

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 3.12 OF THE CITY OF CARMEL-BY-THE-SEA MUNICIPAL CODE TO REGULATE CONTRACTING INCLUDING PURCHASES OF SUPPLIES, SERVICES AND PUBLIC WORKS PROJECTS

The City Council of the City of Carmel-by-the-Sea does ordain as follows:

SECTION 1: *Findings.*

- A. The City periodically reviews its purchasing regulations to ensure that it complies with applicable law and implements policies enacted in the public interest;
- B. A review of the City of Carmel-by-the-Sea Municipal Code shows that many of the City's purchasing regulations are at least 20 years old and should be amended to conform with current public expectations for delivering goods and services;
- C. Among other things, the cost increases associated with goods and services in the past 20 years justifies a corresponding increase in authority for signing agreements between the City and contractors; and
- D. The changes enacted by this Ordinance are in the public interest to help facilitate the timely and efficient delivery of public services.

SECTION 2: *Local Business Policy.* The City Council finds that it is in the public interest to promote utilization of Local Businesses that are small or minority owned such as Disadvantaged Business Enterprises, Minority Business Enterprises, Woman Business Enterprises, Disabled Veteran Business Enterprises in all aspects of purchasing in accordance with applicable law. Accordingly, the City Administrator is authorized to encourage participation of all DBE's, MBE's, WBE's, DVBE's and SLB's located with the City's jurisdiction to the extent allowed by applicable law. To help meet this policy goal, the City Administrator may utilize the vendor program implemented by the County of Monterey's "Small LOCAL Business Outreach Program."

SECTION 3: *Municipal Code Amendment.* Chapter 3.12 of the Carmel-by-the-Sea Municipal Code is amended in its entirety to read as set forth in attached Exhibit "A," which is incorporated by reference.

SECTION 4: *Environmental Review.* This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it consists only of revisions and clarifications to existing purchasing regulations and procedures related thereto. Adoption of this Ordinance will not have the

effect of deleting or substantially changing any regulatory standards or required findings.

SECTION 5: *Invalidity.* If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 6: *Electronic Signatures.* This Ordinance may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 7: The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Carmel-by-the-Sea book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within 15 days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 8: This Ordinance will take effect on the 30th day following its final passage and adoption.

PASSED AND ADOPTED this XX day of May, 2023.

, Mayor

ATTEST:

, City Clerk

APPROVED AS TO FORM:

Brian A. Pierik, City Attorney

EXHIBIT A

Chapter 3.12 PURCHASING SYSTEM

Article I. General Regulations

3.12.010. 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;
- C. The 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 Agent.

The City Administrator, or designee, is the City's purchasing agent 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.

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

3.12.080. 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 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.

3.12.090. 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.

3.12.100. Inspection - Testing.

The purchasing agent 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 has authority to require 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.

3.12.110. 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.
- D. The 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.

**Article III. Supplies/General Services –
Open Market Purchases/Purchases Under \$60,000**

3.12.160. Authorized Purchases Under \$60,000.

Purchases of supplies and general services with an estimated market value of more than \$5,000 but under \$60,000 may be made by the purchasing

agent in the open market, as described in this article, without observing the formal contract procedures in this chapter. Purchases of \$5,000 or less may be made without informal bid of obtaining three written quotes at the discretion of the purchasing agent.

3.12.170. Quotations - Notice of Invitation.

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

3.12.180. 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.

3.12.190. Quotations - Number Required.

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

3.12.200. Quotations - 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. Award of Contract.

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.

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

3.12.220. Formal Contract Procedure.

Except as otherwise provided, supplies and general services of an estimated market value of \$60,000 or more must be considered by the City Council. An award of contract, if any, may only be provided to the lowest responsible, responsive bidder pursuant to the procedure prescribed in this article.

3.12.230. Notice Inviting Bids.

Notice inviting bids shall include a general description of the 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.

3.12.240. 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 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.

3.12.250. 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.

3.12.260. Bidders Security.

When deemed necessary by the purchasing agent, bidders security may be 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 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 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.

3.12.270. 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 on file in the City Clerk's office for public inspection during regular business hours.

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, 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. 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 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 have to select the lowest bid.

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 - 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.

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.