

ORDINANCE NO. 22-2213

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 2611 (EXCEPTIONS TO BIDDING REQUIREMENTS FOR PURCHASES OTHER THAN FOR PUBLIC PROJECTS) OF CHAPTER 6 (PURCHASING SYSTEM) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE TO AMEND THE COOPERATIVE PURCHASING REGULATIONS

WHEREAS, absent an express requirement by statute, charter or ordinance, there is no city requirement to use a competitive bid process and/or award to the lowest bidder. *Davis v. City of Santa Ana*, 108 Cal.App.2d 669 (1952); and

WHEREAS, Section 914 of the City of Carson's Charter provides that the City Council "may, by ordinance, establish procedures for the procurement of supplies, services, construction of public works, on-call contracts, and the like. Such ordinance may provide requirements and procedures for competitive bidding, and award to the lowest responsive and responsible bidder except that no competitive bidding"; and

WHEREAS, in 2017, the City Council adopted such an ordinance set forth in Sections 2600 *et seq.* ("Purchasing Ordinance") of the City's Municipal Code ("CMC"). The Purchasing Ordinance requires purchases of materials, supplies, equipment, and services of an estimated aggregate annual value that is \$25,000 or greater to go out for competitive bidding with certain exceptions under Section 2611, such as for procurement of professional services, emergency purchases, sole source, and where cooperative purchasing is utilized; and

WHEREAS, competitive bidding under the Purchasing Ordinance requires award of the contract to the lowest responsive and responsible bidder, which is "the bidder who submits the lowest monetary bid that responds to the terms upon which bids were requested, and who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract"; and

WHEREAS, while cooperative purchasing under the Purchasing Ordinance allows City to dispense with the process of having to directly solicit bidders utilizing a competitive bidding process, Section 2611(g) nonetheless requires the Purchasing Manager to conduct due diligence and make an affirmative determination that the competitive bidding process utilized by the cooperative purchasing agency ("Cooperative Purchasing Agency") is at least the same as that required in the CMC which means any time City seeks to purchase something using cooperative purchasing, the vendor or party from whom City seeks to procure the item or services and to whom the Cooperative Purchasing Agency awarded the contract, would have needed to qualify as the lowest responsive and responsible bidder as if the City had directly solicited that bidder under the regulations of the CMC; and

WHEREAS, cooperative purchasing serves as a substitute for City soliciting bids directly by taking advantage of another cooperative purchasing agency's solicitation process, and has the following benefits to City: (1) enables City to more quickly purchase items on an as needed basis, while also making a low price available to City; (2) allows smaller jurisdictions to get a better price due to

economies of scale and better value for their investment by combining their purchasing power with the purchasing power of the cooperative purchasing agency which often operates on a national scale; (3) provides an easier way to navigate and understand what is available, reducing the amount of time City staff needs to perform new research, allowing City staff to focus on ensuring the best return on investment decisions are made; and

WHEREAS, now, based on the foregoing the City Council sees fit to amend Section 2611(g) of the Purchasing Ordinance to allow City to utilize cooperative purchasing as a bidding exception, without the Purchasing Manager having to make an affirmative determination that the Cooperative Purchasing Agency awarded its contract to the lowest responsible and responsive bidder as that term is defined in the CMC because there are times when the benefits of using cooperative purchasing outweigh City not purchasing an item for the absolute lowest price available; and

WHEREAS, the City Council also sees fit to amend Section 2611 of the Purchasing Ordinance to clarify some minor drafting irregularities to provide improved guidance regarding City purchases of materials, supplies, equipment, and services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct, and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. Section 2611 (Exceptions to Bidding Requirements for Purchases Other Than for Public Projects) of Chapter 6 (Purchasing System) of Article II (Administration) of the Carson Municipal Code is hereby amended to read in its entirety as follows (deletions shown in ~~strike through~~, additions shown in **bold, italics, underlined**):

“2611 Exceptions to Bidding Requirements for Purchases Other Than for Public Projects.

Except as otherwise provided by law, the following purchases of materials, services, supplies and equipment shall not require compliance with the bidding requirements of this Chapter:

(a) Informal Purchases. Any contract for a purchase of less than \$25,000 shall be let in accordance with the procedures established herein. Contract requirements shall not be artificially divided so as to constitute separate purchases under this Section.

(1) Bidding shall not be required for individual purchases of materials, supplies, equipment, and services of an estimated value of less than \$5,000. The Purchasing Manager shall adopt administrative rules and procedures for making individual purchases of less than \$5,000. These administrative rules and procedures shall include the requirement to prepare and maintain written records adequate to document the procurement, properly account for the funds expended, and facilitate an audit of such purchases.

(2) So far as practical, for any purchase costing \$5,000 or more and less than \$25,000, at least three (3) vendors shall be solicited to submit price quotations by use of sealed bidding methods, electronic facsimile, or electronic mail. This solicitation requirement may be met if price quotations have been sought through prices listed on a vendor's Internet website; provided, that the Purchasing Manager reviews and approves such pricing. Award shall be made to the responsive and responsible vendor who offers the lowest acceptable quotation that best meets the needs of the City. The names of vendors submitting quotations, their respective local addresses and principal places of business, and the date and amount of each quotation shall be recorded and maintained as a public record.

(i) Bids shall be submitted to the Purchasing Manager, who shall specify the time, place, and manner in which bids are to be submitted. It is the responsibility of the bidder to ensure that the Purchasing Manager receives the bid document at the time, place and manner so specified.

(ii) The Purchasing Manager shall keep a record of all informal bid orders and submitted informal bids for a period of two (2) years after submission of such bids or the placing of such orders. This record, while so kept, shall be open to public inspection, except as prohibited by law, such as in the case of a bidder's proprietary information.

(b) Competitive Proposals. When the Purchasing Manager determines that conditions are inappropriate for the use of competitive bidding or that sealed bidding is infeasible or contrary to the best interests of the City, a contract may be entered by use of the competitive proposal method. The facts supporting such a determination shall be recorded and maintained as a public record.

(1) Request for Proposals *and Request for Qualifications*. The Purchasing Manager shall issue or approve a request for proposals *or qualifications* describing the *qualifications*, services or product to be procured, the format which proposals shall follow, the elements proposals shall contain, other appropriate requirements, and a statement of the time and place for the receipt and opening of sealed proposals. The request for proposals *or qualifications* shall identify all significant evaluation criteria and the procedures to be used for evaluation and selection for negotiation and/or contract award.

(2) Notice of Solicitation. Notice of a request for proposals *or qualifications* shall be published at least ten (10) calendar days prior to the date of proposal opening on the City website. The notice shall include a general description of the item or service required, a statement that proposals shall be submitted to the City Clerk's office, and the place, date, and time of proposed opening. The Purchasing Manager or department director may give such other notice as he or she deems appropriate.

(3) Proposal Opening. Proposals shall be opened publicly by the Purchasing Manager or designee in the presence of one (1) or more witnesses at the time and place specified in the request for proposals *or qualifications*. The name of the offeror and such other information as the Purchasing Manager deems appropriate shall be announced and recorded. If no proposals

are received, procurement may proceed without further compliance with competitive proposal requirements.

(4) Proposal Evaluation. The City may, at any time, waive or modify any element of the request for proposals *or qualifications* and/or any evaluation criterion. If so stated in the request for proposals *or qualifications*, selection may be made, without negotiation, solely on the written submittals. If negotiation is elected, the City may negotiate with one (1) or all offerors that the Purchasing Manager determines have a reasonable chance of selection, based on price and other factors stated in the solicitation.

(c) Professional and Personal Services Procurement. The procurement of the professional services of any architect, landscape architect, engineer, artist, environmental consultant, land surveyor, construction project manager, accountant, appraiser, financial advisor, attorney, or other provider of professional services involving a high degree of technical or individual skill shall be based on demonstrated competence, the professional qualifications necessary for satisfactory performance of the required services, and a fair and reasonable price, after notice to a number of potential offerors adequate to permit reasonable competition consistent with the nature and requirements of the procurement, *or pursuant to issuance of a request for proposals or qualifications*. Offerors shall provide evidence that the person or firm carrying out contract responsibilities possesses the expertise and experience to perform the requisite professional services. The contract file shall contain a written summary of the basis on which notice to potential offerors was given and on which the award was made. Professional services contracts, except as authorized below, shall be awarded in accordance with *subsection (a) and (b) of this Section* ~~CMC-2610~~. Professional service contracts of less than \$25,000 may be awarded in accordance with subsection (a) or (b) of this Section by purchase order on the written recommendation of the department or division head. Professional services contracts for the preparation of environmental reports or special studies regarding private projects, when the project applicant has deposited the full amount of the contract, may be awarded by the City Engineer or the Community Development Director.

(d) Emergency Purchasing.

(1) Notwithstanding any other provision of this Chapter, the Purchasing Manager may make or authorize others to make emergency purchases of materials, supplies, equipment, or services when there exists a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and the selection of the particular contractor shall be included in the contract file. Emergency procurements shall require approval of the City Manager or his or her designee. In the absence or unavailability of the City Manager or designee, any department head shall have like authority for purchases related to their respective departments.

(2) Within five (5) business days after such emergency purchase, a record of each emergency procurement shall be made setting forth the vendor's name, the amount and type of the

contract, the terms of the contract, and the identification number of the purchasing file. Expenditures made during a locally declared emergency or in an emergency situation must be reported to the City Council at the next regular City Council meeting if approval for such expenditures would otherwise have been subject to the approval of the City Council.

(e) Sole Source Purchasing. The City Manager may dispense with this Chapter's bidding requirements if he or she finds that the materials, supplies, equipment, or services are unique because of their quality, durability, availability, or fitness for a particular use and are available only from one (1) source, or, if available from more than one (1) source, can be purchased from the manufacturer or service provider for a lower price. If the cost of such sole source purchasing is \$25,000 or greater, then the City Council's approval shall be required.

(f) Piggyback Purchasing. The City, through the Purchasing Manager, may purchase materials, supplies, equipment, or services, without complying with the bidding or proposal procedures in this Chapter, from any vendor who offers the materials, supplies, equipment, or services at the same or better price, terms, and/or conditions as the supplier previously offered to another city or other public agency as the lowest bidder pursuant to the competitive bidding or proposal process required by that city or other public agency; provided, that:

(1) A copy of the solicitation has been obtained from the originating city or public agency and reviewed by the Purchasing Manager for compliance with this Chapter; and

(2) The Purchasing Manager determines that the specifications of the materials, supplies, equipment, or services required by the City are not materially different from those specified in the originating city's or public agency's solicitation; and

(3) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of such city or other public agency; and

(4) The Purchasing Manager determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Chapter; and

(5) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation; and

(6) The Purchasing Manager determines that, as a result of piggyback purchasing, the price of the materials, supplies, equipment, or services is lower than it would be if purchased directly by the City pursuant to this Chapter.

(g) Cooperative Purchasing. The City, through the Purchasing Manager, may purchase materials, supplies, equipment, or services through a joint powers or other cooperative purchasing program with any local, county, State, or Federal public entity or entities, or any association of public agencies, including the California League of Cities, the California State Association of Counties, and the

National Conference of Mayors, *even if the contracts and implementing agreements entered into by the participating entity or association under those cooperative purchasing programs were not entered into pursuant to a process that resulted in the contract being awarded to the lowest responsible and responsive bidder under CMC 2610(i)*; provided, that:

~~(1) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of any participating entity or association *within three years of City's approval of the City contract entered into with the selected bidder via cooperative purchasing.*; and~~

~~(2) The Purchasing Manager determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Chapter; and~~

~~(3) The Purchasing Manager determines that, as a result of cooperative purchasing, *the price of the materials, supplies, equipment, or services may either be lower or higher than it would be if solicited purchased directly by the City pursuant to this Chapter utilizing the lowest responsible and responsive bidder standard under CMC 2610(i), as the City Council has made a determination that the benefits to City of utilizing cooperative purchasing outweigh any incremental higher price that may be paid by City in certain instances as a result of not soliciting directly utilizing the lowest responsible and responsive bidder standard under CMC 2610(i).*~~

Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public agencies and public agency contracts negotiated to be available to other public agencies.

(h) Notice of Award. With respect to contracts awarded under this Section, no notice of intent to award shall be required to bidders as provided for contracts awarded pursuant to CMC 2610 and the procurement protest procedures under CMC 2613 shall not apply.

(i) Other Purchases. The City Council has determined that the purchase of the following items shall not require compliance with the bidding provisions of this Chapter, so long as funds have been properly appropriated and such purchases conform with all other requirements of this Chapter:

(1) Books, periodicals, records, tapes, and other similar materials.

(2) Intellectual property with a unique or special purpose, as documented in writing by the Purchasing Manager.

(3) Items and services acquired with Federal or State loan or grant funds when the terms and conditions of such loan or grant require compliance with procedures that are different from this Chapter; however, where such procedures are less restrictive, this Chapter shall govern to the extent permitted by the terms and conditions of such loan or grant.

- (4) Insurance, insurance adjusting, legal, and related services. If a new appropriation therefor is required or an existing appropriation is insufficient, the City Manager or Finance Director is authorized to bind coverage or otherwise provide for such services until the required appropriation has been approved.
- (5) Vendor servicing agreements where the equipment has been purchased competitively.
- (6) Express mail through a private carrier.
- (7) Services from other governmental agencies that are not covered under a specific inter-agency agreement.
- (8) Advertising and publication for City programs and events.
- (9) Professional development, training, and continuing education classes for City employees.
- (10) Intellectual property use licenses.
- (11) Fuel purchases and other commodities that are subject to market pricing.
- (12) City utility bills (e.g., water, electrical, and gas).
- (13) Postage.
- (14) Publication of legal notices required by law.
- (15) Food purchased at retail.
- (16) Renewal of software licenses already purchased by the City.
- (17) Commission and committee member stipends.
- (18) Travel and conference expenses.

The City Manager may award all contracts under this Section that are less than or equal to the City Manager's expenditure authority under CMC 2606.

(j) For the evaluation and award of any bids, proposals, or offers received pursuant to this Section, a local preference shall be given to local businesses, as provided further in CMC 2611.1.

(k) If prices quoted or received in two (2) or more bids, proposals, or offers pursuant to this Section are equally the lowest, including application of a local preference pursuant to CMC 2611.1, then the

awarding authority may choose whichever options as provided in CMC 2610(j)(1) through (5) that it deems to serve the best interest of the City.

(1) Rejection or Waiver of Proposal.

(1) At any time, the awarding authority may reject any and all proposals presented in response to a request for proposals or qualifications and may re-solicit for proposals in its discretion.

(2) The awarding authority may waive any irregularities or informalities in any proposal.”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 5. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

[SIGNATURES OF FOLLOWING PAGE]

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this
___ day of _____, 2022.

ATTEST:

Lula Davis-Holmes, Mayor

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney