

CHAPTER 3.22: PURCHASE OF SUPPLIES, MATERIALS, EQUIPMENT AND SERVICES

Section

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3.22.010 Purpose of Chapter.

This chapter is enacted to set forth policy to establish efficient procedures for the purchase of supplies, materials, equipment and services at the lowest possible cost commensurate with quality needed, and to clearly define authority for the purchasing function of the City.

(Ord. 1582, § 1 (part), 1992)

3.22.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section.

1. "Bid" means any proposal submitted to the City in competitive bidding for City purchases and contracts for supplies, materials, equipment, and/or services.
2. "Lowest responsible bidder" means the lowest monetary bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform the contract.
3. "Purchases." Purchases of supplies and equipment shall include leases or rentals, as well as transactions by which the City acquires ownership.
4. "Purchasing Officer" means the City Manager or any other official or officials designated in writing by the City Manager for administration of this chapter.
5. "Services" means any and all services including, but not limited to, equipment service contracts.

The term does not include services rendered by City officers or employees, or professional or other services which are by nature unique or for which the procedure for procurement is specifically provided by law.

6. "Supplies," "materials" and "equipment" means any and all articles, things or tangible personal property furnished to or to be used by the City.

(Ord. 1897, § 1 (part), 2002; Ord. 1582, § 1 (part), 1992)

3.22.030 Purchasing Officer.

A. The Purchasing Officer of the City is vested with the authority for the purchase of supplies, materials, equipment and services. When the provisions and intent of this chapter may be best served by so doing, the Purchasing Officer may

authorize in writing any department to investigate, solicit bids or to negotiate the purchase or award of contracts for supplies, materials, equipment or services for that department, provided that such shall be done in conformity with the procedures prescribed by this chapter or by duly adopted administrative rules and regulations pertaining thereto.

B. The Purchasing Officer shall have the responsibility and authority to:

1. Purchase or contract for materials, supplies, equipment and services to be performed as may be required by any department of the City in accordance with procedures prescribed by this chapter or by such administrative rules and regulations as the Purchasing Officer may adopt pursuant thereto;

2. Prepare and adopt administrative rules and regulations not in conflict with the provisions of this chapter for the purpose of carrying out the requirements and intent of this purchasing system.

(Ord. 1582, § 1 (part), 1992)

3.22.040 Purchase Orders or Check Requests Needed-Use of Petty Cash Funds.

A. Purchases of supplies, materials, equipment or services shall be made only by means of purchase orders or check requests processed and issued pursuant to this chapter. The purchase orders or check requests shall be valid only when signed by the City Manager, the Purchasing Officer or other persons as may be designated by the Purchasing Officer to act in his behalf.

B. Nothing herein shall preclude the use of authorized petty cash funds for purposes intended by their establishment.

(Ord. 1582, § 1 (part), 1992)

3.22.050 Availability of Funds.

The Purchasing Officer shall not issue any purchase order or check request, or award any contract for the acquisition of supplies, materials, equipment or services, unless there exists an unencumbered appropriation in the funds as approved by City Council resolution adopting procedures for administration of the annual budget. The appropriate account and funds shall be encumbered immediately after the issuance of the purchase order or check request or award of contract.

(Ord. 1582, §I (part), 1992)

3.22.060 Purchasing Requirements.

A. Open Market Purchases. The Purchasing Officer may award contracts or issue purchase orders or check requests for the acquisition of supplies, materials, equipment or services in the open market without observing the competitive bidding procedure contained in this Chapter when the dollar value will foreseeably equal, or be less than, the amount for public works contracts described in section 22032(a) of the Public Contracts Code.

B. Purchases Approved by City Council-Application of Formal Competitive Bidding Procedures. In instances where the acquisition of supplies, materials, equipment or services will foreseeably result in the issuance of a purchase order, check request, or the award of a contract with a dollar value in excess of the required dollar value for public works contracts described in section 22032(b) of the Public Contracts Code, such will be authorized only by action of the City Council.

Such action shall be taken after the formal competitive bidding procedures described in this section are followed, unless pursuant to a written recommendation of the City Manager, the City Council finds that the use of the formal competitive bidding procedure is not practical due to limitations on source of supply, necessary restrictions in specifications, necessary standardization, quality considerations, or if other valid reasons for waiving the formal competitive bidding process procedures appear. Upon making such a finding, the Council may direct the Purchasing Officer to dispense with the formal competitive procedure and make the purchase on the open market or through any other procedure which meets the City's requirements.

C. Formal Competitive Bidding Procedures. The formal bidding procedures required for purchases described in Section 3.22.060B are as follows:

1. Notice Inviting Bids.

a. Notice inviting bids shall include:

- i. A distinct description of the supplies, materials, equipment or services to be purchased;
- ii. The location where bid blanks, specifications and requests for proposals may be secured;
- iii. The time and place for opening bids;
- iv. A statement that the City has the authority to reject any and all bids and may waive any minor technicality or variance found in a bid document.

b. The notice inviting bids shall be published at least fourteen calendar days before the date of opening of bids in a newspaper of general circulation printed or published in the City. Such notice may also be mailed to any vendor or provider which the Purchasing Officer has reason to believe may be in a position to provide the subject supplies, material, equipment or services to the City.

2. Opening of Bids. Bids shall be opened in public by the City Clerk at the time and place stated in the notice inviting bids. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than fifteen calendar days after the bid opening. Any bid which is received after the time specified in the notice shall be returned unopened.

3. Award of Contract. Contracts shall be awarded by the City Council to the lowest responsible bidder except as otherwise provided in this chapter.

4. Award to Next Lowest Bidder-Failure to Execute Contract. The City Council may, on refusal or failure of the successful bidder to execute the contract within ten days after the date the notice of award of contract is mailed, unless the City is responsible for the delay, award it to the next lowest responsible bidder.

5. Award of Contract to the Next Lowest Bidder-Lowest Bidder Irresponsible-Notice and Hearing.

A. The City Council, in its sole discretion, may reject the lowest monetary bid for purchases of supplies, materials, equipment or services upon a specific finding that the lowest monetary bidder is not responsible. To determine responsibility, the City Council may consider, among other things, the bidder's financial responsibility, level of experience and whether the bidder has failed to complete or deliver any supplies, materials, equipment or services in other projects.

B. If the City Council rejects the lowest bid upon its determination that the lowest bidder is not responsible, the City shall:

- i. Give notice of the City Council's decision to the lowest monetary bidder, setting forth the reasons why the bidder is not considered the lowest responsible bidder;
- ii. Give the bidder the opportunity to ask for a pre-award hearing before the City Council on the issue;
- iii. If the hearing is requested, agendaize the matter before the City Council, giving written notice of such hearing to all bidders;
- iv. After hearing, the City Council shall make a finding, supported by the evidence on the record as to the nonresponsibility of the lowest monetary bidder.

6. Rejection of Bids-Identical Bids-Absence of Bids. The City Council, in its sole discretion, may:

- a. Reject any bids presented and re-advertise for new bids;
- b. Reject any bid that fails to meet the requirements of the formal bidding procedure in any respect;
- c. If two or more bids are the same and the lowest, the City Council may accept the one it chooses;
- d. If no bids are received, the City Council may direct the Purchasing Officer to purchase the supplies, materials, equipment or services without further adherence to the formal bidding procedure;
- e. Waive any minor irregularities or variances in any bid received.

D. Informal Competitive Bidding Procedures. In instances where the purchase of supplies, materials, equipment or services will foreseeably result in the issuance of a purchase order, check request or the award of a contract with a dollar value of greater than the amount for public works contracts described in section 22032(a) of the public contract code but equals, or is less than the amount for public works contracts described in section 22032(b) of the public contracts code, the Purchasing Officer may award contracts or issue purchase orders or check requests for the purchase of supplies,

materials, equipment or services.

Such action shall be taken only after the informal competitive bidding procedure described in subsection E below is followed unless the City Manager finds in writing that the use of the informal competitive bidding procedure is not practical due to limitations on source of supply, necessary restrictions in specifications, necessary standardization, quality considerations, or if other valid reasons for waiving the informal competitive bidding process procedure appear. Upon making such a finding, the City Manager may direct the Purchasing Officer to dispense with the informal competitive bidding procedure and make the purchase on the open market or through any other procedure which meets the City's requirements.

E. Informal Competitive Bidding Procedure for Purchases Described in Subparagraph D. Above.

i. The procedures described in subsections 3.22.060 C I a and C2-C6 of this chapter are applicable except that the duties described thereunder which are performed by the City Council are performed under these informal procedures by the Purchasing Officer. Determinations of the Purchasing Officer are subject to appeal pursuant to Chapter 1.16 of the City's ordinance code.

ii. Publication of notice inviting informal bids is not required.

(Ord. 1897, § 1 (part), 2002; Ord. 1582, § 1 (part), 1992)

3.22.070 Exemptions.

Notwithstanding any provision of this chapter to the contrary, the Purchasing Officer, with the written concurrence of the City Manager, is authorized to issue a purchase order or check request, or award a contract, without adherence to the other provisions of this chapter under following instance:

A. Emergency Purchases. The immediate requirement of an item necessary for the continued operation of a department or for the preservation of life or property shall be deemed an emergency. A full report of the circumstances of emergency purchase in excess of the amount described in subsection 3.22.060B shall be filed with the City Council at its next regular meeting after the purchase was made.

B. Recurring or Essential Services. Purchase orders or check requests, including payment of claims against the City where reasonable advanced estimates of costs cannot be determined for essential services of a recurring nature. Included, but not limited to, this authorization are such items as utility services, approved claims for liability under the City's insurance program, renewal premium for authorized insurance policies, all expenditures for the City's payroll and employee benefits and other matters involving unknown estimates of costs.

C. Purchases From Other Public Agencies. Purchases of supplies, materials, equipment or services from any other public agency created under the laws of the State of California or the United States Government are exempt from the bidding requirements of this chapter.

D. Professional Services. Professional services including, but not limited to, services of lawyers, architects, engineers, land surveyors, artists and accountants are exempt from the bidding requirements of this chapter.

(Ord. 1897, § 1 (part), 2002; Ord. 1582, § 1 (part), 1992)

CHAPTER 3.23: PUBLIC WORKS CONTRACT AND BIDDING PROCEDURES

Section

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- 3.23.130 Exempt from bidding requirements.
- 3.23.140 Performance bond of successful bidder.
- 3.23.150 Deposit of proceeds.
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3.23.010 Purpose.

This chapter is enacted to enhance competition, to prevent corruption and undue influence in the awarding of public works contracts, and to clarify the City's competitive bidding requirements established pursuant to Part 3 of the California Public Contract Code, Sections 20100 et seq.

(Ord. 1583, § 1 (part), 1992)

3.23.020 Definitions.

As used in this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

1. "Bid" means any proposal submitted to the City in competitive bidding for the construction, alteration, repair or improvement of any structure, building, road or other improvement of any kind.
2. "Lowest responsible bidder" means the lowest monetary bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform the public works contract sought.
3. "Public works contract" means an agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind.
4. "Public works project" means:
 - a. The erection, improvement, painting or repair of public buildings and works;
 - b. Work to protect against overflow of streams, bays, waterfronts or embankments;
 - c. Street or sewer work except for maintenance or repair thereof;
 - d. Furnishing supplies or materials for any such project, including the maintenance or repair of streets or sewers.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992)

3.23.030 Competitive Bidding.

Except as otherwise provided for in this chapter, public works projects with an estimated dollar value in excess of the required dollar value for competitive bidding established by section 22032(a) of the California Public Contracts Code, as may be amended, shall be contracted for pursuant to the procedures prescribed in this chapter.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992; Ord. 16- 2143, § 1, 2016)

3.23.040 Notice Inviting Bids.

The notice inviting bids shall be in the form and published as follows:

A. Notices inviting bids shall include:

1. A distinct description of the public works project to be performed;
2. The location where bid blanks and specifications may be secured;
3. The time and place for opening bids;
4. The type and amount of bidder's security required;
5. The class of license required for the public works to be performed; and
6. A statement that the City has the authority to reject any and all bids and may waive any minor technicality or variance from the bid specifications.

B. The notice inviting bids shall be:

1. Published in a newspaper of general circulation printed and published in the City at least the number of days specified in Section 22037 of the California Public Contract Code, as may be amended, before the opening of bids; and
2. Provided to all construction and trade journals specified in Section 22036 of the California Public Contract Code, or as may be amended, at least the number of days and by the methods set forth in Section 22037 of the California Public Contracts Code, as may be amended.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992; Ord. 16-2143, § 2, 2016)

3.23.050 Presentation of Bids-Security Required-Subcontractor Designated in Bid.

A. All bids shall be presented under sealed cover (identified as bids on the envelope), submitted to the City Clerk and accompanied by one of the following forms of bidder's security:

1. Cash;
2. A cashier's check made payable to the City;
3. A certified check made payable to the City;
4. A bidder's bond executed by an admitted surety insurer, made payable to the City.

B. The security shall be in an amount equal to at least ten percent of the amount of the bid, or such other sum as may be authorized by the California Public Contract Code. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it.

C. Upon award of the contract to the lowest responsible bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall such security be held by the City beyond ninety days from the date the notice of award of contract is mailed.

D. All bidders on a public works project must designate in their bids the name, address, the portion of the work each subcontractor will perform, and other information as required by Section 4101(a)(1) of the California Public Contract Code, as may be amended, of each subcontractor:

1. Who will perform work exceeding one-half of one percent of the prime contractor's total bid, or
2. Who meet or exceed the thresholds for specific types of work as specified in Section 4101(a)(1) of the California Public Contracts Code, as may be amended.

E. The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in their bid.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992; Ord. 16-2143, § 3, 2016)

3.23.060 Opening Bids.

Bids shall be opened in public at the time and place stated in the notice inviting bids. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than fifteen calendar days after the bid opening. Any bid which is received after the time specified in the notice shall be returned unopened.

(Ord. 1583, § 1 (part), 1992)

3.23.070 Award of Contract.

Contracts shall be awarded by the City Council to the lowest responsible bidder except as otherwise provided in this chapter.

(Ord. 1583, § 1 (part), 1992)

3.23.080 Forfeiture of Security.

If the successful bidder fails to execute the contract within ten days after the date the notice of award of contract is mailed, unless the City is responsible for the delay, the amount of the bidder's security shall be forfeited to the City except as provided in Section 3.23.090.

(Ord. 1583, § 1 (part), 1992)

3.23.090 Award of Contract to next Lowest Bidder-Failure to Execute Contract.

The City Council may, on refusal or failure to the successful bidder to execute the contract within ten days after the date the notice of award of contract is mailed, unless the City is responsible for the delay, award it to the next lowest responsible bidder. If the City Council awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the bidder's surety if a bond is used.

(Ord. 1583, § 1 (part), 1992)

3.23.100 Award of Contract to Next Lowest Bidder-Lowest Bidder Irresponsible-Notice and Hearing.

A. The City Council, in its sole discretion, may reject the lowest bid upon specific findings that the lowest bidder is not responsible. To determine responsibility, the City Council may consider, among other things, the bidder's financial responsibility, type of license, type of equipment, number of years experience in construction work, other projects bidder worked on in the last five years, whether bidder has failed to complete any contract and bidder's ability to be bonded.

B. If the City Council rejects the lowest bid upon its determination that the lowest bidder is not responsible, the City shall do the following:

1. Give notice of the City Council's decision to the lowest bidder, setting forth the reasons why he/she is not considered the lowest "responsible" bidder;
2. In the notice, give bidder an opportunity to ask for a pre-award hearing before the City Council on the issue;
3. If hearing is requested, agenda the matter pursuant to California Government Code hearing requirements;
4. After the hearing, the City Council shall make a finding, supported by the evidence on the record, as to the nonresponsibility of the lowest bidder.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992)

3.23.110 Rejection of Bids-Identical Bids-Absence of Bids.

The City Council, in its sole discretion, may:

- A. Reject any bids presented and readvertise for new bids;
- B. Reject any bid that fails to meet the bidding requirements in any respect;
- C. If two or more bids are the same and the lowest, the City Council may accept the one it chooses;
- D. If no bids are received, the City Council may have the project done without further complying with this chapter;
- E. Waive minor irregularities in any bid received.

(Ord. 1583, § 1 (part), 1992)

3.23.120 Informal Bidding Procedure for Public Works Projects.

Except as otherwise required by this chapter or under state or federal law, the bidding procedures of this chapter may be dispensed with for public works projects with an estimated dollar value equal to or less than the required dollar value specified in Subdivision (b) of Section 22032 of the Public Contract Code, and the following informal bidding procedures substituted:

A. The City shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for compilation of the contractor list shall be determined by the California Uniform Construction Cost Accounting Commission ("Commission"). All contractors on the list for the category of work being bid and/or all construction trade journals specified by the Commission shall be mailed a notice inviting informal bids, unless the product or service is proprietary.

B. All mailing of notices to contractors and construction trade journals shall be completed not less than the number of days specified in Section 22304(c) of the California Public Contract Code, or as may be amended, before the date of opening the bids.

C. The City Council hereby delegates the authority to award contracts pursuant to informal bidding to the City Manager or other person designated in writing by the City Manager.

(Ord. 1632, 1993; Ord. 1583, § 1 (part), 1992; Ord. 16- 2143, § 4, 2016)

3.23.130 Exempt from Bidding Requirements.

The following are exempt from competitive bidding requirements:

A. Professional Services. Includes, but is not restricted to, services of lawyers, architects, engineers, land surveyors, artists, and accountants;

B. Maintenance. Includes the maintenance and repair of streets and sewers, but does not include the furnishing of materials for such maintenance;

C. Emergency Work. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, the City Council may pass a resolution by a four-fifths vote declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the City may expend any sum required in the emergency without complying with this chapter;

D. Small Contracts. Any contract for public works projects with an estimated dollar value equal to or less than the required dollar value for competitive bidding established by section 22032(a) of the California Public Contracts Code;

E. Meaningless Bids. Where the nature of the subject of the contract is such that competitive proposals would not produce an advantage and when the advertisement for competitive bidding would be undesirable, impracticable or impossible;

F. Performance of Project After Rejection of Bids. After rejection of bids presented, the City Council may pass a resolution by a four-fifths vote declaring that the project can be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution, the City is relieved from further

compliance with formal bidding requirements.

(Ord. 1897, § 2 (part), 2002; Ord. 1583, § 1 (part), 1992)

3.23.140 Performance Bond of Successful Bidder.

The City Manager has authority to require a performance bond before entering a contract, in such amount as the City Manager finds reasonably necessary to protect the best interests of the City or as may be required by law. If the City requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

(Ord. 1583, § 1 (part), 1992)

3.23.150 Deposit of Proceeds.

The cash or proceeds collected pursuant to this chapter shall be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost and publication of notice are paid.

(Ord. 1583, § 1 (part), 1992)

3.23.160 Additional Work by City Authority.

Notwithstanding the provisions of this chapter, if the Director of Public Works determines that additional or extra work on any public works project is required to complete the project as originally intended, the Director of Public Works is authorized to approve contract change orders for additional or extra work on any public works contract without complying with the bidding requirements established in this chapter, provided that each individual contract change order does not exceed the required dollar value for bidding established by Section 22032 of the California Public Contract Code; and, further, that the aggregate total of all such contract change orders for any one public works project does not exceed the value of the project contingency established for the project at the time the contract is awarded. Under this same authority, the Director of Public Works is authorized to approve extensions of time to public works contracts up to a maximum of sixty calendar days.

(Ord. 1900, § 1, 2002)

3.23.170 Deletions of Work by City Authority.

The City reserves the right to delete up to twenty-five percent of the work on a public works contract where such deletions would advance the project as originally contemplated.

(Ord. 1583, § 1 (part), 1992)

CITY OF CUPERTINO PURCHASING POLICY Effective September 1, 2013

| Type | Form | Category | Process | Authorization |
|---|---|------------------------|--|--|
| <p>General Supplies (Operating or maintenance supplies and materials, general meeting expenses, licenses, subscriptions, memberships, mileage reimbursements, tools, furniture, equipment.)</p> <p>General Services (Operating or maintenance services, recurring services, essential or emergency services or purchases from public agencies.)</p> | <p>Petty Cash Voucher (up to \$75); or Check Request; or Partial Receipt of Purchase Order with or without contract</p> | | | |
| | | Up to \$45,000 | No specific requirements. Muni Code Sec 3.22.060A | Form authorized by designated supervisor. Note: Services of temporary personnel authorized by HR Mgr. |
| | | \$45,001 to \$175,000 | Informal competitive bidding process or RFP. Code Sec 3.22.060D | Form authorized by department head. Note: Services of temporary personnel authorized by HR Mgr. |
| | | Greater than \$175,000 | Formal competitive bidding or RFP with approval from the City Manager. Code Sec 3.22.060B. | Form authorized by department head. Contract approved by City Manager/City Council. |
| Utility Payments | Invoices | | Summarized and paid by Finance; copies sent to PW Supervisor. | Payment authorized by PW Supervisor (may be after payment process). |

CITY OF CUPERTINO PURCHASING POLICY Effective September 1, 2013

| Type | Form | Category | Process | Authorization |
|---|--|------------------------|--|--|
| Construction Contracts | Contract; Construction documents and specifications approved by Dir. of Public Works or his designee | Up to \$45,000 | No bidding required. Code Sec 3.23.130D | Contract authorized by designated supervisor |
| | | \$45,001 to \$175,000 | Informal competitive bidding process. Code Sec 3.23.120 | Contract authorized by department head. |
| | | Greater than \$175,000 | Formal competitive bidding approved by Department Head. Formal construction documents approved by Dir. of Public Works. Code Sec 3.23.030 through 3.23.120 | Contract approved by City Manager/City Council. |
| Professional Services (including but not limited to lawyers, architects, engineers, land surveyors, artists and accountants) OR from another Public Agency created under California or US Gov't laws | Petty Cash Voucher (up to \$75); or Check Request; or Partial Receipt of Purchase Order with or without contract | Up to \$45,000 | No bidding required. Code Sec 3.22.070D and 3.23.130A | Form authorized by designated supervisor. |
| | | \$45,001 to \$175,000 | No bidding required. Code Sec 3.22.070D and 3.23.130A | Form authorized by department head. |
| | | Greater than \$175,000 | No bidding required. Code Sec 3.22.070D and 3.23.130A | Form authorized by department head. Contract approved by City Manager/City Council. |
| Expense Reimbursements and Advance Payment | Petty Cash Voucher (up to \$75); or Check Request; or Reimbursement of Expenses | Any amount | See Administrative Procedure I-12 and Unrepresented Employees' Compensation Program Policy No. 3 | Form authorized by designated supervisor. |
| Educational Reimbursements | Request for Educational Reimbursement of Expenses | Up to \$1,200 per year | See Administrative Procedure II-2; Memorandum of Understandings with CEA and OE3 | Authorized by Human Resources and department head. |