

ORDINANCE NO. 17-1609

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA AMENDING CHAPTER 6 OF TITLE II OF THE CARSON MUNICIPAL CODE RELATING TO THE CITY'S PURCHASING SYSTEM

WHEREAS, the City's Purchasing System is contained within Chapter 6 of Article II of the Carson Municipal Code ("Purchasing System");

WHEREAS, the Purchasing System was most recently updated in 2000 and in 2013;

WHEREAS, the City Council desires to update the Purchasing System in order to more ensure that the City has efficient procedures for the purchase of materials, supplies, equipment, and services and professional services, to secure for the City materials, supplies, equipment, and services and professional services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority of the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted;

WHEREAS, the City Council also desires to adopt and comply with the California Uniform Construction Cost Accounting Act (found under California Public Contract Code Sections 22000 through 22045) and has adopted Resolution No. 17-012, which provides that the City elects to be subject to the California Uniform Construction Cost Accounting Act (found under California Public Contract Code Sections 22000 through 22045), including any policies or procedures promulgated by the Commission established by the California Uniform Construction Cost Accounting Act;

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

SECTION 1. The forgoing recitals are true and correct and incorporated herein by this reference.

SECTION 2. Chapter 6 "Purchasing System" of Title II of the Carson Municipal Code is hereby amended to read in its entirety as follows:

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Section 2600. Purpose and Applicability.

- (a) The purpose of this Chapter is to establish efficient procedures for the purchase of materials, supplies, equipment, and services and professional services, to secure for the City materials, supplies, equipment, and services and professional services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority of the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted.

- (b) This Chapter shall apply to all purchase orders and contracts solicited or entered into after the effective date of this ordinance.

Section 2601. Definitions.

As used in this Chapter, the following words shall have the following definitions:

- (a) “Awarding Authority” shall mean either the City Council or Purchasing Manager, as the case may be.
- (b) “Capitalized equipment” shall mean equipment that is reported as an asset on the City’s audited financial statements in accordance with Generally Accepted Accounting Principles.
- (c) “Commission” shall mean the Uniform Public Construction Cost Accounting Commission, created pursuant to California Public Contract Code Section 22010.
- (d) “Inventory” shall mean supplies that may be consumed such as light bulbs, printing paper, writing instruments, and other similar items.
- (e) “Maintenance work” shall have the same meaning as that term is defined under California Public Contract Code Section 22002.
- (f) “Public project” shall have the same meaning as that term is defined under California Public Contract Code Section 22002.
- (g) “Purchase order” shall mean a written or electronic authorization for a particular vendor to provide particular materials, supplies, equipment, and services to the City for a particular price and which shall contain terms and conditions of such purchase and shall be in a form approved by the City Attorney.
- (h) “Purchasing system” shall mean the purchasing system established by this ordinance and codified under Chapter 6 of Title II of the Carson Municipal Code.
- (i) “Surplus property” shall mean personal property belonging to the City that is no longer needed or which have become obsolete or worn out as determined by the relevant City Department. “Surplus property” includes capitalized equipment, but does not include inventory.
- (j) “The Act” shall mean the “Uniform Public Construction Cost Accounting Act.”

Section 2602. Centralized Purchasing.

The purchasing system is intended to be centralized within the Finance function of the City. The City Manager may authorize, in writing, any department to purchase specified

supplies and equipment independent of the Purchasing Manager, however such purchases shall be made in conformity with established procedures and regulations.

Section 2603. Purchasing Manager.

The City Manager shall serve as the Purchasing Manager. The City Manager may also appoint a designee to serve as the Purchasing Manager and to administer the purchasing system. The Purchasing Manager's authority and responsibilities shall be in accordance with the purchasing system, any established administrative rules and procedures, and as established by the City Council and/or the City Manager. The Purchasing Manager may also establish administrative rules and procedures in order to carry out the purposes of this Chapter.

Section 2604. Requisitions.

Administrative rules and procedures governing the purchasing system, either by resolution or administrative procedures and regulation, shall provide procedures that require every department to annually submit requests and estimates for materials, supplies, equipment and services to the designated Purchasing Manager in a prescribed requisition process.

Section 2605. Purchase Orders and Contracts.

(a) Purchase Orders. Every expenditure of public funds made pursuant to this Chapter, irrespective of the source, by the City shall require a purchase order, where the original template form of the purchase order shall be approved by the City Attorney; however, the following expenditures may not require a purchase order:

- (1) Individual purchases of materials, supplies, and equipment from one vendor of less than \$1,000, in the aggregate, during a fiscal year.
- (2) Individual purchases made pursuant to Section 2611(i)(11) through 2611(i)(18).
- (3) Notwithstanding the forgoing, the Purchasing Manager, in his or her sole discretion, may require the use of a purchase order.

(b) Written Contracts. The following shall govern the use of written contracts:

- (1) For purchases of any personal property, including materials, supplies and equipment:
 - (i) If the estimated value of an individual purchase is less than \$25,000 over a fiscal year or is a purchase made under Section 2611 (i)(6), (i)(8), (i)(12), (i)(13), (i)(14), and (i)(17), then a separate written contract may not be required. However, the Purchasing Manager shall have the sole discretion to require the

use of a separate written contract, in a form approved by the City Attorney, in addition to the purchase order requirement under Section 2605(a).

(ii) If the estimated value of an individual purchase is \$25,000 or greater over a fiscal year, then a separate written contract, in a form approved by the City Attorney, shall be required in addition to the purchase order requirement under Section 2605(a). However, the Purchasing Manager has the sole discretion to waive this requirement.

(2) For purchases of any services:

(i) If the estimated cost of a service is less than \$5,000 over a fiscal year, then a separate written contract may not be required.

(ii) If the estimated cost of a service is \$5,000 or greater over a fiscal year, then a separate written contract, in a form approved by the City Attorney, shall be required in addition to the purchase order requirement under Section 2605(a).

(iii) Notwithstanding the forgoing, the Purchasing Manager, in his or her sole discretion, may require the use of a separate written contract, in a form approved by the City Attorney, in addition to the purchase order requirement under Section 2605(a).

Section 2606. City Manager expenditure authority.

The City Manager may approve expenditures that are \$25,000 or less. All expenditures of greater than \$25,000 shall be approved by the City Council.

Section 2607. Evasion of Provisions of this Chapter Prohibited.

Purchases for materials, supplies, equipment and services shall not be split into smaller orders or projects, artificially aggregated into larger orders or projects, or willfully mischaracterized or misclassified for purposes of evading the provisions of this Chapter.

Section 2608. Encumbrance of Funds.

Except in cases of emergency as defined in Section 2611(d), the Purchasing Manager shall confirm the requested purchase is funded in the current fiscal year adopted budget. For items not identified in the current fiscal year adopted budget, the requesting City department shall be required to request a budget transfer to or receive City Council approval prior to engaging in the procurement process.

Section 2609. Inspections.

The Purchasing Manager, in his or her discretion, shall have the authority to inspect supplies and equipment delivered, or services rendered, to determine their conformance with the specifications set forth in the original contract or order.

Section 2610. Bidding procedures for purchase of materials, supplies, equipment and services.

Except as otherwise provided in this Chapter, all contracts of the City for the purchase of materials, supplies, equipment, and services of an estimated aggregate annual value that is \$25,000 or greater shall be made using the procedures contained in this Section. Purchases that are less than \$25,000 shall be governed by the procedures found under Section 2611(a). As used in this Section, “materials, supplies, equipment, and services” include all personal property and services, except professional services, as defined in Section 2611(b)(5), procured by the City. This Section shall not govern public project purchases.

- (a) Notice Inviting Bids. Notices inviting sealed bids shall include a general description of the materials, supplies, equipment, or services to be purchased; shall state where bid blanks and specifications may be secured; shall state the time, location, and manner in which the bids shall be submitted; and the time and place for opening bids. Any invitation to bid, request for proposal, and other solicitation may be cancelled in whole or in part when there is good cause therefor or when in the judgment of the Awarding Authority cancellation is in the City’s best interests.
- (b) Published Notice. Notice inviting sealed bids shall be published at least ten (10) days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published in the City, or if there is none, it shall be posted in at least three (3) public places in the City that have been designated by ordinance as the places for posting public notices. Notice shall also be posted on the City’s official website if such website exists.
- (c) Bidders’ List. If a Bidders’ List has been established, the Purchasing Manager shall also solicit sealed bids from responsible prospective vendors or contractors whose names are on the Bidders’ List.
- (d) Interpretation of Bid Specification. Oral interpretation of written bid specifications shall not be made to prospective bidders. If the prospective bidder discovers discrepancies or omissions in any specification, or if the bidder is in doubt as to the meaning of any specification, the bidder shall request a written interpretation or modification from the City. If interpretations or modifications are deemed necessary, the City will then issue a written addendum to all parties known to have received copies of the specifications.
- (e) Bidder’s Security. When deemed necessary by the Purchasing Manager, bidder’s security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall

forfeit its bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder.

(1) If the City Council awards the contract to the next lowest responsible bidder, the amount of the bidder's security shall be applied by the City to the difference between the successful bid and the next lowest responsible bid, and the surplus, if any, shall be returned to the successful bidder.

(f) Performance Bonds. The Purchasing Manager shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the City. If a performance bond is required, then the form and amount of the bond shall be described in the notice inviting bids.

(g) Bid Submission and Opening. Sealed bids shall be submitted to the City Clerk and shall be opened publicly by the Purchasing Manager or designee in the presence of one or more witnesses at the time and place designated in the invitation to bid. No bid shall be considered which has not been received at the place, and at or prior to the time, stated in the invitation for bids. No bid shall be considered which is transmitted by electronic facsimile or electronic mail, unless specifically authorized in the bid. The amount of each bid, the name of each bidder, and such other relevant information as the Purchasing Manager deems relevant shall be announced and recorded. If no bids are received and subject to the approval of the Purchasing Manager, procurement may proceed without further compliance with competitive bidding requirements. After the opening of a sealed or formal bid/proposal, and after the City has identified the awardee, a "notice of intent to award" will be sent to all actual bidders by mail, email, or fax at the option of the City, and all applicable response periods will begin on the date the notice was sent identifying the awardee and including at least the following text: "Protests must comply with the requirements of Carson Municipal Code Sections 2613 and be submitted no later than five business days after the date of this notice."

(h) Bid acceptance and Evaluation. Bids shall be evaluated on the requirements set forth in the invitation to bid, and no such criterion shall be used unless set forth in the invitation to bid or in this Chapter. Evaluation criteria may include criteria to determine acceptability, including, but not limited to, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in evaluation of a bid shall be objectively measurable if possible, such as discounts, transportation costs, and total or life cycle costs.

(i) Award to Lowest Responsive and Responsible Bidder. Unless bids are rejected as provided in this Chapter, all contracts of the City for the purchase of materials, supplies, equipment, and services of a value equal to or exceeding \$25,000, except for contracts entered pursuant to requests for proposals and exempted purchases, shall be awarded to the lowest responsible and responsive bidder. "Lowest responsible and responsive bidder" means 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. To the extent permitted by law, criteria for determining whether a bidder is responsible include, without limitation, all of the following:

- (1) The conformity of the supplies, materials, equipment, or services to the required specifications;
- (2) The ability, capacity, and skill of the bidder to provide the supplies, materials, equipment, or services as required;
- (3) The ability of the bidder to provide the required items or services within the time specified;
- (4) The character, integrity, reputation, judgment, experience, efficiency, financial resources, and financial responsibility of the bidder;
- (5) The ability of the bidder to promptly provide future maintenance, repair, parts, and service after purchase;
- (6) The bidder's prior record of performance on other procurements or projects, including timely completion of performance, quality of products and work provided, and completion of projects within the bid amount submitted and project budget;
- (7) The bidder's involvement in prior or current litigation or contract disputes that could impair satisfactory performance of the contract to be awarded; and
- (8) The bidder's history of noncompliance with occupational safety and health requirements, labor statutes and regulations, and other local, state, and federal laws.

The purchasing file shall contain a written summary of the basis on which the award is made. If a bidder is rejected because of an adverse determination of that bidder's capability of performing the contract, a written determination of irresponsibility, setting forth the basis of the finding, shall be prepared by the procurement officer or designee. The unreasonable failure of a bidder promptly to supply information in connection with an inquiry regarding responsibility may be

grounds for a determination of irresponsibility. Prompt written notice shall be sent to the bidder of the evidence reflecting upon the bidder's responsibility that has been either received from others or adduced from independent investigation. The bidder shall be afforded an opportunity to rebut such adverse evidence and to present evidence of qualification. After consideration of the evidence and the rebuttal evidence, the procurement officer shall make a final determination of the lowest bidder's responsibility and promptly so notify the bidder in writing. A bidder aggrieved by any such determination may protest as provided in Section 2613 of this Chapter.

(j) Equal Bids. If prices quoted or received in two sealed bids are equal, then the City Manager or the City Council may choose whichever of the following options it deems to serve the best interest of the City:

- (1) Select one bid, giving preference to a business located within the City of Carson; or
- (2) Reject all bids and re-solicit for bids; or
- (3) Reject all bids and authorize negotiation of an agreement between the City and one of the equivalent bidders; or
- (4) Select one bid, giving preference to the business which is the most experienced; or
- (5) Take any other action that the City Council deems to serve the best interest of the City.

(k) Rejection or Waiver of Bid Requirements.

- (1) At any time, the awarding authority may reject any and all bids presented and may re-solicit for bids in its discretion.
- (2) The awarding authority may waive any irregularities or informalities in any bid or bidding.

Section 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 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 bidders' 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. The Purchasing Manager shall issue or approve a request for proposals describing the 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 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 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 or more witnesses at the time and place specified in the request for proposals. 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 and/or any evaluation criterion. If so stated in the request for proposals, selection may be made, without negotiation, solely on the written submittals. If negotiation is elected, the City may negotiate with one 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. 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 Section 2610 of this Chapter. Professional service contracts of less than \$25,000 may be awarded in accordance with Sections

2611(a) or 2611(b) of this Chapter 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 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; provided, that:

(1) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of any participating entity or association; 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 is likely to be lower than it would be if purchased directly by the City pursuant to this Chapter.

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 Section 2610 and the procurement protest procedures under Section 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 Section 2609.

Section 2612. Contracts for Public Project.

(a) Uniform Public Construction Cost Accounting Act Adopted. The City Council of the City of Carson, California, hereby adopts the Act, for the purpose of prescribing regulations governing purchases and contracts awarded by the City for "public projects" and "maintenance work," as defined in California Public Contract Code Section 22002. In accordance with the Act, the City shall utilize the Act's procedures and definitions when contracting for "public projects" or "maintenance work." However, nothing shall preclude the City from utilizing more restrictive procedures.

(b) Informal Bidding Procedure. Public projects and maintenance work which are in accordance with the limits established in California Public Contract Code Section 22032(b), may be let to contract by following the Act's informal procedures. The informal procedures include the following:

(1) Contractors List. A list of contractors, identified according to categories of work, shall be developed and maintained in accordance with the provision of California Public Contract Code Section 22034, together with any criteria promulgated by the Commission from time to time.

(2) Notice Inviting Bids. At least ten calendar days before bids are due, a notice inviting informal bids shall be mailed to all contractors on the list for the category of work being bid, and to all construction trade journals specified pursuant to the requirements of California Public Contract Code Section 22036; provided however:

(i) Additional contractors and trade journals may be notified at the discretion of the Purchasing Manager.

(ii) If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.

(iii) If the product or service is proprietary in nature, such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to those contractor(s).

(3) The City Council may delegate the authority to award contracts under this informal bidding procedure to the Purchasing Manager.

(4) If all bids received under this informal bidding procedure are in excess of the limits provided in California Public Contract Code Section 22034(d), then, the City Council may award the contract consistent with California Public Contract Code Section 22034(d).

(c) Formal Bidding Procedure. Public projects and maintenance work, which are in accordance with the limits established in Public Contract Code Section 22032(c), shall, unless otherwise provided by the Act or by law, be let to contract pursuant to the formal procedures set forth in Act.

(1) Notice Inviting Bids.

(i) Formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fourteen calendar days before the date of opening the bids in a newspaper of general circulation pursuant to the requirements of Public Contract Code Section 22037.

(ii) The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail, and mailed to all construction trade journals specified in Public Contract Code Section 22036.

(iii) For circumstances not involving a public project, where there is no construction trade journal for the maintenance work to be procured, the notice inviting bids shall instead be made in conformity with established procedures. All notices under this paragraph shall be sent at least fifteen calendar days before the date of opening the bids.

(iv) In addition to notice required by this Section, the City may give such other notice as it deems proper.

(2) The City Council shall adopt plans, specifications and working details for all public projects requiring the formal bid procedure, pursuant to Public Contract Code Section 22039.

(d) Bid acceptance or rejection.

(1) Processing Bids. Sealed bids shall be submitted to the City Clerk and shall be identified as bids on the envelope. It is the responsibility of the bidder to ensure receipt of the bid document by the City Clerk by the designated hour. Bids shall be opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.

(2) Bid acceptance or rejection.

(i) Rejection of All Bids. In its discretion the Awarding Authority may reject all bids presented, if the City, prior to rejecting all bids and declaring that the project can be more economically performed by City employees, furnishes a written notice to the apparent low bidder. The notice shall inform the bidder of the city's intention to reject the bid, and shall be mailed at least two business days prior to the hearing where the bid will be rejected. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the City may:

(A) Abandon the project or readvertise for bids; or

(B) Following passage of a resolution of the City Council by a four-fifths vote stating the project can be performed more economically by the employees of the City, the City may have the project done by force account without further complying with the requirements of the Act.

(ii) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the City may accept the one it chooses.

(iii) If no bids are received through the formal or informal procedure, the project may be performed by the employees of the City by force account or negotiated contract without further complying with this article.

Section 2613. Procurement protest procedures

Procurements for public works projects, materials, supplies, goods and services shall be protested in accordance with this Section. Protests not complying with the provisions of this Section shall not be reviewed.

(a) Definitions. For the purposes of this Section:

- (1) “Bid” includes “offer” and “proposal” in the context of formal, informal, or negotiated procurements.
- (2) “Days” mean business days unless otherwise indicated.
- (3) “Filing date” or “submission date” means the final date for receipt by the City Clerk or the Purchasing Manager of the City of Carson.
- (4) “Interested party” means an actual bidder or offeror.
- (5) “Procurement staff” means the Finance Director, designated Purchasing Manager, City Engineer, community development director or other department director initiating the procurement being requested, or the designees of any of these persons.
- (6) “Reviewing officer” means the City Manager or designee.
- (7) “Mail” means any delivery service such as US mail, UPS or FEDEX.

(b) Grounds for Protest. Any interested party may file a written protest on any of the following grounds:

- (1) The existence of a substantial defect, error or omission in the solicitation documents issued by the City;
- (2) Failure of the City to follow the procedures of this Chapter;
- (3) Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents therefor;
- (4) Award of the contract by the City to a bidder other than on the basis stated in the solicitation documents; or
- (5) Such other grounds as would state a cause of action at law or in equity.

(c) Disallowed Protest Grounds. Protests based on the following grounds shall not be considered:

- (1) An evaluator's professional judgment on the quality of a response;
or
- (2) The proposer's assessment of the agency's needs or requirements;
or
- (3) Any grounds other than those listed in Subsection (b) of this Section.

(d) Protest Filing and Delivery. Pursuant to Section 2610, a notice of intent to award shall be issued prior to the award of contracts awarded in accordance with Section 2610. Protests made in accordance with said section shall be processed in accordance herewith. Protestors shall bear all costs of the protest other than salary and personnel costs of City employees. Protests shall be filed with the City Clerk in writing and hand delivered or sent by certified U.S. mail, return receipt requested.

(e) Protest/Appeal Contents. Protest documents shall:

- (1) Include the name, address, business telephone, email, and fax number of the protestor;
- (2) Identify the procurement or project under protest by name, solicitation number, and submission date;
- (3) Contain a concise statement of the grounds for protest and the facts supporting such grounds, including all supporting documentation (documentation submitted after filing will not be reviewed); and
- (4) State the form of relief requested.

(f) Pre-Opening Protest Period—Solicitation Documents. Interested parties wishing to protest City solicitation documents must do so before the final date to accept bids and within five business days after the date the solicitation documents are issued or amended.

(g) Post-Opening Protest Period. In cases of protests involving aspects of City procurement other than solicitation documents, interested parties shall make such protest within five business days after the notice of intent to award is mailed or otherwise transmitted.

(h) Protest Process.

- (1) Upon receipt of a timely protest, procurement staff shall review all the submitted materials and create and retain a written record of their review. Not later than ten (10) days after receipt of the protest, procurement staff shall respond in writing to the protest and to each material issue raised in the protest.

(2) In the event of a timely protest, procurement staff shall not proceed with the solicitation or award of the contract until all administrative remedies have been exhausted unless the City Manager determines that the award of a contract without delay is necessary to protect substantial interests of the City.

(3) Procurement staff may elect, but are not obligated, to attempt to resolve the protest with the affected parties. "Resolution" means the formal withdrawal of a protest by the protestor, or written acknowledgement of protest resolution signed by the City and the protestor.

(4) If procurement staff attempts resolution, protestors shall be notified in writing of the date on which their matters shall be considered and shall be afforded an opportunity to present evidence for consideration to the City and such technical or other staff as the City deems necessary.

(5) Procurement staff shall make a formal decision ("protest determination") to deny or uphold the protest and shall notify the protestor of that decision by mail, email or fax. The decision notification shall include a statement that the protestor has the right to appeal the protest determination to the City Council within three business days of the decision notification.

(6) The award of contract shall be deferred until completion of the protest procedure provided that if award of the contract is by the City Council, the protest determination may be made by the City Council concurrent with the decision to award the contract. The protestor shall be given at least five days written notice of the date of the City Council meeting to consider the award and the right to appear and be heard, but no further appeal rights.

Section 2614. Disposition of Surplus Property.

(a) All City departments shall submit to the Purchasing Manager, at such times and in such form as the Purchasing Manager shall prescribe, reports showing all surplus property which is no longer needed or which has become obsolete or worn out.

(b) The Purchasing Manager may dispose of surplus property by the following methods:

(1) Competitive bidding under Section 2614(d);

(2) Public auction under Section 2614(e);

(3) Other methods of disposition under Section 2614(f), provided that the Purchasing Manager determines that competitive bidding or auctioning of such surplus property is infeasible, has not resulted in sale of such surplus property, or will result in minimal return to the City.

(c) Competitive Bidding. If the Purchasing Manager elects to dispose of surplus property by competitive bidding, the following procedures shall be used:

(1) Surplus property shall be sold to the highest bidder submitting a sealed bid in response to a notice of sale by sealed bid.

(2) The Purchasing Manager shall cause to be published at least three days before the sale, in a locally adjudicated newspaper, a notice setting forth a general description of the surplus property to be sold; and the date, time and location for submittal of sealed bids, which date shall not be less than five calendar days following the last date of publication of the notice; the location where the property may be inspected; any special terms or conditions of sale; and the place, date and time when the bids will be opened and tabulated.

(3) The Purchasing Manager shall accept the highest bid or may reject all bids, and at a later date hold another public sale by competitive bidding. However, if the disposition of such surplus property includes capitalized equipment, then approval of the City Council shall also be required prior to disposition of such capitalized equipment.

(d) Auction. If the Purchasing Manager elects to dispose of surplus property by auction, the following procedures shall be used:

(1) If the auction of such surplus property includes capitalized equipment, then the Purchasing Manager shall seek the approval of the City Council prior to initiating disposition by auction.

(2) Surplus property shall be sold to the highest bidder at a public auction conducted by a licensed auctioneer or through participation in a cooperative auction of government agencies.

(3) The Purchasing Manager shall cause to be published at least three days before the sale, in a locally adjudicated newspaper, a notice setting forth a general description of the surplus personal property to be sold, and the date, time and location of the auction. If the auction is part of a cooperative auction, the notice given by or on behalf of the agency coordinating the auction will satisfy the requirements of this subdivision and no additional notice is required.

(4) The surplus property shall be sold to the highest bidder, provided the bid exceeds the minimum bid price, if any.

(5) All surplus property shall be sold “as-is” without warranty express or implied.

(6) The Purchasing Manager may contract with a professional auctioneer and allow a flat fee, hourly fee or percentage of the amount of the sale to be paid based upon that which is common and customary method and rate for such auctioneering services.

(e) Other Methods of Disposition. The Purchasing Manager, when in his or her judgment that the competitive bid or auction of surplus property is infeasible, has not resulted in sale of such surplus property, or will result in minimal return to the City, may dispose of such surplus property by:

(1) Donation to any other governmental organization, nonprofit group or corporation exempt from federal taxes pursuant to Internal Revenue Code Section 501(c)(3) located within or serving the City of Carson. Surplus property shall only be donated upon approval of the City Council; or

(2) Sending to a recycling or waste disposal facility.

(3) However, to the extent that the disposition of such surplus property includes capitalized equipment, then approval of the City Council shall also be required prior to disposition of such capitalized equipment.

(f) The Purchasing Manager shall keep a written record of surplus property sold or donated pursuant to this Chapter. If the property was sold, the record shall include the price or other consideration paid and the identity of the purchaser. If the property was donated, the record shall include the identity of the donee.

(g) Unless otherwise provided, all proceeds from sale or auction of surplus property will be deposited into the city’s general fund. Proceeds from sale of enterprise, federal, grantor other special designation property will be reimbursed, less prorated selling expenses to the appropriate fund, after completion of each sale.

Section 2615. Employee Conflict of Interest Prohibited.

(a) It shall be unethical for any City employee or City official to participate directly or indirectly in a procurement contract when the City employee or official knows that:

(1) The City employee or official, or any member of the City employee’s or official’s immediate family has a financial interest pertaining to the procurement contract; or

(2) Any other person, business, or organization with whom the City employee or official, or any member of the City employee’s or official’s

immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

- (b) No City employee or City official may purchase any surplus property from the City.

Section 2616. Services performed by City Employees

Nothing in this Chapter shall preclude the City from utilizing its employees from performing work or services.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 5. 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.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this 24th day of January, 2017

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI