

## ATTACHMENT 1

Title 3 Revenue and Finance, Chapter 3.12 Purchasing System

# Chapter 3.12 PURCHASING SYSTEM\*

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\* For statutory provisions on purchases of supplies and equipment by cities, see Government Code § [54201](#) et seq.; for provisions on city contracts, see Government Code § [37901](#) et seq.

Prior legislation: Code 1975 §§ 121.0 and 124.0, Ord. 104 C.S.

## Article I. General Regulations

### **3.12.010 Adopted Purpose.**

The purchasing system set forth in this chapter is adopted in order to establish efficient procedures for the purchase of supplies, materials, equipment and public works projects at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases; to clearly define authority for the purchasing function, and to assure the quality of purchases. No obligation for the payment of supplies, materials, equipment or public works projects shall be incurred by the City except as prescribed by this chapter. (Ord. 2003-02 § 1, 2003).

### **3.12.020 Purchasing Procedures by City Administrator.**

The City Administrator or her/his designee is the City's purchasing agent. She/he shall establish the procedure and forms to carry out such duty in accordance with the procedures set forth herein. (Ord. 2003-02 § 1, 2003).

### **3.12.030 Applicability of Chapter.**

All purchases of and contracts for supplies, services, with the exception of professional services, materials, or equipment by the City, or by an officer or employee thereof, shall be made only in accordance with and pursuant to the provisions of this chapter. (Ord. 2003-02 § 1, 2003).

### **3.12.040 Encumbrance of Funds.**

A purchase order for supplies, materials, services, equipment, or public works projects shall not be issued unless there exists an unencumbered appropriation in the fund against which the purchase is to be charged. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.050 Declaration of Policy.**

A purchasing system for all City departments is adopted in order to:

- A. Establish a level at which public notice is required for formal bid process;
- B. Secure supplies, services, with the exception of professional services, materials, equipment, or public works projects at the lowest, responsible possible cost commensurate with quality needed;
- C. Exercise positive financial control over purchases;
- D. Patronize local Carmel-by-the-Sea merchants and businesses whenever possible;
- E. Define authority for the purchasing function;
- F. Assure the quality of purchases;
- G. Encourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- H. Supervise the inspection of all supplies and equipment purchased to insure conformance with specifications;
- I. Recommend the transfer of surplus or unused supplies and equipment among departments as needed; and
- J. Prepare, in consultation with departments, specifications for supplies, services, materials and equipment for the City. (Ord. 2003-02 § 1, 2003).

### **3.12.060 Estimates of Requirements and Procurement of Nonaccountable Property.**

All departments shall file with the purchasing agent detailed estimates of their requirements for supplies, materials, and equipment in such manner, at such times, and for such future periods as the purchasing agent shall prescribe. (Ord. 2003-02 § 1, 2003).

### **3.12.070 Purchase Orders.**

All departments shall purchase supplies, materials, and equipment only in such manner, at such times, and by the use of such written requisitions (purchase order forms) as prescribed. A purchase order approved by an authorized person becomes a legally binding contract. It can stand alone and can include attachments for clarification. Purchase orders shall be required for all expenditures. No invoice or other demand for payment shall be honored without such purchase order. (Ord. 2003-02 § 1, 2003).

### **3.12.080 Filing with Department of Administrative Services.**

Two copies of each purchase order issued will be filed with the Department of Administrative Services. Such copies shall list each item ordered. (Ord. 2003-02 § 1, 2003; Ord. 2002-01 § 1, 2002; Ord. 94-8 § 1, 1994; Ord. 137 C.S. § 2, 1966; Code 1975 § 120.0.2. Formerly 3.12.030).

### **3.12.090 Certification of Receipt.**

The Department of Administrative Services shall not process any invoice or other demand for payment for supplies, materials, or equipment until the department receiving such has authorized payment through invoice and signed purchase order. Department heads shall file such certification no later than the next regular payment cycle following the receipt of such supplies, materials, equipment or public works projects. (Ord. 2003-02 § 1, 2003; Ord. 2002-01 § 1, 2002; Ord. 94-8 § 1, 1994; Ord. 137 C.S. § 2, 1966; Code 1975 § 120.0.6. Formerly 3.12.070).

### **3.12.100 Entering Contracts.**

Contracts, other than purchase orders, shall be entered into only by authorization of the City Council, except standard or ongoing contracts for the servicing or maintenance of equipment or facilities, which service contracts may be signed by the head of the department having nominal custody of such equipment or facilities, or any other contract under \$25,000 signed/approved by the City Administrator.

Council may authorize a one-time renewal of a contract of \$25,000 or more for a period of up to three years. Thereafter, the contract shall go to bid. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003; Ord. 2002-01 § 1, 2002; Ord. 94-8 § 1, 1994; Ord. 137 C.S. § 2, 1966; Code 1975 § 120.1. Formerly 3.12.080).

### **3.12.110 Contracts.**

Contracts with a value of \$25,000 or more shall be entered into only by authorization of the City Council, with the following exceptions:

A. Payment of utilities and like services where there is only one vendor.

B. Payroll and payroll-related items.

C. Emergency contracts authorized pursuant to CMC [2.64.080](#) and [2.64.090](#). (Ord. 2003-02 § 1, 2003).

## **Article II. Accountable Property**

### **3.12.120 Definition.**

For the purposes of this chapter, “accountable property” means property which:

- A. Had an initial or has a replacement cost in excess of \$1,000; and
- B. Is of continuing value; and
- C. Is not consumed or expended in the normal use for which it is intended. (Ord. 2003-02 § 1, 2003; Ord. 94-8 § 1, 1994; Ord. 137 C.S. § 2, 1966; Code 1975 § 122.0. Formerly 3.12.100).

### **3.12.130 Capital Outlay Project Authorization.**

Accountable property may be procured by the appropriate authority after such purchase has been approved by the City Council and authorization to proceed with acquisition is approved by the City Administrator. (Ord. 2003-02 § 1, 2003; Ord. 94-8 § 1, 1994; Ord. 137 C.S. § 2, 1966; Code 1975 § 122.1. Formerly 3.12.110).

### **3.12.140 Bidding Procedures – Dispensation When.**

Purchase of supplies, materials, or equipment shall be by quotation or bid procedures as set forth in this chapter. Such procedures may be dispensed with by the purchasing agent, at her or his sole discretion and judgment as to the best interest of the City, as follows:

- A. When an emergency threatens the life, health or property of the community and requires that an order be placed immediately with the nearest available source of supply;
- B. When the amount involved is less than \$25,000;
- C. When the supply, material, or equipment can be obtained from only one vendor or supplier;
- D. When a professional service, such as that available from an attorney, accountant, architect or specialized consultant, involves a specialized knowledge or personal skill;
- E. When supplies or equipment, such as communication systems, computer hardware or software, or specialty rolling stock, have been uniformly adopted in the City or otherwise standardized;
- F. When the article can be cooperatively purchased more economically through the central purchasing authority of another governmental agency;
- G. When specific used supplies, materials or equipment will best serve the City's needs;
- H. When reasonably necessary for the preservation or protection of public peace, health, safety or welfare of persons or property;

Provided, that even when procedures are dispensed with hereunder, City Council approval, by resolution, shall be required for purchases of \$25,000 or more. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.150 Compatibility of Equipment Between Departments.**

With communication equipment, a coordination of effort between departments to ensure compatibility must be made. Communication equipment must allow for interdepartmental coordination, meaning that radio, telephone, computers, etc., will be compatible, to the extent possible, to assure continuous operation of emergency and day-to-day City functions. (Ord. 2003-02 § 1, 2003).

### **3.12.160 Competitive Negotiation.**

As an alternative to the procedures set out in Articles III and IV of this chapter, in the case of obtaining consulting and other technical or highly specialized personal services, the City Administrator or her/his designee may authorize those services which may be obtained by competitive negotiations when:

A. The service involves a specialized knowledge or personal skill, such as attorneys, architects, accountants and specialized consultants; or

B. The supplies or equipment are such that suitable technical or performance specifications are not readily available, the City is not able to develop descriptive specifications, and proposals for the purchase would be more advantageous to the City.

The best offer as judged against proposal evaluation criteria shall be accepted. The use of competitive negotiations is not intended as a vehicle for the avoidance of the bidding procedures as set forth in this chapter. Any offer of \$25,000 or more shall require approval by resolution of the City Council prior to acceptance. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.170 Cooperative Purchasing.**

Purchase of supplies, services, materials, or equipment, by contract, arrangement and agreement for cooperative purchasing programs with the State, county, or any other public or municipal corporation of the State may be made by the purchasing agent when the administering agency has made its purchases through a competitive bid process.

When the City can obtain a price advantage by purchasing from a supplier who has been awarded a contract for a specific item or items, equipment, service or materials, in a contract resulting from a formal competitive bid process by another governmental agency, said competitive process must entail all of the major protections as set forth in the bid process approved by the City Council of the City of Carmel-by-the-Sea. (Ord. 2003-02 § 1, 2003).

### **3.12.180 Lowest Responsible Bidder – Determining.**

For the purpose of this chapter, in addition to price, the “lowest responsible bidder” will be determined after the following factors have been considered:

- A. Whether the bidder has the capability, capacity, and skill to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- B. Character, integrity, reputation, judgment, experience and efficiency of the bidder;
- C. Bidder's record of performance of previous contracts or services;
- D. Previous and existing compliance by the bidder with laws and ordinances related to the contract or service;
- E. Sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- F. Quality, availability and adaptability of the supplies, materials, equipment, or services to the particular use required;
- G. Bidder's ability to provide future maintenance and service for the use of the subject of the contract;
- H. Number and scope of conditions attached to the bid. In the event the lowest bidder is rejected, the purchasing agent or City Council (as the case may be) shall provide the lowest bidder with a written explanation or findings regarding the rejection;
- I. In the case of a bid received from a bidder, a portion of whose sales tax is paid to the City, the purchasing agent shall calculate the actual cost to the City of accepting such bid. Said actual cost shall be the bid amount less sales tax revenue which would be received by the City were the City to accept such bid. Said actual cost shall be the price utilized by the City, in addition to the other factors set out in this section, in determining the lowest responsible bidder. (Ord. 2003-02 § 1, 2003).

### **3.12.190 Surplus Supplies and Equipment.**

All City department heads shall submit to the purchasing agent, at such time and in such form as she/he shall prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing agent shall have authority to sell all supplies and equipment with a value of less than \$5,000 which cannot be used by any other City department or which have become unsuitable for City use, or to exchange the same for, or trade in the same on, new supplies and equipment. The purchasing agent shall utilize all appropriate means to realize maximum return possible on such sales, exchanges and trades. All income from such dispositions shall be deposited in the equipment acquisition reserve fund for new purchases approved by action of the City Council. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.200 Inspection – Testing.**

The purchasing agent or her/his designee shall inspect supplies, materials, equipment, or public works projects delivered and contractual services performed, to determine conformance with the specifications set forth in the order or contract. The purchasing agent shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliverables which are necessary to determine the quality of certain items and conformance with bid specifications. (Ord. 2003-02 § 1, 2003).



### **3.12.210 Illegal Contracts – Interest by City Officer, Employee.**

A. No officer or employee of the City shall be, or become directly interested in, any contract work or business, or in the sale of any article, the expense, price or consideration of which is payable from the City treasury, nor shall such officer or employee receive any gratuity or advantage from any contract or person furnishing labor or material for same.

B. Any contract with the City that any officer or employee has or develops an interest in may be declared void by the City Council.

C. Members of City volunteer and support organizations who are not also full- or part-time employees of the City shall be exempt from the provisions of this section.

D. The provisions of this section shall not be construed to excuse noncompliance with State laws regulating conflicts of interest. (Ord. 2003-02 § 1, 2003).

### **3.12.220 Interference with Bidding Procedure by Officer or Employee.**

No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, materials, supplies, equipment, services, or public works projects at a higher price or rate than that proposed by any other bidder, or favor one bidder over another, or give or withhold information from any bidder not given or withheld from all other bidders, or willfully mislead any bidder in regard to the character of the materials or supplies called for, or knowingly accept materials, supplies or equipment of a quality inferior to that called for by the contract or knowingly certify to a greater amount of labor performed or materials, supplies or equipment furnished, than has respectively been performed or received. (Ord. 2003-02 § 1, 2003).

### **3.12.230 Officer Defined.**

The term “officer” as used herein shall include the Mayor, Council Members, City Administrator, Assistant City Administrator, City Treasurer, City Attorney, Department Directors, members of Boards, Commissions and Committees, and assistants (if any) to said positions. (Ord. 2003-02 § 1, 2003).

## **Article III. Open Market Purchases/Purchases Under \$25,000**

### **3.12.240 Definition.**

For the purposes of this chapter, “open market purchases” means purchases which are unrestricted and competitive, and may include any individual, group or business who chooses to participate. (Ord. 2003-02 § 1, 2003).

### **3.12.250 Authorized Purchases Under \$25,000.**

Purchases of supplies, services, materials, equipment and contractual services, including public works projects, having an estimated market value of more than \$4,000 but under \$25,000 may be made by the purchasing agent in the open market, as described in this article, without observing the formal contract procedures prescribed in Articles IV and V of this chapter. Purchases of \$4,000 or



less may be made without informal bid of obtaining three written quotes at the discretion of the purchasing agent. The \$4,000 limit set forth above shall be automatically increased by \$500.00 on July 1, 2020, and by the same amount each fifth year thereafter. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.260 Quotations – Notice of Invitation.**

The purchasing agent shall invite quotations from prospective sellers, vendors, suppliers or contractors. (Ord. 2003-02 § 1, 2003).

### **3.12.270 Quotations – Submission in Writing.**

Written quotations shall be submitted to the purchasing agent who shall keep a record of all open market quotations and orders for a period of two years after receipt of such quotations. (Ord. 2003-02 § 1, 2003).

### **3.12.280 Quotations – Number Required.**

Open market purchases shall be based on at least three written quotations and recorded on the purchase order for payment. If three quotations cannot be reasonably solicited, the purchasing agent shall record the specific reasons on the purchase order for payment. (Ord. 2003-02 § 1, 2003).

### **3.12.290 Quotations – Rejection.**

The purchasing agent, at her/his sole discretion, may reject all quotations for any reason whatsoever and may invite new written quotations. (Ord. 2003-02 § 1, 2003).

### **3.12.300 Award of Purchase Orders.**

Purchase orders shall be awarded by the purchasing agent to the person submitting the lowest responsible quotation except if two or more quotations are received for the same total amount or unit price, quality and service being equal, and further, if in the sole discretion of the purchasing agent the public interest will not permit the delay of inviting new quotations, then the purchasing agent may accept the one she/he chooses or accept the lowest quotation made by negotiation with the persons submitting the tie quotations. (Ord. 2003-02 § 1, 2003).

### **3.12.310 Splitting Purchase Orders.**

No purchase orders involving amounts in excess of or equal to \$25,000 shall be split into parts to produce amounts of \$25,000 or less for the purpose of avoiding the provisions and restrictions of this article. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

## **Article IV. Formal Bid Procedures/Purchases of \$25,000 or More**

### **3.12.320 Formal Contract Procedure.**

Except as otherwise provided herein, purchases and contracts for supplies, services, materials, or equipment of estimated market value of \$25,000 or more shall be by written contract, approved by resolution of the City Council, with the lowest responsible bidder pursuant to the procedure

prescribed in this article. (The procedures prescribed in Article V of this chapter shall be observed in the case of all public works projects, as defined therein, involving expenditures of \$25,000 or more.) (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.330 Notice Inviting Bids.**

Notice inviting bids shall include a general description of the article(s) to be purchased, state where bid forms and specifications may be secured, identify the contact person, and state the date, time and place for opening bids. (Ord. 2003-02 § 1, 2003).

### **3.12.340 Published Notice.**

Notice inviting bids shall be published at least 10 days before the date of opening of the bids, and shall be published two times, five days apart, in an official newspaper of general circulation in the City. (Ord. 2003-02 § 1, 2003).

### **3.12.350 Bidders' Vendor List.**

The purchasing agent shall also directly solicit sealed bids from all prospective suppliers known to the purchasing agent as responsible bidders and/or vendors dealing in the product to be purchased. (Ord. 2003-02 § 1, 2003).

### **3.12.360 Bidders' Security.**

When deemed necessary, bidders' security may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of bid security. If a successful bidder refuses or fails to execute the contract within 10 calendar days after notice of award of contract has been mailed, they shall forfeit their bid security as liquidated damages to cover the cost of City re-bidding, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest responsible 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; the surplus, if any, shall be returned to the lowest bidder. (Ord. 2003-02 § 1, 2003).

### **3.12.370 Bid Opening Procedure.**

Sealed bids (with name of the project identified on the exterior of the envelope) shall be submitted to the City Clerk who shall record the date and time received on the exterior of the envelope. Bids shall be opened in public at the time and place stated in the notice. Pursuant to State law, all bids received shall be on file in the City Clerk's office for public inspection during regular business hours. (Ord. 2003-02 § 1, 2003).

### **3.12.380 Rejection of Bids.**

The City Council reserves the right to reject any and all bids presented, to accept or reject any one or more items of a bid, and may, at its discretion, re-advertise the project and call for bids. (Ord. 2003-02 § 1, 2003).

### **3.12.390 Open Market Purchase.**

After rejecting bids the City Council may determine and declare by a vote of at least three of its members that the supplies, services, materials, or equipment may be purchased at a lower price in the open market, and after adoption of a resolution to that effect, it may direct the purchasing agent to so purchase. (Ord. 2003-02 § 1, 2003).

### **3.12.400 Tie Bids.**

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Council shall determine the successful bidder by drawing of lots. (Ord. 2003-02 § 1, 2003).

### **3.12.410 Performance Bonds.**

Before entering into a contract, the City shall have authority to require a performance bond in such amount as it shall find reasonably necessary to protect the best interest of the City. If the City requires a performance bond, the form and amount of the bond shall be described in the notice of solicitation inviting bids. (Ord. 2003-02 § 1, 2003).

## **Article V. Public Projects**

### **3.12.420 Written Contract.**

Every public project involving an expenditure of \$25,000 or more for the construction, improvement, maintenance, painting or repair of public buildings and works, in all sewers, storm drains, streets, sidewalks, beaches, parks, tree maintenance, and open space projects, and in furnishing materials or supplies for same shall be let by formal written contract, approved by resolution of the City Council, with the lowest responsible bidder in accordance with the procedures prescribed in this article. Article IV of this chapter and this article notwithstanding, dispensation of bid procedures for projects described in this article shall be made only as allowed in this article. All requests for bids and quotations and contracts must be in accordance with and conform to the applicable California State laws. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).

### **3.12.430 Contract Award Options.**

A public works contract may be awarded to the successful bidder on a competitively bid contract previously awarded by another Monterey Peninsula city. Specific approval by the City Attorney will be required in each case to assure compliance with State statutes governing public works contracts. (Ord. 2003-02 § 1, 2003; Ord. 2002-01 § I, 2002. Formerly 3.12.081).

### **3.12.440 Notice Inviting Bids.**

Notice inviting bids shall include a general description of the public works project(s) to be constructed, state where bid forms and specifications may be secured, identify the contact person, and state the date, time and place for opening bids. In addition to the published notice, the purchasing agent may solicit bids from prospective vendors and contractors by direct mail requests, by notice on official City bulletin boards, or by any other means advantageous to the City. (Ord. 2003-02 § 1, 2003).

### **3.12.450 Published Notice.**

Notice inviting bids shall be published at least 10 days before the date of opening of the bids, and shall be published two times, five days apart, in an official newspaper of general circulation in the City. (Ord. 2003-02 § 1, 2003).

### **3.12.460 Bidders' Security.**

When deemed necessary, bidders' security may be prescribed in the public notice inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall forfeit her/his bid security upon her/his refusal or failure to execute the contract within 10 calendar days after the notice of award of contract has been mailed, unless the City is responsible for the delay. The City Council, on refusal or failure of the successful bidder to execute the contract, may award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the contract price differential between the lowest bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. (Ord. 2003-02 § 1, 2003).

### **3.12.470 Bid Opening Procedure.**

Sealed bids (with name of the project identified on the exterior of the envelope) shall be submitted to the City Clerk who shall record the date and time received on the exterior of the envelope. Bids shall be opened in public at the time and place stated in the notice. All bids received shall be tabulated and, after consultation with the appropriate department head, shall be forwarded to the City Council with a recommendation as to the best and lowest bid. Pursuant to State law, all bids received shall be on file in the City Clerk's office for public inspection during regular business hours. (Ord. 2003-02 § 1, 2003).

### **3.12.480 Tie Bids.**

If two or more bids received are for the same total amount, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Council shall determine the successful bidder by drawing of lots. (Ord. 2003-02 § 1, 2003).

### **3.12.490 Acceptance or Rejection of Bids.**

When it is in the best interests of the City to do so, the City Council may, at its discretion, waive any informalities or minor irregularities in any bid process, and may reject any or all bids. (Ord. 2003-02 § 1, 2003).

### **3.12.500 Work by Workforce.**

If all bids are rejected or no bids are received, the City Council may re-advertise or may, by an affirmative vote of at least three of its members, declare and determine that in its opinion the work in question may be more economically or satisfactorily performed by workforce, by either City employees or others, and after adoption of a resolution to that effect, may proceed to have the same work done in the manner stated in the call for bids. (Ord. 2003-02 § 1, 2003).

### **3.12.510 Emergencies – Contracts Let Without Bids.**

Public works project contracts governed by this article may be let without advertising for bids if such work shall be deemed by the City Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by an affirmative vote of at least three of its members and containing a declaration of the facts constituting such urgency. (Ord. 2003-02 § 1, 2003).

### **3.12.520 Performance Bonds.**

The City Council, before entering into a contract governed by this article, may require a performance bond or other adequate security guaranteeing performance, in an amount as it shall find reasonably necessary to protect the best interests of the City. Form of acceptable security shall be described in the notice inviting bids. (Ord. 2003-02 § 1, 2003).

### **3.12.530 Splitting Purchase Orders.**

No purchase orders involving amounts in excess of or equal to \$25,000 shall be split into parts to produce amounts of \$25,000 or less for the purpose of avoiding the provisions and restrictions of this article. (Ord. 2015-01 § 1 (Exh. A), 2015; Ord. 2003-02 § 1, 2003).