

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CAPITOLA AMENDING SECTION 3.16.010, 3.16.030, 3.16.050, 3.16.075, 3.16.080 AND ADDING SECTIONS 3.16.085, 3.16.090, 3.16.095 AND 3.16.100 TO THE CITY OF CAPITOLA MUNICIPAL CODE REGARDING PURCHASING AND PURCHASING CONTRACTS

WHEREAS, By Resolution no. 3926, the City Council of the City of Capitola elected to opt into the California Uniform Construction Cost Accounting Act (Public Contract Code 22000-22045; and

WHEREAS, Public Contract Code section 22032 is periodically revised to establish new bidding requirements depending on the value of the public project at issue; and

WHEREAS, the most recent update to Public Contract Code section 22032 became effective in 2019; and

WHEREAS, the City of Capitola’s Municipal Code sections regarding purchasing and purchasing contracts must similarly be amended to reflect the updates to the Public Contracting Code; and

WHEREAS, the City Council hereby desires to amend the Capitola Municipal Code to reflect recent changes to the California Uniform Cost Accounting Act.

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

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 3.16.010 – Purpose is amended as follows. New wording is shown in underline and deletions are shown in strikethrough

3.16.010 Purpose.

The purpose of this chapter is to:

A. Provide for the authority of city officers to enter into certain contracts even in which funds have been appropriated without a formal city council approval of the specific contract or transaction and to set forth procedural requirements; and

B. Establish efficient procedures for the purchase of supplies, equipment, ~~and~~ general services, and public projects 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; and

C. To inform those wishing to contract with the city of the authority of the city employee or official to create a binding contract; and

D. To assist the city treasurer in carrying out his or her duties under Government Code Section 41001.

Section 3. Section 3.16.030 – “General procedural requirements” is amended as follows. New wording is shown in underline and deletions are shown in strikethrough.

Section 3.16.030 General procedural requirements

All contracts must be in writing and be signed in the name of the city. They may be transmitted by facsimile, ~~or~~ electronic mail, or digital signature consistent with the City’s electronic signature policy.

Section 4. Section 3.16.050(A) City Manager authority is amended as follows. New wording is shown in underline and deletions are shown in strikethrough.

1. Which contains an initial maximum compensation figure of ~~twenty-five~~ fifty thousand dollars or less, or a change order not exceeding ~~seven thousand five hundred fifteen thousand~~ fifteen thousand dollars. (Cumulative additional orders exceeding ~~twenty-five~~ fifty thousand dollars must be approved by the city council);
2. Contracts for single capital equipment purchases that do not exceed ~~fifty~~ seventy-five thousand dollars; which are clearly defined and identified in the budget;

Section 5. Section 3.16.075 Open market purchases – General services, supplies, and equipment – purchases between five thousand and twenty-five thousand dollars. New wording is shown in underline and deletions are shown in strikethrough.

A. Request Invitation for Bids Quotes or Proposals.

- ~~3. Public Projects Between Five Thousand Dollars and Twenty Five Thousand Dollars. Notices inviting bids for public projects between five thousand dollars and twenty-five thousand dollars, shall be mailed to list of qualified contractors, identified according to categories of work, at least ten calendar days before the bids are due. Notices shall also be mailed within ten calendar days before the bids are due to all construction trade journals as required by the commission. If the city does not have a qualified list of contractors for the particular type of work to be performed, notices inviting bids will only be sent to the construction trade journals as required by the commission. If the product or service is proprietary in nature and can only be obtained from a certain contractor or contractors, notices inviting bids will only be mailed to such contractor or contractors.~~

B. Quotes / Proposals ~~Bids~~ – Retention. Quotations and proposals shall be submitted to the finance director who shall keep a record of all open-market orders and quotes for a period of one year after the submission of quotes or placing of orders. This record is open to public inspection. For a purchase in an amount between five thousand dollars and twenty-five thousand dollars, the quotations shall be written (including facsimile and electronic mail).

C. Rejection. The purchasing authority may reject:

1. Any quotations or proposals which fail to meet the specific purchase requirements in any respect; or
2. All quotations or proposals, for any reason whatsoever, and may invite new quotations or proposals.

D. Award of Contract. A contract shall be awarded to the quotation or proposal representing the best value as defined in Section 3.16.040. The basis upon which the award is made shall be in writing.

~~— E. Public Projects — In Excess of Limit. In the event that all bids received for a construction project are more than the maximum allowed under this section, and bids were invited pursuant to the provisions of this section, the council may, by adoption of a resolution by four fifths of a vote, award the contract, in an amount not to exceed the maximum set forth in Section 22034(f) of the Public Contract Code, to the lowest responsible bidder, if it determines that the cost estimate was reasonable. Otherwise, the bids shall be rejected; and if the agency decides to go forward with the project, shall be re-bid in accordance with the procedures set forth in — Section 3.16.080. (Ord. 972 § 1, 2012)~~

Section 6. Section 3.16.080 Formal purchases – General services, supplies, and equipment greater than twenty-five thousand dollars. New wording is shown in underline and deletions are shown in strikethrough.

A. Request for Notice ~~inviting bids~~ quotes or proposals shall include, but not be limited to, the following:

1. A general description of the item(s) or services to be purchased, ~~or the public work to be constructed or improved;~~
2. The location where ~~bid~~ quote or proposals ~~blanks and~~ specifications may be secured;
3. ~~The time and place assigned for the opening of sealed bids;~~
4. ~~The type and character of bidder's security required, if any;~~
5. The location and deadline for submission of ~~bid~~ quote or proposal.

B. Notices ~~inviting bids~~ requesting quotes or proposals shall be made as follows:

1. For supplies, general services, and equipment, notices inviting ~~bids~~ quotes or proposals shall be published ~~at least once in the official newspaper of the city, with the first publication occurring at least ten calendar days before the date of opening the bids on the City's website.~~
2. ~~For public projects greater than twenty-five thousand dollars, notices inviting bids distinctly describing the project shall be published at least once in the official newspaper of the city, with the first publication at least fourteen calendar days before the date of the opening bids. Notices inviting bids distinctly describing the project shall also be mailed at least thirty calendar days before the date of opening bids to all construction journals as required by the commission.~~

3. The city may also give such other notice as it deems appropriate.

~~C. Bids— Security Requirement. Bidder’s security may be required when deemed necessary by the purchasing authority. When required, the security form, amount and conditions, will be included in the bid documents. Bidders shall be entitled to return of bid security. However, a successful bidder shall forfeit his or her bid security upon refusal or failure to execute a contract within fifteen days after notice of award of that contract, unless the city is responsible for the delay. The contract may be awarded to the next lowest responsible bidder upon the refusal or failure of the successful bidder to execute the contract within the time herein prescribed.~~

~~D. Bids— Opening and Retention. Sealed bids shall be submitted to the purchasing authority and shall be identified as bids on the envelope. Bids shall be opened in public and read aloud at the time and place stated in the public notice. A tabulation of all bids received shall be available for public inspection during regular business hours for a period not less than thirty calendar days after the bid opening.~~

E. Rejection of Bids quotes or proposals. The purchasing authority may reject:

1. Any bid quote or proposal that fails to meet the bidding requirements in any respect; or
2. All bids quotes or proposals, for any reason whatsoever, and may readvertise for new bids quotes or proposals or abandon the purchase;
3. ~~In the case of public projects, the council may, by passage of a resolution by a four fifths vote, declare that the project can be performed more economically by employees of the city and may have the project done by force account.~~

F. Bids Quotes or Proposals – None Received. If no bids quotes or proposals are received the purchase may be made through negotiated contract or other process approved by the finance director; ~~including, in the case of public projects, performing the work by employees of the city by force account.~~

G. Contract Award. Subject to the approval of the city manager, contracts shall be awarded by the purchasing authority to the bid quote or proposal which represents the best value to the city as defined in Section 3.16.040, except as follows:

1. If ~~at the time of bid opening~~, two or more bids quotes or proposals received are for the same total amount or unit price, quality and service being equal, and if the discretion of the purchasing authority the public interest will not permit the delay of readvertising for bids quote or proposal, then the purchasing authority may accept the one he or she chooses or the lowest bid quote or proposal obtained through subsequent negotiation with tied ~~bidders~~ submitters.
2. Exceptions. The quotation procedure under this section may be dispensed with for purchases greater than twenty-five thousand dollars where supplies and equipment are purchased through cooperative purchasing arrangements with the state or other group of multiple governmental entities.

~~H. Requiring Bond of Successful Bidder. The purchasing authority may require as a condition to executing a contract on behalf of the city, a performance bond or a labor and material bond, or both, in such amounts as the purchasing authority shall determine appropriate to protect the best interests of the city. The form and amounts of such bond(s) shall be described in the notice inviting bids.~~

Section 7. A new Section 3.16.085 Alternative Bid Procedures for Public Projects is hereby added to the Capitola Municipal Code as set forth below.

Public projects, as defined by the Uniform Public Construction Cost Accounting Act, Section 22000 et seq., of the [Public Contract Code](#), may be let to contract alternative bidding procedures, in a manner consistent with the applicable dollar thresholds, as set forth in Section 22032 of the [Public Contract Code](#), as may be amended from time to time.

Section 8. A new Section 3.16.090 Public Projects – Informal Bid Procedures is hereby added to the Capitola Municipal Code as set forth below.

Where a public project is to be performed, and is eligible to utilize the informal bidding provisions of subsection (b) of Section 22032 of the [Public Contract Code](#), as may be amended from time to time, the following procedures shall apply:

(a) A notice inviting abbreviated bids shall be mailed or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section [4.04.071](#), and to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the [Public Contract Code](#), unless the product or service is proprietary. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids; provided however:

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

(2) 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 abbreviated bids may be sent exclusively to such contractor or contractors.

(b) All mailing of notices to contractors and construction trade journals pursuant to subsection (a) shall be completed not less than ten calendar days before bids are due.

€ The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids.

(d) For public projects that are under seventy-five thousand dollars and have followed these informal bidding procedures, the city manager may award the contract.

€ If all bids received are in excess of two hundred thousand dollars, or the limits established by subsection (d) of Section 22034 of the [Public Contract Code](#), whichever is higher, the city council, by adoption of a resolution by a four-fifths vote, may award the contract, at no more than two hundred twelve thousand five hundred dollars, or the limit established by subsection (d) of Section 22034 of the [Public Contract Code](#), whichever is higher, to the lowest responsible bidder, if it determines the cost estimate was reasonable.

Section 9. A new Section 3.16.095 Public Projects – Formal Bid Procedures is hereby added to the Capitola Municipal Code as set forth below.

Contracts for public projects as defined by the Uniform Public Construction Cost Accounting Act, Section 22000 et seq., of the [Public Contract Code](#), in an amount exceeding the current limit as specified in subsection(c) of Section 22032 of the [Public Contract Code](#), as may be amended from time to time, shall be accomplished using the formal bidding procedure described in this section.

(a) Notice Inviting Bids. Notices inviting bids shall distinctly describe the project, shall state where bid blanks and specifications may be secured, and shall state the time and place for the receiving and opening of sealed bids.

(1) Published Notice. Notice inviting bids shall be published at least fourteen calendar days before the date of opening the bids in a newspaper of general circulation, printed, and published in the city.

(2) Construction Trade Journals. The notice inviting formal bids shall also be mailed, and emailed to all construction trade journals, and posted on the city's website, or other website used for bidding on public projects, as specified by the California Uniform Construction Cost Accounting Commission in accordance with the requirements of Section 22036 of the [Public Contract Code](#).

(b) Bidder's Security. All bids presented in connection with the public project shall be accompanied by bidder's security in the form and amount prescribed by [Public Contract Code](#) Section 20170 et seq., which security shall be dealt with as prescribed therein. In all cases bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit his or her bid security upon refusal or failure to execute the contract within ten 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. If the city council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

(c) Bid Opening Procedure. Sealed bids shall be submitted to the department identified in the invitation for bid documents and shall be identified as bids on the envelope. 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.

(d) Rejection of Bids or No Bids Received. In its discretion, the city council may reject any and all bids presented and readvertise for bids. If no bids are received, the city council may award the project by negotiated contract.

(e) Award of Contracts. Contracts shall be awarded by the city council to the lowest responsible bidder except as otherwise provided herein.

(f) Tie Bids. If two or more bids received are for the same amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the city council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders or may utilize a public drawing.

(g) Performance Bonds. The department head shall have authority to require a performance bond before entering into a contract in such amount as he or she finds reasonably necessary to protect the best interests of the city. If the department head requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

Section 10. A new Section 3.16.100 Federal Award Projects is hereby added to the Capitola Municipal Code as set forth below.

Federal Procurement: Any procurement made pursuant to a federal award or subject to reimbursement, in whole or in part, with federal funds must comply with the City's procurement procedures, state law, and the applicable Federal Procurement Requirements, including 2 CFR § 200.322 ("Procurement of recovered materials"), 2 CFR § 200.323 ("Contract cost and price"), 2 CFR § 200.324 ("Federal awarding agency or passthrough entity review"), 2 CFR § 200.325 ("Bonding requirements"), and 2 CFR § 200.326 ("Contract provisions"). In the event of any conflict between City, state, or federal requirements, the most stringent requirement must be used. (See 2 CFR § 200.318.) City employees must comply with funding agency requests for review of technical specifications or procurement documents as provided in 2 CFR § 200.324.

Section 11. Environmental Review.

The City Council finds and determines that amendment of this Ordinance, which regulates City purchasing procedures, is an administrative activity and not a project under the California Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have significant effect on the environment. If this action is determined to be a project, it is exempt from review pursuant to the "common sense" exemption in CEQA Guidelines section 15601(b)(3).

Section 12. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption.

Section 13. Severability.

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 14. Certification.

The City Clerk shall cause this ordinance to be posted and/or published in the manner required by law.

This Ordinance was introduced at the meeting of the City Council on the ____ day of _____ 2023, and was adopted at a regular meeting of the City Council on the ____ day of _____ 2023, by the following vote:

AYES:
NOES:
ABSENT:

Margaux Keiser, Mayor

Attest: _____
Julia Moss, City Clerk

Approved as to form:

Samantha W. Zutler, City Attorney