracts. The entire ordinance has been reorganized to provide a more logical structure. "Plain English" reference materials have also been prepared for day-to-day staff use. A summary matrix of the changes is provided as Attachment A and a comparison with other jurisdictions is included as Attachment B.

Environmentally Friendly Purchasing

In addition to the changes mentioned above, a section (KMC 3.85.240) has been added to provide guidelines for staff in making environmentally friendly purchases. Pursuant to the proposed language of KMC 3.85.240 (c), purchasing staff has already begun to routinely seek information on environmentally preferable products from the state, other agencies and vendors. The City has also now been registered as a member of the Responsible Purchasing Network, the first national membership organization devoted to environmentally responsible procurement. In addition, the Buyer has joined the Green Team and we will be looking for opportunities to get the word out on new ideas and resources to buy green. Some sample information is included in Attachment C.

Local Preference Issue

As we were reviewing the ordinance and looking at opportunities for improvement, consideration was given to adding language to provide a preference for Kirkland suppliers. In doing so we found that, with the exception of RCW 39.30.040, state law does not allow for providing a preference for local suppliers (see memo from Bill Evans, Assistant City Attorney, in Attachment D). RCW 39.30.040 only allows that a preference can be given to local suppliers if the consideration of revenues from sales tax or business and occupations taxes would result in the supplier having submitted the lowest bid. The consideration of tax revenues to the City essentially makes the application of RCW 39.30.040 a tie breaker.

However, the City can always do more to inform local suppliers about opportunities to compete for the City's business. We will begin by updating the City's purchasing webpage with information on how suppliers can get on the vendors list used by the City, and how contractors can apply to be on the shared small works roster.

Recommendation

The revised purchasing code language has now been reviewed by, and discussed with, the department directors and the City Council Finance Committee. Suggested revisions from these groups have been incorporated into the code language, a draft of which is provided in Attachment E.

Since we are proposing to discontinue Council authorization to calls for bids which provides some public notification of upcoming opportunities, we propose replacing it with a periodic report of current projects where bids or proposals are being solicited (in addition to posting the information on the City's web page). This report would include listing small works roster projects, Requests for Proposals and Requests for Qualifications, all of which have not previously been included in the authorization to call for bids on the consent agenda. This report will appear as an information only item on the Council Meeting Agenda.

Attachments:

- A – Matrix of Proposed Changes
- B – Comparison of Practices of Other Jurisdictions
- C – Sample Green Purchasing Materials
- D – Local Preference Memorandum
- E – Draft Purchasing Code Language

Proposed Changes to How We Buy

Attachment A

Type of Purchase	No Quotes Required			Quotes			Competitive Bids		
	Current-Estimated Amt.	Streamlined Process	Proposed-Estimated Amt.	Current-Estimated Amt.	Director can execute contract. Council approval not required.	Proposed-Estimated Amt.	Current-Estimated Amt.	Contract awarded by Council or City Manager	Proposed-Estimated Amt.
Public Works (e.g. building repairs, road improvements, facilities construction, etc).	Under \$5,000	Recommend that contractor be selected from Shared Small Works Roster	Under \$7,500	\$5,000 - \$20,000 (Public Notice required if no competition)	Recommended that the Small Works Roster process be used. Limited Public Works process may be used if less than \$35,000. As an alternative, Director can waive use of competitive process.	\$7,500 - \$50,000	Over \$30,000 multi trade or over \$20,000 single trade	Invitation for Bids issued. (As an alternative, Small Works Roster process can be used up to \$200,000.) Awarded by Council	Over \$50,000 multi trade or over \$30,000 single trade
Equipment, Supplies & Routine Services (includes furniture, computer hardware, office equipment, equipment maintenance contracts, etc.)	Under \$1,000	Written quotes are not required, but informal phone quotes are encouraged. Computer hardware or software require IT approval.	Under \$7,500	\$7,500 - \$20,000	At least three written quotes should be obtained, if possible. Computer hardware or software require IT approval.	\$7,500 - \$50,000	Over \$20,000	Invitation for Bids (IFB) issued. Council awards IFB. Request for Proposals (RFP) can be used if award decision is subjective. RFP may be awarded by City Manager.	Over \$50,000
Professional Services (Consulting services other than Architects & Engineers)	Under \$20,000	No competition required. Director executes Professional Services Agreement.	Under \$7,500	Under \$20,000	Professional Services Agreement is executed by Director. Director determines the need for competition for contract award. If there is no competition, rationale is to be documented.	\$7,500 - \$50,000	Over \$20,000	RFP or RFQ process used to assure competition. City Manager can waive use of competitive process. City Manager awards	Over \$50,000
Architects & Engineers	No defined dollar amount	Select from Shared A&E Roster. If specialty is not found on the A&E roster, select whoever can best perform work.	Under \$7,500	Under \$20,000	Select from A&E Roster. If specialty is not found, Director may require RFQ process to ensure competition. Director signs contract.	\$7,500 - \$50,000	Over \$20,000	Select from A&E Roster. If specialty not found, conduct RFQ process. City Manager can waive requirement for competition. City Manager awards.	Over \$50,000
Emergency Purchase of Goods, Services or Public Works (Quick purchase necessary to avoid financial loss.)	Under \$7,500 (Purchasing's approval)	Make purchase without competition. If public work, prevailing wage requirements still apply.	Under \$7,500	Not defined	Director and Purchasing are advised of need for emergency purchase before or immediately after the fact. Documentation of emergency situation is required.	\$7,500 - \$50,000	Over \$20,000	Requires City Manager's approval. Reported to City Council at their next meeting.	Over \$50,000
Sole Source Purchase (Goods & services for which only one source exists.)	Under \$7,500	No competition required.	Under \$7,500	\$7,500 - \$20,000	Consult with Purchasing prior to purchase.	\$7,500 - \$50,000	Over \$20,000	City Council approval required prior to purchase.	Over \$50,000
Cooperative Purchasing	There is no requirement for competition or Council approval when purchasing from State Contracts or other contracts covered by an interlocal agreement. However, for other than State Contracts, Purchasing needs to be consulted to assure compliance with RCW 39.34.								
Small Works Roster Process	May be used for public works projects less than \$200,000. Participating pre-qualified contractors in appropriate work category are notified of bidding opportunities. There's no need to advertise projects or have public bid opening. Council does not authorize Call for Bids. Council will award contracts over \$50,000 v. \$20,000.								

Bid Thresholds for Seattle Suburban Cities

	Public Works		No Quotes	Goods & Routine Svcs		Notes
	Multi. Trade	One Trade		Quotes Required	Formal Bid/RFP	
Kirkland - Current	\$30,000	\$20,000	< \$7,500*	\$7,500 - \$20,000	> \$20,000	
Kirkland - Proposed	\$50,000	\$30,000	< \$7,500*	\$7,500 - \$50,000	> \$50,000	
Bellevue	\$35,000	\$20,000	< \$5,000	\$5,000 - \$35,000	> \$35,000	Council denied increasing PW to \$50k/\$30k
Bothell	\$35,000	\$20,000	< \$2,000	\$2,000 - \$10,000	> \$10,000	
Lynnwood	\$35,000	\$20,000	< \$2,000	\$2,000 - \$35,000	> \$35,000	Purchasing desires increasing PW to \$50k/\$30k
Redmond	\$50,000	\$30,000	< \$2,000	\$2,000 - \$25,000	> \$25,000	
Renton	\$50,000	\$30,000	< \$20,000	\$20,000 - \$50,000	> \$50,000	
Shoreline	\$50,000	\$30,000	< \$5,000	\$5,000 - \$50,000	> \$50,000	

*Phone quotes or other determination of competitive pricing strongly encouraged.

Awards Made by Council for Suburban Cities

	Public Works	Goods & Routine Svcs	Professional Services
Kirkland - Current	\$20,000	\$20,000	Not Defined
Kirkland - Proposed	\$50,000	City Manager*	City Manager*
Bellevue	\$35,000	\$50,000	\$50,000
Bothell	\$30,000	\$100,000	\$30,000
Lynnwood	\$5,000	\$35,000	\$7,500
Redmond	\$50,000	Purchasing**	\$25,000
Renton	\$50,000	\$50,000	\$50,000
Shoreline	\$200,000	\$100,000	\$50,000

*City Manager would have authority to award RFP & RFQ contracts, but may elect to require Council approval.

**Purchasing awards all contracts for goods, equipment & routine services, regardless of dollar amount.

eco markets ²⁰⁰⁷

Summary Report

Contents

3	Introduction
4	Our Respondents
5	Policies
6	Purchasing Behaviors
7	Purchasing Factors
8	Environmental Issues
9	Commodities
10	Paper
11	Cleaning Products
12	Electricity
13	Supporting Green Purchasing
14	Outlook
15	References



ecomarkets ²⁰⁰⁷

The EcoMarkets 2007 survey was carried out in partnership with the Center for a New American Dream and the North American Green Purchasing Initiative (NAGPI) of the North American Commission for Environmental Cooperation. This summary report contains the original results from the survey as well as statistical analyses prepared by TerraChoice Environmental Marketing Inc.

Feedback on this Report

Questions or comments related to this report can be directed to:

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TerraChoice Environmental Marketing Inc.



 Introduction

We surveyed 692 procurement professionals in Canada and the United States. The results presented in this report are accurate within plus or minus 4.4%, nineteen times out of twenty.

EcoMarkets is an ongoing research initiative of TerraChoice Environmental Marketing Inc. that monitors the patterns of greening in business-to-business (B2B) and business-to-government (B2G) procurement and supply chain management. Our purpose is to inform our clients and partners about attitudes and practices of North American buyers towards environmentally-preferable purchasing. This report is a public summary of the results of the research we conducted in 2006/07.

This year, we were very pleased to work on this initiative with two outstanding partners. The North American Green Purchasing Initiative (NAGPI) is a project of the trilateral North American Commission for Environmental Cooperation, based in Montréal. The Responsible Purchasing Network is a project of the Center for a New American Dream, based in Washington, D.C. We extend our thanks to these partners for their excellent assistance and support.

More detailed and customized analyses are available to our clients upon request.

We received survey responses from 692 procurement professionals in Canada and the United States between November 16, 2006 and January 2, 2007. Conservative calculations conclude that the results drawn from mutually exclusive questions are accurate within plus or minus 4.4%, nineteen times out of twenty.

All figures and charts in this report are expressed in percentages or on a mean rating scale.

Our Respondents

Over \$5 billion in annual spending is represented in our sample population.

To date, there is a lack of definitive statistics on the number of people in North America who hold procurement-related positions. However, according to the U.S. Department of Labor, 594,000 people held purchasing-related positions (such as purchasing managers, buyers, purchasing agents, procurement clerks, etc.) in 2004 (Bureau of Labor Statistics, 2004).

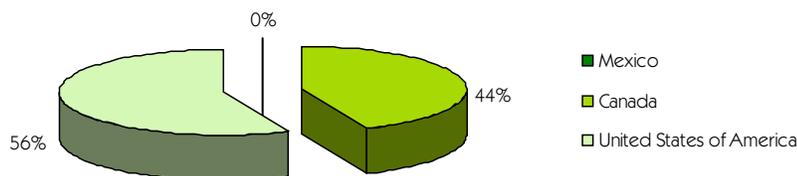
Our population frame was a list of approximately 10,500 procurement professionals compiled from various sources within Canada and the United States. We received a total of 692 responses to our online survey which provided us with the statistically significant sample response rate of 6.6% from which we draw the conclusions outlined in this summary report.

Of the 692 survey respondents, 56% work for organizations that are based in the United States and 44% for Canada-based organizations. Although we sought responses from Mexico, we were unsuccessful.

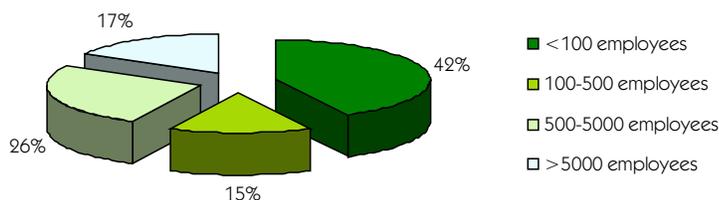
The majority of respondents – 52% – work in private or publicly-held companies. Moreover, 42% of respondents work in small organizations employing less than 100 employees.

Our respondents were invited by email to participate anonymously in this survey. Readers of this report should be aware of the following methodological limitations: (1) because the invitation was clearly about the green subject, there is some pro-environment self-selection bias in this sample; (2) some amount of interpretation was required by our respondents when answering the online survey questions.

Organization Location



Organization Size



Organization Type



Policies

North American organizations in the public, private, governmental, and not-for-profit sectors increasingly recognize the importance of adopting green procurement policies.

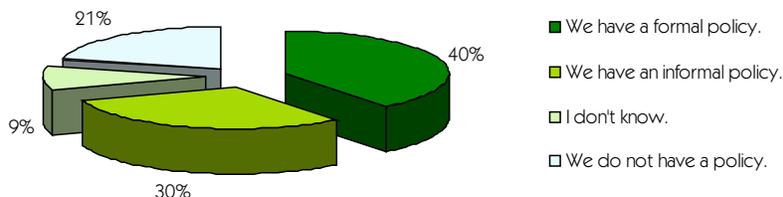
Policies provide top-down guidance and ground-rules for effective interaction and decision-making among staff. Effective procurement policies help shape purchasing decisions and signal organizational attitudes and philosophies towards the environment and sustainability. Clear policies can be an effective tool for organizational change.

70% of respondents indicated that their organization has instituted either a formal or an informal environmental/sustainability policy – this is a 7% increase from 2006. 60% of respondents further indicated that their organization has established either a formal or an informal green procurement policy.

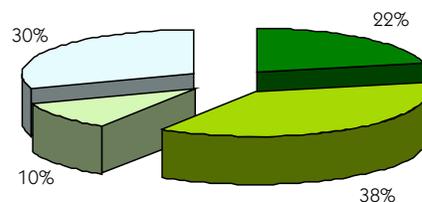
The increase in green procurement policies is especially pronounced in the Canadian context. According to our 2005 survey, 34% of respondents asserted that their organization had a green procurement policy. In this survey, that frequency has almost doubled to 59%!

Regardless of nationality or organization type, the majority of organizations have green purchasing policies. In Canada and the United States, the majority – 76% and 64% respectively – of government departments or agencies have green purchasing policies. This reflects how governments are making the effort to lead by example and how their purchasing decisions are less driven by financial constraints or profit-making.

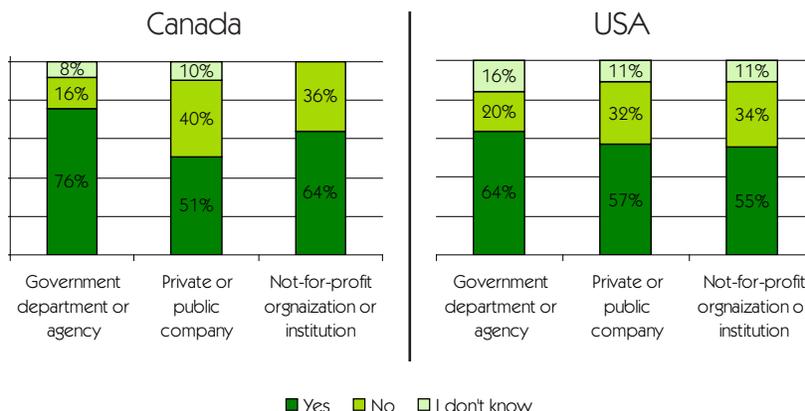
Environmental/Sustainability Policy?



Green Purchasing Policy?



Does Your Organization Have a Green Purchasing Policy?



Purchasing Behaviors

For the majority of organizations in North America, no more than 40% of annual spending is actually influenced by environmental factors.

Implementing a green procurement policy is one matter, but actual spending is what matters to policymakers and green marketers. Our survey asked respondents to indicate the extent to which organizational spending is actually influenced by environmental factors.

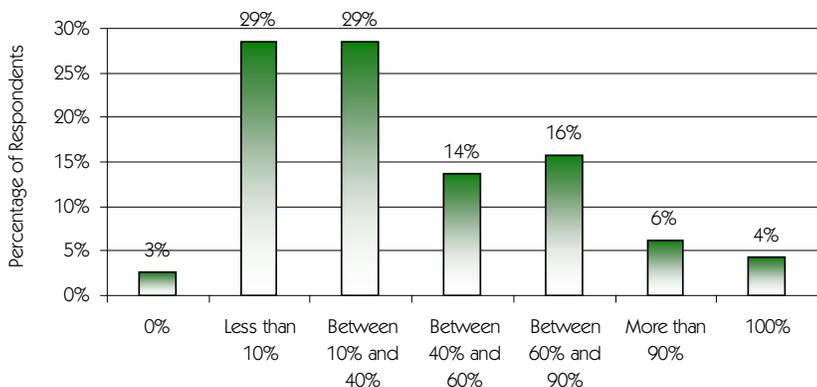
Among those organizations that have either a formal or an informal green purchasing policy, less than half (45%) report that those policies require environmental consideration in all purchasing decisions. 20% of respondents told us that they have to consider environmental factors only in certain product categories. A surprising 31% of procurement policies leave it entirely to the purchaser's discretion.

Despite this considerable variability amongst those organizations that have a policy, the majority of respondents – an overwhelming 91% – assert that they consider green factors at least occasionally. Fully 16% report that they always consider environmental factors when making purchasing decisions!

How procurement policies translate into actual dollars and cents spent is the final test of green penetration. For 29% of organizations in the United States and Canada, less than 10% of organizational spending is actually influenced by environmental factors. For another 29%, between 10% and 40% of spending is influenced by environmental considerations. Only 4% of our respondents told us that environmental issues influence 100% of organizational spending. To summarize, for approximately 60% of organizations in Canada and the United States, no more than 40% of annual spending is actually influenced by environmental factors.

It is clear that while environmental factors are being increasingly incorporated into purchasing considerations, the translation of policy to practice is mixed and incomplete.

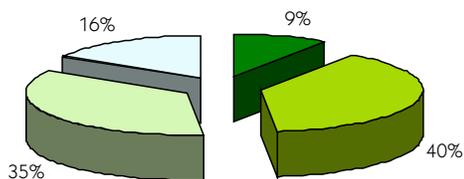
Percentage of Spending that is Actually Green Influenced



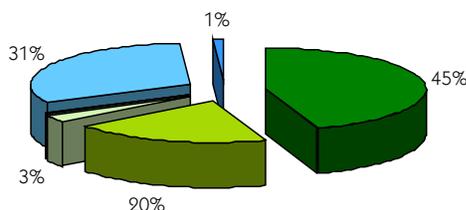
Environmental Factors Considered in...

Actual Purchasing

Purchasing Policy



- Never
- Occasionally
- Usually
- Always



- All purchases
- Certain categories only
- Certain prices only
- Certain volumes only
- Purchaser's discretion
- Other

Purchasing Factors

The three most important factors that influence purchases are product performance, durability, and price. Environment is a lower priority.

“Greener purchasing” clearly doesn’t mean green at any cost, or green above all else. To understand the relative priority of environmental considerations, we asked our respondents about the importance of environmental factors in the context of other – more mainstream – concerns.

In addition to environment, we offered purchasers seven factors and asked them to rate the importance of each to actual purchasing at their organizations.

Environmental factors were ranked in the middle of the group, behind traditional quality and price concerns, and above other non-traditional concerns. The alternative factors and mean scores are: product performance (5.4), durability (4.8), purchase price (4.8), total cost of ownership (4.6), environmental considerations (4.3), social impacts (3.9), other considerations (3.3), and international trade restrictions (2.8).

In a related question, we directly explored the issue of price sensitivity. A strong majority of respondents (60%) report that they will not pay a price premium for environmentally preferred products.

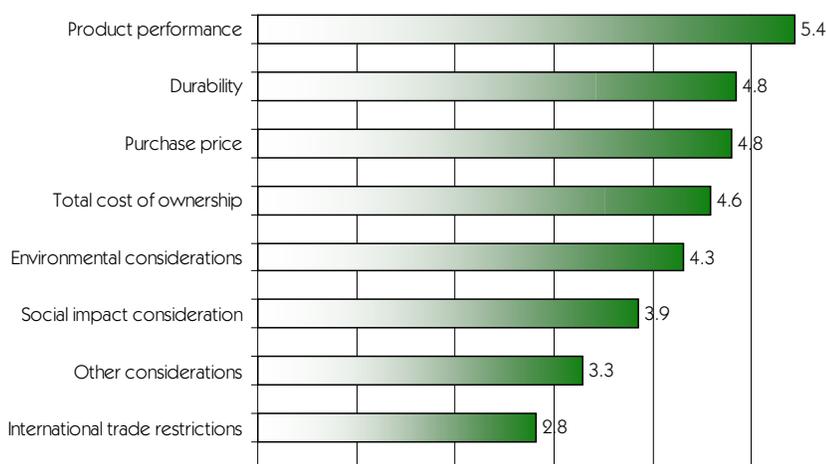
There was a time when a green product would predictably perform less well and/or be higher priced. That day has passed, and purchasers now expect better. There is no doubt that green products need to be competitive in terms of mainstream values.

That is not to say that a higher price may not be available, but these data tell us that a premium cannot be justified on environmental advantages alone. Often, green goods offer lower total costs of ownership and greater durability as a function of their environmental strength. These are both more important values to our audience, and more likely to generate price premiums in a value-for-money equation. (Note that this survey did not ask if a price premium could be paid for better value, but specifically for environmental advantage.)

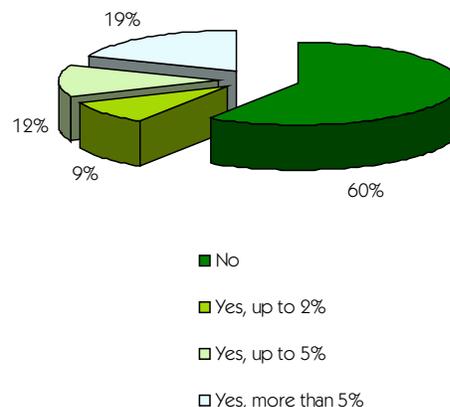
These results serve as a reminder that just being green won’t be enough to win customers. Savvy communications and positioning, particularly those that appeal to mainstream values, will be essential strategies for green marketers.

Relative Importance of Purchasing Factors

Rating Scale of 1 (least) - 6 (most important)



Price Premium?



Environmental Issues

Human health, toxins, and energy conservation are the most important environmental issues influencing purchasing decisions.

We asked North America's procurement professionals to rank the relative purchasing importance of several environmental issues. Some interesting observations can be made by closely examining the graph presented at the bottom of this page.

The first general observation of these results is that environmental issues can be grouped into three broad categories. Issues related to the human environment (such as human health and toxics) are consistently in the most important cluster. Technical and media-specific issues (such as water pollution and biodegradability) form a second and less important cluster of issues. For purchasers, issues related to the non-human ecological environment (such as habitat and ancient forests) currently form the third and least important group of issues.

A more specific observation points to the different ways – and different effectiveness

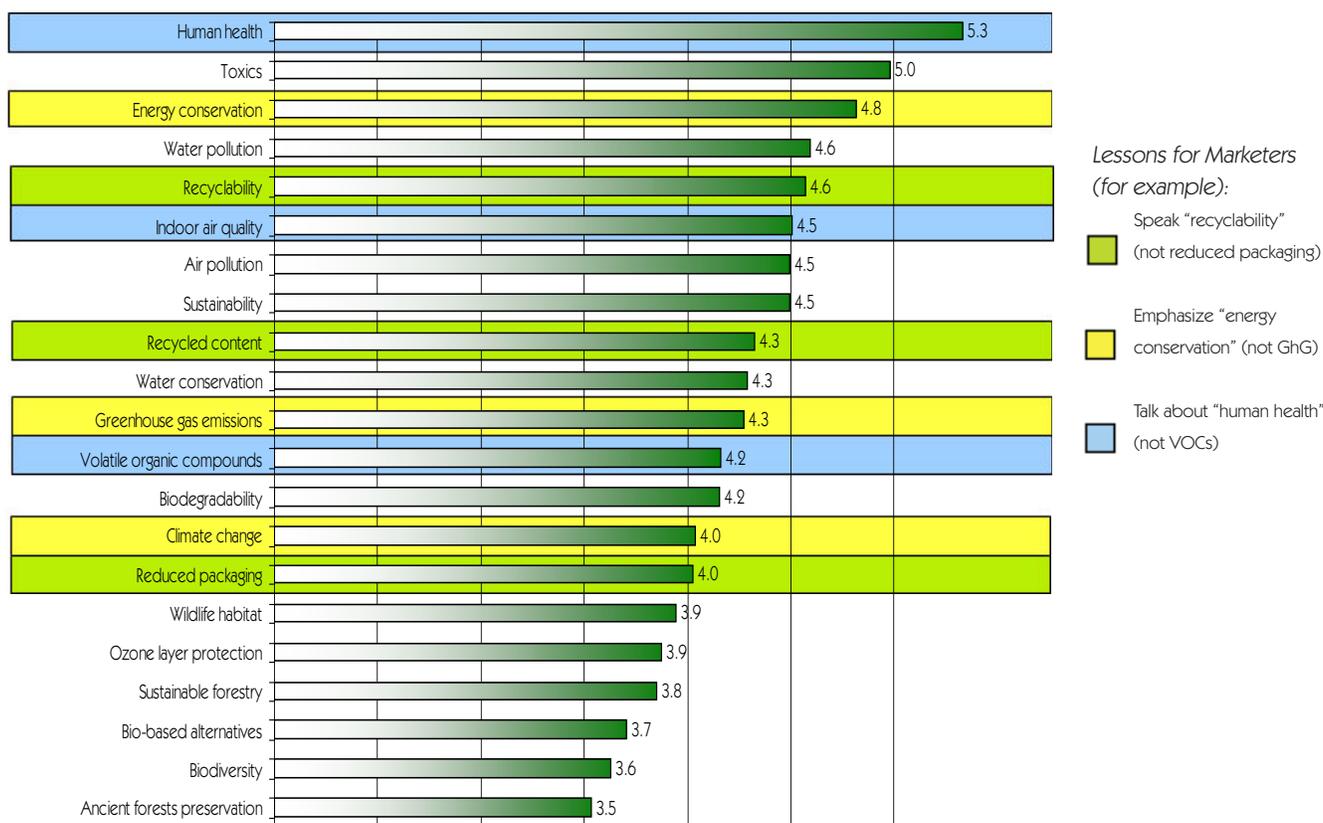
– of expressing the same environmental benefit. Marketers can find an important lesson here related to the best choice of language for communicating genuine environmental value.

An energy efficient product, for example, might genuinely be promoted in terms of “energy conservation” or “climate protection”. As illustrated in yellow on this chart, these data tell us that “energy conservation” appeals to these audiences far more frequently than do the other terms. Energy conservation was ranked the third most important environmental issue and this can be explained by the fact that organizations have long placed a strong emphasis on cost reduction. Producers and sellers of energy-efficient products will be wise to emphasize the strong linkage between energy efficiency and cost savings to appeal to procurement professionals.

This example – energy conservation still trumps climate change – is particularly interesting in light of the high profile of climate issues.

Relative Importance of Environmental Issues

Rating Scale of 1 (least) - 6 (most important)



Commodities

Paper and paper products, followed by janitorial/sanitation goods and services are the purchases most frequently influenced by environmental factors.

Greener purchasing doesn't necessarily mean that all commodities are given environmental scrutiny. In this part of the study, we hoped to learn if some types of goods and services attract more green attention than others.

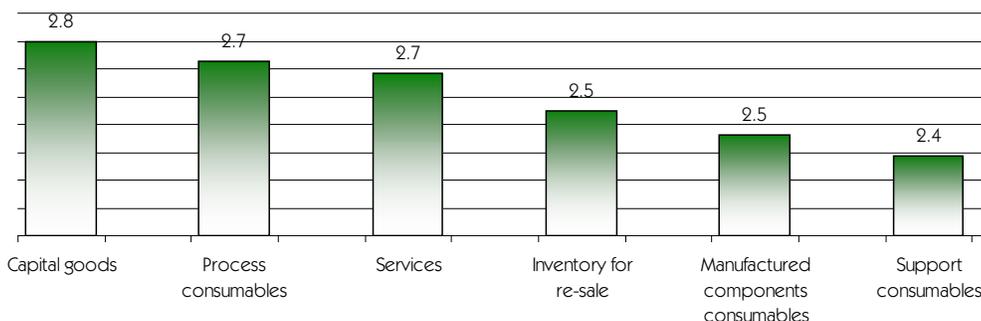
We asked purchasers about their application of green factors to various general types of purchases, including: capital goods, process consumables, services, inventory, manufactured components, and support consumables. Although the differences are not dramatic, capital goods consistently attract the most frequent environmental scrutiny (mean rating of 2.8, versus 2.4 through 2.7 for the other commodities).

In another question, we asked our respondents to focus on more specific commodities, including: paper, cleaning products/services, electricity, offices supplies, electronics, and building materials. In this case, the differences are more notable, as reflected on the mean rating scale. Paper and paper products (3.2) attract environmental scrutiny most frequently, followed closely by janitorial/sanitation commodities (3.0). There is little notable distinction between the remaining options (2.6 to 2.8).

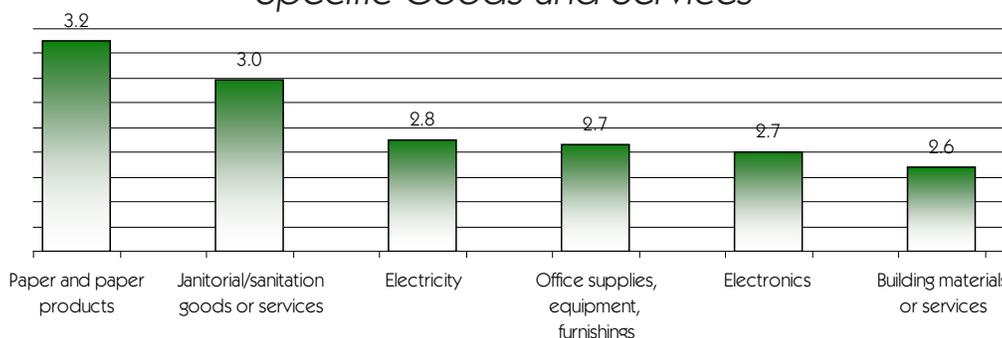
Frequency of Green Consideration When Buying...

Rating Scale of 1 (never) - 4 (always)

General Goods and Services



Specific Goods and Services





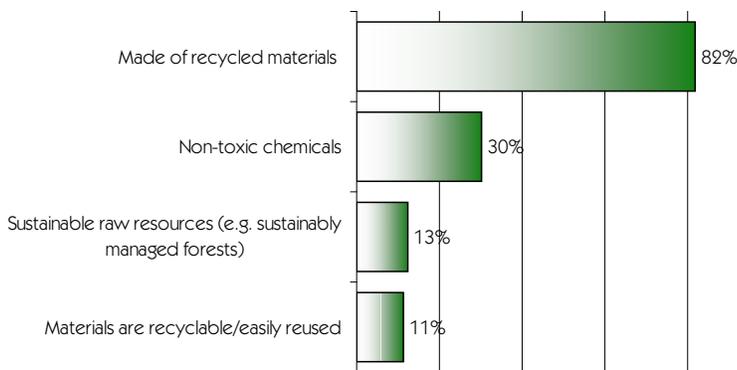
The vast majority of procurement professionals still think of “environmentally-preferable paper” simply as recycled content.

Despite early computer-era predictions of the paperless office, paper consumption continues to rise (Statistics Canada, 2006). Environmental scrutiny of paper – issues like forestry, toxics, and energy – are also growing. We wanted to explore how these trends converge in professional paper purchasing.

A noteworthy majority of Canadian and American organizations – 90% and 88% respectively – have paper re-use and/or recycling programs. Although less common than recycling programs, a significant number of Canadian organizations (59%) and American organizations (61%) have implemented paper use reduction programs. For example, methods of reducing paper usage could include making the effort to only use electronic data and using both

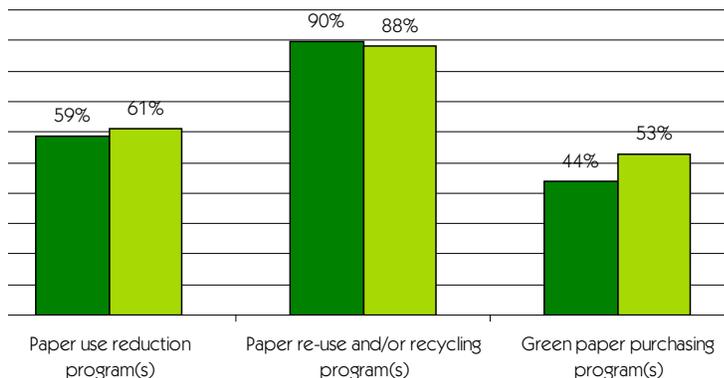
sides of paper. With 44% of Canadian respondents and 53% of American respondents indicating that green paper purchasing programs exist at their organization, such initiatives are still the least common paper-related program.

When we asked, “What does ‘environmentally-preferable-paper’ mean to you?” we received a very clear message. To an overwhelming majority of procurement professionals – 82% of respondents – “environmentally-preferable paper” means paper made from recycled materials. 30% of respondents suggested that environmentally-preferable paper is made using non-toxic chemicals. Paper produced from sustainably-managed forests and from materials that are easily recyclable received a response rate of 13% and 11% respectively.



What Does “Environmentally-Preferable Paper” Mean to You?

(Multiple Responses Possible)



Which of These Paper-Related Programs Exist at Your Organization?

■ Canada
■ USA

Cleaning Products

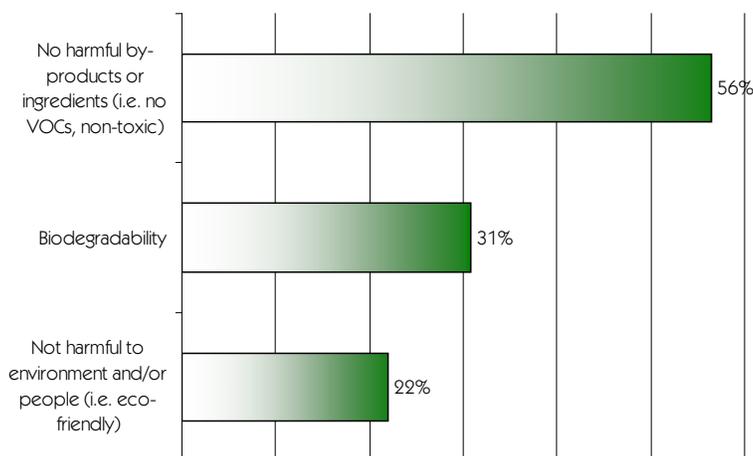
As evidence of the strong growth in green cleaning, over one-quarter of all North American organizations require green products in their janitorial contracts.

In the last two years, few B2B verticals have seen as much greening growth as the cleaning sector. Driven by concerns about indoor health (notably schools and hospitals), worker safety, and hazardous waste streams, the green cleaning movement is shaking up the industry.

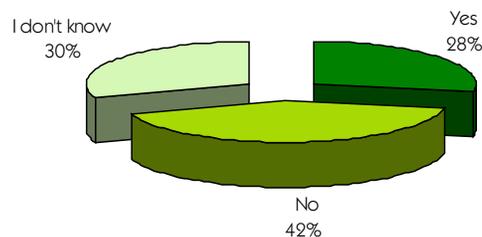
As evidence of this trend, just over one-quarter (28%) of the organizations we surveyed report that their janitorial contracts require green cleaning products. (Fully 30% of respondents “Don’t know” the answer to this question, so the 28% may understate this pattern.)

We also asked procurement professionals what “green cleaning products” means to them. Allowing for multiple responses, the majority of procurement professionals – 56% of respondents – indicated that “green cleaning products” refers to products manufactured using non-toxic ingredients, 31% of respondents suggested “green cleaning products” refers to products that are biodegradable, and a further 22% indicated that green cleaning products are not harmful to the environment and/or people.

What Does “Green Cleaning Products” Mean to You?



Do Your Janitorial Contracts Require Green Cleaning Products?



Electricity

Energy conservation programs within organizations are over three times more common than green electricity purchasing programs.

Driven by a variety of concerns – climate change, security of energy supply, air and water pollution, and increasing energy costs, to name a few – supply and demand for green electricity has grown exponentially in recent years. Nevertheless, green power still makes up a very small fraction of the overall power mix on the continent.

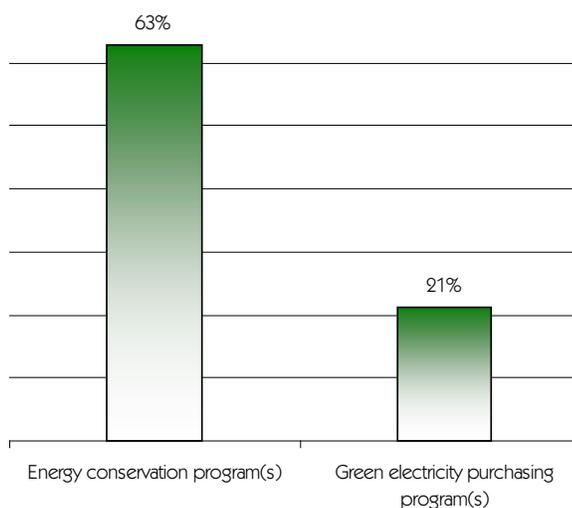
It is also beset by fundamental challenges, not the least of which is definitional. What is “green electricity”? The EcoLogo[®] program defines it as “renewable low-impact”, and establishes specific criteria for each technology. But, there is still considerable controversy on this topic.

Our respondents, in answer to an open-ended question, defined “green electricity” in many different ways. In most cases, these answers were not mutually exclusive, although nuclear energy is a notable exception. (Some respondents specifically include nuclear as green, and some specifically exclude it!)

In general, there was agreement around the common theme of renewability. Wind power, for example, was cited by 41% of respondents and solar/thermal by 35%. Other renewables included alternatives to fossil fuels (22%) and low-impact hydro (21%). Interestingly, 15% of respondents volunteered conservation-related answers (demand) to a question about technology (supply).

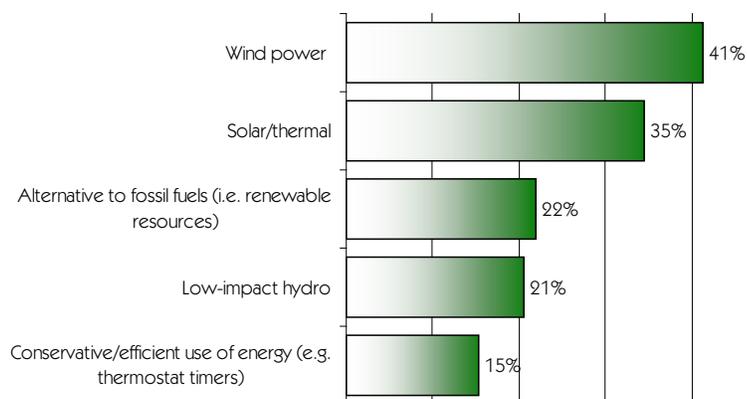
To benchmark procurement solutions against other initiatives, we also asked respondents about energy-related programs at their organizations. Whereas 20% indicated they purchase green electricity, 62% indicated that their organizations have energy conservation programs in place. Traditional cost drivers that encourage energy conservation are well entrenched. Nevertheless, this latent awareness of program alternatives around energy should be seen as an opportunity for marketers of green electricity.

Yes, We Have These Electricity-Related Programs at Our Organization



What Does “Green Electricity” Mean to You?

(Only Top 5 Responses Below)



Supporting Green Purchasing

Better information, selection, and price (value) are the most common opportunities to advance greener purchasing.

Thanks to the work of purchasers and policymakers across the continent, greener purchasing is growing. And although the change has been significant, there is still much more progress to be made. How can greener purchasing be further advanced?

We asked our respondents to rank the helpfulness of several approaches to stimulating more green purchasing. More competitive pricing for environmentally-preferable products was ranked the single most useful approach (mean of 3.5). Although this suggests a supply-side solution, it may also point out internal opportunities since higher prices for greener products are often presumed, but not necessarily factual. Also, when greener products are judged in terms of total cost of ownership, or total value, initial price is often much less of an obstacle.

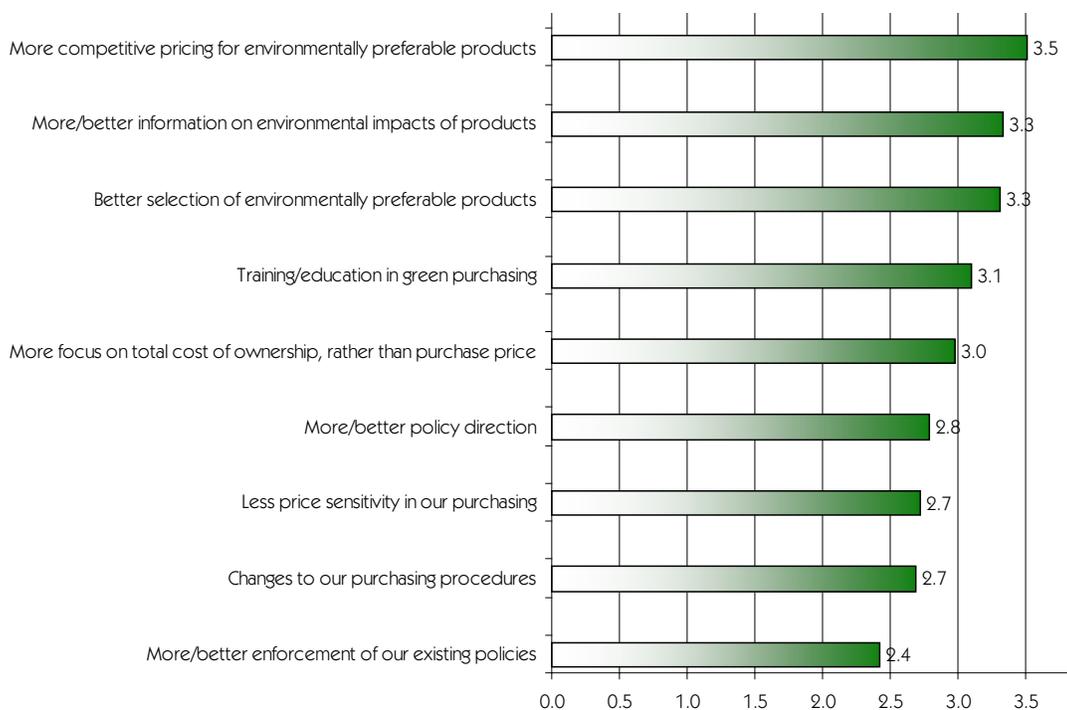
Other more frequent responses included more/better information pertaining to a product's environmental impacts (mean of 3.3), offering a better selection of environmentally-preferable products (mean of 3.3), and providing training and education in green procurement (mean of 3.1).

Stronger marketing campaigns, compelling value arguments, better pricing schemes, and effective training programs should go a long way in stimulating more green procurement.

Purchasing behaviors are also influenced by the availability and visibility of a product or service. Therefore, it is important for manufacturers of greener products to improve their distribution channels and strengthen connections with mainstream selling outlets.

What Would Help Your Organization Do More Green Purchasing?

Rating Scale of 1 (not helpful) - 4 (very helpful)



Outlook

A large majority of procurement professionals believe their organizations will be more active in green purchasing in the near future.

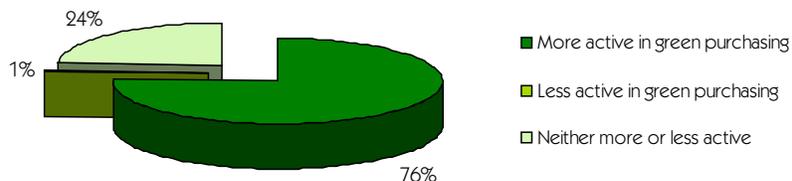
Public, corporate, and institutional attention to the environment and sustainability is high. There's little doubt that institutionalized green purchasing is more common than it has ever been. This is good news for policymakers and advocates; and obviously for marketers of green products.

Ecomarkets are large, but are they growing?

The answer is clearly "yes". Looking ahead two years, 76% of procurement professionals believe their organizations will be more active in green purchasing than they are today. 24% expect their organization to maintain their current green purchasing behavior.

To ensure this trend continues, more work needs to be done to reinforce the importance of green purchasing and to help organizations transform their environmental commitments into action. Advocates, policymakers, and marketers must all contribute with education, policies, tools, and even greener product choices.

In Two Years, My Organization Will Be...





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CITY OF KIRKLAND

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CONFIDENTIAL AND PRIVILEGED

**CITY ATTORNEY'S OFFICE
MEMORANDUM**

To: Gwen Chapman, Financial Operations Manager
Barry Scott, Purchasing Agent

From: Wm. R. Evans, Assistant City Attorney

Date: September 29, 2006

Subject: Local Purchasing Preference

ISSUE

May a municipality adopt a provision in its purchasing code that provides a preference to local businesses when considering or awarding contracts for public purchases?

DISCUSSION

The Washington case law I have reviewed does not provide a clear answer to this question. The issue is further complicated by the Commerce Clause to the U.S Constitution if the non-local vendor also happens to be out of state. However, the Washington State Auditor's Office has reached a conclusion in this regard under Washington law, which it addresses as follows:

State law does not recognize, and implicitly prohibits, granting of preferences to local vendors in purchases of goods, supplies and services by local governments. (If an entity can justify imposing a requirement of local availability of a product, the requirement should be made a part of the bid specifications rather than being a factor in choosing bidders.)"

Washington State Auditor's Office, *Competitive Bid laws*, 2005, pg. 12.

Based on the foregoing Auditor's position and the lack of any clear direction to the contrary, I would recommend the City not adopt any kind of local preference provision in its purchasing code.

**Chapter 3.85
PURCHASING**

3.85.010 PURPOSE

It is the purpose of this chapter to provide procedures governing the purchase of all goods, services and public works by the City in compliance with all state and federal laws applicable to such purchases

3.85.020 DEFINITIONS

- (a) Director means the Director of Finance and Administration or his/her designee.
- (b) Emergency means unforeseen circumstances beyond the control of the city that either presents a real, immediate threat to the proper performance of essential functions or will likely result in material loss or damage to property, bodily injury or loss of life if immediate action is not taken.
- (c) Electronic Data Processing Systems and Telecommunications Systems as defined in RCW 36.92.020 and RCW 19.28.400, respectively, or as otherwise defined for the purposes of RCW 39.04.270.
- (d) Goods means all materials, supplies, equipment or other tangibles not purchased for use in a public works project.
- (e) Lowest Responsible Bidder as defined in RCW 43.19.1911 and means, in addition to price, that the following elements shall be given consideration:
 - 1) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
 - 2) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 - 3) Whether the bidder can perform the contract within the time specified;
 - 4) The quality of performance of previous contracts or services;
 - 5) The previous and existing compliance by the bidder with laws relating to the contract or services;
 - 6) Such other information as may be secured having a bearing on the decision to award the contract.

(f) Public Works as defined in RCW 39.04.010 and means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the city or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020.

3.85.030 ADMINISTRATIVE RESPONSIBILITY

- (a) The Director is responsible for oversight and administration of City purchasing. The Director has the authority to appoint a Purchasing Agent to undertake administrative responsibility for the efficient and economical procurement of goods, services and public works as provided in this chapter.
- (b) The Director may delegate purchasing authority to other department directors for direct, nonrecurring, non-public works purchases under \$7,500, which shall be exercised as a Small Purchase.

3.85.040 PROCUREMENT STANDARDS

The following standards shall be applicable to City procurements:

- (a) A review of all proposed procurements shall be done by Purchasing Staff and/or the appropriate budget authority for the purpose of, including but not limited to, avoiding the purchase of unnecessary or duplicative items and for consolidating procurements when appropriate to obtain a more economical purchase.
- (b) The Purchasing Agent or designee shall be responsible for analyzing procurements to determine whether or not a lease arrangement may be more economically practical than the purchase alternative. All lease agreements must be approved by the Director.
- (c) Time and material type contracts shall be used only after a determination that no other type of contract is suitable and when the contract includes a ceiling price, which the contractor shall not exceed, except at its own risk.
- (d) When using a liquidated damages provision in a contract, the project manager shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary and capricious. The rate should be enough to reasonably compensate the City for damages suffered, but not so large as to be construed as a penalty.
- (e) When contracting for professional services, the contract shall limit the total of the base and option time periods to not more than five years, unless otherwise approved by the City Council. Prices for each base and option time period shall be firm and fixed wherever possible and shall be established in the initial contract negotiation and execution. If it is

not possible to establish firm, fixed prices, changes in the option period prices shall be tied to a well-known, published pricing index, such as the appropriate Consumer Price Index.

- (f) Advance funding payments made to a contractor prior to the incurring of costs by the contractor shall be prohibited. Progress or percentage of completion payments made to a contractor while work is being performed by the contractor may be allowed if deemed appropriate for the project.
- (g) Project managers and Purchasing staff shall work together to ensure contractors perform in accordance with the terms and conditions, and specifications of their contract or purchase order.
- (h) All contracts must contain a provision allowing the City to terminate the contract. Ideally, the provision will authorize such termination without cause but, in lieu of this ideal, a provision allowing termination for cause is acceptable if approved by the City Attorney's Office. A provision in a single contract authorizing termination without cause in certain circumstances and termination only for cause in others is also acceptable upon approval by the City Attorney's Office.

3.85.050 ETHICAL STANDARDS OF CONDUCT

- (a) All purchasing shall be conducted in compliance with the Code of Ethics set forth in Chapter 3.82 of the Kirkland Municipal Code and other applicable law.
- (b) Organizational conflicts of interest shall be avoided. An organizational conflict of interest exists when a supplier, consultant or contractor provides the specifications to be used in a planned procurement and is then allowed to compete in the procurement process.

3.85.060 PERSONAL RESPONSIBILITY FOR UNAUTHORIZED PURCHASES

City employees who exceed their designated purchasing authority and obligate the City to a financial commitment which results in a financial loss to the City may be held personally responsible. The City shall be entitled to recover the full amount of such a loss from the employee.

3.85.070 METHODS OF PROCUREMENT

Procurement shall be achieved by one of the following methods:

- (a) Small purchase
- (b) Invitation for Bids (IFB)

- (c) Request for Proposals (RFP) and Request for Qualifications (RFQ) for competitive negotiations
- (d) Small Works Roster option for public works projects less than \$200,000 authorized by RCW 39.04.155, including the limited public works option for projects under \$35,000
- (e) Cooperative purchasing
- (f) Electronic Data Processing and Telecommunications Systems as provided by RCW 39.04.270
- (g) Waiver of Competitive Bidding Requirements as provided by RCW 39.04.280
- (h) By the City Manager as allowed under KMC 3.16.040 and .050
- (i) As otherwise allowed by law and approved by the Director.

3.85.080 SMALL PURCHASE

- (a) Small purchase procedures shall be used for purchases of goods, services and multi craft or trade public works when it is expected the total price will not exceed \$50,000 (\$30,000 for single craft or trade public works), including sales tax and freight, except as otherwise allowed in 3.85.190 and 3.85.200. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (b) For goods and services, price quotations shall be obtained and documented from at least three (3) sources, where possible, if the total price is expected to be between \$7,500 and \$50,000 including sales tax and freight, except as otherwise allowed in this chapter. All awards to other than the lowest responsible bidder must be documented on the quote sheet with selection rationale clearly defined. For goods and non-public work services under \$7,500, formally documented price quotations shall be unnecessary but it is expected that competitive pricing shall be sought in the best interests of the City.
- (c) For public works projects that are street signalization or street lighting, under \$30,000 involving a single craft or trade, or under \$50,000 if involving multiple crafts or trades, three written quotations must generally be obtained. The Small Works/Limited Public Works process is recommended for obtaining quotes.
 - 1) If it is necessary or advisable that public works projects that are street signalization, street lighting, under \$30,000 for a single craft or trade or under \$50,000 for multiple crafts or trades, should be done without obtaining competitive quotes, the appropriate director or designee may waive in writing the requirement of obtaining quotes.

- 2) For any public work which is not competitively bid and where the cost is estimated to exceed \$25,000, notice providing the estimated cost and a description of the work will be published at least once in a legal newspaper of general circulation in the area where the work will be performed and at least 15 days before beginning work.
- (d) The Purchasing Agent shall be responsible for determining the adequacy of quotations for small purchases. So long as the authorization exists within the budget appropriation for the small purchase, the manager or director with the appropriate budget authority shall not be required to obtain further approval by the City Council prior to the commitment and expenditure of funds.
- (e) Price quotations for repetitively purchased items that are purchased within one year of the last procurement of that exact item(s) shall be unnecessary provided the prior competitively quoted purchase price has not changed.
- (f) In accordance with RCW 39.04.190, the Purchasing Agent will publish a notice twice per year in the City's designated official newspaper advising potential bidders of the existence of the vendor list used by the City. The vendor list is to be used for the purpose of identifying suppliers interested in being provided the opportunity to quote on small purchases for materials, equipment, supplies and routine services.

3.85.090 INVITATION FOR BIDS/REQUESTS FOR PROPOSALS

- (a) Unless another method of procurement is authorized in this Chapter or by other law, IFB/RFP/RFQ procedures shall be used for the purchase of goods and services when it is estimated the total price will exceed \$50,000, including any applicable sales tax and freight charges. The IFB process shall also be used for public works projects in excess of \$30,000 that involve only a single craft or trade and in excess of \$50,000 for those involving multiple crafts or trades.
- (b) A pre-submission conference may be held when conducting the IFB, RFP or RFQ process. The pre-submission conference is for the purpose of answering questions and clarifying the requirements and specifications relevant to the procurement. Notice for such pre-submission conference shall be advertised and stated in the public notice and the general requirements for the Invitation for Bids, Request for Proposals or Request for Qualifications.

3.85.100 INVITATION FOR BIDS

- (a) An IFB shall be used in all cases where adequate information exists to form a complete and realistic bid specification, where the procurement lends itself to a firm, fixed-price dollar amount, and where award can be made principally on the basis of selecting the Lowest Responsible Bidder. All awards to other than the low bidder must be authorized

by law, documented on the bid sheet or where appropriate and with the selection rationale clearly set forth.

- (b) The City Manager may request that the City Council authorize a call for bids for goods, services or public works estimated to have a total cost of more than \$50,000, which must be executed by the City Manager or his/her designee.
- (c) Bids shall be opened and read publicly at the time and place designated in the IFB notice.
- (d) The name and address of each bidder, the bid price and any other relevant information as may be specified in the IFB shall be read aloud and recorded in the minutes of the bid opening.
- (e) It shall also be announced that the bid review will be completed by City staff and the expected date given when the City Council shall meet to award the contract.
- (f) The IFB shall specify the City's right to postpone the award of the contract or to reject any or all bids.
- (g) The City Council will award all contracts for goods, routine services or public works determined to be more than \$50,000.
- (h) The purchase record, bid sheet, minutes of the bid opening and each bid, to the extent allowed by law, shall be open to public inspection following contract award.

3.85.110 REQUEST FOR PROPOSAL / REQUEST FOR QUALIFICATIONS

- (a) An RFP or RFQ shall be used when the procurement lacks definite specifications, when proposals are sought for the purpose of establishing a bid specification, when the goods or services being procured involve creative design or professional administration, and/or when subjective criteria is considered in the contract award, which is made in the best interests of the City.
- (b) When proposals are sought for the purpose of establishing a bid specification, it shall so state in both the public notice and in the RFP or RFQ.
- (c) The RFP or RFQ shall identify all significant evaluation factors and their relative weighted importance.
- (d) Verbal interviews with any proposer who has submitted a proposal may be conducted to determine the capabilities of the proposer and their understanding of the City's needs.

- (e) Contracts in excess of \$50,000 resulting from the RFP or RFQ process may be awarded by and executed by the City Manager or his/her designee. The City Manager/designee may elect to recommend award of the contract by the City Council..
- (f) Except where prohibited by Law, proposals shall be reviewed privately with strict confidentiality regarding all evaluative factors maintained throughout the review process. The evaluation committee will grade all factors, with their consensus recorded on the proposal tabulation worksheet.
- (g) The purchase record, proposal tabulation worksheet and each proposal, to the extent allowed by law, shall be open to public inspection following contract award.

3.85.120 PUBLIC NOTICE ADVERTISING

- (a) With all procurements using the IFB/RFP/RFQ process, the Purchasing Agent shall cause a public notice inviting bids or requesting proposals or qualifications to be posted on the City's web site and published in the appropriate publication(s) at least once, and at least fourteen (14) calendar days prior to the bid/proposal opening.
- (b) The notice shall state generally the item to be purchased and/or the service to be performed, the location of the plans and specifications, if any, the pre-bid conference date and location (if one is held), the bid/proposal opening date and time, and to whom the bid/proposal is to be submitted.

3.85.130 BID/PROPOSAL ACCEPTANCE AND EVALUATION

- (a) Bids received by the published due date and time shall be unconditionally accepted without alteration or correction. Award shall be made to the Lowest Responsible Bidder based on the requirements set forth in the IFB.
- (b) Proposals received by the published due date and time shall be unconditionally accepted without alteration or correction. Submissions shall be evaluated based on the requirements set forth in the RFP/RFQ, which may include but are not limited to criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose, and pre-award survey of the proposer's facilities. Those criteria that will affect the price and will be considered in evaluation for award as determined by the City shall be objectively measurable, including but not limited to discounts, sales tax, transportation costs, installation costs, and total project or life cycle costs.
- (c) In addition to the foregoing, the following elements may be considered in the evaluation of proposals:

- 1) The ability, capacity and skill of the proposer to perform the contract or provide the service required;
 - 2) The character, integrity, reputation, judgment, experience and efficiency of the proposer;
 - 3) The proposer's proposed method for assuring timely and acceptable performance of the work.
 - 4) The quality of performance by the proposer on previous contracts with the City or another public agency, including but not limited to, the relative costs, burdens, time and effort necessarily expended by the City or another public agency in securing satisfactory performance.
 - 5) The previous and existing compliance by the proposer with laws relating to the contract or services.
 - 6) The proposer's management system to be applied in performing the work and the reasonableness of the resources to be applied.
 - 7) Such other information as may be secured having a bearing on the decision to award the contract.
- (d) A committee may be selected to conduct the technical evaluation of the proposals received and shall make a recommendation for contract award to the City Council based upon each of the evaluation elements in accordance with the weighted importance of each element as determined by the project manager and purchasing agent prior to the solicitation. The relative positions and evaluation points are totaled for each evaluation element or category, and the proposer with the highest overall total of evaluation points shall be recommended for contract award.
- (e) After the initial tabulation of evaluated proposals, the most qualified competitor may be selected subject to negotiation of fair and reasonable compensation. (When evaluating RFQ's, price shall not be considered as an evaluation factor in determining the most qualified proposer.) Price negotiation shall be conducted with only the most qualified proposer. Failing agreement on price, negotiations with the next most qualified proposer may be conducted until a contract award can be made to the most qualified proposer whose price is fair and reasonable to the City.

3.85.140 BID/PROPOSAL CORRECTION

- (a) Except in the case of competitive negotiation, no changes in price or other provisions of bids or proposals shall be permitted after opening unless an error is obvious. An obvious error is one which can be clearly established from mathematical extension or tabulation shown in the bid documents submitted with the bid. An error in a mathematical extension, reported by a bidder but not shown in the bid documents, does not constitute an obvious error. Bidders are presumed to submit correct tabulations and specifications.
- (b) Minor informalities and irregularities in the bid/proposal may be waived by the City.

3.85.150 BID/PROPOSAL PROTEST – PROCEDURE

- (a) Types of protests include:
- 1) Protests based on specifications or other requirements of the bidding/proposal process that are made by any prospective bidder/proposer prior to opening the bids/proposals.
 - 2) Protests following the bid/proposal opening that are made by any bidder or proposer who has made a submittal and has a substantial financial interest in the solicitation or award of the contract.
- (b) In order to be considered, a protest shall be in writing, addressed to the Purchasing Agent, and include:
- 1) The name, address and phone number of the bidder or proposer protesting, or the authorized representative of the bidder or proposer;
 - 2) The Invitation for Bid or Request for Proposals/Qualifications Number and/or Title under which the protest is submitted;
 - 3) A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting bidder/proposer to supplement its protest with any subsequently discovered documents prior to the Purchasing Agent's decision;
 - 4) The specific ruling or relief requested; and
 - 5) Evidence that all persons with a financial interest in the procurement have been given notice of the protest or if such persons are unknown, a statement to that effect.
- (c) Protests based on specifications or other terms in the RFP, RFQ or IFB documents which are apparent on the face of said documents must be received by the City no later than ten calendar days prior to the date established for submittal of bids/proposals. Protests based on other circumstances must be received by the City within five calendar days after the protesting bidder/proposer knows or should have known of the facts and circumstances upon which the protest is based. In no event shall a protest be considered if all bids/proposals are rejected or after award of the contract.
- (d) Upon receipt of a timely written protest, the Purchasing Agent shall investigate the protest and shall respond in writing to the protest prior to the award of contract. The decision of the Purchasing Agent shall be final.
- (e) In the event the protest is from a bidder for a public works project which is the subject of competitive bids, the city shall not execute the contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute the contract for the project; provided that the

protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

- (f) Failure to comply with the protest procedures set forth herein may render a protest untimely or inadequate and may result in rejection thereof by the City.

3.85.170 SMALL WORKS ROSTER PROCESS

- (a) In accordance with the procedures set forth in RCW 39.04.155, contracts for public works projects with a total cost, including applicable taxes, between \$7,500 and \$200,000 may be awarded using the small works roster process.
- (b) The limited public works process as defined in RCW 39.05.155 (3) may also be used for projects estimated to cost less than \$35,000. Using this process, quotes are solicited from a minimum of three contractors found in the appropriate category of work in the Small Works Roster. The performance and payment bond requirements and retainage requirements may be waived by the City.
- (c) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if only five quotations are sought and the estimated cost of the work is from \$100,000 to \$200,000, the city must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. Such notice must be published in a legal newspaper of general circulation, mailed to these other contractors or sent by facsimile or other electronic means.
- (d) At least once a year, the city shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records.
- (e) The City is authorized to participate with other local governments in the use of a multijurisdictional small works roster. The lead entity for the multijurisdictional small works roster must be clearly identified in the interlocal agreement as being responsible for implementing the provisions of 39.04.155(2).
- (f) A formal public bid opening is not required when using the small works roster process. However, no interested party shall be unreasonably denied the opportunity to be present when bids are opened.

- (g) Contracts for small works roster bids between \$50,000 and \$200,000 will be awarded by the City Council at the next scheduled Council meeting following staff recommendation, unless continued by the City Council.
- (h) In accordance with RCW 39.04.200, the Purchasing Agent will, at least once every year, make available to the public a list of the contracts awarded using the small works roster process during the previous year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

3.85.180 COOPERATIVE PURCHASING

- (a) With the approval of the City Council, the Purchasing Agent may enter into interlocal cooperative purchasing agreements with other public agencies. The interlocal cooperative purchasing agreements must be in accordance with the provisions set forth in RCW Chapter 39.34 as currently written or hereafter amended.
- (b) When purchasing off of a contract awarded by another public agency where an interlocal cooperative purchasing agreement is in place, any statutory obligation to provide notice for bids or proposals that applies to the city is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own legal requirements and either posted the bid or solicitation notice on a web site established and maintained by the public agency for purposes of posting public notice of bid or proposal solicitations or provided an access link on the state's web portal to the notice.
- (c) Invitations for Bids for goods and services and Requests for Proposals issued by the City may include notice that the City participates in cooperative purchasing and that other public agencies may desire to place orders against the awarded contract. Bidders/proposers may be asked to indicate if they agree to allow orders from other public agencies that have an interlocal cooperative purchasing agreement with the City.
- (d) Contracts/purchase orders in excess of \$50,000 resulting from the cooperative purchasing process will be awarded by the Purchasing Agent.

3.85.190 PURCHASES FROM/THROUGH THE UNITED STATES GOVERNMENT

- (a) In accordance with RCW 39.32.090, this ordinance allows for the purchase of supplies, materials and/or equipment from or through the United States government without calling for competitive bids.

- (b) The Purchasing Agent is responsible for reviewing the proposed purchase to determine that the purchase is in the best interests of the City.
- (c) Under this section, purchases made in excess of \$50,000 must be approved by the City Manager or his/her designee.

3.85.200 ELECTRONIC DATA PROCESSING AND TELECOMMUNICATIONS SYSTEMS

- (a) The city may purchase electronic data processing or telecommunication equipment, software, or services through competitive negotiation rather than through competitive bidding.
- (b) Competitive negotiation, for the purposes of this section, shall include, as a minimum, the following requirements:
 - 1) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the municipality in its discretion, to permit reasonable competition consistent with the requirements of the procurement. Notice of the request for the proposal must be published in a newspaper of general circulation in the municipality at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.
 - 2) The municipality shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.
- (c) The award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered. The municipality may reject any and all proposals for good cause and request new proposals.

3.85.210 WAIVER OF COMPETITIVE BIDDING REQUIREMENTS

- (a) The Competitive Bidding Requirements set forth in this chapter may be waived by the City Manager or designee. However, if the cost exceeds \$50,000, the City Manager or designee must provide the City Council with documentation of the rationale for waiving the Competitive Bidding Requirements. Competitive Bidding Requirements may be waived for:
 - 1) Purchases that are clearly and legitimately limited to a single source of supply,
 - 2) Purchases involving special facilities or market conditions,
 - 3) Purchases of insurance or bonds, and

- 4) Purchases of goods, services or public works in the event of an emergency.
- (b) Immediately after the award of any contract under this section, to the extent allowed by law, the contract and the factual basis for the exception must be recorded and open to public inspection.
- (c) If an emergency exists, the City Manager or designee may declare an emergency situation exists, waive competitive bidding requirements and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the City Manager and entered of record by reporting to the City Council no later than two weeks following the award of the contract.
- (d) In accordance with RCW 39.04.020, upon the written determination by the City Manager of an emergency for the procurement of any public work in excess of \$25,000, a description and estimate of the cost of such work shall be published within seven (7) working days after commencement of the work.

3.85.220 CONTRACT AMENDMENTS/CHANGE ORDERS

- (a) Amendments are changes to Professional Service Agreements, contracts for goods and contracts for routine maintenance.
 - 1) If an amendment increases the total value of the contract, the contract amendment must be approved by the appropriate authority based on the new value of the contract. Any amendment that takes a contract value over \$50,000 requires the approval of the City Manager. The City Manager may choose to seek additional Council approval.
 - 2) Contracts awarded by the Council may also authorize negotiation of amendments without further Council approval being needed.
 - 3) Amendments that do not change the total value of the contract (e.g. extended duration) may be approved by the department director.
- (b) Change Orders are changes made to a public works contract.
 - 1) Public Works Under \$50,000
 - a.) Department directors or their designees are authorized to approve public works contract change orders where the total value of the contract plus the change order remains below \$50,000.

- 2) Public Works Over \$50,000
 - b.) Change orders, cumulatively or singly, that do not exceed the project's contingency funding may be approved by the department director or their designee.
 - c.) Change orders that cumulatively or singly increase the value of a contract to exceed the project's contingency funding by \$25,000 or less, require the approval of the City Manager. The City Manager may choose to seek additional approval from the Council.
 - d.) The Council must approve change orders that increase the value of the contract to more than \$25,000 beyond the project's contingency funding.

3.85.230 BONDING POLICY

- (a) For all public works contracts, the following minimum bonding requirements shall be met for each procurement.
 - 1) A bid deposit in the form of a bid bond or certified check in an amount equal to at least five percent of the total bid must be enclosed with the submitted sealed bid.
 - 2) A performance and payment bond for 100 percent of the total contract price shall be received from the successful contractor prior to contract award for all contracts in excess of \$35,000.
- (c) On public works contracts of \$25,000 or less, at the option of the contractor, the City may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and settlement of any liens fixed under RCW 60.28, whichever is later.
- (d) If the limited public works process allowed under KMC 3.85.170(c) is used, the city may waive the requirements for performance and payment bond and retainage.
- (e) The Purchasing Agent, in consultation with the project manager, City Attorney's Office and Risk Management Coordinator as needed, shall have authority to determine amounts of protective bid guarantees for all purchases in the best interests of the City.

3.85.240 ENVIRONMENTALLY PREFERABLE PURCHASING PRACTICES

- (a) When specifying products to be purchased, staff should give consideration to products that have a lesser or reduced effect on health and the environment when compared with other products that serve the same purpose.
- (b) The environmental attributes of a product are to be an additional consideration in the buying decision along with such traditional factors as price, performance, quality, and service.
- (c) It is the responsibility of purchasing staff to:
 - 1) Monitor information from the State of Washington and other public agencies on environmentally preferable purchasing initiatives.
 - 2) Attend periodic training sessions and workshops on the purchasing of environmentally preferable products to learn of new developments in this area.
 - 3) Solicit information from vendors representing environmentally preferable products to become better aware of available products.
 - 4) Communicate opportunities for the purchase of environmentally preferable products to City staff.

3.85.250 PURCHASE RECORD MAINTENANCE

- (a) The purchasing department shall maintain or be afforded access to all records sufficient to detail the significant history of a procurement. These records will include, but are not limited to the following:
 - 1) The rationale for the method of procurement.
 - 2) The selection of contract type and evaluation criteria.
 - 3) Contractor selection or rejection, and rationale.
 - 4) The basis for the contract price.
 - 5) The bid tabulation or proposal evaluation worksheet.
 - 6) All documented communication with potential contractors, prior to the bid opening date.
 - 7) Advertising affidavits of publication.

- 8) Bidder's lists, with names, addresses, and telephone numbers.
- 9) All bids or proposals received.

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