



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Transfer of purchasing authority
to Director of Finance **DATE:** May 12, 2005

RECOMMENDATION

1. Approval of an Ordinance amending Chapters 2.04, 4.06, 4.12, 4.13 and 4.16 the San Jose Municipal Code to transfer purchasing responsibilities from the Director of General Services to the Director of Finance
2. Adoption of a resolution amending prior Council resolutions to transfer authority delegated to the Director of General Services to the Director of Finance

BACKGROUND

On September 21, 2004 the City Council directed the City Attorney to draft an amendment to the San Jose Municipal Code to transfer the authority and responsibility of the Director of General Services with regard to purchasing to the Director of Finance. On September 14, 2004 the City Council also directed the City Auditor to "conduct a management audit, review and comment on the City Manager's reforms, and make any additional recommendations about how better management controls could prevent future problems." The City Auditor reported back to the City Council on December 14, 2004, at which time the City Council reaffirmed its direction to amend the Municipal Code to transfer the purchasing responsibilities to the Director of Finance.¹

The original Council direction did not specify whether the warehouse and surplus property responsibilities which are part of the Director of General Services' duties were also meant to be transferred to the Director of Finance. Staff has indicated that such duties also be transferred.

ANALYSIS

The duties of the Director of General Services are discussed in five separate Chapters of the Municipal Code. Chapter 2.04 deals with the duties of each of the City's Department Heads. The changes to Chapter 2.04 involve amending the sections which recite the duties of the Director of Finance and the Director of General Services. Under the proposed ordinance the Director of Finance will be responsible for the procurement

¹ In conjunction with this direction the City Council also accepted the Auditor's recommendation to "establish policies and procedures to ensure that the Purchasing function is adequately segregated from the Accounts Payable function."

May 12, 2005

Subject: Transfer of purchasing authority to Director of Finance

Page 2

of supplies, materials and equipment and contracts for general services, supervision of City warehouses and administration of surplus personal property. The Director of General Services will be responsible for the administration of general services, but not the procurement of contracts for general services. General Services are services that the City has performed by contract such as operations, or maintenance or repairs contracts, software licenses and leasing of equipment. They do not include professional services or public works construction contracts. The Director of General Services has had the separate authority to procure and manage minor public works contracts (less than \$100,000 in value). The proposed ordinance will maintain that authority in the Director of General Services.

The proposed amendment also makes changes to Chapters 4.06 (Local and Small Business Preference), 4.12 (Purchases of Supplies, Materials and Equipment), 4.13 (Contracts for General Services) and 4.16 (Unclaimed and Surplus Personal Property), basically by changing the name of the director responsible for those duties from the Director of General Services to the Director of Finance. In addition, there was a subsection D of section 4.12.146 that should have been changed several years ago when the Code was amended to increase the Manager's contract authority to \$100,000. That correction is now being made in this Ordinance. A copy of the proposed Ordinance is attached to this memorandum.

We are also proposing that City Council adopt a resolution which amends prior City Council resolutions that have delegated authority to the Director of General Services. For example, the City Council may have delegated authority to enter into amendments or to execute renewal options with respect to specific contracts. The purpose of the proposed resolution is to allow the Director of Finance to now exercise that delegated authority.

PUBLIC OUTREACH

Not applicable.

COORDINATION

The drafting of this Ordinance was coordinated with the Departments of General Services and Finance and with the City Manager's Office.

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By 

Brian Doyle
Sr. Deputy City Attorney

cc: Del Borgsdorf

Proposed

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTIONS 2.04.2020 AND 2.04.2420 OF
CHAPTER 2.04 OF TITLE 2 OF THE SAN JOSE
MUNICIPAL CODE, SECTION 4.06.040 OF CHAPTER
4.06, SECTIONS 4.12.002, 4.12.010, 4.12.060, 4.12.070,
4.12.080, 4.12.146, AND 4.12.180 OF CHAPTER 4.12,
4.13.030 OF CHAPTER 4.13, AND SECTIONS 4.16.010,
AND 4.16.130 OF CHAPTER 4.16 OF TITLE 4, TO
TRANSFER PURCHASING RESPONSIBILITIES FROM
THE DIRECTOR OF GENERAL SERVICES TO THE
DIRECTOR OF FINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.04.2020 of Chapter 2.04 of Title 2 of the San José Municipal Code is amended to read as follows:

2.04.2020 Functions, Powers and Duties

In addition to those general functions, powers and duties given to the department by this Chapter and other provisions of this Code, the Director shall:

- A. Administer and enforce all ordinances and regulations of the City relating to the imposition and collection of City taxes.
- B. Administer and supervise the investment of City funds in accordance with City's investment policies as may be adopted or amended by the City Council from time to time.
- C. Administer and supervise the issuance of debt by the City, the City of San José Financing Authority, and such other financing entities as may be formed by the City from time to time.
- D. Administer and supervise the accounts payable function of the City.
- E. Administer and supervise the risk management function of the City.
- F. Administer the procurement of supplies, materials and equipment and contracts for general services for the City.
- G. Supervise the operation of City warehouses.

- H. Administer the City's responsibilities with regard to surplus personal property.
- I. Perform such other programs or functions related to City finance or procurement matters that the City Council or the City Manager may, from time to time, authorize or request.

SECTION 2. Section 2.04.2420 of Chapter 2.04 of Title 2 of the San José Municipal Code is amended to read as follows:

2.04.2420 Functions, Powers and Duties

In addition to those general functions, powers and duties given to the department head by this Chapter and other provisions of this Code, the Director shall:

- A. Administer general services for the City and minor public works projects.
- B. Supervise the operation of City warehouses and general service yards.
- C. Maintain all public grounds and buildings excepting those public grounds, buildings, facilities or property the maintenance of which is specifically assigned to other departments of the City, or for which other special provision is made by the City Council.
- D. Supervise the maintenance of City-owned vehicles and equipment, excepting that equipment the maintenance of which is specifically assigned to other departments of the City, or for which other special provision is made by the City Council.
- E. Perform such other programs or functions related to procurement, maintenance or general services that the City Council or the City Manager may, from time to time, authorize or request.

SECTION 3. Section 4.06.040 of Chapter 4.06 of Title 4 of the San José Municipal Code is amended to read as follows:

4.06.040 Application of Preference in Contracting For General and Professional Services

- A. Prior to the issuance to of a request for quotes or proposals for general or professional services the City Manager or the Director of General Services Finance shall make a determination of whether price shall be the determinative factor in selection of the vendor or contractor for such services.
- B. For solicitations where price has been chosen as the determinative factor the preferences granted under this Chapter shall be applied as follows:

Proposed

1. A credit of two and one-half percent (2.5%) of the cost bid by proposers meeting the definition of "Local Business Enterprise" set forth in Section 4.06.010; and
 2. A credit of two and one-half percent (2.5%) of the cost bid by bidders meeting the definition of "Small Business Enterprise" set forth in Section 4.06.020.
- C. For solicitations where price has not been chosen as the determinative factor the preferences granted under this Chapter shall be applied as follows:
1. Proposers who qualify as a Local Business Enterprise shall be given a credit equal to five percent (5%) of the total points used to determine the most advantageous proposal under Subsection A and Section 4.13.040 of this Title.
 2. Proposers who qualify as a Small Business Enterprise shall be given a credit equal to five percent (5%) of the total points used to determine the most advantageous proposal under Subsection A and Section 4.13.040 of this Title.

SECTION 4. Section 4.12.002 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.002 Director

"Director" shall mean the Director of ~~general-services~~ Finance or such other director designated by the City Manager to administer this Chapter.

SECTION 5. Section 4.12.010 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.010 Director of general-services Finance - Powers and Duties

Unless and except as may be otherwise provided elsewhere in this Code, the Director ~~of General-Services~~ shall be responsible for the procurement and provision of supplies, materials and equipment and procurement of contracts for general services for the City. In particular, but not by way of limitation, the Director shall have the following specific powers and duties:

- A. Take the necessary action to ensure that City will receive the needed quality and quantity of supplies, materials and equipment at least expense to the City;
- B. Negotiate and recommend execution of contracts for the purchase of supplies, materials and equipment;

- C. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- D. Keep informed of current developments in the field of purchasing prices, market conditions and new products;
- E. Prepare and recommend to the City Manager rules governing the purchase of supplies, materials and equipment for the City;
- F. Prescribe and maintain forms as are reasonably needed to implement this Chapter;
- G. In those situations requiring the publication of notice inviting bids, the Director of ~~General Services~~ shall cause such notices to be published without first obtaining the consent of the City Council thereto. Such notices shall include the time for submission of bids, the time for opening of bids, and such other information as is required by the provisions of this chapter or which is appropriate and necessary for the procurement of supplies, materials and equipment for the City;
- H. Execute contracts and purchase orders for supplies, materials or equipment and general services when authorized by the City Manager.

SECTION 6. Section 4.12.060 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.060 Bidders' Security

All bids shall include such bidders' security as is required by the bid documents and shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the bidders' security may be declared forfeited by the Director of ~~general-services~~ to the City, and any bonds so forfeited may be prosecuted and collected and the amount of the security paid into the general fund. Unsuccessful bidders shall be entitled to return of their bidders' security. The form and amount of such security shall be described in the notice inviting bids or in the specifications referred to therein.

SECTION 7. Section 4.12.070 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.070 Performance Bonds for Contracts

To secure faithful performance of the contract, the Director of ~~general-services~~ is authorized to require security in the form of cash, cashier's check, certified checks, or corporate faithful performance bonds, in such amount as he the Director shall deem reasonably necessary to protect the best interests of the City. If the Director of ~~general~~

Proposed

services requires such security, the form and amount thereof shall be described in the notice inviting bids or in the specifications referred to therein. The Director of general services need not require such security if he the Director does not deem such to be reasonably necessary to protect the best interest of the City, or if he the Director believes the interests of the City are best served by not requiring the same.

SECTION 8. Section 4.12.080 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.080 Opening of Bids

Sealed bids shall be submitted to the office of the Purchasing Division at the time specified in the notice inviting bids. At the time and place prescribed in the said notice, the Director of general services or his the Director's authorized representative shall publicly open said bids and declare the aggregate bid of each bidder. The Director of general services shall examine the bids and prepare and file with the City Council a written report and recommendation.

SECTION 9. Section 4.12.146 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.146 Open Purchase Orders

- A. **Use.** Open purchase orders may be used as a means of procuring supplies, materials, equipment, or services when the amount or nature of the specific items or services cannot be predicted before they are needed, or where it is necessary that the place from which the items are purchased is strategically located. More than one vendor may be issued an open purchase order for the same item.
- B. **Amount of Open Purchase Order.** Open purchase orders shall be established for the full estimated annual amount to be expended with the vendor by the City department for which the open purchase order is established. An open purchase order may remain valid for a period up to but not to exceed twelve (12) calendar months from the date of issue.
- C. **Maximum Purchase Limit.** No single purchase utilizing an open purchase order for supplies, materials or equipment shall exceed twenty thousand dollars (\$20,000) or the state bid requirement for a public project, whichever is higher. The Director of general services shall establish a line item purchase maximum wherever practical.
- D. **Formal Bidding Not Required.** Formal bidding is not required in order to establish an open purchase order for supplies, materials or equipment regardless of its total dollar amount. The open market purchasing procedure set forth in Section 4.12.135 shall apply to open purchase orders of supplies, materials or equipment. For purposes of Section 4.12.135, the total annual dollar amount of

the open purchase order shall be considered as the amount of the purchase or the award under that section. An open purchase order with a total amount not exceeding ~~seventy-five~~ one hundred thousand dollars (~~\$75~~100,000) shall be executed by the City Manager. An open purchase order with a total amount exceeding ~~seventy-five~~ one hundred thousand dollars (~~\$75~~100) shall be approved by the City Council. An addition to an open purchase order which brings the cumulative total amount of the open purchase order to over ~~seventy-five~~ one hundred thousand dollars (~~\$75~~100) shall also require Council approval.

E. Additional Factors in Awards. Since open purchase orders are established in order to obtain the most cost-effective purchasing arrangements for the City, the following factors may be considered in addition to the factors set forth in Sections 4.12.115, 4.12.117 and 4.12.135.B., in determining price quotation to the City:

1. Vendor proximity to the using department;
2. Completeness of inventory;
3. Quality of past service;
4. Most favorable price discounts;
5. Vendor that has consistently offered the lowest price during the previous twelve-month period.

SECTION 10. Section 4.12.180 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.180 Requisitions -- Appropriations Prerequisite

No officer or employee of the City shall requisition or order any supplies, materials, or equipment other than those purchased with cash funds except through the Director of general services. No such officer or employee shall request the requisition or order any supplies, materials or equipment unless there exists an unencumbered balance of an appropriation or appropriations, available for such purpose, against or which the requisition or purchase may be charged.

SECTION 11. Section 4.13.030 of Chapter 4.13 of Title 4 of the San José Municipal Code is amended to read as follows:

4.13.030 Director of General Services Finance-- Powers and Duties

Unless otherwise provided in this Code, the Director of general services Finance shall be responsible for the procurement of contracts for providing of general services for the City.

SECTION 12. Section 4.16.010 of Chapter 4.16 of Title 4 of the San José Municipal Code is amended to read as follows:

4.16.010 Director

As used in this Chapter, the term "Director" means Director of general-services Finance or such other director designated by the City Manager to administer this Chapter.

SECTION 13. Section 4.16.130 of Chapter 4.16 of Title 4 of the San José Municipal Code is amended to read as follows:

4.16.130 Transfer of Property to Director of general-services Finance

- A. If no owner claims an item of property found on public property within three (3) months from the date the property comes into the possession of the Chief of Police, the finder may claim the property, unless the finder is an employee of any public agency who found the property in the course of employment.
- B. If the finder does not take possession of the unclaimed property within two (2) months after expiration of the three-month time period allowed for the owner to claim the property, such property shall be transferred by the Chief to the Director.
- C. If the property was found in the course of employment by an employee of any public agency, the property shall be transferred by the Chief to the Director after the expiration of the three-month period allowed for the owner to claim the property.
- D. If no owner claims property other than found property within the period of time required by state law, then such property shall be transferred by the Chief to the Director.
- E. All property transferred to the Director shall be disposed of in accordance with the provisions of Part 3 of this Chapter.

Proposed

ADOPTED this ____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk