

ORDINANCE NO. 649

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUDAHY, CALIFORNIA, AMENDING CHAPTER 3.16 (PURCHASE AND SALE OF SERVICES, SUPPLIES AND EQUIPMENT) OF TITLE 3 (REVENUE AND FINANCE) OF THE CUDAHY MUNICIPAL CODE RELATING TO THE CITY'S PURCHASING SYSTEM

WHEREAS, pursuant to Government Code section 54201 through 54203, a city must adopt, by ordinance, policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the city; and

WHEREAS, the City of Cudahy ("City") has adopted and codified such policies and procedures in Chapter 3.16 of the Cudahy Municipal Code ("CMC"); and

WHEREAS, the City desires to amend its current policies and procedures governing the purchase of supplies, equipment and services ("Purchasing System") in order to negotiate more favorable pricing on goods and services, increase the City's flexibility in making purchases, and increase purchasing power while still maintaining the City's budget; and

WHEREAS, the City therefore wishes to amend Chapter 3.16 of the CMC to codify the amended Purchasing System.

THE CITY COUNCIL OF THE CITY OF CUDAHY DOES ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Chapter 3.16 of Title 3 of the Cudahy Municipal Code is hereby deleted in its entirety.

Section 2. Code Amendment. Chapter 3.16 of Title 3 of the Cudahy Municipal Code is hereby added to read as follows:

**Chapter 3.16
PURCHASING SYSTEM**

3.16.010 Adoption of Purchasing System

In order to establish efficient procedures for the purchase of supplies, services and equipment, to secure for the city supplies, services and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted. All purchases or services or supplies for "public projects" as defined in section 20161 of the Public Contract Code (or any successor to that section) shall be made in accordance with the Public Contract Code and with sections 3.16.180 and 3.16.220 below, as applicable, of this chapter. All other purchases of supplies, services and equipment shall be made in accordance with this chapter.

3.16.020 Local purchasing system.

In accordance with the provision of Sections 54201 through 54203 of the Government Code of the state of California, the policies and procedures herein contained, as well as the policies and procedures adopted by subsequent rules and resolutions have been adopted. The authority for purchase of supplies and equipment is vested in a purchasing officer and the procedures and policies herein contained as well as in supplemental rules and resolutions shall hereafter be followed in respect to the purchase of supplies and equipment, unless the provision of CMC 3.16.110 should apply.

3.16.030 Purchasing Officer

The city manager, or his designated deputy, shall serve as the purchasing officer.

The purchasing officer shall have authority to:

- A. Purchase or contract for supplies, service and equipment required by any using department in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing officer shall adopt for the internal management and operation of the purchasing department and such other rules and regulations as shall be prescribed by the city council;
- B. Negotiate and recommend execution of contracts for the purchase of supplies, services and equipment;
- C. Act to procure for the city the needed quality in supplies, services and equipment at least expense to the city;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- E. Prepare and recommend to the city council rules governing the purchase of supplies, services and equipment for the city;
- F. Prepare and recommend to the city council revisions and amendments to the purchasing rules;
- G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain such forms as reasonably necessary to the operation of this chapter and other rules and regulations;
- I. Supervise the inspection of all supplies, services and equipment purchased to ensure conformance with specifications;
- J. Recommend the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any department or which have become unsuitable city use; and
- K. Maintain a bidder's list, vendor's catalog file and records needed for the efficient operation of the purchasing department.

3.16.040 Estimates of Requirements

All departments using the purchasing department shall file detailed estimates of their requirements in supplies, service and equipment in such manner, at such time, and for such future periods as the purchasing officer shall prescribe.

3.16.050 Encumbrance of Funds

Except in cases of emergency, the purchasing officer shall not issue any purchase order for supplies, services or equipment unless there exists an unencumbered appropriation in the fund account against which said purchase is to be charged.

3.16.060 Requisitions

Using departments shall submit requests for supplies, services and equipment to the purchasing officer by standard requisition forms.

3.16.070 Purchase Orders

Purchases of supplies, services and equipment shall be made only by purchase requisition, purchase order, or, where appropriate, by formal written contract.

3.16.080 Change Orders

A. Any alteration to, amendment of, or deviation from an awarded purchase order or contract as to scope, cost, time for completion, material, or equipment furnished as a part of the purchase order or contract, or any alteration to, amendment of, or deviation from the nature of work to be performed, shall require the completion and issuance of a change order or execution of a contract amendment.

B. Additions to work cannot be combined with deletions to work to avoid the change order requirement.

C. If the original purchase order or contract was approved by the purchasing officer, then the purchasing officer or his or her designee may approve a change order for that purchase order or contract; provided the combined amount of the original purchase order and the change order does not exceed the purchasing officer's purchasing authority. If the original purchase order or contract was approved by the council, then the purchasing officer or his or her designee may approve a change order in an amount that does not exceed the purchasing officer's purchasing authority. All other change orders shall be approved by the council or the person, if any, designated in a contract approved by the council. No change order shall be binding on the city until approved as provided in this division.

D. If a proposed contract modification, change order or request for extra work exceeds the limitations set upon the city manager by this section or resolution and delay in obtaining city council approval is reasonably determined to subject the city to liability for damages incurred by a contractor, or to jeopardize the public health, welfare, or safety, or to otherwise result in potential detriment to the city, then the purchasing officer shall have authority to exceed the dollar amounts specified in the purchasing policy/municipal code. All contract modifications shall be subject to approval as to form by the city attorney.

E. Change orders shall not be issued unless:

1. The change order arises in good faith out of an unknown condition or unforeseen circumstance differing materially from the conditions of the purchase order or contract; or the change order arises due to an error, as determined by the city, in the city's specifications that accompanied the bid solicitation; or the city desires to make a material substitution or addition to the project based on new information obtained during the construction phase of the project; and
2. The change order does not change the purpose of the purchase order or contract; and
3. With regard to a service contract or a contract for Public Project performance, the change order is reasonably related to the scope of work authorized under the original contract; and
4. With regard to the purchase of equipment, goods or supplies, the change order is required to allow the equipment, goods or supplies to fulfill the purpose for which they were intended, and such change order does not authorize the purchase of additional equipment, goods or supplies that could also be purchased from another source and used compatibly with the equipment, goods or supplies purchased.

3.16.090 [Reserved]

3.16.100 Cooperative Purchasing Agreements

- A. Without complying with the requirements of sections 3.16.120 and 3.16.130 of this chapter, the purchasing officer may participate in a cooperative purchasing agreement for the procurement of any supplies or equipment with any federal, state, county or local government agency when that agency has made their purchases in a competitive manner. The purchasing officer may participate in a cooperative purchasing agreement when the city can obtain supplies or equipment at a purchase price lower than that which the city can obtain through its normal purchasing procedures. In those instances where it is determined that purchasing through the federal, state, county or local government agencies will result in savings to the city, the purchasing officer is authorized to make such purchases.
- B. The purchasing officer may also buy directly from a vendor at a price established by competitive bidding by another federal, state, county or local government agency in substantial compliance with sections 3.16.120 and 3.16.130 of this chapter even if the city has not joined with that public agency in a cooperative purchase agreement.

3.16.110 Open Market Procedure

- A. **Less than \$5,000.** Purchases of supplies, equipment, or services and sales of personal property of an estimated value in an amount less than five thousand dollars (\$5,000.00) may be made by, or at the direction of, the purchasing officer in the open market without observing the procedures prescribed below in subsection B of this section or prescribed in section 3.16.130 of this chapter.
- B. **\$5,000 to \$25,000.** Purchases of supplies, equipment, or services and sales of personal property of an estimated value in an amount greater than \$5,000 but less than \$25,000 may be made by the purchasing officer in the open market without

observing the procedure prescribed in section 3.16.130 of this chapter. Purchase requisitions or purchase orders shall, whenever possible, be based on at least three (3) informal quotes and shall be awarded to the lowest responsible bidder. Purchases made pursuant to this subsection B shall be authorized and signed for by the city manager or in the city manager's absence the designee, provided purchases of items authorized by the city manager or the designee are included as part of an approved and adopted budget for the city. The limitation affecting the authority of the designee shall not include that person designated as an acting city manager in the city manager's absence or unavailability.

3.16.120 Bidding

- A. Purchases of supplies, services (other than professional services), or equipment and the sale of personal property of an estimated value in excess of \$25,000 shall be by bid procedures pursuant to this section and section 3.16.130 of this chapter. Bidding shall be dispensed with only when an emergency requires that an order be placed with the nearest available source of supply, when the city council by a four-fifths (4/5) majority determines after opening of bids that rejection of all bids and purchase on the open market will best serve the city, or when the commodity can be obtained from only one vendor.
- B. Prior to bid solicitation, the purchasing officer shall confirm the requested purchase is identified in the current fiscal year adopted budget. For items not identified in the current fiscal year adopted budget, the requesting department shall be required to receive City Council approval at time of contract award.

3.16.130 Formal Contract Procedure

Except as otherwise provided herein, purchases and contracts for supplies, services (other than professional services), equipment and the sale of personal property of estimated value greater than twenty five thousand dollars (\$25,000) shall be by purchase order or written contract with the lowest (or for purposes of section 3.16.190 of this chapter, highest) responsible bidder, as the case may be, pursuant to the procedure prescribed herein:

- A. Notice Inviting Bids: Notices inviting bids shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place for opening bids.
 - 1. Published Notice: Notice inviting 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 notices.
 - 2. Bidder's List: The purchasing officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidder's list or who have requested their names to be added thereto.
 - 3. Bulletin Board: The purchasing officer shall also advertise pending purchases or sales by a notice posted on a public bulletin board in the city hall;

- B. Bidder's Security: When deemed necessary by the purchasing officer, 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 his 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. 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 purchasing officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be opened for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening;
- D. Rejection Of Bids: In its discretion, the city council may reject any and all bids presented and readvertise for bids;
- E. Award Of Contracts: Contracts shall be awarded by the city council to the lowest responsible bidder who meets the quality requirements. The decision of the city council shall be final. For purchases of supplies and equipment, determination of the "lowest responsible bidder" may include the adjustment of the bid price of a qualifying local vendor (as defined in subsection 3.16.220(B)(1) of this chapter) according to the local vendor preference procedures described in subsection 3.16.220(B)(3) of this chapter. For purposes of this section, a "responsible bidder" means a bidder who has demonstrated the quality, fitness, capacity, and experience to satisfactorily perform the particular requirements of the city;
- F. Tie Bids: If two (2) or more bids received are for the same total 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 at the time of the bid opening;
- G. No Bids: If no bids are received, the council may authorize the purchase of goods in compliance with informal bidding procedures prescribed in 3.16.110(B).
- H. Performance Bonds: The city council shall have authority to require a performance bond before entering into a contract in such amount as it shall find reasonably necessary to protect the best interests of the city. If the city council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

3.16.140 [Reserved]

3.16.150 Inspection and Testing

The purchasing officer shall inspect supplies and equipment delivered and contractual services performed, to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have authority to require chemical and physical tests of sample submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

3.16.160 Professional Services; Multi-year Contracts

- A. Purchase of professional services provided by persons, firms, companies, or corporations (including, but not limited to, architecture, landscape architecture, engineering, environmental, land surveying, legal, accounting or construction management) shall be made on the basis of demonstrated competence and experience of the service provider and on the professional qualifications necessary for the satisfactory performance of the services required. The process for securing professional services may be through negotiation or through request for proposals; the purchasing officer will attempt to obtain information relating to prices and availability of such professional services from different sources prior to making the purchase; however, neither formal nor informal bidding shall be required prior to the purchase of professional services.
- B. The city manager shall sign all professional service contracts on behalf of the city. Professional services contracts will be prepared in accordance with the city's standard consultants services agreement. Authorization to approve the contract value shall be subject to the limitations of sections 3.16.110 of this chapter; furthermore, contracts with a contract value of greater than twenty five thousand dollars (\$25,000) shall require City Council approval prior to execution, unless otherwise authorized pursuant to section 3.16.170.
- C. Unless otherwise limited by the CMC, or applicable state or federal law, the term of a contract shall be as set forth in the contract and may include extensions as authorized in the contract. The city manager may approve a multi-year contract, provided that the value of the multi-year contract as extended does not exceed the city manager's purchasing authority. Otherwise, multi-year contracts shall require the approval of the council.

3.16.170 Urgency/Emergency Purchases

During times of emergency, as declared by a four-fifths vote of the city council, emergency purchases may be made without competitive bidding and without compliance with this chapter. During times of emergency, if action is needed before the council has an opportunity to meet to declare an emergency, the city manager is authorized to order the repair of a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

An emergency, for purposes of this policy, is defined as 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. Since emergency purchases do not normally provide the city an opportunity to obtain competitive quotes or properly encumber funds committed, sound judgment shall be used in keeping such orders to an absolute minimum. In addition, the following requirements shall apply:

1. The Finance Department shall be contacted as soon as possible for an advance purchase order number, which may be given verbally, to cover the urgent or emergency transaction. If unable to contact the Finance Department, place the order and contact the Finance Department the next workday.

2. A completed purchase order shall be submitted to the purchasing officer within two workdays, or as soon as the information is available. All purchase orders for urgent or emergency purchases shall be signed by the appropriate department head.
3. Documentation explaining the circumstances and nature of the urgency or emergency purchase shall be submitted by the appropriate department head as follows:
 - a. Purchases equal to or less than \$12,500. Report to the purchasing officer by processing a requisition within one week.
 - b. Purchases equal to \$12,500 - 25,000. Requires City Manager's (or designee in City Manager's absence or unavailability) approval prior to purchase. Report to the purchasing officer by processing a requisition within two days.
 - c. Purchase of \$25,000 or more requires City Manager's (or designee in City Manager's absence or unavailability) approval prior to purchase and report to the City Council within two working days to explain the circumstances and necessity of the purchase.
4. If the urgency or emergency purchase causes any budget line items to exceed the approved budget, it shall be the responsibility of the department requesting the purchase to obtain advance City Council approval for an additional appropriation or to make a transfer to cover the purchase.
5. For contracts under the purview of Public Contracts Code § 20100 et seq., the city council must review the emergency action at its next regularly scheduled meeting, and each meeting thereafter until the action is terminated, to determine by four-fifths vote that there is a need to continue the action.

3.16.180 Design/Build Contracts

Whenever the city seeks to construct any public work, excluding projects on the state highway system, with design and construction costs in excess of one million dollars (\$1,000,000.00), the city council may proceed to contract therefor as a design/build project in compliance with California Public Contract Code sections 22160 et seq., as amended, or any later enacted statute regulating design/build contracts.

3.16.190 Surplus Supplies and Equipment

All using departments shall submit to the purchasing officer at such times and in such form as he shall prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer shall have authority to sell all supplies and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for, or trade in the same on, new supplies and equipment. Such sales shall be made pursuant to sections 3.16.110, 3.16.120 and 3.16.130 of this chapter, as applicable.

3.16.200 Duty to Disclose Relationships with City

All bidders and consultants shall disclose in writing to the purchasing officer any prior and current business and personal relationship with the city, members of the city council, and

city employees prior to entering into any transaction or contractual arrangement with the city exceeding \$5,000.

3.16.210 Employee Interest Prohibited

No employee, member of the council, nor any appointed member of a city commission, board or committee, shall be financially interested, directly or indirectly, in any purchase order or contract for furnishing equipment, goods, supplies or services within the purview of this chapter. Any purchase order or contract involving former city employees, members of the council, or any appointed member of a city commission, board or committee, shall be awarded solely by the council at a public meeting.

3.16.220 Local Vendor Preference Program

- A. The city has established a local vendor preference program to be applied in the procurement of supplies and equipment under section 3.16.130 of this chapter.
- B. The adjustment to bids provided for under the local vendor preference program shall be implemented according to the following:
 1. **Qualification For Local Vendor Preference:** In the procurement of supplies and equipment for the city's requirements, preference shall be given to those vendors who: a) qualify as a local vendor ("qualifying local vendor") under this subsection and b) submit a written statement in their bid package requesting to be considered a qualifying local vendor. In order to qualify as a local vendor, the bidder must certify the following information as part of the bid package:
 - a. It has fixed facilities with employees located within the city limits;
 - b. It has a business street address (post office box or residential address shall not suffice to establish a local presence);
 - c. All sales tax returns for the goods purchased must be reported to the state through a business within the geographic boundaries of the city; and
 - d. It has a city business license.
 2. **False Certifications:** False certifications shall be immediate grounds for rejection of any bid or if the bid is awarded, grounds for voiding the bid, terminating any agreement, and seeking damages thereto. Failure to certify the above information shall result in the bid being considered by the city without any adjustment for a local vendor as described in subsection B3 of this section.
 3. **Application Of Local Vendor Preference:** The bid of a qualifying local vendor shall be adjusted according to the following procedures:
 - a. In the tabulation of bids to determine the lowest responsible bidder, the bid of each qualifying local vendor shall be reduced by five percent (5%).
 - b. The reduced bid price of the qualifying local vendor will then be compared to the other bids received by the city to determine the lowest responsible bidder under section 3.16.130 of this chapter. Notwithstanding this reduction for purposes of

determining the lowest responsible bidder, the contract amount with the lowest responsible bidder shall be at the bid price.

Section 3. Severability. Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity of any other portion of this Ordinance and, to that end, the provisions of this Ordinance are severable.

Section 4. Inconsistency. Any provision of the Cudahy Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of his Ordinance.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption pursuant to California Government Code section 36937.

Section 6. Certification and Publication. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be posted according to law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Cudahy on this 22nd day of June, 2015.



Cristian Markovich
Mayor

ATTEST:



Laura Valdivia
Interim City Clerk

APPROVED AS TO FORM



Isabel Birrueta
Assistant City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF CUDAHY) **SS:**

I, Laura Valdivia, Interim City Clerk of the City of Cudahy, hereby certify that this Ordinance was introduced at a regular meeting of the City Council of the City of Cudahy on the 8th day of June, 2015, and adopted and passed at a regular meeting of the City Council of the City of Cudahy held on the 22nd day of June, 2015, by the following vote:

AYES: Garcia, Guerrero, Hernandez, Markovich

NOES: None

ABSTAIN: None

ABSENT: Sanchez



Laura Valdivia
Interim City Clerk

