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CONTRACTING PRACTICES, CITY OF SAN CARLOS

Issue

Determine the progress made as proposed in the response by the City of San Carlos (City) to the 2004-2005 Grand Jury report with respect to the City's contracting practices as reviewed in the 2005-2006 Grand Jury report.

Background

Over the last several years, the San Mateo County Civil Grand Jury issued reports on the management practices in the City concerning the appearance of a conflict of interest in the City's granting, and then automatically renewing, contracts to former employees. In early 2006, the City began to:

- revise several of its contracts;
- have City employees perform more of the work previously done by independent contractors;
- review and revise City Code Section 3.12 dealing with the purchasing of services and supplies.

Investigation

To assess whether the recommendations by previous Grand Juries were satisfied, this Grand Jury:

- interviewed San Carlos City staff and Council members;
- reviewed prior Grand Jury reports of 2004-2005 and 2005-2006;
- reviewed Ordinance 1392 of the City of San Carlos, modifying Chapter 3.12 of the San Carlos Municipal Code: Purchasing of City Supplies and Services.

Findings

Ordinance 1392 was passed unanimously by the City Council on September 10, 2007. (See Ordinance appended hereto.)

This Grand Jury finds that the recommendations of prior Grand Juries have been satisfied.

Conclusion

This Grand Jury commends the City of San Carlos and prior Grand Juries for their work and believes the 2007-2008 Grand Jury's interest in this matter has been satisfied.

ORDINANCE NO. 1392

ORDINANCE MODIFYING CHAPTER 3.12 OF THE SAN CARLOS
MUNICIPAL CODE - PURCHASING OF CITY SUPPLIES AND SERVICES

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

SECTION 1: Chapter 3.12 of the San Carlos municipal Code is revised as follows:

3.12.010 Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

3.12.020 Application.

Except as otherwise provided herein, this chapter applies to contracts for the procurement of supplies and services, entered into by the City. When the procurement involves the expenditure of State or Federal assistance or contract funds, the procurement shall be conducted in accordance with mandatory applicable State or Federal law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law. The purchase of all supplies and services by the City shall be made pursuant to this Chapter.

3.12.030 Definitions.

As used in this chapter:

- A. "Architect-engineer and land surveying services" means those professional services within the scope of practice of architecture, professional engineering, or land surveying, as defined by the laws of the State.
- B. "Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.
- C. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.
- D. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- E. "City" means the City of San Carlos.
- F. "Invitations for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- G. "Person" means any business, individual, union, committee, club, or other organization, or group of individuals.
- H. "Procurement" means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including

description of requirements, selection, and solicitation of sources, preparation and award of contract, and contract administration.

I. "Quote, Quotation, Bid and Proposal" shall be synonymous as used in this Chapter. . A "formal" quote shall be obtained in writing (or e-mail) and an "informal" quote is one obtained verbally or simply by price checking.

J. "Services" means the furnishing of labor, time or effort, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements. Professional Services shall be as defined in and governed by Section 3.12.260. All other services shall be considered non-professional.

K. "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply or service for delivery.

L. "Supplies" means all property (including but not limited to equipment and materials) except as otherwise provided herein.

M. "Surplus supplies" means supplies which are worn out, obsolete or unsuitable for continued City use.

3.12.040 Establishment.

Purchasing for the City shall be managed by the Administrative Services Director In all cases where the Administrative Services Director is authorized to act in this Chapter, the City Manager or his/her designee is also authorized.

3.12.050 Duties.

In accordance with this Chapter, the Administrative Services Director shall:

A. Procure or supervise the procurement of all supplies and services needed by the City, except as otherwise provided herein;

B. Exercise direct supervision over the City central stores and general supervision over all other inventories of supplies belonging to the City;

C. Sell, trade or otherwise dispose of surplus supplies belonging to the City; and

D. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the City Departments the public agencies using such supplies and services. (Ord. 1178 § 2 (part), 1995)

3.12.060 Operational procedures.

Consistent with this chapter, operational procedures may be adopted by written order of the City Manager or the City Manager's designee, which may then be reviewed or modified by the City Council.

3.12.070 Delegation/Request for Proposals by City Staff.

A. The Administrative Services Director may delegate authority to purchase

supplies or services, and to dispose of surplus supplies, to other city officials if such delegation is deemed necessary for the effective procurement or disposal of those items, and is authorized by the City Manager.

B. Where the City determines to select a professional consultant's services and any staff member or City consultant has been involved in the preparation of, and/or implementation of a Request For Proposals (RFP) for such services, said City staff member and any city consultant, shall not be allowed to solicit proposals for services under such RFP.

3.12.080 Factors to Consider in Purchasing Supplies and Non-Professional Services.

In every case, purchases of supplies and non-professional services shall be awarded on the basis of the bid or bids most advantageous to the City. In determining whether a bid is most advantageous to the City, in addition to price, the following factors shall be considered:

- A. The ability, capacity and skill of the bidder to perform the contract or provide the supplies or service required;
- B. Whether the bidder can perform the contract or provide the supplies or service promptly, or within the time specified, without delay or interference;
- C. The previous and existing Compliance by the bidder with applicable laws and regulations in previous public contract projects.
- D. The bidder's reputation, experience, and the quality of performance of previous contracts for supplies or services;
- E. The quality, availability and adaptability of the supplies or services to the particular use required;
- F. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- G. The number and scope of conditions attached to the bid.

3.12.090 Justification for acceptance of a high bid.

In cases where the purchase of supplies or non-professional services is awarded to the most advantageous bid and not the lowest bid, the Administrative Services Director shall prepare and place on file with the records of the department a written statement of his or her opinion and the reasons therefore. Such statements shall be open to public inspection at all times during regular office hours.

3.12.100 Preference given to bidder within the City when bids are equal.

A bidder with a permanent place of business within the City shall be preferred over a bidder without a permanent place of business within the City, in cases where two or more bids are judged to be equal.

3.12.110 Brand names or equal specification.

A. Use. Brand name or equal specifications may be used when the Administrative Services Director determines that:

1. No other design or performance specification or qualified products list is available;

2. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
3. The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
4. Use of a brand name or equal specification is in the City's best interest.

B. Designation of Several Brand Names.

1. Brand name or equal specifications shall state that substantially equivalent products to those designated will be considered for award.
2. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

3.12.120 Preference given to bidder(s) supplying recycled paper and paper products. The Administrative Services Director shall provide a preference to the suppliers of recycled paper or paper products as defined in Section 10855 of the Public Contract Code equal to five percent of the lowest bid or price quoted by suppliers offering unrecycled paper or paper products, provided the recycled paper is compatible with City equipment and when fitness and quality are comparable to nonrecycled paper products.

3.12.140 Purchases of less than five hundred dollars.

Where the cost is less than five hundred dollars the purchase of supplies or nonprofessional services or professional services may be made without an informal or formal quote or bid process.

3.12.150 Purchase of five hundred dollars to five thousand dollars.

Where the cost is from five hundred to five thousand dollars, the purchase of supplies or non-professional services or professional services shall be made by the Administrative Services Director by informal quote. At least three vendors shall be contacted or three price checks made, except where three or more vendors are found not to exist.

3.12.160 Purchase of five thousand and one dollars to fifty thousand dollars made through formal written quote.

Where the cost involved is at least five thousand and one dollars and up to fifty thousand dollars the purchase of supplies or non-professional services shall be made by the Administrative Services Director through formal written quotation with at least three (3) quotes obtained for a proper comparison of prices, except where three or more vendors are found not to exist.

3.12.170 Purchase of fifty thousand and one dollars or more made by the City Council through competitive bid. Where the cost involved is at least fifty thousand and one dollars, the purchase of supplies or non-professional services shall be made by the City Council through competitive bid, upon notice as hereafter required in Section 3.12.210 of this chapter with at least three (3) bids being obtained for a proper comparison of prices, except where three or more vendors are found not to exist. Provided, however, the Council may elect to make any purchase without competitive bid in any amount (except as the laws of the State of California otherwise require) in the following cases:

A. By affirmative vote of three Council persons upon a determination that competitive bids upon notice would cause unnecessary expense or delay under the circumstances;

B. By affirmative vote of three Council persons on a finding that a purchase may be made through a governmental entity, as provided in Section 3.12.200.

C. By affirmative vote of three Council persons upon a finding that there is only one source for the required supply or service based on a review of available sources by the Administrative Services Director and he/she making a written recommendation therefore.

D. By majority vote of a quorum of Council persons present at a Council meeting upon a determination that the immediate preservation of the public peace, health or safety requires said purchase be made without competitive bids upon notice;

3.12.180 Emergency authority of City Manager and Administrative Services Director.

A. In an emergency requiring the immediate preservation of the public peace, health and/or safety, the City Manager or Administrative Services Director may purchase supplies or services up to \$50,000 without complying with the purchasing procedures set forth in Sections 3.12.150 through 3.12.160.

B. Where emergency conditions as set forth in A. above exist and the amount(s) in question exceeds \$50,000, and the City Council is unable or unavailable to meet in the time necessary to act, then the City Manager or the City Manager's designee shall have the authority to purchase supplies or services in excess of \$50,000 without complying with the provisions of Section 3.12.170.

C. At the next succeeding Council meeting following such an emergency, the City Manager or the Administrative Services Director shall submit to the Council a written statement of the circumstances of such emergency, a description of the supplies or services purchased, and the prices thereof.

3.12.190 Waiver of informalities - Rejection of bids.

Where the Administrative Services Director or City Council is required to make purchases of non-professional supplies or services upon competitive bids, the Administrative Services Director or Council may waive any informalities or minor irregularities, or may reject any and all bids (anything herein contained to the contrary notwithstanding) if said Administrative Services Director or Council deems said rejection to be in the best interests of the City. Said rejection shall be at the sole discretion of the Administrative Services Director or Council, as the case may be.

3.12.200 Purchase through a governmental entity.

Purchases may be made on behalf of the City through any governmental entity (including, but not limited to, the State of California or the County of San Mateo) pursuant to authority granted by any statute or ordinance or pursuant to contractual arrangement between the City and said governmental entity. The City is authorized and empowered to enter into contracts with other governmental entities providing for purchases to be made on behalf of the City.

3.12.210 Competitive bids - Notice.

Where notice is required, notice shall be given at least fifteen (15) days prior to bid opening as follows:

A. For purchase under Section 3.12.170 of supplies or non-professional services by:

1. Posting notice at City Hall.
2. Placing the notice on the City's website.
3. Sending (by e-mail or regular mail) notice to any person or entity requesting such notices and to whom the Administrative Services Director determines such notice should be sent.
4. Publishing a notice in a newspaper of general circulation in the City of San Carlos at least fifteen (15) days prior to the date set for final receipt of bids.

B. The notice shall give such information as to the proposed purchase or disposal as the Administrative Services Director deems sufficient but shall include the following:

1. A general description of the supplies or services to be purchased or personal property to be disposed;
2. Date, time and place of bid opening;
3. Whether bid deposit or bond and faithful performance bond will be required.
(Ord. 1178 § 2 (part), 1995)

3.12.220 Competitive bids - Consideration.

Where competitive bids are required, they shall be submitted in writing in a sealed envelope at the office of the Administrative Services Director no later than the final time and date for the receipt of bids as set forth in the notice and opened publicly. Where competitive bids are required, the purchase shall be made on the basis of three or more of said bids unless the Administrative Services Director shall certify in writing that less than three prospective vendors or purchasers have submitted bids or that, to the best of the Administrative Services Director's knowledge, there are less than three prospective vendors from whom the supplies or services are available and that bids were invited from all of said vendors. Any bid may be withdrawn by a written request signed by the bidder and received by the Administrative Services Director prior the final time and date for the receipt of bids.

A. Opening. Bids shall be opened in public at the time and place stated in the public notices.

B. Tabulation. A tabulation of all bids received shall be available for public inspection.

3.12.240 Faithful performance deposits.

When deemed necessary by the Administrative Services Director or City Council, any person entering into a contract with the City may be required to furnish a faithful performance deposit or bond in an amount determined by the Administrative Services Director or Council. Said person (and his or her surety, if a bond is furnished) shall be liable for any damages upon said person's failure to faithfully perform the terms or his or her contract.

3.12.250 Additional powers and duties of Administrative Services Director.

A. The Administrative Services Director is empowered to invite bids by telephone, e-mail or by regular mail or fax when deemed in the best interests of the City.

B. The Administrative Services Director shall keep a record of all purchases of supplies and services made and the bids, if any, submitted thereon. Said records shall be open to public inspection.

3.12.260 Service Contracts - Professional Services

A. Solicitation and Selection Criteria

1. Solicitation and selection of professional services, including but not limited to private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management, legal, accounting or planning firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required and on fair and reasonable prices.

2. The City Council may, by resolution, prescribe specific procedures, rules and regulations governing the solicitation and selection of firms.

B. Contracts for major services (more than \$50,000)

1. Solicitation of professionals shall be by written or published requests for proposals and at least three (3) proposals shall be obtained for comparison purposes except where three proposers for the services required cannot be found to exist.

2. Proposals shall be reviewed and ranked by a Selection Committee composed of staff members competent to judge the qualifications of firms for the category of services to be provided, and appointed by the City Manager.

3. Contracts shall be reviewed and awarded by the City Council.

C. Contracts for minor services (\$50,000 or less)

1. Solicitation of professionals shall be by verbal, written or published requests for, at which least three (3) proposals shall be obtained for comparison purposes except where three proposals for the services requested cannot be found to exist.

2. The City Manager, or his/her designee shall review and rank proposals.

3. The City Manager may award and execute contracts for minor services.

D. Contract incentives

Service contracts may include monetary or other incentives for superior performance or early completion of the services rendered.

E. Exceptions to the procedures prescribed in Section 3.12.260

1. Contracts utilizing funding or other participation from agencies which require conformance with state, federal or other contracting regulations shall be exempt from provisions of this chapter, and any resolutions established pursuant thereto, which would jeopardize the availability of the funding or participation.

2. Solicitation and selection of firms and award of contracts for public works design/build projects shall not be subject to the provisions of this chapter.

3. The City Council may authorize award and execution of service contracts in excess of \$50,000 with no competitive proposals where experience with the proposed service provider has demonstrated competence and satisfactory performance or in the renewal or renegotiation of existing contracts for continuing services.

4. The City Manager or City Manager's designee may authorize the solicitation, selection, award, and execution of service contracts by the most expeditious method where time is of the essence to prevent an emergency lack of critically needed services or otherwise to protect the public health, safety or welfare of the City and its residents. If the contract is for major services, it shall be submitted for ratification at the next regular City Council meeting."

F. Peer Review

Where a consultant is to be engaged for the purpose(s) of performing a peer review of a decision or work product of a member of City staff or another City consultant, the consultant shall be an independent third party, properly qualified for the task, and the scope of services for peer review shall be properly defined.

3.12.290 Sufficient funds must be available. No purchase order for services or supplies shall be issued until the Administrative Services Director has ascertained that there is a sufficient unencumbered appropriated balance in excess of all unpaid obligations to defray the amount of such order. (Ord. 1178 § 2 (part), 1995)

3.12.300 Department head responsible for checking quality.

Upon receipt by any department of supplies or services, the department head shall be responsible for the making of a careful check of the quality, condition and quantity received.

3.12.340 Disposal of personal property valued at one thousand dollars or less. Except as otherwise provided by State law or City ordinance, the Administrative Services Director shall be empowered to dispose of personal property of the City which cannot be used by any department of the City, at public or private sale or by renting or destroying the same (all with or without notice, competitive bid or necessity of posting bid bonds, at the Administrative Services Director's discretion, and upon such terms as he or she deems best), provided any single item of property involved does not exceed one thousand dollars in current market value. (Ord. 1178 § 2 (part), 1995)

3.12.360 Disposal of more than one thousand dollars.

In the event any single item of property exceeds one thousand dollars in current market value, the City Council shall be required to empower the Administrative Services Director to dispose of it (in accordance with the same terms and conditions and subject to the same discretion and limitations as if it were under one thousand dollars in value). Alternatively, the City Council may elect to sell, rent or destroy the same in accordance with whatever provision, terms and conditions the Council may, in its discretion, decide. (Ord. 1178 § 2 (part), 1995)

3.12.370 Exclusions from chapter. The provisions of this chapter shall not apply:

A. To public works projects (governed by the provisions of the California Public Contracts Code);

B. To franchises governed by the provisions of the California Public Utilities Code or other statute of the State of California;

C. Where State or Federal law requires a different procedure;

- D. To franchises, rights, privileges, licenses and permits granted by the City;
- E. To the purchase of insurance;
- F. To the leasing, purchase or sale of land or any interest therein;
- G. To the hiring of or contracting for personnel whether as temporary, seasonal or permanent employees;
- H. To the purchase of utilities, including, but not limited to, telephone service, gas, electricity or water. (Ord. 1178 § 2 (part), 1995)

SECTION 5: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Carlos hereby declares that it would have adopted this Ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional. SECTION 6: Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 7: The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this 13th day of August, 2007.

PASSED AND ADOPTED as an Ordinance of the City of San Carlos at a regular meeting thereof held on the _____ day of _____, 2007.

AYES, COUNCILMEMBERS: _____

NOES, COUNCIL MEMBERS: _____

ABSENT, COUNCIL MEMBERS: _____

ABSTAIN COUNCIL MEMBERS: _____

MAYOR of the City of San Carlos

ATTEST:

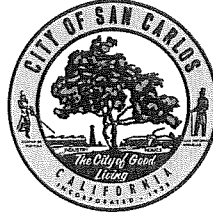
CITY CLERK of the City of San Carlos

COPY

CITY OF SAN CARLOS

CITY COUNCIL

BRADFORD LEWIS, MAYOR
ROBERT GRASSILLI, VICE MAYOR
MATTHEW GROCOTT
OMAR AHMAD
RANDY ROYCE



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February 5, 2008

Hon. Joseph C. Scott
San Mateo County Civil Grand Jury
400 County Center
Redwood City, CA 94063-1655

Re: Civil Grand Jury
December 19, 2007
Contracting Practices, City of San Carlos

Dear Judge Scott:

This letter is in response to your letter of December 19, 2007, and the San Mateo County Civil Grand Jury Report regarding Contracting Practices by the City of San Carlos.

We were pleased to note that the one (1) page Report makes a finding that "This Grand Jury finds that the recommendations of prior Grand Juries have been satisfied. No further action is to be taken." We note that the Grand Jury received San Carlos Purchasing and Ordinance No. 1392 and found it to be a satisfactory document and procedure.

We appreciate the respective Grand Jury's interest and efforts regarding the City's purchasing and contracting practices over the past few years.

If there is any further information and material that we can supply, please let me know.

Sincerely,

Bradford Lewis
Mayor

BL/lm