



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: May 19, 2009

TO: Ordinance Committee Members

FROM: General Services Division, Finance Department

SUBJECT: Proposed Amendments To The Purchasing Code

RECOMMENDATION: That the Ordinance Committee:

- A. Consider proposed amendments to Chapter 4.52 of the Municipal Code relating to the purchase of equipment, supplies and services, and forward the ordinance amendments to the City Council for introduction and subsequent adoption; and
- B. Consider a proposed resolution establishing debarment procedures for the City and forward the resolution to the City Council for adoption.

DISCUSSION:

Chapter 4.52 of the Municipal Code (the Purchasing Code) specifies the procedures for the purchase of ordinary goods and services. "Ordinary goods and services" are distinguished from "public works" contracts (covered under Section 519 of the City Charter) and can include small purchases of a few thousand dollars for office supplies to very large purchases of hundreds of thousands of dollars for the maintenance of water and sewer mains.

Several years ago, the City Council approved changes to sections of Chapter 4.52 governing the authorization thresholds, which dictate the type of approvals needed for various dollar levels of purchasing and when formal bidding processes are required. The authorization thresholds had not been changed for over 30 years.

On February 3, 2009, the Ordinance Committee received a report from staff that provided a conceptual overview of additional changes to the Code that would: (1) incorporate existing practices that have evolved over the last thirty years, which are not currently included in the Purchasing Code, and (2) rewrite, as necessary, sections of the Code to incorporate current best practices and to improve the Code readability and cohesiveness. The Committee unanimously supported the proposed changes. Staff returns today with the draft amendments to the Code for the Committee's review and recommends that the Committee consider the proposed amendments and forward the amendments to the City Council for introduction and adoption.

The proposed amendments and additions were identified through collaboration and meetings with the various City departments and divisions including the City Attorney's Office. In addition, some of the proposed changes stem from staff experience with the current procedures and research into current best practices. The proposed amendments to the Purchasing Code include the following:

1. Environmentally Preferred Purchasing

The Chapter's purpose statement (Section 4.52.010) has been amended to state the City's intent to make "green" purchases. The term "environmentally preferred purchases" is defined in Section 4.52.020. These additions incorporate the Council's Environmentally Preferred Purchasing Policy, adopted on December 9, 2008, into the City's purchasing procedures.

2. Definitions

A new section has been added containing definitions of terms used in the Chapter (Section 4.52.020). Clear definitions are important to the proper implementation of the purchasing procedures. For example, maintenance and repair services can be similar to, and sometimes confused with, Public Works construction. However, the bidding and contract award procedures for the two types of contracts are very different. Clear definitions will simplify the administration of the purchasing procedures and lead to more efficient purchases.

3. Contracting Authority

Section 518 of the City Charter authorizes the City Council to delegate purchasing authority to the City Administrator or other City officers by ordinance or resolution. Under the current code, it is not always clear how this delegated authority is to be exercised. A new section entitled "Contracting Authority" (Section 4.52.050) clarifies how delegated purchasing authority relates to the purchasing procedures specified in the Purchasing Code. The proposed addition also codifies the authority for the City Administrator to further delegate the purchasing authority in a manner consistent with the Council's delegation and the purchasing code. In the past, the authority for such further delegation has simply been assumed to exist.

4. Bidding and Award Procedures

The bidding and contract award procedures (Sections 4.52.060 & 4.52.070) have been amended to resolve some prior gaps in procedure or authority, to affirmatively extend purchasing authority that has been exercised by the Purchasing Agent for many years in the case of contracts up to \$25,000, and to extend new authority to the Purchasing Agent to reject bids (when the Purchasing Agent otherwise has the authority to award the contract) or to solicit bids without further publication when no bids are received in the case of contracts over \$25,000.

5. Emergency Purchases

A new section has been added to specify alternative purchasing procedures in the case of declared emergencies (Section 4.52.080). This addition supplements the existing purchasing authority extended to the City Administrator in the case of disasters (See, Section 9.116.060). These new procedures will enable staff to address operational emergencies, such as an equipment failure at the Cater Water Treatment Plant, that require immediate purchases that do not allow for compliance with the normal bidding and award procedures.

6. Maintenance and Repair Services

The section regarding maintenance agreements (Section 4.52.110) has been amended to specify the procedure for bidding and contract award for maintenance and repair services. These procedures are established separately from the purchase of other goods and services in order to accommodate the increased dollar thresholds established by Council Resolution 97-052.

7. Surplus Personal Property

As currently written, the Purchasing Code authorizes the Purchasing Agent to exchange or sell surplus City property. A proposed amendment to this section would authorize the Purchasing Agent to make sell surplus property up to established dollar values without the need to advertise or obtain competitive bids. The idea behind the different dollar thresholds is that sales to other governmental agencies have a reduced opportunity for self dealing or other improprieties.

8. Cooperative Purchases

An amendment to the section authorizing cooperative purchases is proposed to allow the Purchasing Agent to conduct cooperative purchases with a wider group of entities. The current code only allows cooperative purchases with the State Department of General Services, the County of Santa Barbara, and other municipalities located in Santa Barbara County. This limitation artificially restricts the City's ability to piggyback on other public agencies' contracts and prevents the Purchasing Agent from leveraging the City's purchasing power by using contracts awarded by larger public agencies located outside of Santa Barbara County, such as the City of Los Angeles or agencies of the federal government, without prior Council approval. The new proposal would allow the Purchasing Agent to conduct cooperative purchases with any local, state, or federal government or any association of governmental agencies authorized by state or federal law.

This section is also being amended to authorize the use of a surrogate bidding process as long as the original contract was awarded pursuant to a competitive bidding process that substantially conforms to the requirements of the City's purchasing procedures. Common examples of surrogate bidding include the purchase of fire engines based on bid specifications developed and bid by other governmental agencies. This amendment will allow the Purchasing Agent to award contracts based on surrogate bidding as long as the value of the contact is within the budget approved by the City Council.

9. Professional Services

In the past, the relationship between the contracting for professional services and the purchase of ordinary goods and services has been defined by the omission of professional services from the list of goods and services subject to the procedures specified in the Purchasing Code. A new section has been added to the chapter to clarify how contracts for professional services are awarded and how those procedures relate to the Purchasing Code.

10. Debarment

Debarment is a process where the City declares a contractor or supplier to be nonresponsible and prohibits the contractor or supplier from bidding on City purchases for a period of time. Since the ability to bid on government contracts is viewed as a property right of the contractor, the City must afford a contractor due process before declaring the contractor nonresponsible. A section has been added to the Purchasing Code directing the City Administrator to develop a debarment procedure for approval by Council resolution. A draft resolution establishing the debarment procedure accompanies the ordinance amending the Purchasing Code.

Recommendation

That the Ordinance Committee consider the proposed amendments to Chapter 4.52 of the Municipal Code (the Purchasing Code) and the draft resolution establishing the City's debarment procedures and forward the ordinance and resolution to the Council for introduction and adoption.

Budget/Financial Information

The proposed amendments to the Purchasing Code will clarify and streamline purchasing procedures, thereby reducing the amount of staff time dedicated to routine purchases. The extension of the cooperative purchasing authority will enable the Purchasing Agent to take advantage of the purchasing power of other large jurisdictions. The establishment of a debarment process will enable the City to avoid having nonresponsible contractors or vendors competing for City contracts that can lead to inefficiencies and the need to rebid contracts.

Sustainability Impact

The proposed amendments incorporate the City Council's Environmentally Preferred Purchasing Policy into the City's purchasing procedures. In addition, the proposed amendments to the City's purchasing procedures will reduce paperwork and lead to more efficient purchases.

ATTACHMENTS:

1. Ordinance Amending Chapter 4.52
2. Resolution Establishing Debarment Procedures

PREPARED BY: Robert Samario, Assistant Finance Director

SUBMITTED BY: Robert Peirson, Finance Director

APPROVED BY: City Administrator's Office

ORDINANCE COMMITTEE DISCUSSION DRAFT 5/19/09
SHOWING CHANGES FROM EXISTING CODE

ORDINANCE NO. _____

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 ~~supplies, non-~~
~~professional services and equipment~~ 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. **PROFESSIONAL SERVICES.** Services that require specialty training, education, or experience, including but not limited to, financial, economic, accounting, engineering, legal, or administrative matters.

G. **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.

H. **PURCHASING AGENT.** The general services manager of the City of Santa Barbara.

I. **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.

J. 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.

4.52.02030 Purchasing Agent - Duties.

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

A.(a) Negotiate, purchase, and contract for equipment, supplies (other than library books and library periodicals), routine laboratory tests, non-professional 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.(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.(c) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.;

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

E.(e) KeepStay informed of current developments in the field of purchasing, prices, market conditions and new products.;

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

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

4.52.030040 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.

4.52.040060 Contracts UnderUp to \$25,000.00.

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

~~(b)B. BIDDING PROCEDURE. Purchases of ~~the aforementioned goods and services~~ equipment, supplies (other than library books and library periodicals), routine laboratory tests, non-professional services, or services not involving peculiar ability, of a value of up to \$25,000, may be made by the Purchasing Agent in the open market pursuant to the bidding ~~procedures described herein, prescribed herein, provided,~~ however, all bidding may be dispensed with in an emergency, where the value of said goods and/or services is \$2,500.00 or less or where said goods and/or services can be obtained from only one (1) source. ~~Telephone or verbal quotations exceeding \$2,500.00 require written confirmation:~~~~

1. **Purchases of up to \$2,500.** Purchases of goods or services of a value up to \$2,500 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 \$2,500 and up to \$25,000. Purchases of goods or services of a value over \$2,500 and up to \$25,000 shall be bid in the following manner:

~~(1)~~ a. Minimum Number of Quotations. ~~Open market p~~Purchases shall whenever possible be based on at least three (3) quotations, and shall be awarded to the person submitting the lowest responsible quotation.

~~(2)~~ b. Notice Inviting Quotations. The Purchasing Agent shall solicit quotations by written requests to prospective vendors or by telephone.

~~(3)~~ 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. ~~These records, while so kept, shall be open to public inspection.~~

C. CONFIRMATION OF VERBAL QUOTATIONS. For all purchases made pursuant to this section, verbal quotations over \$2,500 require written confirmation.

~~(4) Written Contracts. Where written contracts are entered into for purchases made under this section, the Purchasing Agent is hereby authorized to execute such contracts on behalf of the City. Such purchases shall be made only by~~

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 Encumbrance of Funds.~~

~~—REGULAR AND EMERGENCY PURCHASES. Except in cases of emergency, the Purchasing Agent shall not issue any purchase order for supplies, routine laboratory tests, non-professional services or services involving peculiar ability, or equipment for which there is an insufficient appropriation in the budgetary account against which said purchase is to be charged. When emergency purchases are requested of items 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.~~

4.52.080070 Formal Contract Procedures (Purchases Greater than \$25,000).

Except as otherwise provided herein, purchases of ~~supplies (other than library books and library periodicals), equipment and services~~ supplies (other than library books and library periodicals), non-professional services, services not involving peculiar ability, and equipment, of a value greater than twenty-five thousand dollars (\$25,000.00), shall be by written contract with the lowest responsible bidder pursuant to the following procedures ~~hereinafter prescribed~~:

A. REQUISITION. All departments of the City shall submit requests for equipment,

supplies (other than library books and library periodicals), and non-professional services or services not involving peculiar ability to the Purchasing Agent by standard City requisition forms.

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

~~(1)~~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, ~~printed and~~ published in the City of Santa Barbara.

~~(2)~~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. ~~(b) Bidders' Security~~ **BIDDER'S 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 mailed, unless the City is responsible for the delay 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. (c) Bid Opening Procedure~~ **BID OPENING PROCEDURE**. Sealed bids shall be submitted to the Purchasing Agent and shall be identified as "bid" on the envelope.

Bids shall be opened ~~in public~~ at a location open to the public at the time and place stated on the ~~public~~ 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. (d) Rejection of Bids~~ **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 ~~above prescribed~~.; 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. (e) Award of Contracts~~ **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. (f) Award of Contracts by Purchasing Agent~~ **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

budgeted ~~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. ~~(g) Tie Bids~~ **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. ~~(h) Performance Security~~ **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.;

~~—(i) Prior to advertisement of Notice to Bidders, the interested department shall initiate a requisition and forward the same to the Purchasing Agent.~~

K. ~~(j)~~ **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. ~~(K)~~**BEST INTEREST WAIVER.** The City Council may authorize purchase of supplies, equipment and services equipment, supplies (other than library books and library periodicals), and non-professional services or services not involving peculiar ability, of a value greater than twenty-five thousand dollars (\$25,000.00), 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 \$25,000 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.

4.52.100090 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.

4.52.140100 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, ~~and~~ or returned to stock.

~~4.52.120 Inventory of Fixed Assets Equipment.~~

~~The Purchasing Agent shall prepare rules and regulations governing the control of fixed assets equipment and the taking of an annual physical inventory of equipment.~~

~~4.52.130 Equipment Leasing Agreements.~~

~~(a) As used in this section:~~

~~(1) "Leasing of non-purchasable equipment" means equipment which is available through "lease only" plans;~~

~~(2) "Leasing purchasable equipment" means equipment which can be acquired through "lease with option to purchase" type plans.~~

~~(b) Equipment Leasing. Leasing of purchasable and non-purchasable equipment shall be in accordance with Section 4.52.040 or 4.52.080.~~

~~Bidding may be dispensed with only as stated in Section 4.52.040.~~

~~—Contracts for equipment leasing shall be approved by the City Council as set forth in Section 518 of the Charter or by the Purchasing Agent if the amount is seven thousand five hundred dollars (\$7,500.00) or less.~~

4.52.140110 Maintenance Agreements.

Notwithstanding the provisions of Sections 4.52.060 and 4.52.070 above, services for the maintenance and repair of City equipment and facilities, up to an amount established by Council resolution, may be purchased by the Purchasing Agent pursuant to the following procedures.

A. **BIDDING.** The Purchasing Agent shall comply with the following bidding procedures for purchases conducted pursuant to this section:

1. **Purchases of up to \$2,500.** Purchases of a value up to \$2,500 may be made without competitive bidding.

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

3. **Purchases over \$2,500.** Purchases of a value over \$2,500 and up to the amount established by Council resolution 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. These records, while so kept, shall be open to public inspection.

B. **CONFIRMATION OF VERBAL QUOTATIONS.** For all purchases made pursuant to this section, verbal quotations over \$2,500 require written confirmation.

C. **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.

D. **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.

~~As used in this section "maintenance agreements" means that which guarantees to maintain equipment in good operating condition subject to terms and conditions agreeable to both the company and the City.~~

~~Maintenance agreements shall be signed or terminated by the Purchasing Agent with prior approval of the department head responsible for the equipment.~~

4.52.150120 Contract Splitting Prohibited.

It is unlawful to split or separate any purchase into smaller increments ~~work order, or~~

~~project, any public work project,~~ for the purpose of evading the provisions of the Charter or this Chapter requiring ~~public work to be done by contract after advertising and~~ competitive bidding. ~~The same prohibition shall apply to equipment purchases or equipment leases.~~

4.52.160130 Surplus Personal Property.

All ~~using 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 \$5,000.

4.52.170140 Cooperative Purchasing. ~~Agreements with County or Other Municipalities.~~

A. COOPERATIVE PURCHASING AGREEMENTS. Nothing contained in this chapter shall prohibit the ~~voluntary~~ 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.~~the State of California, Department of General Services, County of Santa Barbara and other municipalities situated within the boundaries of the County of Santa Barbara, and t~~

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 an 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. 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~~or surrogate bidding process, agreements, or programs, as may be entered into by the City to the extent such purchases are within the budget approved by the City Council.~~ Sections ~~4.60.0404.52.060~~ and ~~4.60.0804.52.070~~ of this chapter shall not apply to the purchase of supplies or equipment pursuant to any voluntary co-operative purchasing agreement or ~~program~~surrogate bidding process 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 or ~~program~~[the surrogate bid](#).

4.52.~~180~~[150](#) Future Expenditures.

No contract to be executed in a future fiscal year or years for purchases of goods ~~and~~ 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.~~190~~[160](#) Public Works Contracts.

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.

4.52.~~200~~[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.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE
CITY OF SANTA BARBARA ESTABLISHING
THE GROUNDS AND PROCEDURES FOR
THE DEBARMENT OF NONRESPONSIBLE
CONTRACTORS

WHEREAS, the City of Santa Barbara generally awards contracts for City purchases to the lowest bidder;

WHEREAS, poor contractual performance in the past, bidding irregularities, and other negative actions on the part of a contractor or its affiliates give reason to question the ability of a contractor to properly perform on future contracts; and

WHEREAS, in order to protect the City's interests while maintaining fairness in the competitive bidding of City contracts, the City hereby establishes a process for the suspension and debarment of nonresponsible contractors.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES HEREBY RESOLVE:

1. Statement of Purpose

The City only intends to do business with responsible persons. Debarment and suspension are designed to protect the City and to promote fairness in the competition for City business by ensuring that only responsible persons may submit bids or proposals or otherwise contract with the City.

This Resolution sets forth the grounds for debarment and suspension and establishes procedures for determining whether a person is to be debarred or suspended.

2. Definitions

For purposes of these procedures:

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliate" means a person who:

(a) is the assignee, successor, subsidiary of, or parent company, of another person; or,

(b) is a controlling stockholder; or,

(c) has the same or similar management of the debarred corporate or other legal entity; or,

(d) directly or indirectly controls, or has the power to control, another person, or is directly or indirectly controlled by another person.

Indicia of control include but are not limited to, interlocking management or ownership, identity of interests among relatives, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a person which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended or proposed for debarment, or the debarred person or the business entity created after the debarment, suspension or proposed debarment operates in a manner designed to evade the application of these procedures or to defeat the purpose of these procedures.

“Bidder” means a person who has submitted a bid, proposal or other document seeking award of a contract.

“Contract” means any written agreement between the City and another person. It also includes a public works contract. It also includes a City issued purchase order.

“Controlling stockholder” means a stockholder who:

(a) owns more than 25% of the voting stock of a corporation; or,

(b) notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the management or policies of a corporation.

“Debar” or “Debarment” means the disqualification of a person from:

(a) bidding on a contract; or,

(b) submitting responses to City’s requests for proposals or qualifications; or,

(c) being awarded a contract; or,

(d) executing a contract; or

(e) participating in a contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor for a period of time specified by the Debarment Hearing Officer following a hearing.

(f) directly or indirectly (e.g. through an affiliate) submitting offers for, or executing contracts, or subcontracts with the City; or

(g) conducting business with, or reasonably may be expected to conduct business with, the City as an employee, agent, or representative of another person.

“Debarment Hearing Officer” means a person appointed by the City Administrator to hold hearings, take evidence, and to make determinations about debarment for the City.

“Department” means a City department organized under authority of the City Administrator.

“Management” means the officers, partners, owners, foremen or other individuals responsible for the financial and operational policies and practices of a person.

“Performance Evaluation” means a City-issued evaluation of a person describing the person’s performance on a specific contract.

“Person” has the same meaning as that in Santa Barbara Municipal Code section 1.04.190. In addition, if a person is a corporate or other legal entity, it includes individuals who constitute the person’s management. It also includes any individual or other legal entity that:

(a) Directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a contract; or

(b) conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another person.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Prime contractor” means a person who enters a contract directly with the City.

“Public works contract” means a contract for the construction, reconstruction or repair of public buildings, streets, utilities, and other public works.

“Relative” means:

(a) an individual related by consanguinity within the second degree as determined by the common law; or,

(b) a spouse; or,

(c) an individual related to a spouse within the second degree as determined by the common law; or,

(d) an individual in an adoptive relationship within the second degree as determined by the common law; or

(e) any individual considered to be “family” in commonly understood terms of the word.

“Subcontractor” means:

(a) a person who contracts directly with a prime contractor but not directly with the City; or,

(b) any person under contract with a prime contractor or another subcontractor to provide any service, materials, labor or otherwise perform on a contract. Subcontractor includes a trade contractor or specialty contractor.

“Suspend” or “Suspension” means the debarment of a person for a temporary period of time pending the completion of an investigation and any proceedings before a Debarment Hearing Officer and any appeals therefrom.

“Willfully failed to cooperate” means:

(a) intentionally failed to attend a hearing and/or give testimony, or

(b) intentionally failed to provide documents, books, papers, or other information upon request of the City Administrator, the Debarment Hearing Officer, or the City Council.

3. Debarment Hearing Officer to be Appointed

Upon receipt of a recommendation for debarment from a City department, the City Administrator shall appoint a fair and impartial Debarment Hearing Officer to hear and determine whether a person should be debarred. The individual appointed as the Debarment Hearing Officer may be a City employee, but shall not be an employee who participated in the decision to recommend the debarment nor is subject to the authority, direction or discretion of any employee who participated in the decision to recommend debarment.

The Debarment Hearing Officer shall follow the procedures set forth in this resolution and shall make decisions based on evidence taken at a hearing.

4. Suspension Once City Administrator Decides to Recommend Debarment

(a) Once a determination has been made by the City Administrator that adequate evidence exists supporting debarment, the City Administrator may suspend the person pending a debarment decision where the City Administrator finds that doing so is in the public interest.

(b) The City Administrator shall notify the person of the suspension in accordance with the procedures set forth in this resolution, pending the ruling of the Debarment Hearing Officer or the City Council on the matter.

(c) Once the City Administrator has suspended a person, the suspension shall continue until the Debarment Hearing Officer makes a final decision on the proposed debarment or until there has been a final ruling by the City Council following an appeal of a permanent debarment decision, if any appeal is filed.

5. Notices

(a) Whenever a notice is required to be delivered under these procedures, the notice shall be delivered by any of the following methods. Service is effective as described herein unless different provisions are specifically stated to apply:

(1) Personal delivery, service shall be deemed effective on the date of delivery; or,

(2) Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. Service shall be deemed effective on the date of mailing; or,

(3) Publication. Service shall be deemed effective on the first date of publication.

(b) Proof of delivery of notice may be made by the certificate of any officer or employee of the City or by declaration under penalty of perjury of any person over the age of eighteen years. The proof of delivery shall show that delivery was done in conformity with this Division or other provisions of law applicable to the subject matter concerned.

(c) The failure of any person to receive any notice served in accordance with these procedures shall not affect the validity of any debarment proceedings.

6. Grounds for Debarment

(a) A final conviction, including a plea of nolo contendere, or final unappealable civil judgment of any one or more of the following constitutes grounds for permanent debarment of the person who is subject to, or is the affiliate of the person who is subject to, the criminal conviction, plea, or civil judgment:

(1) under any state or federal statute or municipal ordinance for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which affects the person's or its affiliate's responsibility; or,

(2) for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; or,

(3) for violations of California Government Code sections 84300(c) and 84301 (sections of the California Political Reform Act requiring disclosure of true campaign donor), and which violations occur with respect to a City election; or,

(4) for a conviction under federal or state antitrust statutes involving public contracts or the submission of offers or bid proposals,

(b) A Fair Political Practices Commission enforcement order against a person, either following a hearing or by stipulation, that makes a finding of a violation of California Government Code sections 84300(c) and 84301 and which violations occurred with respect to a City election, constitutes grounds for permanent debarment of the person who is subject to, or is the affiliate of the person who is subject to, the enforcement order.

(c) Any one of the following acts or omissions by a person also constitutes grounds for permanent debarment:

(1) the person committed any offense, took any action, or failed to take an action, which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the person on future contracts with the City; or,

(2) the person has committed any corrupt practice in bidding for or in any way seeking award of a contract, or has committed any corrupt practice in any way relating to a City contract; or,

(3) the person was established to, or operates in a manner designed to evade the application of these procedures or to defeat the purpose of these procedures;

(d) Any two or more of the following acts or omissions by a person constitute grounds for debarment of that person for no less than three years and up to and including permanently:

(1) the person unjustifiably refused to properly perform or complete contract work or warranty performance; or,

(2) the person unjustifiably failed to honor or observe contractual obligations or legal requirements pertaining to the contract; or,

(3) the person used substandard materials, or has failed to furnish or install materials in accordance with contract requirements, even if the discovery of the defect is subsequent to acceptance of the project and expiration of the warranty thereof, if such defect amounts to intentionally deficient or grossly negligent performance of the contract under which the defect occurred; or,

(4) the person committed a violation of the Drug-Free workplace Act of 1988 (41 USC sections 701-707); or,

(5) the person willfully failed to cooperate in the investigation or hearing of the proposed debarment; or,

(6) the person performs, or fails to perform, a contract in such a way that environmental damage results or a violation of environmental laws or permits is committed; or,

(7) the person practices unlawful discrimination in employment, and the person has not taken corrective action after sufficient notice by the City;

(8) the person has committed an act or omission of so serious or compelling a nature that:

(a) it affects the present responsibility of the person to be awarded a contract or to participate as a subcontractor in a contract; or,

(b) it affects the integrity of the procurement process.

(e) The following acts or omissions by a person constitute grounds for debarment of that person for no less than one year:

(1) the City issued the person two or more performance evaluations from the City with a rating of unsatisfactory within a two-year period; or,

(2) the City has issued the person a final performance evaluation with a rating of unsatisfactory.

(3) the person has failed to timely submit bond, contract documents, insurance documents or any other item required by the City, acceptable to the City which conform to bid, request for proposal and/or contract requirements.

(4) the person submitted two or more claims of computational or other error in a bid to the City within a two-year period.

7. Debarment Proceedings before the Debarment Hearing Officer or City Council

The proceedings shall be as informal as is compatible with the requirements of justice. The Debarment Hearing Officer and/or City Council need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiries in the matter through all means and in a manner best calculated to make a just factual determination.

8. Debarment Hearing Officer's Authority to Debar; Debarment Hearing Officer's Decision Final

(a) After notice and hearing held in accordance with these procedures, the Debarment Hearing Officer shall determine whether a person is to be debarred and for what length of time. To debar a person, the Debarment Hearing Officer must find by a preponderance of the evidence that one or more grounds for debarment stated in these procedures exist.

(b) Except as provided in subsection (c) below, a Debarment Hearing Officer's decision shall be final.

(c) A decision by a Debarment Hearing Officer to permanently debar a person may be appealed to the City Council in accordance with Chapter 1.30 of the Santa Barbara Municipal Code. The filing of a request for appeal of the debarment decision shall not stay the Debarment Hearing Officer's decision pending a final decision of the City Council.

(d) The Debarment Hearing Officer shall deliver notice of the decision to the person subject to the debarment hearing and to the City Administrator.

9. Standard of Proof

The standard of proof for the Debarment Hearing shall be a preponderance of the evidence.

10. Imputation of Knowledge and Conduct

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a person may be imputed to the person when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a person may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the person who participated in, knew of, or had reason to know of the person's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one person participating in a joint venture or similar arrangement may be imputed to other participating persons if the conduct occurred for, on approval of, or acquiescence of these persons. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

11. Judicial Review

Once a Debarment Hearing Officer or the City Council has issued a final decision as provided in this Division, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6.

12. Creation of List of Debarred and Suspended Persons

(a) The City Administrator shall create and maintain a list of persons who have been debarred or suspended in accordance with these procedures.

(1) This list shall include the names and addresses of all persons who have been debarred or suspended.

(2) For each debarred or suspended person, the list shall state the date of commencement and expiration of the debarment or suspension.

(b) The City Administrator shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with persons who have been debarred or suspended.

13. Effect of Debarment or Suspension

(a) Persons who have been debarred or suspended are excluded from conducting business with the City on behalf of themselves or as agents or representatives of other persons for the duration of the debarment or suspension.

(b) Persons who have been debarred or suspended are excluded from submitting bids, directly or indirectly (e.g., through an affiliate), submitting responses to requests for proposal or qualifications, receiving contract awards, executing contracts, participating as a subcontractor, employee, agent or representative of another person contracting with the City, or receiving contracts for the period of debarment or suspension.

(c) Persons who have been debarred or suspended are excluded from acting in a capacity where the person reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a contract; or

(d) Persons who have been debarred or suspended are excluded from conducting business, or from acting in a capacity where the person reasonably may be expected to conduct business, with the City as an agent or representative of another person.

(e) The management of a corporate or other legal entity that has been debarred or suspended shall not conduct business or act in a capacity where they reasonably may be expected to conduct business with the City under a different corporate name.

(f) The City shall not accept, receive, open a bid, evaluate for award, or include any proposals, quotations, bids, or offers from any debarred or suspended person for the duration of the debarment or suspension.

(g) The City shall not award or approve the award of a contract or execute a contract under which a debarred or suspended person is intended to participate as a subcontractor or material supplier.

(h) A prime contractor who is awarded a contract shall not employ, subcontract with, nor purchase materials or services from a debarred or suspended person;

(i) When a debarred person sells or otherwise transfers to a relative or to any other person over whose actions the debarred person exercises substantial influence or control, then that relative or other person is automatically suspended or debarred or proposed for debarment to the same extent as the seller or transferor is debarred, suspended, or proposed for debarment.

14. Effect of Debarment or Suspension on an Affiliate

(a) If the City determines that a person is an affiliate of a person that is debarred, suspended or proposed for debarment, the affiliate is debarred or suspended to the same extent as the person that is debarred, suspended or proposed for debarment.

(b) The affiliate debarred under this Section may request an appeal of the decision to the Debarment Hearing Officer by submitting a written request to the City Clerk. An appeal under this Section shall be governed by the same rules and regulations in accordance with these procedures as are applicable to a Debarment Hearing Officer's procedure to debar a person.

(c) The filing of a request for review under this Section shall not stay the decision to debar the affiliate.

15. Effect of Debarment or Suspension by Another Governmental Agency

If a person has been debarred by another governmental agency, that person may be automatically debarred by the City Administrator permanently, or for three years, or until the other governmental agency's term of debarment expires, in the sole discretion of the City Administrator.

16. Liability for Increased Costs

Any person who enters a contract with the City, either directly as a prime contractor or indirectly as a subcontractor, during a period of suspension or debarment imposed upon that person by the City under its rules and regulations shall be liable to the City for increased costs incurred as a result of replacing the debarred or suspended person.

17. Effect of Debarment or Suspension on Existing Contracts

(a) Except as otherwise provided in this section and notwithstanding the debarment, suspension, or proposed debarment, of a person, the City may continue contracts or subcontracts it has with that person that are in existence at the time the person was debarred, suspended, or proposed for debarment.

(b) If the basis of a person's debarment or suspension is so serious that the City Administrator believes that termination of contracts or subcontracts the City has with that person that are in existence at the time the person is debarred or suspended is in the best interests of the City, the City Administrator may take actions necessary to terminate those contracts or subcontracts only after consultation with the City Attorney to ensure the propriety and legality of the proposed action.

(c) The City may continue to place orders against existing contracts, including delivery contracts, held by a debarred or suspended person, unless the contract has been terminated.

(d) The City shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred or suspended persons, unless the City Administrator states in writing the compelling reasons for renewal or extension.

18. Agreement Not to Bid in Lieu of One Year Debarment

The City may, but is not required to, offer a person the opportunity to execute a written agreement not to bid for one year, in lieu of the City's pursuing a one year debarment under this Division. By executing this agreement, the person shall consent to waive a debarment hearing as provided under these procedures, and this agreement will not constitute a debarment.