

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 2 OF
THE MOUNTAIN VIEW CITY CODE RELATING TO PURCHASING
AND PROCUREMENTS AND ADDING PROVISIONS RELATED TO
PROCUREMENTS DURING A DECLARED EMERGENCY OR DISASTER

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Article VI of Chapter 2 of the Mountain View City Code is hereby
repealed.

Section 2. Article XIII of Chapter 2 of the Mountain View City Code is hereby
amended to read as follows:

**“ARTICLE XIII.
CENTRALIZED PURCHASING SYSTEM.**

SEC. 2.200. Public works projects – Alternate bidding procedures.

When the estimated construction cost of a public works project has a construction value of less than one hundred thousand dollars (\$100,000.00), indexed to 2011 dollars, but not in excess of the limit set forth in California Public Contract Code at Section 22034, the project may be bid and awarded through the following alternate bidding procedures as authorized by City Charter Section 1107.

a. **Prospective bidders' list.** The city shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the public works director or his/her designee.

b. **Notice inviting informal bids.** A notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and shall be mailed to all contractors on the list of qualified contractors for the category of the work to be competitively bid. Although not required, a notice inviting bids may be posted in trade journals, on-line construction exchange services, on the city website, and advertised. All notices inviting bids shall be mailed not less than ten (10) calendar days before bids are due. The notice shall include when the bids are due and the time and place for submission of the bids.

c. **Bid openings.** All bids shall be opened in the presence of the city clerk.

d. **Award of contract.** The public works director or his/her designee may award the contract to the lowest responsible bidder. The public works director or his/her designee may reject any and all bids presented and may readvertise the project. Upon acceptance of the job, the awarded bidder must provide and maintain an insurance certificate, bonds, an active contractor's license and obtain a city business license to the satisfaction of the public works director or his/her designee. In the event the awarded bidder fails to provide the required documentation in a timely manner and to the satisfaction of the public works director or his/her designee, the next lowest responsible bidder may be awarded the contract.

SEC. 2.201. Establishment of a centralized purchasing system.

A centralized purchasing system is hereby established in order to promote efficient procedures governing the procurement of all supplies, materials, equipment and certain services required by any department, office or agency of the city government; and the disposal of all property, real or personal.

SEC. 2.202. Terms defined.

The terms "purchases" or "purchasing," as hereinafter used, shall include the terms "contracts for" or "contracting for" or "procurement of" or "procure."

SEC. 2.203. Establishment of purchasing division; Purchasing agent to head responsibilities.

There is hereby created a purchasing section, the head of which shall be the purchasing agent, who shall be appointed by the city manager or his/her designee. The purchasing agent's responsibilities shall include, but not be limited to, the following:

1. To reduce to the maximum extent possible the number of purchase transactions by combining into bulk orders and contracts the requirements of agencies for common-use items or items repetitively purchased;

2. To develop and use contracts and purchase orders which will reduce to the minimum the accompanying paperwork and which in other respects will be most advantageous to the city.

SEC. 2.204. Powers and duties of purchasing agent.

The purchasing agent shall have power and be required to:

a. Procure all supplies, materials, equipment and certain services required by any department, office or agency of the city government; and dispose of all property, real or personal, in accordance with rules and regulations as prescribed by this article and such purchasing procedures as the purchasing agent shall adopt for the internal management and operation of the purchasing section. Such purchasing procedures adopted by the purchasing agent shall not be effective until approved by the city manager;

b. Within a specified delivery period, procure for the city supplies, materials, equipment and certain services at the least expense to the city for the quality needed, taking full advantage of trade and cash discounts and all tax exemptions to which the city may be entitled;

c. Specify proper standard nomenclature for supplies, materials and equipment required by any department, office or agency of the city government;

d. Prepare and maintain standard suggested specifications for materials, supplies and equipment whenever practicable;

e. Maintain a record of all sources of supply of goods or services;

f. Declare vendors who default on their quotations irresponsible bidders and disqualify them from receiving any business from the city for a stated period of time after notification to the city manager;

g. Prescribe by regulation the procedure under which emergency purchases falling within this article may be made by department heads;

h. Require when necessary sufficient tests of samples submitted with bids and samples of deliveries when necessary to determine their quality and conformance with the specifications;

i. At the discretion of the purchasing agent, delegate authority to staff outside of purchasing for the procurement of goods or services up to ten thousand (\$10,000) dollars;

j. Improve the efficiency and effectiveness of the procurement process whenever possible by all available means, including the use of available technology.

SEC. 2.205. Departments to file estimates of needed supplies, materials, etc.

All departments shall file detailed estimates of their requirements in supplies, materials, equipment and certain services in such manner, at such time and for such future periods as the purchasing agent shall prescribe.

SEC. 2.206. Encumbrance of funds.

Except in cases of emergency, when necessary for the protection of public peace, health, safety, welfare or property or interest of the city or general public, the purchasing agent shall not issue any purchase order for supplies, materials, equipment or certain services unless there exists an unencumbered appropriation in the account group against which such purchase is to be charged.

SEC. 2.207. Bidding – Formal process.

When the estimated cost of individual purchases of supplies, materials, equipment and certain services, and the estimated return from all individual sales of property, real or personal, exceed the contracts for public works bid limit (Charter Section 1107), the following formal bidding procedures shall be followed:

a. **Notice inviting sealed bids.** Notices inviting sealed bids shall be prepared and shall include a general description (“specifications”) of the supplies, materials, equipment or services to be purchased or sold, shall state where bid forms and specifications may be secured and the time and place for opening bids.

b. **Publication of notice.** The notice inviting sealed bids shall be published at least seven (7) days before the date of opening of bids. Notice shall be published at least once in an official newspaper of general circulation in the city or, as an alternative method of publication, it shall be posted in at least three (3) public places in the city that have been designated by ordinances as the places for posting public notices. At the discretion of the purchasing agent, bid invitations may be transmitted electronically to appropriate vendors.

c. **Bidders’ list.** The purchasing agent shall solicit bids from all responsible prospective suppliers who have requested their names to be added to a bidders’ list, which the purchasing agent shall maintain, by sending them such notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders’ list shall be limited to commodities that are similar in character to the commodities ordinarily available from proposed vendor to which the invitations are sent.

d. **Bidder's security.** When it is deemed necessary by the purchasing agent, bidder's security may be prescribed in the public notices inviting bids. When required, security shall be in the following form: either a certified or cashier's check or a bidder's bond executed by a corporate surety authorized to engage in such business in the state, made payable to the city. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein or, if no amount is specified by the notice inviting bids, then in an amount not less than ten (10) percent of the aggregate amount of the bid. Bidders shall be entitled to return of their bid security. A successful bidder shall forfeit any surety required by the purchasing agent upon failure on his/her part to enter into a contract within fifteen (15) days after the award of the contract has been mailed.

e. **Bid opening procedure.** Sealed bids shall be submitted to the purchasing agent and shall be identified in accordance with instructions to bidders. Bids shall be opened in public at the time and place stated in the public notices. When no member of the public is in attendance at bid opening, at least one (1) city employee, in addition to the city employee opening the bids, will be present. A tabulation of all bids received shall be open for public inspection.

f. **Rejection of bids.** At his/her discretion, the city manager or his/her designee may reject any and all bids presented and readvertise for bids; or he/she may waive any informalities or minor irregularities in a bid.

g. **Award of contract.** Contracts shall be awarded by the city manager or his/her designee to the lowest responsive and responsible bidder on purchases and the highest responsible bidder on sales, except as otherwise provided herein. Should the successful bidder refuse or fail to enter into an agreement with the city, the city manager or his/her designee may execute the contract with the next lowest responsive and responsible bidder.

h. **Tie bids.**

1. If two (2) or more bids are received for the same total amount, unit price, quality and service being equal, the contract shall be awarded to the lowest local bidder in the case of purchases and highest local bidder in the case of sales;

2. Where no local bidder is involved, the purchasing agent shall award the contract to one (1) of the bidders by drawing lots in public.

i. **Performance bonds.** The purchasing agent shall have the authority to require a performance bond before entering into a contract in such amount as he/she shall find reasonably necessary to protect the best interests of the city. Such surety may

be in the form of a certified or cashier's check, corporate surety bond or savings and loan certificate.

SEC. 2.208. Bidding – Informal process.

When the estimated cost of all individual purchases of supplies, materials, equipment and certain services and the estimated return from all individual sales of property, real or personal, shall be less than the contracts for public works bid limit (Charter Section 1107) but more than ten thousand (\$10,000) dollars, such purchase or sale may be made in the open market, without public notification and without observing the procedure prescribed by Sec. 2.207 except that the following shall apply:

a. Notice inviting bids. The purchasing agent shall solicit, whenever practicable, at least three (3) competitive bids by written requests to prospective bidders or by telephone or by public notice posted on a public bulletin board in city hall or published electronically as appropriate.

b. Bid record. All bids shall be submitted to the purchasing agent, who shall maintain records of all bids received for purchase orders issued.

c. Award. All open market purchases shall be awarded to the lowest responsive and responsible bidder, and all open market sales shall be made to the highest responsive and responsible bidder. However, price, quality and time of delivery being equal, preference will be given to the lowest responsive and responsible local bidder.

SEC. 2.209. Transfer or sale of surplus, obsolete, etc., stock.

All departments shall submit to the purchasing agent, inventories of supplies, equipment or other property designating those items which are worn out, surplus or obsolete.

a. Transfer. The purchasing agent, with the approval of the city manager, shall have the authority to transfer surplus items to other departments.

b. Sale. The purchasing agent, with the approval of the city manager, shall have the authority to sell all worn-out, surplus or obsolete supplies, equipment or other property or to exchange the same for or trade in the same on new supplies, equipment or other property. Sales under this section shall be made in conformance with Sec. 2.207 or 2.208, whichever is applicable.

SEC. 2.210. Cooperative purchasing.

The purchasing agent shall have the authority to join with other units of government in cooperative purchasing plans when the best interest of the city would be served thereby.

SEC. 2.211. Nonapplicability.

The provisions of this article shall not be applicable to contracts for public works as outlined in City Charter Section 1107, nor shall they apply to the following:

a. Contracts involving the obtaining of professional or specialized services, including, but not limited to, services rendered by attorneys, architects, engineers, accountants and specialized consultants;

b. Where calling for bids on a competitive basis is, in the opinion of the purchasing agent, undesirable, impossible, unavailing or incongruous;

c. Where the purchasing agent determines that the requirements can be met solely by a single patented article or process;

d. Emergency situations;

e. Where, in the sale or exchange of real property by the city, a public purpose is accomplished or the public interest is served by such sale or exchange, and the city council so finds.

SEC. 2.212. Procurement during a proclaimed emergency or disaster.

This section establishes the city's procurement practices to be followed in the event of an emergency or disaster, such that the city is able to effectively obtain the goods or services required in such circumstances.

SEC. 2.213. Definitions.

For purposes of Sections 2.212 through 2.215, the following definitions apply:

a. "Proclaimed emergency or disaster" means the President or Governor has declared or proclaimed a state of emergency for an area that includes the geographic territory of the city or a local emergency has been proclaimed and is currently in effect, as provided in the Mountain View City Code.

b. “Public exigency or emergency” means a situation, related to a proclaimed emergency or disaster, which demands immediate aid or action and/or presents an immediate threat to public health, life, safety or improved property, as further defined in administrative regulations or policies.

c. “Purchase(s)” means the purchase(s), rental(s) or lease(s) of goods or services related to a proclaimed emergency or disaster.

d. “Simplified acquisition threshold” means the dollar amount below which a nonfederal entity may purchase property or services using small purchase methods, as set forth in Title 2 of the Code of Federal Regulations, Part 200, as it may be amended from time to time.

SEC. 2.214. Procurement procedures during a proclaimed emergency or disaster.

a. The regulations in Title 2 of the Code of Federal Regulations, Part 200, as it may be amended from time to time, are incorporated herein by reference.

b. Procedures for competitive procurements.

1. Competitive procurements for purchases below the simplified acquisition threshold shall not be required to be formally bid.

2. Competitive procurements for purchases equal to or exceeding the simplified acquisition threshold shall be conducted in accordance with the following alternate purchasing procedures:

a. **Public announcement.** For public posting of requests for proposals or solicitation of bids, the purchasing agent may use alternate posting requirements in lieu of normal requirements. Alternate locations may include the emergency operations center, city hall, the public library or other locations as specified by the purchasing agent. The purchasing agent may shorten the normal period for the public announcement period to expedite award, but such period shall be no less than twenty-four (24) hours.

b. **Adequate sources.** The purchasing agent shall obtain competitive sealed bids or proposals from potential suppliers. The purchasing agent may use methods, including, but not limited to, print, telephonic, e-mail, or online/Internet outreach in order to obtain these responses. The purchasing agent may shorten the typical period for responses to be submitted to expedite award, but such period shall be not less than twenty-four (24) hours. A minimum of three (3) responses from qualified sources shall be obtained. All bids or proposals received, including those deemed

nonresponsive by the purchasing agent, shall be counted toward meeting the minimum requirement.

c. **Procedures for noncompetitive procurements.**

1. Noncompetitive procurements may be used when one or more of the following circumstances exist:

(a) Public exigency or emergency will not permit a delay resulting from competitive procurement;

(b) The item is available only from a single source;

(c) After solicitation of a number of sources, competition is determined inadequate; or

(d) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the nonfederal entity.

2. The authorized purchaser shall document the justification for noncompetitive procurement in accordance with established procedures.

3. When a noncompetitive procurement is used due to public exigency or emergency, the procurement shall be limited to that portion of the work that must be performed immediately. Procurement for any additional work shall be conducted through competitive procurement procedures.

SEC. 2.215. Postaward.

a. **Bid protests.** The purchasing agent may alter and/or shorten the normal bid protest process if emergency circumstances will not permit a delay resulting from the normal bid protest process, but such period shall be no less than twenty-four (24) hours.

b. **Authority to cancel procurements.** The city manager or his or her designee has the authority to rescind a purchase contract for nonperformance within twenty-four (24) hours when a contractor or vendor, once awarded a contract, is unable to immediately perform under the terms of the contract."

Section 3. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 5. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 6. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

KC/2/ORD
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