



PUBLIC HEARING

City of San Bernardino Request for Council Action

Date: December 7, 2022

To: Honorable Mayor and City Council Members

From: Robert D. Field, City Manager;
Barbara Whitehorn, Agency Director of Administrative Services

Department: Finance

Subject: **Adopt New Purchasing Policy and Introduce Ordinance No. MC-1605 amending Section 3.04 of the Municipal Code. (All Wards)**

Recommendation

It is recommended that the Mayor and City Council of the City of San Bernardino, California:

1. Introduce, read by title only, and waive further reading of Ordinance No. MC-1605 amending Section 3.04 of the Municipal Code of the City of San Bernardino, California, and
2. Adopt Resolution 2022-246 adopting the Purchasing Policy for the City of San Bernardino.

Background

Over the last two years, the Finance Department has been working to build a robust, responsive Purchasing Division. During the bankruptcy, purchasing personnel in Finance was cut to one Assistant Buyer who was tasked with coordinating procurement for the entire City. Out of necessity, the majority of procurement functions were decentralized, and departments completed most of their own procurement, from small purchases of supplies to major requests for proposals for capital projects with limited assistance from Finance.

While this worked when there was little funding available, as the City has reached financial stability and is now able to invest in ongoing service and capital projects, having a centralized purchasing model backed by well-defined Policy and Municipal Code is of paramount importance. In August, Council requested that the purchasing thresholds of the City Manager and Purchasing Division Manager be added to a future Council meeting agenda, recognizing that the current \$49,999 maximum threshold for the City Manager's contracting authority is low relative to the size of the City of San

Bernardino and the business that the City conducts.

To provide the foundation for good governance, the Municipal Code governing purchasing was rewritten and simplified. A Purchasing Policy (Attachment 4) has been developed in alignment with the Municipal Code that will support operations and ensure appropriate internal controls are in place.

Discussion

As briefly discussed above, the Municipal Code and the Purchasing Policy are two key aspects of procurement that work together to provide the foundation of good governance and the policy framework for citywide procurement. They must complement each other to ensure legal compliance and support efficient and effective operations.

Municipal Code. The San Bernardino Municipal Code was originally developed with very specific procedures for each aspect of the procurement process (Attachment 1). In the redline (Attachment 2), there are numerous changes recommended, removing much of the procedural guidance and adding thresholds for bidding requirements and approval levels, as well as simplifying the language. The changes are intended to put in place a governing Municipal Code that supports Purchasing Policy, internal control, and good governance. The Municipal Code and the Purchasing Policy work together to ensure the City does business legally, efficiently, and effectively. When governance and internal policy are properly aligned, day-to-day operations related to procurement can run smoothly. The Municipal Code should provide the framework from which policies are developed; policies then provide more specific rules, from which procedures are built for efficient operations.

Below the most significant changes to the Municipal Code are outlined.

Section 3.04.030 Estimates of Requirements – eliminated, replaced

This section required departments to submit estimates to the City Administrator for their supplies, materials and equipment needs for the year. This kind of estimate is no longer necessary because the City contracts with Staples for office supplies and individual departments bid materials and equipment either individually or collectively depending on needs.

3.04.030 Bidding Requirements (Summary) - New

This section was added to specify at what threshold competitive bids or proposals are required versus informal or formal quotes. The procurement process used to purchase supplies, material, equipment and contracted services is dependent upon the total dollar amount of the goods or services to be purchased and the type of purchase.

- A. Purchases up to \$10,000 may be purchased using a Purchasing Card or through a check request with no requirement for formal bids or quotes.

- B. Purchases between \$10,001 and \$40,000 are processed informally, through vendor quotations and maybe processed directly by the department making the purchase. The informal bidding process is more particularly described in the Purchasing Policy.
- C. Purchases above \$40,000 are subject to formal competitive bidding or competitive selection depending on the type of purchase. The formal competitive bidding process is more particularly described in the Purchasing Policy.

Section 3.04.040 Requisitions – eliminated, replaced

This section stated that all using departments were to submit requisitions for supplies, materials and equipment on standard requisition forms to the Purchasing Agent. The City no longer uses requisition forms; this model is more reflective of a central stores function in which a City maintains an inventory in a centralized location and “sells” the supplies, materials, and equipment to departments as needed. With the availability of just-in-time delivery, this model is no longer commonly used.

3.04.040 Approval Authority (Summary) – New

This section was added to specify authorization levels. It provides the authority to purchase supplies, material, equipment, and contracted services dependent upon the total dollar amount of the goods or services to be purchased and the type of purchase. Purchasing authority is based on the following amounts:

- A. Purchases up to \$50,000 may be authorized by the Agency/Department Director and/or the City Manager.
- B. Purchases between \$50,001 and \$100,000 may only be authorized by the City Manager or their designee.
- C. Purchases over \$100,000 may only be authorized by the Mayor and City Council.

3.04.070 Formal Contract Procedure – eliminated, replaced

This Section has been eliminated; it outlined specific procedures, as opposed to providing a governance framework for the development of Policy and operational procedure.

3.04.070 Emergency Purchases (Summary) - formerly 3.04.075

The only substantive change to this section is adding a requirement that the Mayor and City Council be notified of any emergency purchases within forty-eight

(48) hours of the purchase.

3.04.080 Open Market Procedure – *eliminated, replaced*

Like previous Section 03.04.070 Formal Contract Procedures, this section provided procedures for purchases in the open market, as opposed to providing a governance framework for the development of Policy and operational procedure.

3.04.080 Surplus Supplies and Equipment (Summary) – *formerly 3.04.100*

The only substantive change to this section is removing language restricting the sale of some surplus to non-profits and sister Cities with Mayor and City Council action. The Mayor and City Council are always able to use their prerogative to direct the City Manager in the treatment of particular surplus items.

3.04.085 Services; 3.04.090 Annual Audit; 3.04.105 Sale of Surplus Property; 3.04.110 Surplus Vehicles and Equipment; 3.04.115 City Manager – *eliminated*

Like previous Sections 3.04.070 Formal Contract Procedures and 3.04.080 Open Market Procedures, Sections 3.04.085 Services, 3.04.105 Sale of Surplus Property and 3.04.110 Surplus Vehicles and Equipment provide procedures for the purchase of services, the sale of surplus property, and the sale of surplus vehicles and equipment, as opposed to providing a governance framework for the development of Policy and operational procedure. There remains a section for surplus, 3.04.080 Surplus Supplies and Equipment, and Section IX of the Purchasing Policy provides more specific detail and guidance. Within the Purchasing Policy there are six sections dedicated to bid, proposal, and contracting procedures:

- III. Informal Procurement Process
- IV. Formal Procurement
- V. Specialized Procurement Situations
- VI. Exemptions
- VII. Bid Protests
- VIII. Contracting

Section 3.04.115 City Manager of the Municipal Code assigned the City Manager the same duties previously assigned to the Purchasing Agent and is unnecessary. Section 3.04.090 Annual Audit is unclear in its intent; referring to an annual audit of accounts established pursuant to the authority granted under this Chapter. However, the creation of accounts is not within the purview of Purchasing. The annual external audit includes testing of the purchasing process to ensure that the City maintains adequate and appropriate internal controls and separation of duties. These two sections have been eliminated.

3.04.100 Local Bidders – formerly 3.04.125

This section has been updated to change the one-percent (1%) local vendor “preference” comparison credit for goods and materials bids to five-percent (5%), which is more in line with other local governments, to clarify that the vendor should have facilities within the City of San Bernardino to be considered a “local vendor,” and that they are required to hold a valid Business License with the City. The Purchasing Policy includes additional language about Local Vendor Outreach, which will be a required part of the standard bid or request for proposal procedures to ensure that local vendors are aware of any opportunities to do business with the City and can submit a bid or proposal for any work for which they may be qualified.

Purchasing Policy. The Purchasing Policy takes a much deeper dive into the specifics of each area of procurement, providing detailed guidance, definitions, examples, exceptions and prohibitions. The Policy supports the following purposes and objectives:

1. *To ensure compliance with all current laws and regulations*
2. *To promote transparency of the City’s procurement activities*
3. *To establish standardized, cost-effective, and efficient purchasing methods*
4. *To ensure continuity of City operations*
5. *To promote fair competitive processes*
6. *To maintain integrity and fairness*
7. *To support the City’s mission and serve the best interest of the public*

The Policy lays out the same bid/proposal thresholds and approval authority levels, and provides specific detail on conflicts of interest, informal and formal purchasing processes, competitive procurement, prohibitions, specialized procurement situations including disadvantaged business enterprise, small business enterprise, local vendor preference and outreach, and grant-funded procurement, exemptions, bid protests, contracting, and surplus supplies and equipment.

Internal Control

It is important to note that neither the Policy nor the Municipal Code provides a separate purchasing authorization level for the Purchasing Division Manager. This decision was made after considerable research of best practices and discussion with subject matter experts. While in very large organizations (counties, for profits companies with multiple locations) purchasing agents and managers often had direct authority to make purchases, this was almost never the case in municipalities. In municipalities, the Purchasing Manager and Purchasing Division act as the key internal control point for the authorized purchasers (P-Card users, Directors, City Manager), ensuring that those making purchases adhere to Policy, Municipal Code, relevant law, regulations and any grant requirements. In very large organizations, this internal control function may fall under the purview of a separate fully staffed internal audit function. In the very large organizations with the purchasing agent structure, every division in the organization has at a minimum one assigned purchasing agent,

because in this case often *only agents* have authorization to make purchases. This structure requires considerably more full-time staff and is a model that is financially impractical for most cities.

As mentioned above in the Municipal Code Section 3.04.100 Local Bidders, the Policy reiterates the local vendor preference of 5%, and requires local vendor outreach for all competitive bids and proposals as follows:

1. Local Vendor Preference.
As legally allowed, specifically in the procurement of goods and materials, the City will provide a 5% local vendor credit for vendors physically located within the City of San Bernardino. As specified in Municipal Code Section 3.04.100, the vendor must maintain fixed facilities within the jurisdiction of the City of San Bernardino and hold an appropriate City of San Bernardino Business License.
2. Local Vendor Outreach.
Outreach to local vendors will be included in all informal and formal quotes, bids, requests for proposals, and requests for qualifications.

The Policy addresses the goals of the disadvantaged business enterprise (DBE) Program as follows:

The City shall take affirmative steps to assure that minority businesses, women's business enterprises, and small businesses are used when possible. Affirmative steps include:

1. *Placing qualified small and minority businesses and women's business enterprises on solicitation lists*
2. *Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources*
3. *When economically feasible, dividing large projects into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises*
4. *Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises*
5. *Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce*
6. *Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed immediately above.*

The Purchasing Division was able to successfully recruit and onboard a Disadvantaged Business Enterprise Specialist, who began employment with the City on November 7. The Purchasing Division currently consists of four authorized full-time equivalent positions. While this is not enough to centralize all procurement, the proposed changes to the Municipal Code and new Policy are intended to enable departments to procure goods and services up to \$50,000 within their own authority with confidence that they have the tools to make the right procurement decisions for their department and the City, while the Purchasing Division provides expert advice and assistance as needed.

2021-2025 Strategic Targets and Goals

The changes to the Municipal Code and the adoption of the Purchasing Policy align with Key Strategic Goals 1.a. Establish clear policy direction and predictable organizational structures, and 1.d. Create a framework for spending decisions.

Fiscal Impact

There is no fiscal impact to the City in adopting the new Purchasing Policy and in introducing the Ordinance amending the Municipal Code.

Conclusion

It is recommended that the Mayor and City Council of the City of San Bernardino, California:

1. Introduce, read by title only, and waive further reading of Ordinance No. MC-1605 amending Section 3.04 of the Municipal Code of the City of San Bernardino, California, and
2. Adopt Resolution 2022-246 adopting the Purchasing Policy for the City of San Bernardino.

Attachments

Attachment 1 – Municipal Code Section 3.04
Attachment 2 – Municipal Code Section 3.04 Redline
Attachment 3 – Resolution No. 2022-246 Adopting Purchasing Policy
Attachment 4 – Exhibit A – Proposed Purchasing Policy
Attachment 5 – Ordinance No. MC-1605 to Amend Municipal Code Section 3.04
Attachment 6 – PowerPoint Presentation Purchasing Policy

Ward:

All Wards

Synopsis of Previous Council Actions:

August 3, 2022 Mayor and City Council requested that an item be added to a future meeting to give the Chief Procurement Officer a

dollar authorization of \$50,000 and increase City Manager's signing authority to \$100,000 (All Wards) – Council Member Alexander