

MONTEREY CITY CODE

CHAPTER 28 **PURCHASING.** *Revised 4/17*

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

In order to establish efficient procedures for public bidding, contracting for public works projects and for the purchase of equipment, supplies, materials, and services, to secure public works contracts and 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.

Sec. 28-5. Designated Purchasing Agent.

For the purposes of this chapter, the term "Purchasing Agent" shall mean and include the City Manager, or his/her designated representative(s), for purchases of equipment, supplies, materials, and services; notwithstanding the foregoing, the City Manager may not delegate his/her authority as Purchasing Agent, or designate a representative (other than the Acting City Manager in the event of the City Manager's absence or disability), to execute contracts for the purchase of supplies, services and equipment unless authorized by the City Council.

In the event one (1) or more representatives are designated as City purchasing agents, those individuals shall be included in the City's Conflict of Interest Code as persons who must file an annual statement of economic interest with the City Clerk. (Ord. 3555 § 2, 2016)

Sec. 28-10. Powers and duties.

The Purchasing Agent shall have the following powers and duties:

- (a) To purchase or contract for materials, supplies, services and equipment, as limited in this chapter, required by any department;
- (b) To negotiate and execute contracts for the purchase of supplies, services and equipment; however, the authority of the City Manager 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) unless authorized by the City Council;
- (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;
- (g) To supervise the inspection of all supplies, services, and equipment purchased to ensure conformance with the specifications. (Ord. 3555 § 2, 2016)

Sec. 28-15. Bidding.

The purchase of equipment, supplies, materials, general services and professional services shall be by bid or request for proposal as set forth in Sections [28-20](#), [28-25](#), and [28-30](#), or by the alternate

procurement methods set forth in this chapter. Formal bidding shall be dispensed with in the following situations:

(a) In the event of an emergency as defined herein, the Mayor or City Manager 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. 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
2. There is an immediate need to 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.

(b) For the purchase of equipment, supplies, materials or services of a value less than that subject to the provisions of Section [28-25](#)(a) or for public works projects of a value less than that subject to the provisions of Section [28-20](#)(a).

(c) 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.

(d) The purchases permitted under this section shall be subject to fair, just and equitable contract conditions. The ratification of contracts procured pursuant to subsection (a) of this section and award of contracts procured under subsection (c) of this section that are valued at forty thousand dollars (\$40,000) or more, or contracts for public works projects valued at one hundred thousand dollars (\$100,000) or more, are subject to City Council approval. The forty thousand dollar (\$40,000) and one hundred

thousand dollar (\$100,000) limits set forth above shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2020, and by the same amount each fifth year thereafter. (Ord. 3555 § 2, 2016)

Sec. 28-20. Public works projects.

(a) Public Bidding -- Formal Bid and Contract Procedure. Contracts for public works projects valued at one hundred thousand dollars (\$100,000) or more shall be by formal written bid and contract, in accordance with the provisions set forth in Sections [28-25](#)(a)(1) through (7), with contracts awarded to the lowest responsive and responsible bidder, except for public works contracts awarded pursuant to the provisions of Sections [28-21](#), [28-22](#) and [28-23](#). The one hundred thousand dollar (\$100,000) limit set forth above shall automatically be increased by five thousand dollars (\$5,000) on July 1, 2020, and by the same amount each fifth year thereafter.

(b) 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 of Section [28-15](#)(a).

(c) 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.

(d) Open Market Procedure. Contracts for public works projects estimated in value in excess at four thousand dollars (\$4,000) or more but less than one hundred thousand dollars (\$100,000), as such amounts may be amended as set forth in subsections (a) and (e) of this section, may be made by the City in the open market. Open market contracts shall, unless infeasible, be based on at least three (3) informal bids or quotes and shall be awarded to the lowest responsible bidder.

(e) Purchases Less Than \$4,000. Contracts for public works projects estimated in value to be less than four thousand dollars (\$4,000) may be let 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. The four thousand dollar (\$4,000) limit set forth above shall be automatically increased by five hundred dollars (\$500) on July 1, 2020, and by the same amount each fifth year thereafter.

(f) Prevailing Wages. Contracts for City-funded public works construction projects valued in excess of twenty-five thousand dollars (\$25,000), and contracts for City-funded alteration, demolition, repair or maintenance projects 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.

(g) Job Order Contracts. Notwithstanding subsection (a) of this section, 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, 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 projects less than \$100,000, adjusted as set forth in subsection (a) of this section. 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 two (2) years (including any extensions), except as necessary to complete outstanding work orders that were awarded within the two (2) 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.

(h) 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 subsection (g) of this section, may be awarded to multiple contractors/vendors following the procedures set forth herein. Job order contracts shall not be used for new construction projects, defined as construction or erection of new structures or public works projects on unimproved land.

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 nonresponsibility under this section may be appealed using the procedures set forth in [Section 28-24](#).

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.

(i) The provisions of the Public Contract Code shall not apply unless otherwise adopted by the City. (Ord. 3555 § 2, 2016)

Sec. 28-21. 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 exceeding one million dollars (\$1,000,000), are hereby adopted and incorporated by reference as if fully set forth herein. Utilization of design-build procurement must be approved by the City Council prior to commencement of the competitive solicitation process for any authorized public works project. Prevailing wages shall be paid pursuant to Section [28-20\(f\)](#). (Ord. 3555 § 2, 2016)

Sec. 28-22. 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 [28-20\(f\)](#). (Ord. 3555 § 2, 2016)

Sec. 28-23. 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. (Ord. 3555 § 2, 2016)

Sec. 28-24. Bid protests.

Bid protests shall be accompanied by bid protest filing fee of ninety-five dollars (\$95.00). Such protest fee is nonrefundable except in the instance where protestor prevails in the protest, City engaged in a processing error, or the call for bid documents is ambiguous. The following procedures shall apply to bidder protest(s):

(a) Grounds for Protest. 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, in writing, prior to award of contract and within five (5) business days after the date aggrieved bidder knew or should have known of the facts giving rise to the bid protest award. Such protests may be filed immediately after the bid opening. Protests will be accepted in person or via mail, either delivery shall be to City of Monterey, Finance Administration, 735 Pacific Street, Suite A, Monterey, CA 93940, so long as accompanied by the bid protest filing fee as specified herein. Once the bid protest package has been received, follow-up communications in reference to the bid protest may be made to the Finance Department by telephone, fax, or email.

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 buyer 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 within the five (5) business days described in this subsection (b) may not be reviewed;
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.

(c) If a timely protest is filed, Finance Administration 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.

(d) Finance Administration 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, Finance Administration will make a decision as to the protest and so inform the involved department(s). The department(s) or Finance Administration will then notify the protest bidder(s), in writing.

(e) 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).

(f) Bidders may appeal, in writing, to the City Manager within five (5) business days of receipt of the written notification. The City Manager or Acting City Manager shall have five (5) business days to make a decision which shall be final. (Ord. 3555 § 2, 2016)

Sec. 28-25. Purchasing process.

(a) Formal Bid Procedure. Purchases of supplies, materials, services, and equipment (other than professional services pursuant to Section [28-30](#), public works projects pursuant to Sections [28-20](#) through [28-23](#), and purchases of vehicles, rolling stock and similar equipment pursuant to subsection (b)(2) of this section) valued at forty thousand dollars (\$40,000) or more 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 [28-26](#). The forty thousand dollar (\$40,000) limit set forth above shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2020, and by the same amount each fifth year thereafter.

1. Notice Inviting Bids. Notices inviting bids and specifying the time and place of opening shall be published at least ten (10) days prior to the opening of the bids. Notice shall be published at least once in a newspaper of general circulation within the City and posted on the City's website.

2. Receipt and Opening of Bids. All bids shall be sealed, identified on the envelope, and submitted to the City at or before the time specified on 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.

3. Bidders' Security. At the discretion of the City, 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 herein, the City Council shall award the contract to the lowest responsible bidder whose bid complies with the specification. In determining

responsibility, the City Council shall consider the known reliability, resources, experience, integrity, reputation for workmanship, and any other criteria set forth in the bid specifications, of the various bidders. The City Council may waive any informalities or minor irregularities in bids received.

5. Rejection of Bids. The City Council may reject any and all bids presented, and may, in its discretion, re-advertise for other bids.

6. No Bids Received. In the event no bids are received, the City Council may, in its discretion, re-advertise for other bids, or may determine and declare by resolution that the equipment, supplies, materials, services, or project may be more economically or satisfactorily procured in the open market and direct 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.

(b) Informal Bid Procedure.

1. Purchase of supplies, materials, services and equipment estimated in value at four thousand dollars (\$4,000) or more and below forty thousand dollars (\$40,000), as such amounts may be amended every five (5) years as set forth below, may be made by the City informally without observing the formal bidding procedures prescribed in subsection (a) of this section, or may be awarded based on "best value" criteria as set forth in Section [28-26](#). 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. The four thousand dollar (\$4,000) and forty thousand dollar (\$40,000) limits shall be automatically increased by five hundred dollars (\$500) and five thousand dollars (\$5,000), respectively, on July 1, 2020, and by the same amount each fifth year thereafter.

2. Purchases of vehicles, rolling stock and similar equipment estimated in value at five thousand five hundred dollars (\$5,500) or more and sixty thousand dollars (\$60,000) or less, as such amounts may be amended every five (5) years as set forth below, may be made by the City informally without observing the procedures prescribed in subsection (a) of this section, or may be awarded based on "best value" criteria as set forth in Section [28-26](#). 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. The five thousand five hundred dollar (\$5,500) and sixty thousand dollar (\$60,000) limits shall be automatically increased by five hundred dollars (\$500) and five thousand dollars (\$5,000), respectively, on July 1, 2020, and by the same amount each fifth year thereafter.

(c) Purchases Less Than \$4,000. Purchases of supplies, materials, services and equipment estimated in value to be less than four thousand dollars (\$4,000) may be made without informal bids or quotes, subject, however, to fair, just and equitable terms and conditions of purchase. The four thousand dollar (\$4,000) limit set forth above shall be automatically increased by five hundred dollars (\$500) on July 1, 2020, and by the same amount each fifth year thereafter.

(d) 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 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 his/her designee. (Ord. 3555 § 2, 2016)

Sec. 28-26. Best-value purchasing.

As an alternative to the competitive process set forth in Section [28-25](#) 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 his/her designee. (Ord. 3555 § 2, 2016)

Sec. 28-27. Contracts for Furtherance of Public Policy. [Revised 4/17](#)

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. (Ord. 3565 § 2, 2017)

Sec. 28-30. Contracts for professional services.

Professional services are defined as 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, attorney, 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.

(a) **Formal Contracts.** Award of contracts for services of a professional nature with an annual value of forty thousand dollars (\$40,000) or more shall be subject to City Council approval pursuant to the procedure prescribed herein. The forty thousand dollar (\$40,000) annual contract limit set forth above shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2020, and by the same amount each fifth year thereafter.

1. **Request for Proposals.** When selecting providers of professional services, a request for proposals process shall be used when feasible. 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 herein, the City Council shall award a contract based on at least three (3) proposals and shall be 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.
3. **Rejection of Proposals.** The City Council may reject any and all proposals submitted and may, in its discretion, re-advertise for other proposals.

(b) **Informal Proposal.** Contracts for professional services in excess of four thousand dollars (\$4,000) but not exceeding forty thousand dollars (\$40,000), as such amounts may be amended in subsections (a) and (c) of this section, may be made by the City informally without observing the procedures prescribed in subsection (a) 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) **Contracts Less Than Four Thousand Dollars (\$4,000).** Contracts estimated to be less than four thousand dollars (\$4,000) in cost may be let without informal proposals, subject, however, to fair, just and equitable contract terms and conditions. The four thousand dollar (\$4,000) limit set forth above shall be

automatically increased by five hundred dollars (\$500) on July 1, 2020, and by the same amount each fifth year thereafter. (Ord. 3555 § 2, 2016)

Sec. 28-35. Purchases for Library.

The Board of Library Trustees shall select, rent or 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 herein.

Sec. 28-40. 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. 28-45. 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. 28-50. 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. 28-55. Conflicts of interest in contracts, etc., with City.

In accordance with Government Code Section [1090](#), no contract for any purchase of goods, labor or service, or any sale of City property in which any officer or employee is or becomes interested shall be allowed, and the resulting contract or sale shall be void.

Sec. 28-60. 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 wilfully 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. 28-65. 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.

ARTICLE 2.

Local Hiring for Public Works Projects

Sec. 28-70. Purpose.

The purpose of this article is to create a policy that encourages contractors who receive City public works contracts to hire residents of the Monterey Bay Area. Unless excepted under section 28-72 herein, all City contracts for public works subject to the formal bidding requirements set forth in section 28-20(A) of this chapter shall contain provisions pursuant to which the contractor promises to make a good faith effort to hire qualified individuals who are residents of the Monterey Bay Area in sufficient numbers so that no less than 50% of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Monterey Bay Area residents. (Ord. 3254 §2, 1999)

Sec. 28-71. Definitions

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

- (a) Contractor. Any person or entity, which, pursuant to a written agreement or purchase order, provides labor or materials on public works projects for the City.
- (b) Days. Means calendar days unless otherwise specified.
- (c) Qualified Individual. A person who is specially trained, skilled, and experienced in the work, trade, or craft specified in the portion of the public work of improvement to be performed or who is enrolled in a certified state or federally approved apprenticeship program in the applicable trade or who is a journey person in his or her applicable trade.
- (d) Monterey Bay Area. Means Monterey County, San Benito County and Santa Cruz County.
- (e) Public Works Project. A project of public works improvement which is let by contract pursuant to the formal bidding procedures set forth in section 28-20(A) of this code.
- (f) Resident of the Monterey Bay Area. An individual who is domiciled within the boundaries of the Monterey Bay Area immediately preceding the date of the bid advertisement by the City and who can verify his or her domicile upon request of the contractor or City by producing documentation such as rent/lease agreement, telephone and utility bills or payment bills, a valid California drivers license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within the Monterey Bay Area.
- (g) Subcontractor. Any person or entity, which, pursuant to an agreement or purchase order with a City contractor or another subcontractor, participates in the provision of labor or materials on public works projects for the City.

Sec. 28-72. Exceptions

The provisions of this article shall not apply under the following circumstances:

- (a) Whenever a state or federal law or regulation applicable to a particular contract prohibits the provision of a local hire requirement; or
- (b) Whenever the City, in accordance with the requirements of this Code or state law, determines that the contract is necessary to respond to an emergency which endangers the public health, safety, or welfare.
- (c) Whenever the City determines that a suitable pool of persons providing specialized skills, such as marine-related pile drivers, does not exist locally for a specific public works project.

Whenever an exception is imposed, the basis of the exception shall be included in the staff report to the City Council.

Sec. 28-73. Requirements for Contractors Submitting Bids

- (a) A contractor who is submitting a formal bid to the City for a public works project must promise to make a good-faith effort to hire qualified individuals who are residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Monterey Bay Area residents.
- (b) A "good-faith" effort means the contractor will take the following or similar actions to recruit and maintain Monterey Bay Area residents as part of the construction workforce:
 - 1. Contact local recruitment sources to identify qualified individuals who are Monterey Bay Area residents;
 - 2. Advertise for qualified Monterey Bay Area residents in trade papers and newspapers of general circulation in the Area, unless time limits imposed by City do not permit such advertising.
 - 3. If portions of the work are to be performed by subcontractors, identify qualified subcontractors whose workforce includes Monterey Bay Area residents; and
 - 4. Develop a written plan to recruit Monterey Bay Area residents as part of the construction workforce.
- (c) Every bidder must complete and sign under penalty of perjury a Certification of Good-faith Effort to Hire Monterey Bay Area Residents, on the form provided in the City's bid package, and submit said Certification with the sealed bid no later than the date and time of the bid opening. Bidder shall attach to the Certificate documentary evidence supporting bidder's promise to meet or make a good-faith effort to meet the local hiring goal.

(d) Contractor shall include in each and every subcontract relating to the project the requirement that the subcontractor promises to make a good faith effort to hire qualified individuals who are residents of the Monterey Bay Area. Contractor shall be responsible for subcontractor's compliance under this article.

(e) Prior to submitting bids, bidders shall ensure that any and all subcontractors listed in their bids are not disqualified at that time pursuant to section 28-78 herein. Prospective contractors may consult the list, available from the City Clerk, of contractors and subcontractors, if any, who are currently disqualified.

(f) Contractors who have been disqualified pursuant to section 28-78 herein may not submit bids during the period of disqualification. Any bid received from a bidder who is currently disqualified will be returned to the bidder unopened.

Sec. 28-74. Requirements for Prospective Subcontractors

(a) Any subcontractor for work, laborers or materialmen relating to a project subject to this article will be required, in his or her contract with the prime contractor, to promise to make a good-faith effort to hire qualified individuals who are residents of the Monterey Bay Area.

(b) A "good-faith effort" means the subcontractor will take actions such as those required of contractors pursuant to section 28-73(b) above to recruit and maintain Monterey Bay Area residents as part of subcontractor's workforce. Subcontractor shall maintain documentary evidence of such actions.

(c) Subcontractors who have been disqualified pursuant to section 28-78 herein may not be listed in a prime contractor's bid for a City public works project and may not submit bids during the period of disqualification.

Sec. 28-75. Non-responsive Bids

The City may declare a bid to be non-responsive under the provisions of this article for good cause including, but not limited to, the following circumstances:

(a) If a bidder fails to complete and sign under penalty of perjury the Certification of Good-Faith Effort to Hire Monterey Bay Area residents and to submit said Certification with his or her sealed bid no later than the date and time of the bid opening; or

(b) If a bidder fails to comply with the good-faith effort requirements set forth in section 28-73(b) herein; or

(c) If a bidder or a subcontractor listed by the bidder has been disqualified pursuant to section 28-78 herein or any other disqualification action.

Section 28-76. Required Documentation

During the performance of the contract, the contractor shall keep an accurate record on a standardized form showing the name, place of residence, trade classification, hours employed, proof of qualified individual status, per diem wages and benefits of each person employed by the contractor on the specific

public works project, including full-time, part-time, permanent and temporary employees. Contractor shall require any and all subcontractors on the project to maintain records of the same information for subcontractor's work force on the project and shall require subcontractor to provide a copy of those records to contractor upon contractor's request. Contractor shall make contractor's and subcontractor's records available to the City, upon request, within five working days.

Sec. 28-77. Forms Submitted Under Penalty of Perjury.

All forms required under this article shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

Sec. 28-78. Disqualification.

If the City finds that a contractor to whom a City contract for public works has been awarded, or a subcontractor listed by contractor on a public works project, has failed to comply with the good-faith hiring provisions of Section [28-73\(b\)](#) during the performance of the contract, the City may disqualify the contractor and/or subcontractor from bidding or being listed in any bid on any City contract for public works for a period of one (1) year from the date of the City's disqualification for a period of three (3) years. The Finance Department shall keep a current list of all disqualified contractors and subcontractors on file. (Ord. 3472 § 16, 2012)

Sec. 28-79. City Attorney Prosecution

If the City Attorney has reasonable cause to believe that any contractor or subcontractor has knowingly committed any of the acts or omissions set forth in this article, the City Attorney may prosecute pursuant to the provisions of section 1-7 of this code.