

ORDINANCE NO. 23-0009

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH AMENDING MUNICIPAL CODE CHAPTER 2.36 (PURCHASING) OF TITLE 2 TO INCREASE THE INFORMAL AND FORMAL BID LIMITS AND MAKE OTHER MINOR CHANGES

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.36.030 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.030 Centralized Purchasing Division.

There is hereby created a centralized Purchasing Division in which is vested authority for the purchase of supplies, equipment, and services. The Purchasing Agent shall administer and be responsible for the successful performance of all functions of the Purchasing Division. The Purchasing Agent shall purchase supplies, equipment, and services at the lowest possible cost commensurate with quality needed.

SECTION 2. Section 2.36.040 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.040 Purchasing Agent.

The City Manager is designated as Purchasing Officer pursuant to Section 2.04.070(I) of this title, and shall assign an employee to act as a Purchasing Agent. The Purchasing Agent shall be the head, and have general supervision of the Purchasing Division, and shall act as the purchasing agent for the City. The Purchasing Agent shall have authority to:

- A. Purchase or contract for supplies, equipment, and services required by any using department or agency in accordance with the provision of Section 54201 et seq. of the California Government Code, and with purchasing procedures prescribed by this chapter, such administrative regulations as the Purchasing Agent shall adopt for the internal management and operation of the Purchasing Division and such other rules and regulations as shall be prescribed by the Council or City Manager;
- B. Negotiate and recommend execution of contract for the purchase of supplies, equipment, and services;
- C. Act to procure for the City the needed quality in supplies, equipment, and services at least expense to the City;
- D. Discourage collusion in bidding and induce full competition on all purchases;
- E. Prepare and recommend to the City Manager rules governing the purchase of supplies, equipment and services for the City;
- F. Prepare and recommend to the Council revisions and amendments to the purchasing rules;

- G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain processes as are reasonably necessary to the operation of this chapter and other rules and regulations;
- I. Supervise the inspection of all supplies, equipment, and services purchased to insure conformance with specifications; and
- J. Recommend the transfer of surplus or unused supplies and equipment between departments as needed and selling all supplies and equipment that cannot be used by any agency and have become unsuitable for City use.
- K. Recommend local purchases whenever feasible, reasonable, and in the City's best interest.

SECTION 3. Section 2.36.050 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.050 Requisitions.

Using departments shall submit requests for supplies, equipment, and services on such form as may be approved by the Purchasing Agent.

SECTION 4. Section 2.36.060 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.060 Specifications.

As needed, the Purchasing Agent, in conjunction with the using department or agency, shall develop standard specifications for repetitively procured items and services. Every specification shall be prepared to assure the broadest possible bidder participation consistent with the needs of the using department or agency. Alternate specification provisions for any particular bid invitation may be established by the Purchasing Agent.

SECTION 5. Section 2.36.070 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.070 Formal contract procedure.

Except as otherwise specifically provided in this section or in other sections of this chapter, purchases of supplies, equipment and services of an estimated value of \$75,000 or more shall be by formal sealed competitive bids. Awards for such expenditures shall be made by the Council to the lowest responsible bidder in accordance with the following provisions:

- A. Lowest Responsible Bidder. "Lowest responsible bidder," as used in this chapter, shall mean that bidder who best responds in price, quality, service, fitness, or capacity to the particular requirements of the City. Price alone shall not be the determining factor but shall be considered along with the other factors, including, but not limited to, the ability of the bidder to deliver, availability of parts or service, prior experience and other factors relating to the particular needs of the City for the supplies, equipment or services to be purchased.
- B. Notices Inviting Bids. The Purchasing Agent shall be responsible for posting notification of solicitation of bids, which shall include a general description of the articles to be purchased, state where bid specifications may be secured and the

time and place for opening of the bids. The notice shall specify the factors referred to in subsection A of this section, which factors will be given special consideration in determining the lowest responsible bid for the supplies or equipment to be purchased. Notices shall be posted on the City's website and other public posting locations may be utilized as determined by the Purchasing Agent.

- C. Bidders' Security. When deemed necessary by the Purchasing Agent, bidders' security may be prescribed in the notices inviting bids. Bidders shall be entitled to the return of bid securities; provided, however, a successful bidder shall forfeit his bid security upon his refusal or failure to execute the contract within the time designated in the bid specifications. The Council, on the refusal or failure of the successful bidder to execute the contract, may award the contract to the next lowest responsible bidder. If the 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.
- D. Performance Bonds. The Purchasing Agent shall have authority to require a performance bond before entering a contract in an amount reasonably necessary to protect the best interests of the City.
- E. Bid Opening Procedure. Bids shall be submitted electronically through the electronic bidding system used by the City's Purchasing Division, unless the Purchasing Agent determines otherwise. Bids shall be made publicly available upon opening.
- F. Confidentiality of Bids. All bids received pursuant to the provisions of this chapter shall not be revealed directly or indirectly to any other bidder until the bidding process is completed and all submitted bids have been verified. A tabulation of all bids received shall be available for public inspection during regular business hours after the bids have been verified.
- G. Rejection of Bids. The Purchasing Agent may reject any and all bids presented and re-advertise for bids.
- H. Award of Contracts. Any resulting contract shall be awarded by the Council to the lowest responsible bidder as defined in subsection A of this section.

SECTION 6. Section 2.36.080 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.080 Informal contract procedure.

Subject to other applicable provisions of this chapter:

- A. Value of Purchases. General purchases of supplies, equipment and services of an estimated value of \$10,000 or less shall be purchased directly by the departments under established administrative rules and authority. Purchases valued more than \$10,000 but less than \$75,000 may be made by the Purchasing Agent in the open market pursuant to the procedure prescribed in this section without observing the procedures prescribed in Section 2.36.070 of this chapter. Such purchases shall be based whenever possible on competitive bids and shall be awarded to the lowest responsible bidder.

- B. Approval of Purchases. Any purchase between \$10,000 and \$75,000 shall be made by the Purchasing Agent. All such purchases between \$10,000 and up to \$25,000 require the prior approval of the Finance Director. All such purchases of more than \$25,000 require the prior approval of the City Manager.
- C. Minimum Number of Bids. Open market purchases equal to or in excess of \$10,000 shall, whenever possible, be based on at least three bids, and shall be awarded to the lowest responsible bidder.

SECTION 7. Section 2.36.090 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.090 Purchase orders.

- A. Purchase Orders. Purchases of supplies, equipment, and services shall be made only by numbered purchase order.
- B. Change Orders. Any change order for an approved purchase or contract shall be documented by a purchase order addendum. The Finance Director may authorize cumulative increases up to \$25,000 as long as sufficient funding is available. The City Manager may authorize cumulative increases up to the informal contract threshold of \$75,000 as long as sufficient funding is available.

SECTION 8. Section 2.36.100 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.100 Encumbrance of funds.

Except in cases of emergency, the Purchasing Agent shall not issue any purchase order for supplies, equipment or services unless there exists an unencumbered appropriation in the fund account against which such purchase is to be charged.

SECTION 9. Section 2.36.110 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.110 Inspection and testing.

The Purchasing Agent shall inspect supplies and equipment delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The Purchasing Agent shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

SECTION 10. Section 2.36.120 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.120 Emergency procurement.

For purposes of this section, an emergency shall be deemed to exist only when a condition exists that presents an immediate threat to health, safety or improved property and when a local emergency or disaster has been proclaimed.

- A. When a local emergency is proclaimed, the City's normal purchasing procedures may be superseded by the following provisions to deal with the exigent circumstances.

- B. Solicited bids that are non-responsive shall count towards the minimum number of bids required when there is a declared emergency or disaster in the City.
- C. When an emergency or disaster is proclaimed, the City's normal requirements for sealed formal bids will be suspended to allow for telephonic or other electronic bids from potential vendors or suppliers. In addition, the requirement for public posting may be waived. Also, if the purchase exceeds \$75,000, those expenditures will be presented to the Council for ratification within 60 days.
- D. If the emergency requires the immediate procurement of supplies, equipment or services and the amount is between \$10,000 and \$75,000, the Purchasing Agent will obtain the EOC (Emergency Operations Center) Director's approval prior to making a purchase.
- E. If during the proclaimed emergency, the Purchasing Agent is not available, the EOC Director may order the needed commodity or service from the nearest available source. As soon as possible thereafter, the EOC Director shall submit to the Purchasing Agent a requisition and a notation that the commodity or service has been ordered on an emergency basis from the vendor designated and the Purchasing Agent shall prepare an after-the-fact purchase order.
- F. If the emergency requires the immediate procurement of supplies, equipment or services needed to preserve life and/or property, the purchase may be made without following bidding procedures. However, written justification enumerating one or more of the following rationale, must be included with the purchase request: emergency protective measure, scarce commodity, emergency consulting services, emergency road clearance, other emergency requirement, and/or lack of bids. The use of a pre-existing contract may be utilized under these circumstances.
- G. During a declared emergency or disaster, the Purchasing Agent has the authority to rescind a contract for non-performance within 24 hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or non-performance present an immediate threat to life, safety or improved property.
- H. All purchases made under emergency or disaster conditions shall require separate invoicing from routine (non-disaster related) purchases. All invoices shall state the goods, services or equipment provided and shall specify where the purchases were delivered and/or used.

SECTION 11. Section 2.36.130 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.130 Professional services.

Contracts for services of specially-trained and professional persons shall be exempt from bidding. Such contracts may be procured by the Director of the Department (or designee) that requires the services, in accordance with established administrative rules and procedures. If the amount equals or exceeds \$25,000, the City Manager's approval is required. All contracts equaling or exceeding \$75,000 must be approved by the Council.

SECTION 12. Section 2.36.140 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.140 Waivers.

At its discretion, the Council may, at any time by majority vote and without amending this chapter, waive purchasing procedures or alter these proceedings to fit a specific purchase when such waiver is not in violation of California State law. Whenever special market conditions require it, the City Manager may waive the \$75,000 open market requirements for replenishment of supplies, materials, and equipment, or for services, where the best interest of the City is served, provided that such waiver is ratified by the Council at a meeting within 30 days of the purchase.

SECTION 13. Section 2.36.150 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.150 Cooperative purchasing.

Where purchases are to be made in concert with or through agreements executed by other agencies, formal bid requirements as outlined in Section 2.36.070 of this chapter may be waived by the City Council.

SECTION 14. Section 2.36.180 of Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby revised as follows:

2.36.180 Disposition of City obsolete and surplus property.

The Purchasing Agent shall dispose of all City owned surplus and obsolete property by bid, auction, negotiated sale or exchange for the best value attainable to the City.

SECTION 15. Chapter 2.36 of Title 2 of the Manhattan Beach Municipal Code is hereby amended by adding Section 2.36.190 to read as follows:

2.36.190 - Reimbursement Agreements; Contracts Paid by Third Parties.

The City Manager is authorized to enter into the following agreements:

- A. Reimbursement agreements, whereby a third party (typically a developer or project applicant) pays for services relating to processing a development application, or for services relating to conditions of approval for a project.
- B. Professional services agreements that are paid solely by third parties pursuant to a reimbursement agreement.

SECTION 16. The City Council determines that this ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the "CEQA Guidelines"). It can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the regulations established hereby, may have a significant effect on the environment, and the action taken herein is not a "project" within the meaning of CEQA.

SECTION 17. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

SECTION 18. 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 their application and, to this end, the provisions of this Ordinance are severable.

SECTION 19. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 20. The Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31<sup>st</sup> day after its passage.

ADOPTED on October 3, 2023.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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RICHARD MONTGOMERY  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk

APPROVED AS TO FORM:

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QUINN M. BARROW  
City Attorney