

**ORDINANCE NO. 3624 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**AMENDING CHAPTER 28, ARTICLE 1 OF THE MONTEREY CITY CODE RELATING TO THE CITY'S PURCHASING SYSTEM TO UPDATE BIDDING THRESHOLDS, ALLOW THE CITY MANAGER TO DELEGATE TO DEPARTMENT HEADS SIGNATURE AUTHORITY FOR SMALL PROCUREMENT CONTRACTS, ADD SEPARATE PURCHASING PROCEDURES FOR CONFIDENTIAL LEGAL SERVICES AND IT CONTRACTS, AND ELIMINATE REDUNDANT LANGUAGE.**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, City purchasing rules are set forth in Chapter 28 of the City Code, with the goal of establishing efficient procedures for the purchase of equipment, supplies, materials, and services for the City at the lowest possible cost commensurate with quality needed, exercising positive financial control over purchases, and clearly defining authority for the purchasing function. The Code includes dollar thresholds at which informal or formal bidding or requests for proposals are required for City procurements; and

WHEREAS, increasing the dollar limits at which informal and formal bidding is required will bring the City more in line with other agencies and increase efficiencies in purchasing practices while continuing to maintain and promote an open and competitive purchasing environment; and

WHEREAS, reducing the threshold for allowing design-build projects to \$500,000 will allow this process for additional projects, which may result in lower costs and more efficient project completion. Additionally, administrative efficiencies are increased by allowing the City Manager to authorize design-build procurements; and

WHEREAS, job order contracts have been widely used by the City and have been found to be an invaluable tool in efficiently and economically completing necessary, ongoing public works and maintenance projects. Increasing the term limit for job order contracts to three years will maximize the efficiencies afforded by such contracts; and

WHEREAS, recent case law holds that fee invoices, including a cumulative total for an attorney's work in pending legal matters, are protected by the attorney-client privilege and are, therefore, exempt from the Public Records Act during the pendency of the matter. Disclosure of the costs of litigation, including the contract amounts and any amendments increasing the dollar amount of the contract, threatens the confidentiality of legal consultation by revealing legal strategy. The proposed amendment will preserve the confidentiality of these contracts by making the City Attorney the awarding authority in specified circumstances; and

WHEREAS, sensitive information technology (IT) purchases and contracts are exempt from disclosure under the Public Records Act, California Government Code section 6254.19,

because the disclosure of such contracts has the potential to increase vulnerabilities associated with IT software and systems. Therefore, the amendment provides that authority to award such purchases and contracts at the formal bidding level move from Council to the City Manager in order to maintain their confidentiality;

WHEREAS, to improve service and project efficiencies, the amendment allows the City Manager to delegate in writing to Department Heads the authority to execute contracts for their respective department that are below the threshold requiring informal bids or proposals; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 ("CEQA Guidelines") Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action has no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 28, Article 1 is hereby repealed and replaced as follows:

**"Article 1 - Purchasing**

Sec. 28-1. Purchasing system adopted; purpose of Chapter.

In order to establish efficient procedures for the purchase of equipment, supplies, materials, and services for the City 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. The purchase of equipment, supplies, materials, general services and professional services shall be by bid or request for proposal, or by the alternate procurement methods set forth in this Chapter. In accordance with Monterey City Charter section 4.8, the provisions of the Public Contract Code shall not apply unless otherwise adopted by the City Council.

Sec. 28-2. Definitions.

The following definitions shall govern this Chapter:

- a. Professional services are those provided by a person or firm engaged in a profession based on a generally recognized special knowledge or skill, including, but not limited to, the professions of accountant, artist, architect, landscape architect, construction manager, engineer, environmental consultant, dentist, physician, training or educational consultant, or land surveyor, and whose services are considered distinct and unique to such a degree that bidding of such services would not be feasible.

- b. Public Works Project shall mean a project paid for in whole or in part with public funds for the construction, alteration, repair, improvement, painting, reconstruction, or demolition of any public building, facility, street, sidewalk, utility, park or open space improvement, or other public improvement. Public Works Project does not include Maintenance Work, which includes routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purpose, minor repainting, and landscape maintenance, including servicing of irrigation and sprinkler systems.
- c. Purchasing Agent shall be the City Manager of the City of Monterey except with respect to the procurement of legal services in which case the Purchasing Agent shall be the City Attorney.
- d. Responsible bidder means a bidder that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance of the contract. In addition to factors specified in the notice inviting bids or request for proposals, factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:
  - 1. The ability, capacity, experience and skill to provide the goods, services, professional services, and/or construction projects in accordance with bid specifications, and if applicable;
  - 2. The ability to provide the goods, services, professional services, and/or construction projects promptly, or within the time specified, and if applicable;
  - 3. The equipment, facilities and resources of such capacity and location to enable the bidder to provide the required goods, services, professional services, and/or construction projects, and if applicable;
  - 4. The ability to provide future maintenance, repair, parts and service for the use of the goods and/or construction projects purchased, and if applicable;
  - 5. A record of satisfactory performance under prior contracts with the City or other purchasers where such bidder has previously been awarded such contract.

Sec. 28-3. Purchasing Agent Powers and Duties.

The Purchasing Agent, or designee(s), shall have the following powers and duties:

- a. To prepare a written purchasing manual that implements the requirements of this Chapter. The purchasing manual shall describe in detail the operational procedures and processes for the procurement of materials, supplies, services, equipment, and public works contracts;
- b. To purchase and execute contracts for materials, supplies, services and equipment, as limited in this Chapter, required by any department. Notwithstanding any other provision of this Chapter, the authority of the Purchasing Agent to execute contracts may not be delegated (other than to the Acting City Manager in the event of the City Manager's absence or disability) except that the Purchasing Agent may delegate in writing to Department Heads (as defined in City Code Chapter 25) the authority to execute contracts for their respective department that are below the threshold requiring informal bids or proposals;

- c. To act to procure the needed quality in supplies, materials, services and equipment at the least expense to the City;
- d. To obtain as full and open competition as possible on all purchases;
- e. To keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- f. To prescribe and maintain such forms as are reasonably necessary to the purchasing operation; and
- g. To supervise the inspection of all supplies, services, and equipment purchased to ensure conformance with the specifications.

Sec. 28-4. Procurement of Goods and General Services.

- a. *Small Procurements.* Purchases of supplies, materials, furnishings, vehicles, rolling stock, materials, general services, and equipment estimated in value to be less than twelve thousand dollars (\$12,000) may be made without informal bids or quotes, subject, however, to fair, just and equitable terms and conditions of purchase.
- b. *Informal Bid Procedure.* Purchases of supplies, materials, furnishings, vehicles, rolling stock, general services, and equipment estimated in value at twelve thousand dollars (\$12,000) or more and below seventy-five thousand dollars (\$75,000), may be made by the Purchasing Agent informally without observing the formal bidding procedures, or may be awarded based on “best value” criteria as set forth in Section 28-15. Such purchases shall, unless infeasible, be based on at least three (3) informal bids or quotes and shall be awarded to the lowest responsible bidder.
- c. *Formal Bid Procedure.* Except as otherwise provided for in this Chapter, formal bidding procedures shall be used when the anticipated cost of supplies, material, furnishings, vehicles, rolling stock, general services, and equipment is valued at seventy-five thousand dollars (\$75,000) or more per agreement year and shall be by written bid and contract pursuant to the procedure prescribed herein, except for those purchases awarded based on “best value” criteria as set forth in Section 28-15. Formal bidding procedures shall be as follows:
  - 1. *Notice Inviting Bids.* Notices inviting bids and specifying the time and place of opening shall be published at least ten (10) calendar days prior to the opening of the bids. Notice shall be posted on the City’s website. The Purchasing Agent may require additional notice as determined to be in the best interest of the City.
  - 2. *Receipt and Opening of Bids.* Bids may be submitted in physical form or electronically as specified in the notice inviting bids. Bids submitted in physical form shall be in a sealed envelope and shall be identified as a “bid” on the envelope, and submitted to the City at or before the time specified in the notice. Bids submitted electronically shall be identified as specified in the notice. At the time and place specified, the bids shall be publicly opened and read. Any bid received after commencement of bid opening shall be rejected and returned unopened. The City Council may waive any informalities or minor irregularities in bids received.
  - 3. *Bidders’ Security.* At the discretion of the Purchasing Agent, each bid may be required to be accompanied by a bid deposit or bond equal to at least ten percent (10%) of the bid amount, as set forth in the bid specifications.

4. *Award of Bid.* Except as otherwise provided in this Chapter, the City Council shall award the contract to the lowest responsible bidder whose bid complies with the specification. Notwithstanding the foregoing, in the case of contracts pertaining to informational technology systems that would be exempt from disclosure under the Public Records Act, California Government Code section 6254.19, as amended, the Purchasing Agent shall award the contract to the lowest responsible bidder whose bid complies with the specification.
  5. *Rejection of Bids.* In its discretion, the Purchasing Agent may reject any and all bids presented, and may re-advertise for other bids pursuant to the procedures described in this Chapter.
  6. *No Bids Received.* In the event no bids are received, the Purchasing Agent may, in their discretion, re-advertise for other bids, cancel the procurement, or recommend that the City Council declare by resolution that the equipment, supplies, materials, or general services may be more economically or satisfactorily procured on the open market and order such procurement on the open market by direct negotiations.
  7. *Tie Bids.* If two (2) or more low bids received are for the same total amount or unit price, quality and service being equal, the City may re-advertise for bids, draw lots or accept the one it chooses.
- d. *Prevailing Wages.* Contracts for City-funded Maintenance Work valued in excess of fifteen thousand dollars (\$15,000) shall require payment of prevailing wages in accordance with the requirements of the California Labor Code.

Sec. 28-5. Public Works Projects.

- a. *Small Procurements.* Contracts for Public Works Projects estimated in value to be less than twelve thousand dollars (\$12,000) may be made without informal bids or quotes, subject, however, to fair, just and equitable terms and conditions of purchase, and recognizing the need for fair competition in the conduct of such purchases.
- b. *Informal Bid Procedure.* Contracts for Public Works Projects estimated value at twelve thousand dollars (\$12,000) or more and below one hundred fifty thousand dollars (\$150,000), may be made by the Purchasing Agent informally without observing the formal bidding procedures. Such contracts shall, unless infeasible, be based on at least three (3) informal bids or quotes and shall be awarded to the lowest responsible bidder.
- c. *Formal Bid Procedure.* Except as otherwise provided for in this Chapter, contracts for Public Works Projects estimated in value at one hundred fifty thousand dollars (\$150,000) or more shall be by formal written bid, in accordance with the procedures set forth in subsections (1) through (7) of 28-4(c), with contracts awarded by the City Council to the lowest responsive and responsible bidder.
- d. *Bids Exceeding Available Funds.* In the event all bids for a Public Works Project exceed available funds as certified by the Purchasing Agent, and the lowest responsive and responsible bid does not exceed such funds by more than ten percent (10%), the Purchasing Agent or his/her designee is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to

negotiate with the lowest responsive and responsible bidder for an adjustment of the bid price, including changes in the bid scope and bid requirements, in order to bring the bid within the amount of available funds.

When the lowest responsive and responsible bid exceeds available funds by more than ten percent (10%), and an essential operation or City service affecting the public's health, welfare or safety would be greatly hampered if the City were required to formally re-solicit bids, the procurement may proceed under the emergency procurement provisions set forth in this Chapter.

- e. *Local Hire Standards.* Unless such provision would be excepted under Section [28-72](#), all City contracts for Public Works Projects subject to the above-stated formal bidding requirements shall contain provisions for a good-faith effort to hire qualified individuals who are residents of the Monterey Bay Area, in accordance with the provisions set forth in Article 2 of this Chapter.
- f. *Prevailing Wages.* Contracts for City-funded Public Works Projects valued in excess of twenty-five thousand dollars (\$25,000), and contracts for City-funded Maintenance Work valued in excess of fifteen thousand dollars (\$15,000), shall require payment of prevailing wages in accordance with the requirements of the California Labor Code.

Sec. 28-6. Public Works Projects -- Design-build procurement.

Except as otherwise set forth in this section, the provisions of Public Contract Code Section [22160](#) et seq., authorizing cities to utilize design-build procurement on designated public works projects are hereby adopted and incorporated by reference as if fully set forth herein. Design-build contracts may only be used for Public Works Projects valued in excess of five hundred thousand dollars (\$500,000). Utilization of design-build procurement must be approved by the City Manager prior to commencement of the competitive solicitation process for any authorized public works project. Prevailing wages shall be paid pursuant to Section 28-5(f).

Sec. 28-7. Public Works Projects -- Renewable energy and energy efficiency projects.

The provisions of Government Code Section [4217.10](#) et seq., authorizing renewable energy and energy efficiency Public Works Projects to be sole-sourced or procured through either formal or informal request for proposals following a public hearing process, including adoption of specific findings concerning the projected energy cost savings, are hereby adopted and incorporated by reference as if fully set forth herein. Prevailing wages shall be paid pursuant to Section 28-5(f).

Sec. 28-8. Public Works Projects -- Public-private partnerships.

The City Council may authorize the City to enter into agreements with private entities for use of private sector investment capital for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, for infrastructure projects pursuant to Chapter 14 of the [California Government Code](#), beginning with Section 5956 (the "Infrastructure Financing Act") in lieu of the other procedures specified herein.

Sec. 28-9. Job Order Contracts.

- a. The City Council may award individual annual contracts, referred to as “job order contracts,” none of which may exceed one million dollars (\$1,000,000), for repair, maintenance, remodeling, paving, sidewalk repair, or other work to be done according to unit prices. No annual contracts may be awarded for any new construction; however, job order contracts may be utilized for new construction less than \$150,000. The contracts shall be awarded to the lowest responsive, responsible bidder and shall be based on plans and specifications for typical work. No job order contract shall exceed three (3) years (including any extensions), except as necessary to complete outstanding work orders that were awarded within the three (3) year period.

For purposes of this section, the term “unit price” shall mean the amount paid for a single unit of an item of work, the term “typical work” shall mean a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project, and the term “repair, remodeling, paving, sidewalk repair, or other repetitive work to be done according to unit prices” shall not include design or contract drawings.

- b. *Multiple Job Order Contracts Procedure.* Contracts for repair, maintenance, alterations, or other repetitive work necessitating award of more than one (1) job order contract, as authorized by this section, may be awarded to multiple contractors/vendors following the procedures set forth herein.
  1. *Selection Process.* Bidding, selection and award of multiple public works job order contracts shall be performed in accordance with the bidding procedures set forth in this Chapter.
  2. *Award of Multiple Contracts.* The City may award job order contracts to a pool of the lowest responsive, responsible bidders for the work set forth in the City’s call for bids and/or written plans and specifications based on unit prices. Up to four (4) multiple job order contracts for public repair, maintenance or alterations work may be awarded by the City Council. Award of multiple job order contracts shall be made to those bidders that submitted responsive and responsible bids, in sequential order based on their bid amount, with the first job order contract awarded to the lowest responsive, responsible bidder (hereinafter, the “first low bidder”), the second job order contract awarded to the second lowest responsive, responsible bidder (hereinafter, the “second low bidder”), and so on, up to a maximum of four (4) total multiple job order contracts.
  3. *Contract Types.* The City’s call for bids and/or written plans and specifications for multiple job order contracts may be based on a particular category of work (such as sidewalk repair, curb ramps, etc.) or a specified trade or combination of trades.
  4. *Job Order Contracting Project Assignment.* Following Council award of the multiple job order contracts, the City shall prepare drawings and/or specifications of sufficient detail to determine a scope of work and schedule for individual projects. These individual projects shall be offered first to the first low bidder, who will be entitled to perform the work unless the contractor declines the project or the City determines the contractor would be unable to timely and satisfactorily perform the work due to bidder responsibility factors established by City, including but not limited to adequate financial, material, equipment, facility, workforce and personnel resources. Upon such determination by City, the project shall be offered next to the

second low bidder, who will be entitled to perform the work unless the project is declined or the City determines that the contractor would be unable to timely and satisfactorily perform the work due to the contractor responsibility factors set forth above. If there are additional on-call contractors, this process would continue as needed until the project is assigned. The City's determination of non-responsibility under this section may be appealed using the procedures set forth in Section 28-12.

5. *Removal of Contractor from Approved Pool.* The City may terminate a job order contract, at its discretion, should the contractor fail to adhere to the provisions set forth in the original call for bids. Removal of a contractor from the pool will not affect the term of the job order contracts for the remaining pool members.

Sec. 28-10. Contracts for Professional Services.

- a. *Small Procurements.* Contracts estimated to be less than twelve thousand dollars (\$12,000) in cost may be let without informal proposals, subject, however, to fair, just and equitable contract terms and conditions.
- b. *Informal Proposal.* Contracts for professional services in excess of twelve thousand dollars (\$12,000) but not exceeding seventy-five thousand dollars (\$75,000) per agreement year, may be made by the Purchasing Agent informally without observing the procedures prescribed in subsection (c) of this section. Such contracts shall, unless infeasible, be based on at least three (3) informal proposals and shall be awarded based on firm qualifications, experience and responsiveness, in addition to other appropriate criteria.
- c. *Formal Contracts.* Services of a professional nature with a value of seventy-five thousand dollars (\$75,000) or more per agreement year shall be procured pursuant to the procedure prescribed herein.
  1. *Request for Proposals.* When selecting providers of professional services, a request for proposals process shall be used. Request for proposals shall specify the deadline and place for submission, the nature of the services required, and the selection criteria to be used for awarding the contract.
  2. *Award of Contract.* Except as otherwise provided in this Chapter, the City Council shall award a contract based on firm qualifications, experience and responsiveness, in addition to any other criteria set forth in the request for proposals. The City Council may award more than one (1) professional services contract if specifically permitted in the request for proposals. In the case of contracts pertaining to information technology services that would be exempt from disclosure under the Public Records Act, California Government Code section 6254.19, as amended, the Purchasing Agent, and not the City Council, shall award the contract based on the qualifications, experience, and responsiveness of the proposals received.
  3. *Rejection of Proposals.* The Purchasing Agent may reject any and all proposals submitted and may, in its discretion, re-advertise for other proposals.

Sec. 28-11. Contracts for Legal Services.

The City Attorney shall have authority to approve contracts for legal services, including, without

limitation, services provided by outside counsel, investigators, consultants and other experts needed for litigation or other administrative and legal proceedings, to be provided to the City, where the contract price, and any contingency established for additional services, does not exceed the sum of one hundred thousand dollars (\$100,000) per agreement year. Except as otherwise provided in this Chapter, the City Council shall award contracts that exceed the sum of one hundred thousand dollars (\$100,000) per agreement year; however, in the case of contracts pertaining to litigation-related legal services that would be exempt from disclosure under the Public Records Act, California Government Code section 6254(k), as amended, the City Attorney, and not the City Council, shall award the contract subject to fair, just and equitable contract conditions.

Sec. 28-12. Responsibility Determination.

- a. A bidder who is denied the award of a contract because the bidder is not considered to be responsible may contest the City's determination by submitting a written appeal, accompanied by the applicable appeal fee as set by resolution of the City Council, which must be received by the Finance Department no later than 5:00 p.m. on the tenth calendar day after the City notifies the bidder it is not a responsible bidder. The City's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), or internet posting. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
- b. A bidder may request a hearing to present evidence contesting the City's determination that it is not a responsible bidder. The request for a hearing must be made in writing and submitted with the bidder's appeal. If a request for hearing is not submitted, then the procedures in section 28-13(f)-(k) for written protests shall be followed. If requested, the responsibility hearing shall be conducted before the Appeals Hearing Board. The following procedures shall apply to responsibility appeals before the Appeals Hearing Board:
  1. Upon receiving a written request for hearing, the Secretary of the Board shall set a time and place for the hearing not less than 10 calendar days nor more than 60 calendar days thereafter. Notice of the time, date, and place of such hearing shall be mailed to the appellant, to the applicant, and to any other person who has requested such notice in writing.
  2. De Novo Hearing. The Appeals Hearing Board shall hear the appeal as a new matter. The City has the burden of proof by a preponderance of the evidence.
  3. The bidding process shall be suspended until a determination is made on the merits of the responsibility appeal.
  4. The hearing shall be conducted with a staff presentation of the matter prior to the public hearing. Any member of the public, including the appellant and other bidders, shall have the right to be heard by the Board either in person or by counsel. Formal rules of evidence and discovery do not apply in the proceedings under this Section and the Board may consider any evidence or information deemed relevant and reasonably reliable.
  5. Notice of the decision of the Board shall be provided to the appellant and the other bidders in the same manner as the notice of the hearing. The decision of

the Board shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.5.

Sec. 28-13. Bid protests.

The following procedures shall apply to bidder protest(s):

- a. Authority to protest shall be limited to bidding vendors. A written protest may be filed based on the following grounds:
  1. 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.
  2. Such other grounds as would create a cause of action at law or in equity.
- b. Bidder protests must be submitted to the City, in writing and containing all information specified in subsection (c) herein, in person or via mail to City of Monterey, Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940, and shall be accompanied by the bid protest filing fee, which shall be set by resolution of the City Council.
  1. For contracts awarded pursuant to a notice inviting bids, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the date of the bid opening.
  2. For contracts awarded pursuant to a request for proposals, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the City notifies the bidders of the winning proposal.
  3. Notwithstanding subsections (1) and (2) above, if a bidder's bid or proposal is rejected as non-responsive, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the City notifies the bidder that the bid or proposal is being rejected.
  4. The City's notification under subsections (2) and (3) above may be by any reasonable means, including but not limited to U.S. mail, electronic mail, or internet posting. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
  5. If the fifth business day falls on a weekend or a City holiday, the deadline to submit a protest shall be extended to 5:00 pm on the next business day.
  6. The party filing the protest must concurrently transmit a copy of the protest to the bidder deemed the apparent low bidder and to any bidder that is the subject of the protest.
  7. A written protest that is late or fails to include the bid protest filing fee shall be returned without further action by the City.
- c. The written formal protest must contain the following:

1. Identification of the specific City Purchasing Code (Chapter [28](#) of this Code) or other statutory or regulatory provision(s) that the bidder or department is alleged to have violated;
  2. Description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
  3. A precise statement of the relevant facts that includes dates, timelines and involved parties, and all supporting documents. Supporting documentation not submitted at the time of submission of the written protest will not be considered;
  4. An identification of the issue(s) that need to be resolved that support the protest;
  5. A statement of the form of relief requested;
  6. A signed statement by an authorized representative that the protest is submitted under penalty of perjury under the laws of the State of California.
- d. If a timely protest is filed, Finance Director, or designee, shall notify the involved department(s) and any further action related to the bidding process shall be suspended until a determination is made on the merits of the protest.
  - e. Finance Director, or designee, will conduct an investigation, gather information, prepare documentation of its findings and make every effort to resolve the protest to the mutual satisfaction of all stakeholders. If the protest cannot be mutually resolved, the Finance Director will make a decision as to the protest and so inform the involved department(s) and notify the protest bidder(s) in writing.
  - f. The notice to the protester shall state the basis of bidder's protest(s), the results of the investigation, findings, recommendation(s) and reasons for the action taken and delivered, in writing, to the protesting bidder(s).
  - g. Bidders may appeal the Finance Director's determination, in writing, to the City Manager within five (5) business days of receipt of the written notification. The City Manager, or Assistant City Manager if designated by the City Manager, shall have five (5) business days to make a decision, which shall be in writing and shall be final.
  - h. The procedures and time limits set forth in this section are mandatory and are the bidder's sole and exclusive administrative remedy in the event of a bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including a filing a challenge of the award of contract, filing a claim pursuant to the California Government Code, or filing any other legal proceedings. These bid protest procedures shall not limit the City Manager's authority to reject all bids. Rejecting all bids or proposals shall render a protest moot and terminate all protest proceedings.

Sec. 28-14. Exceptions to Competitive Procurement Requirements.

The following are exempt from the informal and formal competitive procurement requirements of this Chapter. The purchases permitted under this section shall be subject to fair, just and equitable contract conditions.

- a. *Purchases Through Cooperative Purchases Contracts.* A cooperative procurement contract negotiated by another governmental agency or cooperative purchasing agency approved by the Purchasing Agent may be utilized for the purchase of goods, services, materials, furnishings, equipment, vehicles, rolling stock, and/or supplies if it meets all of the following:
  1. It is in the best interest of the City.
  2. It is to the City's economic advantage.
  3. It was competitively awarded using a process that complies with the policies, rules and regulations as approved by the Purchasing Agent or designee.
  
- b. The use of another governmental or public agency's contract or substantially the same contract terms provided: (i) the agency uses a solicitation method substantially similar to the method required by this Chapter; (ii) the contract is consistent with the requirements of the City Code; and (iii) the Purchasing Agent determines that the City will realize overall value to utilizing the other agency's contract or contract terms compared to the City performing its own procurement.
  
- c. *Emergency Contracts.* In the event of an emergency as defined herein, the Purchasing Agent may order the suspension of normal bidding or purchasing and procurement requirements for projects related to abatement of the impacts or effects of such emergency. With respect to formal contracts, the City Council shall, if possible, ratify such emergency suspension of procedures at the next properly noticed Council meeting following the emergency procurement and consider whether further suspension of procedures is required to abate the impacts of the emergency. An emergency shall be deemed to exist if:
  1. There is a public calamity such as a fire, flood, earthquake, storm, or similar disaster that poses a serious threat to the public safety or national defense; or
  2. There is an immediate need to protect or prepare for national or local defense; or
  3. An essential operation or City service affecting the public health, welfare or safety would be greatly hampered if adherence to the prescribed purchasing procedures would cause undue delay in procurement of the needed item or service.
  
- d. *Sole Source Contracts.* In the event the contract and/or purchase contemplated is capable of being performed as follows:
  1. By a sole provider such as a public utility or the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchase of goods or services when there is a demonstrated need for compatibility with an existing item or service;
  2. By another governmental agency;

3. Through purchasing contracts negotiated by another governmental agency or cooperative purchasing agency approved by the Purchasing Agent utilizing acceptable bidding procedures;
  4. When purchasing used equipment;
  5. When leasing or renting equipment.
- e. Placement of insurance coverage and surety bonds.
  - f. Legal services contracts, including without limitation, the services of outside counsel, consultants and other experts needed for litigation, administrative, or other legal proceedings.
  - g. Conferences, trainings, and seminars as approved in advance by the Department Head.
  - h. The Library Director is authorized to rent, purchase or otherwise acquire all books, magazines, periodicals, recordings, films, pictures, photographs, programs received through electronic media, documents, or any other cultural items for circulation from or study in the Public Library pursuant to the procedures prescribed by the Board of Library Trustees subject to the appropriations of the approved budget for the Library.

#### Sec. 28-15. Best-value purchasing.

As an alternative to the competitive process set forth in Section 28-4 for purchase of supplies, materials, furnishings, equipment, vehicles, rolling stock and other items when design, performance, aesthetics and similar factors preclude award of a contract solely on the basis of lowest responsive and responsible bid, the City may utilize a best-value purchasing process. "Best value" means a procurement process based on objective criteria for evaluating the bids with the resulting selection representing the best combination of price, quality, suitability and other factors as set forth in the solicitation for bids. Such process may be utilized for the purchase of supplies, materials, furnishings, equipment, vehicles, rolling stock and other items if it meets the following criteria:

- a. It is in the best interest of the City;
- b. It is to the City's economic advantage; and
- c. It was competitively awarded using a process that complies with the policies, rules and regulations adopted and approved by the Purchasing Agent or designee.

#### Sec. 28-16. Contracts for Furtherance of Public Policy.

The City Council may award contracts for services or projects of up to two hundred fifty thousand dollars (\$250,000) in value to a non-profit organization qualified under [501\(c\)\(3\)](#) of the Internal Revenue Code, including but not limited to a qualified educational institution, without having to undergo a competitive bid or request for proposal process as otherwise required under this Chapter, provided that Council makes the following findings:

- a. That the contract furthers a specific public policy;
- b. That the contract is in the best interest of the public; and

- c. That award of the contract does not compromise City standards for quality and performance.

Award of all such contracts shall require adequate insurance as specified by City, including but not limited to liability and workers' compensation insurance, shall require the organization to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the organization or its employees, students, volunteers or other persons working on behalf of the organization, and shall require compliance with all state, federal and local laws and regulations.

Sec. 28-17. Splitting Purchases Prohibited.

No acquisition of equipment, materials, supplies, or contractual services from a single vendor or provider shall be accomplished by the issuance of several purchase orders for portions thereof.

Sec. 28-18. Inspection and testing.

The City 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 City shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

Sec. 28-19. Surplus supplies and equipment.

The City shall have authority to, in the most equitable manner, dispose of 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.

Sec. 28-20. Interference with, misleading, etc., bidders prohibited.

No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, materials or other supplies or favor one bidder over another, or give or withhold information from any bidder not given or withheld from all other bidders, or willfully mislead any bidder in regard to the character of the materials or supplies of a quality inferior to that called for by the contract or knowingly certify to a greater amount of labor performed or material or supplies furnished than has, respectively, been performed or received.

Sec. 28-21. Acceptance of gifts, etc., by City employees prohibited.

No officer or employee of the City may accept, directly or indirectly, any gift, rebate, money, or anything else of value whatsoever from any person or entity if the gift, rebate, money, or item of value is intended as a reward or inducement for conducting business, placing orders with, or otherwise using the employee's position to favor the contributor. Promotional items of nominal value, such as calendars, pens, balloons, etc., shall not constitute a gift if received as a non-personal item by the officer or employee, and the item is distributed to customers or potential customers routinely by the contributor."

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed. In addition, Resolution No. 15-183 Delegating Authority for Bidder Responsibility Hearings to the Appeals Hearing Board is hereby repealed.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 1<sup>st</sup> day of September, 2020, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:  
  
FA1981217DEF4FB  
 \_\_\_\_\_  
 Mayor of said City

DocuSigned by:  
  
FD8453A4E62C4AA  
 \_\_\_\_\_  
 City Clerk thereof