

ORDINANCE NO. 28802

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING VARIOUS SECTIONS OF 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, AND TO STREAMLINE
PROCUREMENTS AND THE DISPOSITION OF
PERSONAL PROPERTY**

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

SECTION 1. Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.020 Contract Authority of the City Manager

- A. The City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council, any Contract, for which:
1. Moneys have been appropriated; and
 2. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and
 3. The total monetary value expended or received by the City does not exceed the amount listed below with respect to the type of contract:
 - a. Emergency purchases pursuant to Section 4.12.220 regardless of the amount expended;

- b. Agreements for the lease or purchase of supplies materials and equipment including services incidental to such lease or purchase, having a maximum value of One Million Dollars (\$1,000,000) (as adjusted pursuant to Section 4.04.085), provided that the value of services incidental to such lease or purchase shall not exceed the lesser of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085) or twenty-five percent (25%) of the total contract value;
- c. Agreements for services, other than professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms, having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- d. Agreements relating to the grant of funds to or from the City and agreements for the acquisition of public artwork having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- e. Sponsorship Agreements (as described in Section 4.04.010A.7) having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085), each with a term not exceeding three (3) years, and which otherwise comply with City Council policy;
- f. All other types of contracts having a maximum value of One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085).

- B. In addition, the City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council the following:
1. Any Contract for the payment of fees imposed on the developer of a residential project pursuant to Chapter 14.25 or Chapter 19.38 of this Code;
 2. One or more amendments to a lease, where City is a lessee or lessor, for the purpose of undertaking a cumulative total of no more than One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) in improvements to the leased property over the term of the lease, including option periods;
 3. Tenant estoppel certificates on behalf of the City, where City is a landlord, tenant or subtenant under an existing lease;
 4. Agreements for the purchase or donation of fee interests in real property or for the grant of easements to the City, and all documents necessary to complete the purchase, where:
 - a. the real property or the easement is being acquired in order to implement a project approved by the City Council; and
 - b. the grant of easement or acquisition of real property has been determined to present no significant toxics liability; and
 - c. the compensation to the seller of the real property or grantor of the easement does not exceed One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) and all costs

of purchase and additional costs of escrow and closing are lawfully available in accordance with Subsections 4.04.020 A. 1 and 2 above.

5. Temporary construction easements for terms not exceeding two (2) years where the City is grantor or grantee and the compensation for the temporary construction easement rights does not exceed One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085).
- C. No provision of this Chapter is intended to limit the authority of the City Manager or any Council Appointee from seeking approval of a specific action by the City Council, nor is it intended to limit the authority of the City Council to place limitations on the City Manager's or other Council Appointee's authority with respect to entering into specific contracts.

SECTION 2. Section 4.04.030 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.030 Contract Authority of the City Attorney

In addition to the authority specifically granted pursuant to Chapter 4.24 of this Title, the City Attorney is hereby authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any contract:

- A. Whose object or purpose is related to the activities or functions of the Office of City Attorney; and
- B. Which is not required by any applicable law to be let to the lowest responsible bidder; and

- C. Which provides for payment of money by the City; and
- D. Which has a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085); and
- E. For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

SECTION 3. Section 4.04.040 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.040 Contract Authority of the City Clerk

The City Clerk is hereby authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any contract:

- A. Whose object or purpose is related to the activities or functions of the Office of City Clerk; and
- B. Which is not required by any applicable law to be let to the lowest responsible bidder; and
- C. Which provides for payment of money by the City; and
- D. Which has a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085); and

- E. For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

SECTION 4. Section 4.04.050 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.050 Contract Authority of the City Auditor

The City Auditor is hereby authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, any contract:

- A. Whose object or purpose is related to the activities or functions of the Office of City Auditor; and
- B. Which is not required by any applicable law to be let to the lowest responsible bidder; and
- C. Which provides for payment of money by the City; and
- D. Which has a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085); and
- E. For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

SECTION 5. Section 4.04.080 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.080 Quarterly Reports

- A. The City Manager shall prepare a quarterly report which describes all contracts having a value of One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085) or more that were entered into and executed by the City Manager, City Attorney, City Clerk, and City Auditor, in the preceding calendar quarter. The report shall identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.

- B. The City Attorney, City Clerk, and City Auditor shall provide to the City Manager the information necessary to enable the preparation of quarterly reports. Such quarterly reports will be posted on the City's web site on a web page designated for such postings.

SECTION 6. Chapter 4.04 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

4.04.085 Periodic Automatic Adjustments to Contract Authority Limitations and Related Figures

- A. For the purposes of this Section, "CPI" shall mean 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. In the event the CPI is no longer published, the Director shall use another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- B. For the purposes of this Section, "Applicable Monetary Amounts" shall mean those monetary amounts set forth in Sections 4.04.020, 4.04.030, 4.04.040, 4.04.050, 4.04.080, 4.12.210, 4.12.350, 4.12.415, 4.12.420, and 4.16.240 A.
- C. Commencing on July 1, 2013, and continuing every three (3) years thereafter on July 1st, the Applicable Monetary Amounts shall increase based on the percentage increase from the CPI which is published most immediately preceding the July 1st as of which the immediate past calculation occurred (or, for the purposes of the first calculation, July 1, 2010) to the CPI which is published most immediately preceding the July 1st as of which the new calculation shall occur. The Applicable Monetary Amounts thus adjusted shall thereafter be rounded to the nearest ten thousand, which rounded amounts shall be the Applicable Monetary Amounts for the next three (3) years. If there is no increase in the CPI, then the Applicable Monetary Amounts shall remain unchanged.
- D. The foregoing calculations shall be made by the Director, as defined in Section 4.12.020 of this Code, and the effective Applicable Monetary Amounts shall be posted on the City's web site on a web page designated for such postings.

SECTION 7. Section 4.12.210 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.210 Selection of Procurement Method

The City shall where practicable engage in competitive procurement. The Procurement Authority shall use the following methods of procurement under the circumstances described below:

- A. Purchases which are estimated not to exceed Ten Thousand Dollars (\$10,000.00) (as adjusted pursuant to Section 4.04.085) may be made without a competitive procurement method.
- B. Request for quotes process shall be used for purchases with an estimated value between Ten Thousand Dollars (\$10,000.00) (as adjusted pursuant to Section 4.04.085) and One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085).
- C. Request for proposal process shall be used for purchases of services with an estimated value of more than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085).
- D. Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value of more than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085), or for services when the Director determines that it is in the best interest of the City to do so.

SECTION 8. Section 4.12.225 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.225 Public Agencies Purchases

The Procurement Authority may without observing the competitive procurement requirements prescribed by this Chapter:

- A. Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or

B. Contract with any "public agency" (as said term is defined in subsection (b) of Section 800 of the Charter) for the purchase or acquisition by such public agency for or on behalf of the City of any supplies, materials or equipment or services under the following circumstances:

1. Agreements for the purchase of supplies, materials or equipment or services directly from another public agency; or
2. Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or
3. Direct purchases from vendors on terms obtained pursuant to competitive procurement processes undertaken by another public agency which substantially comply with the City's procurement procedures and name the City of San José either specifically or categorically as a third party beneficiary of the competitive procurement process. For the purposes of the first sentence of this subsection B.3. only, the term "public agency" shall also include any nonprofit organization made up of at least one or more public agencies in California or elsewhere, which nonprofit organization has been approved by the Director for the conduct of competitive procurements.

SECTION 9. Part 1 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

4.12.056 Services Incidental to Lease or Purchase

“Services incidental to lease or purchase” means any services which are ordinarily or customarily provided with the supplies, materials or equipment which are the subject of the lease or purchase, or which are otherwise determined by the Procurement Authority necessary to the efficient conclusion of the lease or purchase. Examples of such incidental services include but are not limited to assembly, installation, integration, implementation, configuration, training, maintenance, support, and delivery and other transportation charges.

SECTION 10. Section 4.12.270 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.270 Formal Bids Procedure; Use of Electronic Media; Reverse Auctions

- A. Sealed bids shall be submitted to the Office of the Purchasing Division at the time specified in the procurement notice. At the time and place prescribed in the said notice, the Director or the Director's authorized representative shall publicly open said bids and declare the aggregate bid of each bidder. The Director shall examine the bids and prepare a written report and recommendation.

- B. The use of electronic media is authorized for the formal bidding process, including without limitation submission, opening and reporting of bids electronically, provided that such use shall be governed by an administrative procedure promulgated by the Director. The administrative procedure shall include measures as the Director deems appropriate for security of the bidding, approval and award processes and accurate retrieval or conversion of electronic information into a medium which permits inspection and copying.

- C. When the Director finds it to be in the best interest of the City based on the circumstances of the particular procurement, the Director, in the Director's discretion, may procure by reverse auction purchases of goods requiring formal bidding, which goods are readily available in the marketplace, highly standardized, and can be supplied by a reasonable number of qualified competitors. "Reverse auction" means an internet-based process in which vendors compete to obtain business, the identity of vendors submitting bids but not the amount of the bids remains sealed during the time allotted for the auction, and vendors may submit successively lower bids, with the goal that bids submitted by vendors will decrease over the time allotted for the auction.

SECTION 11. Section 4.12.310 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.310 Award Factors

- A. The Procurement Authority shall award the contract in accordance with the award factors and respective weights set forth in the solicitation. The award decision shall be documented and available to public inspection.
- B. Award Factors for Formal Bids.
1. Except for procurements that are authorized under subsection B.2 below, purchases requiring formal bidding shall be awarded to the lowest responsible and responsive Bidder after Notice in accordance with Section 4.12.260. The low bidder shall be determined based on the lowest total cost to the City including, but not limited to, the effect of:
 - a. Trade discounts;

- b. Shipping costs;
- c. Life cycle costs;
- d. Operating efficiency;
- e. Maintenance Cost;
- f. Application of the preferences provided for in Section 4.12.320;
- g. If two or more bids received are for the same amount and are the lowest bids, the City may accept whichever one it chooses or have the award determined by lot.

2. If the Procurement Authority determines that it is in the best interest of the City to issue a solicitation for the procurement of goods or services of indefinite quantities and/or with indefinite delivery dates that requires formal bidding, the solicitation may allow for the award to multiple Bidders in order of the lowest bids. When multiple awards have been made under such circumstances, then at the time that actual purchases are made, the choice between or among the selected Bidders shall be based on consideration of factors including but not limited to the following: (a) lowest total cost to the City, (b) availability, and (c) quality.

C. Award Factors for Quotes and Proposals.

1. Except for procurements authorized under subsection C.3 below, purchases not requiring formal bidding shall be awarded to the Bidder who has submitted the most advantageous quote or proposal in accordance with the applicable provisions of this Chapter. In addition to the factors set

out in Subsection B, the most advantageous quote or proposal shall be determined based on but not limited to:

- a. Quality;
 - b. Capabilities and/or expertise of the Bidder;
 - c. Adherence to applicable City Council policies;
 - d. Ability of the Bidder to provide future maintenance, repair parts and service;
 - e. Application of the preferences provided for in Section 4.12.320.
2. Any one or more of the factors set out in Subsections B.1 a through e, or Subsection C.1. d, may be excluded from a procurement if the factor or factors are clearly not applicable, at the discretion of the Procurement Authority. The Procurement Authority shall document the basis for its decision to exclude any of the factors.
3. If the Procurement Authority determines that it is in the best interest of the City, the solicitation for procurements of goods or services not requiring formal bidding may allow for the award to multiple Bidders in order of the most advantageous quotes or proposals. When multiple awards have been made under such circumstances, then at the time that actual purchases are made, the choice between or among the selected Bidders shall be based on consideration of factors including but not limited to the following: (a) lowest total cost to the City, (b) availability, and (c) quality, capabilities and/or expertise.

SECTION 12. Section 4.12.350 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.350 Rejection of Responses

The Procurement Authority may reject any or all responses received. If all responses are rejected, the Procurement Authority may in his or her discretion:

- A. Re-notice the solicitation; or
- B. Negotiate and execute with a vendor for the goods or services without further solicitation under the following circumstances:
 - 1. For solicitations for contracts with a value equal to or greater than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085), upon approval of the City Council; or
 - 2. For solicitations for contracts with a value less than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085), upon documentation of the reasons for such a decision and notice to all person(s) who submitted responses to the solicitation.

SECTION 13. Part 5 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

4.12.415 Formal and Informal Protest Procedures

The remaining sections of this Part shall govern protests of decisions regarding procurements having a value greater than One Hundred Thousand Dollars (\$100,000)

(as adjusted pursuant to Section 4.04.085). Protests of decisions regarding procurements having a value equal to or less than One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) shall be governed by an administrative procedure promulgated by the Director. However, until such time as this administrative procedure is promulgated, the protest procedures in this Part shall apply to procurements having a value equal to or less than One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085), except that for such procurements, the Procurement Authority's decision shall be final.

SECTION 14. Section 4.12.420 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.420 Notice of Decision

After a decision regarding a procurement having a value greater than One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) has been made, the Procurement Authority shall send a Notice of Intended Award to all persons who submitted a response to a City solicitation.

SECTION 15. Section 4.12.450 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.450 Procurement Authority's Decision

The Procurement Authority shall issue a written decision on the protest. The Procurement Authority may base the decision on the written protest alone or may informally gather evidence from the person filing the protest or any other person having relevant information.

SECTION 16. Section 4.12.460 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.460 Appeal of Decision

An appeal of the Procurement Authority's decision may be filed with the City Council. All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of the sending of the Procurement Authority's decision.

SECTION 17. Section 4.16.070 of Chapter 4.16 of Title 4 of the San José Municipal Code is amended to read as follows:

4.16.070 Sealed Bid

- A. In cases where a sealed bid is required for the sale of property, the Director shall cause notice of such sale by sealed bid to be given at least five (5) days before the final time fixed for the submission of bids.
- B. Notice shall be by publication in a newspaper of general circulation published in the City or by posting on the City's web site on a web page designated for such postings.

SECTION 18. Section 4.16.240 of Chapter 4.16 of Title 4 of the San José Municipal Code is amended to read as follows:

4.16.240 Sale of Surplus Property

The Director is authorized to sell surplus personal property under either of the following conditions:

- A. The Director may sell property which does not exceed a fair market value of Twenty Thousand Dollars (\$20,000) (as adjusted pursuant to Section 4.04.085) to any public or governmental body or agency, any public utility which is either publicly owned or is regulated by the public utilities commission of the state of California or any volunteer fire department, subject to the following conditions:
1. Before making a sale pursuant to this Section, the Director shall make a written determination that the sale price of the property is reasonable and appropriate under the circumstances.
 2. All sales pursuant to this Section shall be without warranty, express or implied, and the buyer shall agree to defend, indemnify and hold harmless the City, its officers and employees, from any claim, cause of action, damage, loss or liability arising out of the condition of the property or its use by the buyer or subsequent transferee.
- B. The Director may sell property of any value to the general public subject to the following conditions:
1. If the Director determines that the value of the surplus property is greater than One Thousand Dollars (\$1,000), the Director may sell such property under sealed bid or by public auction.
 2. If the Director determines that the value of the surplus personal property is One Thousand Dollars (\$1,000) or less, the Director may sell such property by any method which the Director determines to be most advantageous to the City considering the value of the property and the cost of sale.

PASSED FOR PUBLICATION of title this 24th day of August, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: CAMPOS.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk