

## Chapter 3.12 PURCHASING SYSTEM<sup>2</sup>

### Article I. General Regulations

#### **3.12.010. ~~3.12.010 Adopted Purpose.~~**

This chapter is adopted pursuant to the city's general and specific contracting powers and, without limitation, Government Code § 40602 for the purpose of establishing the requirements to bind the city by contract.

#### **3.12.020. ~~Generally.~~**

The city is not bound by any contract unless the contract is in writing, approved as to form by the city attorney, and signed on behalf of the city by an officer or officers as set forth in this chapter. Any such officer must sign a contract on the city's behalf when directed to do so by the city council.

#### **3.12.030. ~~City Council Authority.~~**

Unless otherwise provided in this code, a resolution, or ordinance, the city council must approve all contracts and direct the mayor, or other officer, to sign a contract on the city's behalf.

#### **3.12.040. ~~Signature Authority.~~**

In accordance with Government Code § 40602, the following officers are authorized to sign contracts on the City's behalf:

- A. The Mayor or, if the Mayor is unavailable, the Mayor pro tem;
- B. The city administrator when directed to do so by the city council, resolution, ordinance, or any provision of this code;

The ~~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.~~

- C. ~~3.12.020~~ city administrator for contracts less than \$60,000; and
- D. Department directors for contracts less than \$25,000.

#### **3.12.050. ~~Contracting Authority.~~**

The City Administrator and Department Directors are authorized to solicit bids, award contracts, and select vendors without a bid as allowed by this chapter, up to the limits of their respective signature authority.

#### **3.12.060. ~~Purchasing Procedures by City Administrator~~Agent.**

The City Administrator, or her/his designee, is the City's 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.

**~~3.12.030 — Applicability of Chapter.~~**

~~All purchases~~ and is authorized to implement this chapter. To do so, the City Administrator may promulgate administrative policies and procedures to facilitate the requirements of this chapter.

**3.12.070. Encumbrance of Funds.**

~~and contracts~~ A contract for supplies, materials, 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.

**3.12.040. 3.12.040 Encumbrance of Funds.**

A purchase order for supplies, materials, services, equipment, or public works projects shall may not be issued unless ~~there exists~~ an unencumbered appropriation exists in the fund against which the purchase is to be charged.

**~~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.~~

**~~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.~~

**~~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.~~

**~~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.~~

### **3.12.080. ~~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.~~contract. 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.

### **~~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.~~

### **~~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.~~

### **3.12.090. Definitions.**

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this chapter:

A. “Contract” may include a purchase order, construction contract, or professional services agreement as the context may dictate.

B. “General Services” means services that are manual or routine in nature as opposed to services that are predominately intellectual and varied in character or require specialized knowledge of an advanced type generally acquired from study at an institution of higher learning.

C. “Open market purchases” means purchases which are unrestricted and competitive, and may include any individual, group or business who chooses to participate.

D. “Professional Services” means those services provided to the City by independent consultants that are predominantly intellectual and varied in character – as opposed to manual or routine in nature – which require specialized knowledge of an advanced type generally acquired from study at an institution of higher learning, and entail the exercise of a wide degree of discretion and judgment when performing the services (e.g., lawyers,

engineers, architects, certified public accountants and land-use planners).

E. “Purchase” includes renting, leasing, purchasing, licensing, or a trade or supplies.

F. “Supplies” includes general services; equipment; materials; goods, parts; miscellaneous commodities; and other office supplies. “Supplies” does not include professional services. Refer to Chapter 8.68 of this code regarding Environmentally Acceptable Materials.

G. “Uniform Guidance” means Federal Purchasing requirements published by the Office of Management and Budget (OMB). The OMB issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule (on December 26, 2013) which applies to all non-federal entities receiving Federal awards, and to all new federal awards and existing awards that receive additional funding (or funding increments) after December 26, 2014.

## **~~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.~~

### **~~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.~~

### **~~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.~~

### **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.~~

### **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.~~

### **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.~~

### **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.~~

### **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.-).~~

### **3.12.100.     ~~3.12.200~~ Inspection ~~is~~ Testing.**

The purchasing agent ~~or her/his designee shall~~**must** 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~~**has** 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.

### **~~3.12.210 — Illegal Contracts is 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.~~

~~A.     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.~~

~~A.     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.~~

### **3.12.110.     Exceptions to bidding. Notwithstanding any other requirement of this chapter, bidding is not required for the following:**

A. Emergency Purchasing. During a declared state of local emergency, bidding is not required. The city administrator must provide a report to the city council in accordance with applicable law regarding such emergency

purchases.

- B. Convenience. When the supply can be obtained from only one vendor or there are circumstances demonstrating only one vendor is best qualified to provide the supplies.
- C. Best Value. The city administrator may select the lowest responsible and responsive bidder based on objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications along with the nature of the goods, supplies, or equipment.
- D. Cooperative Purchasing. Where the purchasing agent identifies a cooperative competitive bidding procedure, being prepared by and processed through another local, state, or federal governmental agency, the purchasing agent may join into an existing written purchase contract through a competitive bidding process prepared by and awarded by another local, state or federal governmental agency.
- E. Supplies less than \$5,000. Purchases made for supplies with an estimated value of less than \$5,000 may be purchased on the open market without bidding requirements.

### **3.12.120. Professional services.**

The purchasing agent may utilize requests for qualifications and requests for proposals, as desirable, when considering retention of professional services.

## **Article II. Surplus Property**

### **3.12.130. Surplus Supplies and Equipment.**

Surplus property may be disposed in accordance with this Article and Government Code § 37350. Disposal of surplus property with a value exceeding \$25,000 must be approved by the City Council.

### **3.12.140. Authorization.**

- A. The purchasing agent is authorized to dispose of salvageable Surplus Property through sale in the open market. Property disposition may occur by public auction, competitive sealed bids, or exchange or trade in for new goods.
- B. The purchasing agent is authorized to sell any Surplus Property to a governmental, public, or quasi-public agency without advertisement for or receipt of bids.

- C. The purchasing agent is authorized to donate, as appropriate, Surplus Property to any governmental, public, or quasi-public agencies, charities, or non-profit organizations.

The ~~þ~~

- D. 3.12.220 purchasing agent is authorized to dispose of Surplus Property that does not have salvage value, as determined by the purchasing agent, or designee, in any reasonable manner.

**3.12.150. Record-keeping and Proceeds.**

- A. The purchasing agent must keep regular logs showing the Surplus Property, the method of disposal, and the amounts recovered from its disposal.
- B. Proceeds from the sale of the Surplus Property must be deposited into the appropriate City fund as determined by the purchasing agent.

**3.12.010. ~~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.~~

**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.~~

**Article III. Supplies/General Services –**  
**Open Market Purchases/Purchases Under \$2560,000**

**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.~~

**3.12.250**

**3.12.160. Authorized Purchases Under \$2560,000.**

~~Purchases of supplies, services, materials, equipment and contractual~~general  
~~services, including public works projects, having~~ with ~~an estimated market value of more than \$45,000 but under \$2560,000 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 \$45,000 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.~~

**3.12.170. ~~3.12.260~~ Quotations ~~þ~~ Notice of Invitation.**

The purchasing agent shall invite quotations from prospective sellers, vendors, suppliers or contractors.

~~3.12.270~~

**3.12.180. Quotations ~~to~~ 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.

~~3.12.280~~

**3.12.190. Quotations ~~to~~ Number Required.**

Open market purchases shall be based on at least three written quotations and recorded ~~on~~with the purchase order for payment. If three quotations cannot be reasonably solicited, the purchasing agent shall record the specific reasons ~~on~~with the purchase order for payment.

~~3.12.290~~

**3.12.200. Quotations ~~to~~ Rejection.**

The purchasing agent, at her/his sole discretion, may reject all quotations for any reason whatsoever and may invite new written quotations.

**3.12.210. ~~3.12.300~~ Award of ~~Purchase Orders~~ Contract.**

~~Purchase orders shall~~A contract may be awarded by the purchasing agent to the person submitting the lowest responsible, responsive 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.

**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.~~

**Article IV. Supplies/General Services –  
Formal Bid Procedures/Purchases of ~~\$25~~60,000 or More**

~~3.12.320~~

**3.12.220. Formal Contract Procedure.**

Except as otherwise provided ~~herein, purchases and contracts for~~, supplies, and general services, ~~materials, or equipment of~~ of an estimated market value of \$~~25~~60,000 or more ~~shall~~must be considered by ~~written contract, approved by resolution of the City Council, with.~~ An award of contract, if any, may only be provided to the lowest responsible, responsive 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.)~~

~~3.12.330~~

**3.12.230. Notice Inviting Bids.**

Notice inviting bids shall include a general description of the ~~article(s)~~supplies to be purchased or general services to be rendered, state where bid forms

and specifications may be secured, identify the contact person, and state the date, time and place for opening bids.

~~3.12.340~~

### **3.12.240. 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~~ and such additional newspaper or other means of bid advertising that the purchasing agent may select to find the greatest number of potential bidders.

~~3.12.350 Bidders~~

### **3.12.250. 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 or the general services to be rendered.

~~3.12.360 Bidders~~

### **3.12.260. Bidders Security.**

When deemed necessary, ~~bidders~~ by the purchasing agent, bidders security may be ~~prescribed~~ required 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~~ 15 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 or awarding a contract to the next lowest bidder, 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, responsive bidder. If the City Council awards the contract to the next lowest responsible, responsive bidder, the amount of the lowest ~~bidders~~ bidders 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.

~~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.

### **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.

### **3.12.010. — 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.~~

### **3.12.010. — 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).

### **3.12.010. ~~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.~~

## **~~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.~~

### **~~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.~~

### **~~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.~~

### **~~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.~~

### **3.12.270. ~~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~~ Clerk's office for public inspection during regular business hours.

**3.12.480 — Tie Bids.**

**3.12.280. Rejection of Bids.**

The City Council may reject any or all bids presented, to accept or reject any one or more items of a bid, waive any irregularity, and may, at its discretion, re-advertise the project for bids.

**3.12.290. Open Market Purchase.**

After rejecting bids, the City Council may determine that the supplies, services, materials, or equipment may be purchased at a lower price in the open market, and it may direct the purchasing agent to so purchase.

**3.12.300. Lowest responsible, responsive bidder.**

A. For the purposes of this chapter, in addition to price, "lowest responsible, responsive bidder" will be determined based on consideration of the following factors:

1. The ability, capacity and skill of the bidder to perform the contract or provide the supplies;
2. Whether the bidder has the facilities to perform the contract or provide the supplies promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The bidder's record or performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract; and
7. The quality, availability and adaptability of the supplies to the particular use required.

**3.12.310. Tie Bids.**

If two or more bids received are for the same total amount or unit price, quality and service being equal, and the city council may accept one of them or accept the lowest bid made by negotiation with the tie bidders at the time of or after the bid opening.

### **3.12.320. Award of Contract.**

Except as otherwise provided, an award of contract, if any, may only be provided to the lowest responsible, responsive bidder.

### **3.12.330. Bonds.**

Before entering into a contract, the purchasing agent has 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. A contractor must provide such additional bonds that may be required by applicable law including, without limitation, Civil Code § 9550 regulating payment bonds.

## **Article V.**~~the~~ **Federal Requirements**

**3.12.340. Uniform Guidance.** Whenever Federal Award funds are used the following criteria must be followed in addition to this chapter:

- A. Requirements. The Uniform Guidance requirements for sub-award and sub-recipient is based on the pass-through agency. If the pass-thru agency is subject to the Uniform Guidance (i.e., if the source of funds are federal and the pass-through agency is subject to Uniform Guidance), then the sub-award or sub-recipient is also subject to the Uniform Guidance. The requirement for a sub-award, no matter when the sub-award was made, flows from the requirements of the original federal award from the federal awarding agency.
- B. Micro Purchases. The maximum aggregated amount for micro purchases is \$3,500. The maximum amount for construction projects is \$2,000 and is subject to the Davis-Bacon Act (Prevailing Wages). Micro purchases are exempt from the City's informal and formal bidding processes, so there are no requirements for multiple quotations. To the extent practical the City must distribute micro-purchases equitably among qualified suppliers.
- C. Small Purchases. Small purchases utilize simple and informal procurement methods. The acquisition threshold is currently \$150,000. The Uniform Guidance states quotes for small purchases must be obtained from an "adequate" number of qualified sources. There is no specific number of sources required by the Uniform Guidance, thus one quote can be sufficient as long as there is proper documentation. Quotes can be obtained from suppliers or from public websites (i.e., City may use internet searches as documentation).
- D. ~~Sealed interest will~~ Bids. Sealed bids are required for contracts in excess of \$150,000 and is the preferred method for construction contracts. Sealed bids are also appropriate for fixed price contracts where bidders are

provided complete and adequate specifications. Additionally, sealed bids must come from two or more qualified bidders must be publicly advertised and solicited from an adequate number of suppliers. The contract is awarded to the lowest responsive and responsible bidder.

- E. Competitive Proposals. Competitive proposals are required for contracts in excess of \$150,000 and is the preferred method for architectural, engineering and Professional Services. Request for Proposals must be publicized and proposals solicited from an adequate number of qualified sources. Competitive proposals are awarded to the most advantageous bid which considers both price and other factors. The City does not permit the delay of re-advertising for bids, the City Council shall determine the successful bidder by drawing of lots have to select the lowest bid.

**3.12.010. 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.~~

**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.~~

**3.12.510 Emergencies ñ**

- F. Sole Source. Vendor must meet at least one of the following criteria:

1. The vendor offers a unique supply or service that can only be fulfilled by one vendor or only one known source for the supply/service exists;
2. There is a public emergency;
3. After soliciting a number of sources, the competition is deemed inadequate; and
4. Written request has been made and approved by the federal agency responsible for the grant.
5. The City must have written pre-approval from the federal awarding agency. Additionally, the City must have proper documentation as to why a sole source vendor was required in these circumstances. The sole source must be properly documented and the City must maintain the documentation.

**Article VI. Prohibitions**

**3.12.350. Illegal Contracts ~~Let Without Bids-~~ Interest by City Officer, Employee.**

- A. It is a misdemeanor for any elected or appointed official, officer or

employee of the City to 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.

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

~~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.~~

#### **3.12.520 Performance Bonds.**

It is a misdemeanor for any elected or appointed official, officer or employee of the City to 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.

### **3.12.370. Segmentation Prohibited.**

It is a misdemeanor to knowingly take action to separate purchases into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements set forth in this chapter.

~~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.~~

**~~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.~~