

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING MOUNTAIN VIEW CITY CODE ARTICLE XIII, CENTRALIZED PURCHASING SYSTEM, TO
ALIGN THE MOUNTAIN VIEW CITY CODE WITH PUBLIC CONTRACT CODE SECTION 22034 AND
MAKE OTHER CLARIFYING AMENDMENTS

WHEREAS, City Charter Section 1112 requires a centralized purchasing system be established for all city departments, offices, and agencies and for the council to adopt by ordinance rules and regulations governing the contracting for, purchasing, inspection, storing, distribution or disposal of all property, supplies, materials, and equipment required by any department, office or agency of the city government; and

WHEREAS, City Charter Section 1107 establishes requirements for bidding public work projects, including allowing the Council, by ordinance, to establish an alternate bidding procedure for public works contracts where the amount does not exceed the limit for the alternate bidding procedures for general law cities as set forth in the California Public Contract Code at Section 22034 as amended from time to time; and

WHEREAS, the council adopted City Code Article VI, Centralized Purchasing System, on March 30, 1964 (Ordinance No. 28.64) and amended it from time to time until 2006; and

WHEREAS, the council repealed City Code Article VI, Centralized Purchasing System, and adopted Article XIII, Centralized Purchasing System, on May 24, 2016 (Ordinance No. 7.16), which included Section 2.200. Public works projects – Alternate bidding procedures; and

WHEREAS, amending certain sections of City Code Article XIII, Centralized Purchasing System, for clarity and consistency with the City Charter and California Public Contract Code as well as other administrative revisions will improve operational efficiencies; now, therefore,

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

SECTION 1. Chapter 2, Article XIII, Section 2.200, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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), 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.~~ either:
 - (1) Via an electronic procurement system; or
 - (2) In the presence of any City officer who takes no part in inviting bids, the contract award process, or overseeing the performance of the contract being bid.
- 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.

SECTION 2. Chapter 2, Article XIII, Section 2.203, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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.

SECTION 3. Chapter 2, Article XIII, Section 2.204, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~striketrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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. "Certain services" shall include, but not be limited to, professional and specialized services provided with the acquisition of supplies, materials, and equipment in order to place them into service. 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~~twenty thousand dollars (\$~~10~~20,000);
- j. Improve the efficiency and effectiveness of the procurement process whenever possible by all available means, including the use of available technology.

SECTION 4. Chapter 2, Article XIII, Section 2.207 of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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, ~~exceeds~~exceeds the ~~contracts for public works bid limit (Charter set forth in California Public Contract Code at Section 1107), 22032(b), or any successor provision authorizing public agencies to let contracts by informal procurement procedures,~~ 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~~the bidder's part to enter into a contract within fifteen (15) days after the award of the contract has been ~~mailed~~transmitted by any method authorized by law.

- 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~~the city manager's 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~~the purchasing agent 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.

SECTION 5. Chapter 2, Article XIII, Section 2.208, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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 set forth in California Public Contract Code at Section 1107)~~22032(b), or any successor provision authorizing public agencies to let contracts by informal procurement procedures, but more than twenty thousand (\$10,000) dollars, (\$20,000), such purchase or sale may be made in the open market, without public notification and without observing the procedure prescribed by Section 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.

SECTION 6. Chapter 2, Article XIII, Section 2.215, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

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 7. CEQA. Pursuant to California Code of Regulations section 15060(c)(2), these code amendments are not subject to the California Environmental Quality Act (“CEQA”) because they will not result in a direct or a reasonably foreseeable indirect physical change in the environment.

SECTION 8. Severability. 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 9. Publication. Pursuant to Mountain View City Charter section 522, at least two (2) days prior to final adoption of this ordinance, the City Clerk shall post the ordinance in three (3) prominent places in the City and publish in the City's official newspaper notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the ordinance are posted.

SECTION 10. Effective Date. Pursuant to Mountain View City Charter section 519, this ordinance shall become effective thirty (30) days after the date of its adoption.
