

ORDINANCE NO. 544

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK REPEALING AND REPLACING CHAPTER 3.04 “PURCHASING SYSTEM” OF TITLE 3 “REVENUE AND FINANCE” OF THE CITY OF NEWARK MUNICIPAL CODE IN ITS ENTIRETY

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances and regulations not in conflict with general laws; and

WHEREAS, Section 54202 *et. seq.* of the Government Code requires the City to adopt policies and procedures, including bidding regulations, governing the purchase by the City of supplies and equipment of all departments, divisions or services of the city government; and

WHEREAS, Chapter 3.04 of the City of Newark Municipal Code (“NMC”) sets forth the authority and procedures governing the purchase by the City of supplies and equipment of all departments, divisions or services of the city government; and

WHEREAS, in 1977, the City Council adopted Ordinance No. 142, which established a comprehensive purchasing system for the City by adding Chapter 3.04 to the NMC; and

WHEREAS, the City Council, on the recommendation of the City Manager and the City Attorney, desires to repeal and replace Chapter 3.04 to update and revise the purchasing rules and procedures governing the purchase of materials, supplies, services and equipment for the City; and

WHEREAS, the amendments to the Municipal Code propose to repeal and replace Chapter 3.04 “Purchasing System” of Title 3 “Revenue and Finance” of the NMC in its entirety, as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from environmental review in accordance with California Environmental Quality Act Guidelines section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment will have a significant effect on the environment

SECTION 3. Municipal Code Amendment. The City Council hereby approves the amendments to the NMC, more particularly, repealing Chapter 3.04 “Purchasing System” of Title 3 “Revenue and Finance” of the City Of Newark Municipal Code in its entirety, and replacing it with the text shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk’s office during normal business hours.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Council Member Collazo at the regular meeting of the City Council of the City of Newark held on June 22, 2023.

This ordinance was read at the regular meeting of the City Council held July 13, 2023. Council Member Bucci moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES: Council Members Bucci, Freitas, Jorgens, Vice Mayor Collazo and Mayor Hannon

NOES: None

ABSENT: None

SECONDED: Council Member Freitas

APPROVED:

s/MICHAEL K. HANNON
Mayor

ATTEST:

s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO
City Attorney

Chapter 3.04

PURCHASING SYSTEM

3.04.010 Adoption.

In order to establish procedures for the purchase of materials, supplies, software subscriptions, services, and equipment, to secure for the City materials, supplies, services, and equipment at the lowest possible cost commensurate with the level of quality required, to exercise financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is adopted.

3.04.020 Definitions.

For the purposes of this chapter, the words set out in this section shall have the following meanings:

- A. “Consultant or professional services” means the services rendered by architects, attorneys, engineers, doctors, financial consultants, planning or environmental consultants, investment advisors, bank or trustee officers, and other professional or specialized consultants.
- B. “Contract” means any agreement to do or not do a certain thing. For the purposes of this chapter, “contract” and “agreement” are synonymous. The term “contract” includes, but is not limited to, a purchase order; a contract for services; an addendum or change order, which means a change or addendum to an executed contract; a letter of agreement; and a memorandum of understanding.
- C. “Emergency” means 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.
- D. “General services” means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:
 - 1. Maintenance or nonstructural repair of city buildings, structures or improvements which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, elevator maintenance, custodial services and pest control, etc.;
 - 2. Repair, modification and maintenance of city equipment and software;
 - 3. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of city supplies and equipment;

4. Replanting, care or maintenance of public grounds, including, but not limited to, maintenance of trees, shrubbery, flowers, and lawns;
5. Providing other miscellaneous services to facilitate city operations;
6. Performing repair, demolition or other work required to abate nuisances under this code;
7. Licensing software services;
8. Leasing or rental of equipment (personal property) for use by the City;
9. Maintenance of equipment owned or leased by the City.

“General services” does not include consultant or professional services, or work associated with a public project.

- E. “Goods of a technical nature” means hardware, software, or communications equipment, or any item that is substantially similar to the foregoing as determined by the Purchasing Agent.
- F. “Materials, Supplies and equipment” means and includes tangible goods, supplies, equipment, vehicles, printing, materials, and furniture and furnishings purchased on behalf of the City.
- G. “Public project” shall have the meaning given that term by the Uniform Public Construction Cost Account Act and referenced in Chapter 3.05.

3.04.030 Purchasing Agent designated.

The City Manager is designated as ex officio Purchasing Agent. The Purchasing Agent may delegate all or a portion of the contracting or purchasing duties to any city staff member. The Purchasing Agent shall have the authority to:

- A. Contract for or procure consultant or professional services, general services, supplies and equipment required by the City, in accordance with this chapter and as may be established by administrative procedures by the Purchasing Agent;
- B. Negotiate and recommend execution of contracts for the purchase of consultant or professional services, general services, supplies and equipment;
- C. Act to procure for the City the necessary quality in consultant or professional services, general services, supplies and equipment at the lowest cost to the City;
- D. Prepare and recommend to the City Council revisions and amendments to this chapter;
- E. Establish and maintain such forms and administrative procedures as are reasonably necessary to the operation of this chapter;
- F. Supervise the inspection of all consultant or professional services, general services, supplies and equipment purchased to ensure conformance with specifications;

- G. Pursuant to Chapter 2.38 of the Newark Municipal Code, arrange the sale or disposal of all supplies and equipment which cannot be used by the City, or which have become unsuitable for city use;
- H. Maintain a bidder's list and other records necessary for the efficient acquisition of consultant or professional services, general services, and supplies and equipment;
- I. Join with other governmental agencies in joint purchasing endeavors where the purchasing procedures conform to the provisions of this chapter and state law.

3.04.040 Purchasing award—Factors to be considered for responsiveness and responsibility.

The following factors shall be considered in determining the responsiveness of potential contracts and purchases and the responsibility of vendors and bidders in accordance with applicable law:

- A. The amount of the contract or the purchase price;
- B. The ability, capacity and skill of the bidder or vendor to perform the contract or provide the service required;
- C. The ability of the bidder or vendor to perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- D. The reputation and experience of the bidder or vendor;
- E. The previous experience of the City with the bidder or vendor;
- F. The previous and existing compliance by the bidder or vendor with applicable laws and ordinances;
- G. The sufficiency of the bidder's or vendor's financial resources and ability to perform the contract or provide the service;
- H. The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- I. The ability of the bidder or vendor to provide future maintenance and service for the subject of the contract or purchase;
- J. The number and scope of conditions attached to the contract or purchase;
- K. The purchase of supplies, whenever feasible, containing the highest amount of postconsumer and recovered materials practicable. In all cases, these products must meet reasonable performance standards, and be readily available at a competitive price. In addition, all equipment bought, leased or rented shall, wherever feasible, be compatible with the use of other recycled products purchased by the City;
- L. In the event that two (2) or more potential contracts or bids are received from responsible bidders or vendors for the same total amount or unit price, quality and service being equal,

preference shall be given to the local vendor, or the City may accept the lowest bid made by negotiation with the tie bidders and the Purchasing Agent.

3.04.050 Contracts and purchases of general services, supplies and equipment - Less than five thousand dollars (\$5,000).

For purchases of general services or supplies and equipment of less than five thousand dollars (\$5,000), informal quotations should be obtained. Comparative pricing is expected to secure the lowest price.

3.04.060 Contracts and purchases of general services, supplies, and equipment—Greater than or equal to five thousand dollars (\$5,000) and less than fifty thousand dollars (\$50,000).

A. Purchases of general services, supplies and equipment greater than or equal to five thousand dollars (\$5,000) and less than fifty thousand dollars (\$50,000) shall be based on at least three (3) quotations unless the Purchasing Agent determines that it is not possible to obtain three (3) quotations based on existing circumstances. The quotations shall be in writing, which writings may include electronic mail transmissions. Quotations with the required documentation shall be submitted to the Finance Department for approval by the Purchasing Agent. The purchase of any general services, supplies and equipment greater than or equal to five thousand dollars (\$5,000) and less than fifty thousand dollars (\$50,000) shall be consistent with the factors stated in Section 3.04.040 .

B. At the discretion of the Purchasing Agent, the competitive bidding procedure set forth in Section 3.04.070 may be used for any acquisition of general services, supplies and equipment, regardless of the value.

3.04.070 Contracts and purchases of general services, supplies, and equipment— Greater than or equal to fifty thousand dollars (\$50,000).

Purchases of general services and supplies and equipment with a cost greater than or equal to fifty thousand dollars (\$50,000) shall comply with the competitive bidding procedure set forth in this section, except as provided in Section 3.04.080.

- A. Notices inviting bids shall include a general description of the services and/or articles to be purchased or sold, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond and a faithful performance bond will be required.
- B. Notices inviting bids shall be posted in at least one (1) public place in the City and posted on the City's website at least fourteen (14) calendar days before the date of opening the bids.
- C. The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidder's list and may advertise the notice inviting bids in applicable publications readily accessible to the public.
- D. When deemed necessary by the Purchasing Agent, any bidder may be required to submit a bid deposit or bond in an amount determined by the Purchasing Agent. A successful bidder (and his surety, if a bond is furnished) shall be liable for any damages upon the bidder's failure to enter

into a contract with the City or upon the bidder's failure to perform in accordance with the tenor of their bid.

- E. When deemed necessary by the Purchasing Agent or City Council, any person or entity entering into a contract with the City may be required to furnish a faithful performance deposit or bond in an amount determined by the Purchasing Agent or City Council.
- F. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.
- G. At its discretion, the City may reject all bids presented and re-advertise for bids.
- H. Contracts shall be awarded by the City to the lowest responsive, responsible bidder, except as otherwise provided herein.
- I. If two (2) or more bids received from responsible bidders are for the same total amount or unit price, quality and service being equal, preference shall be given to the local vendor.

3.04.080 Exceptions.

- A. Contracts or purchases involving the acquisition of consultant or professional services are exempt from the provisions of this chapter; however, the procurement of such services shall be subject to the following:
 - 1. With respect to contracts for or procurement of professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, the Purchasing Agent shall establish administrative procedures to assure that such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices in compliance with Government Code Section 4526.
 - 2. The Purchasing Agent may utilize a request for quotation or request for proposal to ensure the services are matched with the needs of the City.
- B. Any request for an exception under this subsection shall identify the nature of the contract or purchase, amount of the contract or purchase, and the reasons why competitive bidding is not feasible and shall be subject to Purchasing Agent approval. The provisions of this chapter approval shall not apply to the following:
 - 1. Where the City's requirements can be met solely by a single patented article or process or provider;
 - 2. Situations where no bids have been received following bid announcements conducted pursuant to the provisions of this chapter;
 - 3. When an emergency requires that an order be placed without complying with this chapter;
 - 4. When a contract or purchase involves goods of a technical nature, where it would be difficult for a vendor to bid on a standard set of specifications, and the Purchasing Agent undertakes a

thorough review of known products and a comparison of features which would most closely meet the City's needs at the lowest cost;

5. Public projects, pursuant to Chapter 3.05;
6. When another public agency has administered a competitive bidding process substantially similar to the City's process as determined by the Purchasing Agent and has a current valid agreement for the same or substantially similar consultant or professional services, general services, supplies or equipment;
7. When goods or services are available through cooperative purchasing programs or consortiums, provided the City's Purchasing Agent approves of such participation or if the underlying purchase was made using quotation or bid procedure at least as restrictive as outlined in this chapter;
8. When a purchase of goods and/or services involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with mandatory applicable federal or state laws or regulations. Such laws or regulations may be incorporated in administrative policies, and periodically updated, as required.
9. When formal bids would work an incongruity and would be unavailing in affecting the final results and formal bids would not produce any advantage to the City.

3.04.090 Splitting orders prohibited.

The purchasing dollar limits set forth in this chapter are determined on a per order basis. It is unlawful to split or separate into smaller orders the contract or purchase of general services, supplies and equipment for the purpose of evading the competitive bidding provisions of this chapter.

3.04.100 Purchase orders.

Purchases greater than or equal to five thousand dollars (\$5,000) shall be documented by purchase orders prepared by the Purchasing Agent in accordance with adopted administrative policies.

3.04.110 Availability of sufficient funds.

No purchase shall be transacted until it has been ascertained that there is, to the credit of the department of the City for whose benefit such purchase is to be made, a sufficient appropriated balance in excess of all unpaid obligations to defray the amount of such purchase.

3.04.120 Inspection and review.

The Purchasing Agent shall require the inspection of supplies and equipment delivered, and contractual services performed, to determine their conformance with the specifications and requirements set forth in the purchase order or contract.

3.04.130 Public projects.

Public projects as defined by the Uniform Public Construction Cost Accounting Act (Section 22000 et seq. of the California Public Contract Code) shall follow the purchasing procedures as set forth in Section 22032 et seq. of the Public Contract Code.