

**ORDINANCE NO. 5716**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING CHAPTER 4.52 OF TITLE 4 OF THE SANTA BARBARA MUNICIPAL CODE PROVIDING PROCEDURES FOR THE PURCHASE OF EQUIPMENT, SUPPLIES, AND SERVICES.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**SECTION 1.** Chapter 4.52 of Title 4 of the Santa Barbara Municipal Code is amended to read as follows:

**4.52.010 System Adopted - Purpose.**

In order to establish efficient procedures for the purchase of equipment, supplies, and services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases, a purchasing system is adopted. To the greatest extent practicable, the City shall endeavor to develop purchasing specifications that will result in the purchase of equipment, supplies, and services that are environmentally preferred. Competitive bidding for the purchase of equipment, supplies, and services is preferred as a matter of City policy and good purchasing practice. Even when competitive bids are not required by this Chapter, competitive proposals or bids should be obtained if reasonably practicable and compatible with the City's interests.

**4.52.020 Definitions.**

The following words and phrases shall have the following meaning and construction for purposes of this chapter.

A. **ENVIRONMENTALLY PREFERRED PURCHASES.** A manner of purchasing equipment, supplies, and services that results in less harm to the natural environment. Environmentally preferred purchases involve the purchase of equipment, supplies, and services in a manner that uses less harmful materials, employs recycled or recovered materials (where appropriate and available), and utilizes techniques intended to result in less impact on the environment than other available methods.

B. **EMERGENCY PURCHASE.** A purchase made to address a situation that creates an immediate and serious need for equipment, supplies, or services which cannot be met through normal purchasing procedures and where the lack of such equipment, supplies, or services would seriously threaten the functioning of City government, the preservation of property, or the health or safety of any person.

C. **WITHIN THE BUDGET APPROVED BY THE CITY COUNCIL.** Purchases that fall within the annual financial budget adopted by the City Council for the Department against whose account the purchase will be applied. A particular purchase need not be

a specific line item of the Department's budget in order to be considered included within the budget approved by the City Council.

D. **INFORMATION TECHNOLOGY.** Includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

E. **MAINTENANCE AND REPAIR.** The routine, recurring, or usual work for the restoration or preservation of the condition of an existing facility, structure, or equipment, as opposed to the purchase of a new or replacement facility, structure, or equipment. If a question arises as to the proper characterization of a purchase as maintenance and repair or a public work, the Purchasing Agent shall determine in writing whether the primary purpose of the purchase is to restore or preserve the condition of an existing facility, structure, or equipment or to obtain a new or replacement facility, structure, or equipment.

F. **PERSONAL PROPERTY.** All property other than real estate, including, but not limited to, equipment, supplies, and materials.

G. **PROFESSIONAL SERVICES.** Services that require specialty training, education, or experience, including, but not limited to, financial, economic, accounting, engineering, legal, or administrative matters.

H. **PURCHASE.** To obtain equipment, supplies, or services in exchange for money or its equivalent. For purposes of this Chapter, the term purchase shall also include the acquisition of equipment or supplies by lease.

I. **PURCHASING AGENT.** The general services manager of the City of Santa Barbara. J. **REVERSE AUCTION.** A process where the City announces its need for equipment, supplies, or services on the Internet, or some other manner, and suppliers bid against one another in a real-time, open, and interactive bidding environment to supply the City with required equipment, supplies, or services.

K. **SERVICES INVOLVING PECULIAR ABILITY.** Services that typically require artistic or creative skill and advanced or specialized training or experience. For purposes of this Chapter, the construction trades are not services involving peculiar ability.

#### **4.52.030 Purchasing Agent - Duties.**

The Purchasing Agent shall be under the direction, supervision, and control of the Director of Finance. The Purchasing Agent shall:

A. Negotiate, purchase, and contract for equipment, supplies (other than library books and library periodicals), routine laboratory tests, nonprofessional services, or services not involving peculiar ability required by any office, department, or agency of the City in accordance with purchasing procedures prescribed by this chapter, and such other rules and regulations as shall be prescribed by the City Council.

B. Act to procure for the City the needed quality in equipment, supplies, routine laboratory tests, nonprofessional services, or services not involving peculiar ability at least expense to the City.

C. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.

D. Prepare and recommend to the City Council rules governing the purchase of supplies, services and equipment for the City.

E. Stay informed of current developments in the field of purchasing, prices, market conditions and new products.

F. Prescribe and maintain such purchasing forms as are reasonably necessary to the operation of this chapter and other rules and regulations.

G. Maintain a bidders' list, vendors' catalog file and records needed for the efficient operation of the Purchasing Division.

#### **4.52.040 Estimates of Requirements.**

All departments shall file detailed estimates of their requirements for supplies and equipment in such manner, at such time, and for such future periods as the Purchasing Agent shall prescribe.

#### **4.52.050 Contracting Authority.**

A. **COUNCIL AUTHORIZATION.** Pursuant to Section 518 of the City Charter, the City Council may, by ordinance or resolution, authorize the City Administrator or other officer to bind the City for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council.

B. **EXERCISE OF AUTHORITY.** To the extent the City Council grants written purchasing authority to the City Administrator or another officer, the City Administrator or such other officer shall exercise such authority in accordance with the procedures specified in this Chapter or as otherwise specified in the ordinance or resolution granting such authority.

C. **DELEGATION OF AUTHORITY.** To the extent the City Council grants purchasing authority to the City Administrator, the City Administrator may delegate such authority to a subordinate in a manner that does not conflict with Section 518 of the City Charter, the provisions of any applicable City ordinance, or the provisions of the Council resolution or ordinance granting the purchasing authority to the City Administrator.

#### **4.52.55 Exceptions to Competitive Bidding.**

The following purchases of equipment, supplies, and services are exempt from the competitive bidding requirements specified in Sections 4.52.060 or 4.52.070 of this Code to the extent such purchases are within the budget approved by the City Council. The City Administrator is authorized to negotiate and contract for such equipment, supplies, and services without complying with competitive bidding subject to the conditions as specified below:

A. Purchases of advertising services (print, television, radio, internet, etc.) upon a showing that the proposed services are a cost effective means of reaching the targeted audience.

B. Software license renewals where the software has been shown to have

continuing value to the operation of the City organization.

C. Housing and furniture rental for police department cadets.

#### **4.52.060 Contracts Up to \$75,000.**

A. **REQUISITIONS.** All departments of the City shall submit requests for equipment, supplies (other than library books and library periodicals), routine laboratory tests, nonprofessional services, or services not involving peculiar ability to the Purchasing Agent by standard requisition request forms.

B. **BIDDING PROCEDURE.** Purchases of equipment, supplies (other than library books and library periodicals), routine laboratory tests, nonprofessional services, or services not involving peculiar ability, of a value of up to \$75,000, may be made by the Purchasing Agent in the open market pursuant to the bidding procedures described herein.

1. **Purchases of up to \$7,500.** Purchases of goods or services of a value up to \$7,500 may be made without competitive bidding.

2. **Sole Source Purchases.** Where only one source is available for the goods or services, the purchase may be made without competitive bidding.

3. **Purchases over \$7,500 and up to \$75,000.** Purchases of goods or services of a value over \$7,500 and up to \$75,000 shall be bid in the following manner:

a. **Minimum Number of Quotations.** Purchases shall whenever possible be based on at least three (3) quotations, and shall be awarded to the person submitting the lowest responsible quotation.

b. **Notice Inviting Quotations.** The Purchasing Agent shall solicit quotations by written requests to prospective vendors or by telephone.

c. **Written quotations shall be submitted to the Purchasing Agent who shall keep a record of all open market orders and quotes for a period of one (1) year after the submission of quotes or the placing of orders.**

C. **CONFIRMATION OF VERBAL QUOTATIONS.** For all purchases made pursuant to this section, verbal quotations over \$7,500 require written confirmation.

D. **WRITTEN CONTRACTS.** All purchases made pursuant to this section shall be made by purchase order or other form approved by the City Administrator and the City Attorney. The Purchasing Agent is authorized to execute such contracts on behalf of the City.

E. **ENCUMBRANCE OF FUNDS.** Except in cases of emergency, the Purchasing Agent shall not issue any purchase order for equipment, supplies, or services for which there is an insufficient appropriation in the budgetary account against which said purchase is to be charged.

#### **4.52.070 Formal Contract Procedures (Purchases Greater than \$75,000).**

Except as otherwise provided herein, purchases of supplies (other than library books and library periodicals), nonprofessional services, services not involving peculiar ability, and equipment, of a value greater than seventy-five thousand dollars (\$75,000), shall be by written contract with the lowest responsible bidder pursuant to the following procedures:

A. **REQUISITION.** All departments of the City shall submit requests for equipment, supplies (other than library books and library periodicals), and nonprofessional services or services not involving peculiar ability to the Purchasing Agent by standard City requisition forms.

B. **NOTICE INVITING BIDS.** The Purchasing Agent shall issue a notice inviting bids that includes a general description of the articles to be purchased or the services sought, states where the bid forms and specifications may be secured, and announces the time and place for opening bids.

1. Published Notice. Notices inviting bids shall be published at least ten (10) working days before the date of opening of bids. Notices shall be published at least once in a newspaper of general circulation, published in the City of Santa Barbara.

2. Bidders' List. The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers whose names are on the City's bidders' list or who have requested their names to be added thereto.

C. **BIDDERS' SECURITY.** When deemed necessary by the Purchasing Agent, bidders' security may be required. Bidders shall be entitled to a return of bid security upon execution of the contract or upon the re-advertisement for bids, provided that the successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within ten (10) days after notice of contract has been deposited in the United States mail. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest responsible bidder, the bidder first awarded the contract shall forfeit only the portion of his security which is equal to the difference between his bid and the bid of the next lowest responsible bidder. If the next lowest responsible bidder is awarded the contract, he shall forfeit his bid security if he fails or refuses to execute the contract.

D. **BID OPENING PROCEDURE.** Bids may be submitted in physical form or electronically, as specified in the notice inviting bids. Physical bids shall be submitted to the Purchasing Agent in a sealed envelope and shall be identified as "bid" on the envelope. Bids submitted electronically shall be identified as "bid" in the subject line of the e-mail or by other conspicuous method. Bids shall be opened at a location open to the public at the time and place stated on the notice inviting bids or as may otherwise be announced to all bidders. A tabulation of all bids received shall be open for public inspection during regular City business hours for a period of not less than thirty (30) calendar days after the bid opening.

E. **REJECTION OF BIDS.** In its discretion, the City Council may reject any and all bids presented and re-advertise for bids pursuant to the procedure described herein. In cases where the Purchasing Agent is authorized to award a contract, the Purchasing Agent may, in his or her discretion, reject any and all bids presented and re-advertise for bids pursuant to the procedure described herein.

F. **AWARD OF CONTRACTS.** Contracts shall be awarded by the City Council to the lowest responsible bidder who submits a bid responsive to the specifications except as otherwise provided herein.

G. **AWARD OF CONTRACTS BY PURCHASING AGENT.** The Purchasing Agent is authorized to award contracts to the lowest responsible bidder when the City Council has approved a Departmental budget that includes funds specifically for the purchase of

the item(s) and the amount of the award is not more than the budgeted amount.

H. **TIE BIDS.** If two (2) or more bids received are for the same total amount or unit price, quality, service and delivery being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Council may in its discretion accept the one (1) it chooses or accept the lowest bona fide offer made by and after negotiation with the bidders who were tied at the time of the bid opening.

I. **NO BIDS RECEIVED.** If no bids are received within ten (10) days of the publication of the notice inviting bids or such other time specified in the notice inviting bids for the receipt of bids, the Purchasing Agent may either publish a new notice inviting bids or solicit bids without further publication.

J. **PERFORMANCE SECURITY.** The Purchasing Agent shall have the authority to require a performance security before entering into a contract in such amount as it shall find reasonably necessary to protect the best interests of the City. If the Purchasing Agent requires a performance security, the form and amount of the security shall be described in the terms, conditions or general provisions of bid documents.

K. **SOLE SOURCE PURCHASES.** Purchases of goods or services which can be obtained from only one (1) source may be made by the Purchasing Agent without advertising and after a determination by the City Council that the goods or services are only available from one source and approval of the purchase by the City Council.

L. **BEST INTEREST WAIVER.** The City Council may authorize purchase of equipment, supplies (other than library books and library periodicals), and nonprofessional services or services not involving peculiar ability without complying with the above procedures when, in the opinion of the Council, compliance with the procedure is not in the best interest of the City.

M. **ENCUMBRANCE OF FUNDS.** Except in cases of emergency, the Purchasing Agent shall not issue any purchase order for equipment, supplies, or services for which there is an insufficient appropriation in the budgetary account against which said purchase is to be charged.

#### **4.52.080 Emergency Purchases.**

An emergency purchase of any equipment, supplies, or services shall be made in accordance with the following procedures:

A. **DECLARATION OF NEED TO MAKE AN EMERGENCY PURCHASE.** The City Administrator or a City department head must declare the need to make an emergency purchase in writing. The declaration shall specify the reasons why an emergency purchase of equipment, supplies, or services is necessary.

B. **SCOPE OF AUTHORITY.** When the need to make an emergency purchase is declared, the City Administrator or the department head declaring the need to make an emergency purchase may purchase any equipment, supplies, or services needed to address the emergency. Emergency purchases are only allowed as necessary to address an immediate need. Even when normal purchasing procedures are not followed for reasons relating to the emergency, competitive bidding shall be used to the greatest extent practicable under the circumstances.

C. **DOCUMENTATION.** All emergency purchases shall be documented in writing.

D. **ENCUMBRANCE OF FUNDS.** When emergency purchases are requested of

equipment, supplies, or services for which no funds have been encumbered, the emergency requisition shall so state and the interested department head shall initiate a request for fund transfer within four (4) hours after the start of the next regular work day.

**E. REPORT TO CITY COUNCIL.** Any time the value of emergency purchases made without compliance with normal purchasing procedures exceeds \$35,000 in the aggregate for a single emergency, a report shall be made to the City Council within thirty (30) days of the declaration of the need for an emergency purchase.

#### **4.52.090 Inspection and Testing.**

The Purchasing Agent may inspect supplies and equipment delivered 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.

#### **4.52.100 Central Stores.**

The Purchasing Agent is responsible for the City storage control program. Under direction of the Purchasing Agent, the City Stores Manager is responsible for the custody of and accounting for the supplies. This includes the maintenance of a perpetual inventory record for each item carried in stock and making quantity checks at frequent intervals to verify the ledger count and value. The City Stores Manager is to exercise full control and reporting of all materials received, withdrawn, or returned to stock.

#### **4.52.110 Information Technology Purchases.**

The City recognizes that purchasing information technology on the basis of lowest purchase price alone may not always serve the best interests of the City. Therefore, the Purchasing Agent is hereby authorized to purchase information technology, within the budget approved by the City Council, on a "best value basis." In determining the best value for the City, the Purchasing Agent may consider the following factors:

- A. The purchase price or cost;
- B. The quality of the vendor's goods or services;
- C. The extent to which the vendor's goods or services meet the City's needs;
- D. The total long-term cost to the City of the good or service;
- D. The reputation of the vendor and the vendor's goods or services;
- E. The vendor's past relationship with the City;
- F. The impact of the proposed purchase on the City's ability to comply with laws relating to the procurement of goods or services from persons with disabilities;
- G. The impact of the proposed purchase on the City's ability to comply with laws relating to the procurement of goods or services from historically underutilized businesses; and
- H. Any relevant criteria specifically listed in the request for proposals or bids.

The preceding list of factors is not listed in order of priority and not all factors will be relevant to all purchases. Unless the request for proposals or bids assigns a particular weight to one factor or another, the Purchasing Agent may assign priority of the factors as appropriate for the individual purchase based on the information available at the time of the purchase with the goal of obtaining the optimum combination of economy, quality, and effectiveness that is the result of fair, efficient, and practical procurement decision-making.

#### **4.52.120 Contract Splitting Prohibited.**

It is unlawful to split or separate any purchase into smaller increments for the purpose of evading the provisions of the Charter or this Chapter requiring advertising and competitive bidding.

#### **4.52.130 Surplus Personal Property.**

All City departments shall submit to the Purchasing Agent, at such times and in such forms as the Agent shall prescribe, reports showing all supplies, equipment or personal property of any nature which are no longer used or which have become obsolete or worn out. The Purchasing Agent shall have the authority to exchange or trade on new supplies and equipment, or to sell, all supplies and equipment which cannot be used by any department or which have become unsuitable for City use. The Purchasing Agent shall also have the authority to make transfers between departments of any usable surplus supplies or equipment. The Purchasing Agent, upon obtaining the specific written approval of the City Finance Director, may, without published notice of the intended sale or competitive bidding, sell items of surplus personal property to: 1. any interested party if the value of the item does not exceed \$500, or 2. any governmental entity as long as the value of the item does not exceed \$10,000.

#### **4.52.140 Cooperative Purchasing.**

A. **COOPERATIVE PURCHASING AGREEMENTS.** Nothing contained in this chapter shall prohibit the participation by the City of Santa Barbara in any voluntary cooperative purchasing agreement, agreements, or programs entered into between the City of Santa Barbara and any local, state, or federal government, or association of governmental agencies within the United States which is authorized by state or federal law or regulations.

B. **SURROGATE BIDDING.** Nothing contained in this chapter shall prohibit the participation by the City of Santa Barbara in a surrogate bidding process where the City purchases equipment, supplies, or services at the same price as a contract awarded by another local, state, or federal government, or association of governmental agencies within the United States following a competitive bidding process that substantially conforms to the City's purchasing procedures.

C. **CALIFORNIA MULTIPLE AWARD SCHEDULE CONTRACTS AND LEVERAGE PROCUREMENT AGREEMENTS.** Nothing contained in this chapter shall prohibit the participation by the City of Santa Barbara in any purchase under a California



Multiple Award Schedule Contract or Leverage Procurement Agreement.

D. **AUTHORITY TO ACT.** The Purchasing Agent is hereby empowered and authorized to act under the provisions of this chapter, to procure for the City supplies and equipment in conjunction with such voluntary cooperative purchasing agreement, surrogate bidding process, California Multiple Award Schedule Contract, or California Leverage Procurement Agreement to the extent such purchases are within the budget approved by the City Council. Sections 4.52.060 and 4.52.070 of this chapter shall not apply to the purchase of supplies or equipment pursuant to any voluntary cooperative purchasing agreement, surrogate bidding process, California Multiple Award Schedule Contract, or California Leverage Procurement Agreement entered into under the provisions of this section. All formal contract and bidding procedures to be followed in such cases shall be those specifically enumerated in the voluntary cooperative purchasing agreement, the surrogate bid, California Multiple Award Schedule Contract, or California Leverage Procurement Agreement.

#### **4.52.150 Future Expenditures.**

No contract to be executed in a future fiscal year or years for purchases of goods or services as described in this chapter shall be valid unless appropriations for such purchase shall have been made in the year in which the contract was entered into.

#### **4.52.160 Public Works Contracts.**

A. **COMPLIANCE WITH THE CHARTER.** Bidding and advertising and award of contracts for public works, excluding maintenance and repair, shall be as required by Section 519 of the City Charter.

B. **PREVAILING WAGES REQUIRED IN COMPLIANCE WITH SB 7.** The state prevailing wage law requires contractors on public works projects to be paid the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed. Under California Constitution Article XI, Section 5, the laws of chartered cities supersede state law with respect to municipal affairs of the city. The City of Santa Barbara is a chartered city duly organized and validly existing under the laws of the State of California, and thus the city may exempt itself from prevailing wage requirements. California Senate Bill No. 7 ("SB 7"), approved October 13, 2013, provides that the state has limited financial resources and resolves only to extend financial assistance to construction projects of those chartered cities that require compliance with the prevailing wage law on all their municipal construction projects. Effective January 1, 2015, unless the contract was advertised for bid prior to that date, chartered cities are additionally disqualified from receiving financial assistance under SB 7 if the city has awarded, within the prior two (2) years, a public works contract without requiring the contractor to comply with prevailing wage requirements. Chartered cities that have charter provisions exempting city projects from prevailing wage requirements may adopt a local prevailing wage ordinance with requirements equal to or greater than state prevailing wage law in order to avoid disqualification.

For at least the last 25 years, the City has generally required prevailing wages to be paid on capital improvement projects. Compliance with SB 7, however, requires the

adoption of an ordinance and the payment of prevailing wages beyond capital improvement projects to include maintenance and repair work, as described in the Labor Code. Notwithstanding the City's constitutional right to exempt locally funded projects from prevailing wage, the City Council finds that the City's financial interests are best served by complying with California's prevailing wage law as delineated in SB 7.

C. Prevailing wages shall be paid on all public works contracts in accordance with Labor Code section 1782 (SB 7).

D. The provisions of this ordinance do not restrict the city from receiving or using state funding or financial assistance awarded prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract awarded prior to January 1, 2015. Further, this ordinance does not disqualify or amend any contracts awarded prior to January 1, 2015.

E. If SB 7 is, for any reason, held to be invalid or inapplicable to charter cities by any court of competent jurisdiction or is otherwise repealed, this ordinance shall automatically sunset and be of no further effect immediately thereafter.

#### **4.52.170 Library Books and Periodicals.**

The City Administrator or his designee may purchase library books and library periodicals in accordance with the budget approved by the City Council.

#### **4.52.180 Professional Services.**

The award of contracts for professional services shall comply with Section 518 of the City Charter or any other procedures established by ordinance or resolution of the City Council consistent with Charter Section 518.

#### **4.52.190 Debarment.**

The City Administrator shall prepare and promulgate procedures for the suspension or debarment of nonresponsible bidders or contractors, and such procedures shall be approved by resolution of the City Council.