



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Procurement Ordinance
Revisions

DATE: August 12, 2010

RECOMMENDATION

Approve an ordinance amending Chapters 4.04, 4.12 and 4.16 of Title 4 of the San Jose Municipal Code to adjust contract authority limits for Council appointees based on the Consumer Price Index (CPI), and to streamline procurements and the disposition of personal property.

OUTCOME

Approval of the ordinance would allow the contract authority limits for Council appointees, as well as related monetary amounts specified in the Municipal Code, to be adjusted every three years based on changes in the CPI, and would authorize a variety of measures to streamline the processes for procurements and disposition of personal property.

BACKGROUND

On April 6, 2010, the Council directed the City Attorney to draft an ordinance amending Title 4 of the Municipal Code, in accordance with the recommendations of Finance Purchasing staff and approved by the Public Safety, Finance & Strategic Support Committee and the full Council. The specific changes were outlined as follows:

- (1) Council Appointees' contract authority:
 - Include a CPI adjustment to automatically increase the contract approval authority limits every three years; and
 - Include incidental services as part of the purchase of supplies, materials, and equipment.

- (2) Procurement of goods and services:
 - Change the protest procedures for purchases of \$100,000 or less;
 - Allow for an online formal bid procedure, including a reverse auction process to purchase goods and services;

- Expand the conditions for cooperative purchases to include non-profit organizations that are made up of multiple public agencies;
 - Establish that the list of required award factors used in requests for quotes (RFQ) and requests for proposals (RFP) is subject to revision by the Director of Finance on a case-by-case basis, if it is determined to be in the City's best interest;
 - In formal bidding, allow award of contract to more than one bidder when exact quantities and/or delivery dates are unknown; and
 - For RFQ and RFP processes, allow award of contract to more than one proposer if it is determined to be in the City's best interest.
- (3) Unclaimed and surplus personal property:
- Streamline the noticing requirements for bids of surplus personal property; and
 - Raise the threshold requiring the sale of surplus personal property by sealed bid or auction from \$400 to \$1,000.

The draft ordinance attached to this memorandum has been reviewed by Finance Department staff and complies with the Council's direction.

ANALYSIS

This memorandum briefly describes the amendments to the Procurement Ordinance. For a more detailed discussion, including a comparison of current practice and the proposed change in practice, please see the staff memorandum for Item 3.4 on the April 6, 2010 Council Agenda, available on the City's website at http://www.sanjoseca.gov/clerk/Agenda/20100330/20100330_0303.pdf.

Automatic CPI Adjustment

The revised ordinance would allow for adjustment of Council Appointees' contract authority every three years based on increases in the CPI. The selected index is the Consumer Price Index, All Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San José area, with all items included. Related monetary amounts set forth in Chapters 4.04, 4.12 and 4.16 of the Municipal Code, such as the threshold for using a RFQ or RFP procurement method, would be CPI adjusted at the same time and posted on the City's website.

Purchase of Supplies, Materials and Equipment – Incidental Services

For purchases of supplies, materials and equipment within the City Manager's contract authority, the revised ordinance would allow such purchases to include incidental services (i.e., installation of equipment) not to exceed 25 percent of the total contract value or \$250,000, whichever is less.

Protest Process for Informal Solicitations

For purchases of \$100,000 or less, the revised ordinance would replace the formal protest procedure with a less formal, administrative procedure to be developed and implemented by the Director of Finance.

Online Bid Submission

The proposed changes to the formal bidding procedure in the ordinance would allow bids to be submitted, opened and reported online or through electronic media, pursuant to an administrative procedure to be developed and implemented by the Director of Finance.

Reverse Auction

The revised ordinance would allow the use of the reverse auction process for purchases of goods requiring formal bidding under certain conditions.

Cooperative Purchases

The amended ordinance would expand the City's ability to make direct purchases from vendors on terms obtained from competitive procurement processes undertaken by other public agencies, under specified conditions, to also allow the City to take advantage of terms resulting from competitive procurements undertaken by non-profits comprised of at least one or more public agencies.

Multiple Awards

For purchases of goods or services of indefinite quantities and/or delivery dates, the proposed changes to the ordinance would authorize the procurement authority to award to multiple bidders, based on the lowest bids or the most advantageous quotes/proposals, as applicable.

Award Factors for Quotes and Proposals

The proposed changes would give the procurement authority the discretion to exclude from consideration any factor currently listed in the Municipal Code as a mandatory award factor if that factor is clearly not applicable to the procurement.

Disposition of Unclaimed and Surplus Personal Property

Where a sealed bid is required for the sale of property, the revised ordinance would expressly state that the noticing of sealed bids shall be by publication in a newspaper of general circulation or by posting on the City's website.

The ordinance would also increase the threshold value of surplus personal property from \$400 to \$1,000, at which the Director of Finance must utilize either a sealed bid or public auction process for sale of such property. The Director would be able to dispose of surplus personal property valued at \$1,000 or less by any method determined to be in the City's best interest.

PUBLIC OUTREACH/INTEREST

This memorandum and the proposed ordinance will be posted on the City's website for the August 24, 2010 Council meeting.

CEQA

Not a Project, PP10-068(C) (Municipal Code revisions involving no changes to the physical environment)

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