



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: February 3, 2009

TO: Ordinance Committee Members

FROM: General Services Division, Finance Department

SUBJECT: Proposed Revisions To The City's Purchasing Code (Santa Barbara Municipal Code Chapter 4.52)

RECOMMENDATION:

That the Ordinance Committee hear a report from staff providing a conceptual overview of proposed changes to Chapter 4.52 of the Municipal Code specifying the City's procedures for the purchase of ordinary goods and services.

DISCUSSION:

Chapter 4.52 of the Municipal Code (Code) governs the purchase of ordinary goods and services. The purchase of "ordinary goods and services" is distinguished from "public works" contracts (covered in Charter Section 519) and contracts for professional services. Purchases of ordinary goods and services can range from small purchases of a few thousand dollars for office supplies to a very large purchase of hundreds of thousands of dollars for the maintenance of water and sewer mains.

Several years ago, the City Council approved changes to the authorization thresholds, which had not been changed for over 30 years. The authorization thresholds dictate the type of approvals needed for various dollar levels of purchasing and when formal bidding processes are required.

The changes to the authorization thresholds were made in anticipation that a second round of changes would follow to: (1) incorporate existing practices that have evolved over the last thirty years, which are not currently included in the Purchasing Code, and (2) to rewrite sections of the Code to improve its readability and cohesiveness as necessary.

Prior to drafting the specific changes and proposed language, staff would like to present a conceptual overview of the proposed modifications for Ordinance Committee consideration and feedback. Subsequently, based on the feedback from the Committee, the City Attorney's office will draft the proposed changes to the Purchasing Code in consultation with staff and return to the Ordinance Committee for review and approval.

The areas to be updated or created were identified through collaboration with various City departments, including the City Attorney's Office. Many of the proposed changes stem from staff experiences with the various processes, interpreting the Purchasing Code, and research into current best practices.

The changes to the Purchasing Code being considered include the following:

1. **Adding a definition section to the chapter to define common terms such as maintenance & repair and professional services.** Maintenance and repair can be similar to and confused with public works construction contracts. However, the bidding and awarding processes for the two areas are very different. Maintenance and repair purchases are treated as purchases of ordinary goods and services while public works construction contracts are processed pursuant to Charter Section 519. Similarly, the procedures for the purchase of ordinary services and professional services differ in important ways. Since the adoption of Chapter 4.52, new services have emerged that do not clearly fall within the historic definition of professional services (i.e., software design). Adding new definitions to the Code will clarify what procedures apply to particular purchases.
2. **Adding "green" purchasing language to the chapter's purpose statement.** This will link the Environmentally Preferred Purchasing Policy that Council adopted on December 9, 2008.
3. **Adding a "contracting authority" section.** This section will consolidate and summarize contracting authority. Over the years, contracting authority has been delegated in several different sections of the Municipal Code, multiple City Council resolutions, and staff memoranda. The consolidation of these authorities in a single location will ease the task of determining the appropriate purchasing authority and will ensure consistent application of the procedures.

Currently, Council Resolution 96-045 grants the City Administrator the authority to contract for goods and services that are within the budget approved by the City Council up to a limit of \$25,000. This resolution does not specify how these contracts are to be awarded. Staff recommends adding a provision to the Code that clarifies that the City Administrator acts with the same authority of the City Council for purchases up to the \$25,000 limit.

4. **Adding an "operational emergencies" section.** This section will codify the City's current practice for responding to operational emergencies such as an equipment failure at the Cater Water Treatment Plant. Currently, Chapter 9.116 of the Municipal Code grants the City Administrator emergency purchasing authority in the case of a natural disaster or other public emergency. This authority was most recently utilized during the Tea Fire. The authority granted under Chapter 9.116 does not require competitive bidding.

This proposal would authorize the City Administrator or a Department Head to approve purchases without competitive bidding in circumstances that do not fall within the definition of disaster provided in Chapter 9.116 but where an immediate response is required that makes the normal competitive bidding process impractical or undesirable.

5. **Updating the cooperative purchasing code section.** Cooperative purchasing is a procedure by which the City purchases a good or service at the price offered to another governmental agency through a competitive bidding process. Through cooperative purchasing (or "piggybacking"), the City gets the benefit of a competitively bid price without the delay and expense of conducting the bidding process itself. The City's current cooperative purchasing section is outdated and artificially restricts the City's ability to piggyback on other public agencies' contracts. The current section limits the City's ability to use only contracts awarded by the State of California, Department of General Services, contracts awarded by the County of Santa Barbara, and contracts awarded by other municipalities located within Santa Barbara County. This restricts the City's ability to leverage its purchasing power by using contracts awarded by larger public agencies located outside of Santa Barbara County, such as the City of Los Angeles or the US Government, without prior Council approval.
6. **Adding a "buying from & selling to other public agencies" section.** This section will permit the City to buy from or sell to other public agencies without going through a competitive bidding process. At times it is in the City's interest to purchase materials or sell materials to other public agencies. This procedure supports the City's sustainability efforts by promoting the reuse of items between public agencies and allows the City to establish and maintain relationships with other public agencies. Also, it provides flexibility in satisfying public needs for goods and materials. For example, the County of Santa Barbara ("County") may be interested in a specific item that the City is going to surplus. The current procedure does not formally permit the City to sell an item directly to the County. They would need to bid on the item at an auction along with all of the other private bidders. The purpose of open competition is to prevent favoritism, which is not an issue when buying from or selling to another public agency.

The Code currently grants the Purchasing Agent the authority to sell surplus City property. Staff recommends adding provision that specifically authorizes the Purchasing Agent to sell or otherwise dispose of surplus property below a certain value threshold to another public agency without requiring a competitive bid process when determined in the best interest of the City.

7. **Adding a "sole source purchasing" section.** The process for sole sourcing or purchasing without competition is not clearly defined. Staff recommends adding language to the Code that will more specifically define when sole source purchasing or single source purchasing is appropriate. The current process of

requiring City Council approval to dispose of competitive bidding in these cases will remain unchanged.

8. **Adding a “no bids received” section.** This section would authorize the Purchasing Agent to re-advertise or to solicit quotes without re-advertising when no bids are received after advertising. There is no formal procedure or authority to dispense with formal bidding when no bids are received. When this happens, it can create unnecessary delays of re-advertising in the hopes of receiving bids, or returning to Council for approval to award a contract that did not strictly adhere to the formal bidding requirements.
9. **Adding a “professional services” section.** This proposal would standardize and codify the City's process for selecting professional service providers.
10. **Adding a “debarment process” section.** In general, contracts for the purchase of ordinary goods and services are awarded to the lowest responsible bidder regardless of the identity of the bidder. If vendor breaches a contract or exhibits inappropriate behavior in the performance of a City contract, the City may declare the vendor to be irresponsible and may prohibit the vendor from bidding on City contracts for a period of time. This process is called “debarment.” Currently, the City does not have a formal process for debarring contractors. Establishing a debarment process would enable the City to avoid contracting with irresponsible vendors while preserving the vendors' due process rights by giving them an opportunity to address the charges before being prohibited from bidding on City contracts.

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