



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Bruce Moe, Finance Director
Gwen Eng, General Services Manager

DATE: February 2, 2010

SUBJECT: Consideration of Finance Subcommittee Recommendation to Introduce Ordinance No. 2133 Amending Chapter 2.36 – Purchasing – of the Manhattan Beach Municipal Code Including Informal Bid Limit and Emergency Procurement Policy

RECOMMENDATION:

Staff recommends that the City Council accepts the Finance Subcommittee's recommendation to introduce Ordinance No. 2133 amending Chapter 2.36 – Purchasing – of the Municipal Code including changes to the informal bid limit and emergency procurement policy and waive further reading.

FISCAL IMPLICATION:

There is no direct budget implication. The proposed changes will result in a more effective use of staff time to procure goods and services, as well as increasing the likelihood of FEMA (Federal Emergency Management Agency) reimbursement in case of emergency.

DISCUSSION:

In December 2009, the Finance Subcommittee met with staff to discuss several proposed changes to Chapter 2.36 – Purchasing – of the Municipal Code. The below resulting items are the issues and proposed solutions:

Informal Bid Limit

The City purchases approximately \$5 million of goods, materials, and services each year. These purchases range from office supplies and vehicles to computer equipment and professional services.

The City's purchases are governed by the Municipal Code Section 2.36, which was last revised in 1997. The following is a summary of the current purchasing parameters by dollar value:

Based upon the above solutions, the proposed purchasing parameters can be illustrated as follows:

Proposed		Approvals Required				
Amount of Purchase	Bidding Required	Dept.	Purchasing	Finance	City Manager	Council
\$0-\$2,500	None	X	X	X		
\$2,500.01-\$4,999.99	Informal	X	X	X		
\$5,000-\$19,999.99	Informal	X	X	X	X	
\$20,000+	Formal	X	X	X	X	X

We believe that the departments can handle these small dollar purchases, thus allowing purchasing staff to focus on higher dollar purchases and contracts and still be able to review all the department purchases.

Vendor List

Issue: The Municipal Code requirement for maintaining a list or file of prospective suppliers is not efficient, particularly when technology allows us to solicit bids more effectively.

Solution: *The advent of the City’s new website has greatly improved formal bid notification. In fact, formal bids are posted electronically and e-mailed to all vendors who have registered to be notified; therefore Finance Subcommittee and staff recommend that this requirement be deleted.*

Change Orders

Issue: When purchases over \$20,000, previously approved by Council, have required a change order, the net amount of the change order has been the determining factor on what level of approval is required. For example, if the Council awards a \$30,000 contract, multiple change orders up to \$20,000 may be administratively approved by the City Manager.

Solution: *While this has been past practice, Finance Subcommittee and staff recommend that language be updated to codify this practice to make it absolutely clear. The code clarification will reflect that the City Manager has the authority to approve cumulative increases on a purchase up to the formal bid limit of \$20,000, if funds are available.*

Emergency Procurement Policy

Issue: The language for emergency procurement could be better defined and allow for waiver of normal procedures when there is an immediate threat to health, safety or property. In addition, the verbiage used throughout this Section does not allow for flexibility or adherence to FEMA (Federal Emergency Management Agency) reimbursement guidelines.

Solution: *Finance Subcommittee and staff recommend making modifications to maximize flexibility and ensure compliance with FEMA reimbursement guidelines, thereby increasing the likelihood of FEMA reimbursement.*

Cooperative Purchasing

Issue: Current bid practices entail bidding independently, cooperatively bidding with another agency for like requirements, or “piggybacking” off of other agencies’ contracts. The code suggests, but is not clear, that the City must be a participant in the original cooperative bid process,

ORDINANCE NO. 2133

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA AMENDING CHAPTER 2.36 OF
THE MANHATTAN BEACH MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1. Section 2.36.040 "K" (Vendor list maintenance) is removed in its entirety.

SECTION 2. Section 2.36.070 (Formal contract procedure) is amended in its entirety to
read as follows:

Except as otherwise specifically provided in this section or in other sections of this chapter, purchases of supplies, equipment and services of an estimated value of twenty thousand dollars (\$20,000.00) or more shall be by formal sealed written competitive bids. Awards for such expenditures shall be made by the Council to the lowest responsible bidder in accordance with the following provisions:

A. Lowest Responsible Bidder. "Lowest responsible bidder," as used in this chapter, shall mean the bidder who best responds in price, quality, service, fitness, or capacity to the particular requirements of the City. Price alone shall not be the determining factor but shall be considered along with the other factors, including, but not limited to, the ability of the bidder to deliver, availability of parts or service, prior experience and other factors relating to the particular needs of the City for the supplies, equipment or services to be purchased.

B. Notice Inviting Bids. "Notice inviting bids" shall include a general description of the articles to be purchased and shall state where bid specifications may be secured and the time and place for opening of the bids. The notice shall specify the factors referred to in subsection A of this section, which factors will be given special consideration in determining the lowest responsible bid for the supplies or equipment to be purchased. Notices shall be posted at City Hall and other public posting locations as determined by the General Services Manager.

C. Bidders' Security. When deemed necessary by the General Services Manager, bidders' security may be prescribed in the notices inviting bids. Bidders shall be entitled to the return of bid securities; provided, however, a successful bidder shall forfeit his bid security upon his refusal or failure to execute the contract within the time designated in the bid specifications. The Council, on the refusal or failure of the successful bidder to execute the contract, may award the contract to the next lowest responsible bidder. If the Council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the contract price differential between the lowest bid and the second lowest bid and the surplus, if any, shall be returned to the lowest bidder.

D. Performance Bonds. The General Services Manager shall have authority to require a performance bond before entering a contract in an amount he shall find reasonably necessary to protect the best interests of the City.

E. Bid Opening Procedure. Sealed bids shall be submitted to the City Clerk's Office and shall be identified as bids on the envelopes. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be available for public inspection.

F. Confidentiality of Bids. Any written bid received pursuant to the provisions of this chapter shall not be revealed directly or indirectly to any other bidder until the bidding process is completed and all submitted bids have been received and opened. A tabulation of all bids received shall be open for public inspection during regular business hours after the bid opening.

G. Rejection of Bids. In his or her discretion, the General Services Manager may reject any and all bids presented and re-advertise for bids.

H. Award of Contracts. Contracts shall be awarded by the Council to the lowest responsible bidder as defined in subsection A of this section.

- I. Line Item-Specific Budgeted Purchases. Purchases of materials, capital equipment and vehicles valued at twenty-five thousand dollars (\$25,000.00) or less, specifically identified in the annual budget adopted by the City Council, may be awarded without further City Council approval in accordance with the informal contract procedure identified and described within this chapter.

SECTION 3. Section 2.36.080 (Informal contract procedure) is amended in its entirety to read as follows:

Subject to other applicable provisions of this chapter:

- A. General purchases. General purchases of supplies, equipment and services of an estimated value less than twenty thousand (\$20,000.00) dollars may be made by the General Services Manager in the open market pursuant to the procedure prescribed in this section without observing the procedures prescribed in Section 2.36.070 of this chapter. Such purchases shall be based whenever possible on competitive bids and shall be awarded to the lowest responsible bidder.
- B. Value of purchases. Informal contract purchases having an estimated value of five thousand (\$5,000) dollars or more, but less than twenty thousand (\$20,000.00) dollars may be based on informal written bids or verbal bids at the discretion of the General Services Manager and shall be awarded to the lowest responsible bidder by the General Services Manager, after receiving approval by the City Manager. Informal contract purchases having an estimated value of less than five thousand (\$5,000.00) dollars but more than two thousand five hundred (\$2,500.00) dollars may be based on verbal bids and shall be awarded by the General Services Manager. Purchases of two thousand five hundred (\$2,500.00) dollars or less shall be purchased by the departments from the Blanket Purchase Order List whenever possible. All Blanket Purchase Order purchases will be reviewed by the General Services Manager.
- C. Minimum number of bids. Open market purchases in excess of two thousand five hundred (\$2,500.00) dollars shall, whenever possible, be based on at least three (3) bids and shall be awarded to the lowest responsible bidder.
- D. Notices inviting informal bids. Notice inviting informal bids shall include a general description of the articles to be purchased and shall state where bid forms and specifications may be secured and the date and time in which bids are due.

SECTION 4. Section 2.36.090 (Purchase orders) is amended in its entirety to read as follows:

- A. Purchase orders. Purchases of supplies, equipment and services shall be made only by numbered purchase order.
- B. Change orders. Any change order for an approved purchase or contract shall be documented by a purchase order addendum. The City Manager may authorize cumulative increases up to the informal contract threshold of twenty thousand dollars (\$20,000.00) as long as sufficient funding is available.

SECTION 5. Section 2.36.120 (Emergency Procurement) is amended in its entirety to read as follows:

For the purposes of this section, an emergency shall be deemed to exist only when a condition exists that presents an immediate threat to health, safety or improved property and when a local emergency or disaster has been proclaimed.

- A. When a local emergency is proclaimed, the City's normal purchasing procedures may be superseded by the following provisions to deal with the exigent circumstances.
- B. Solicited bids that are non-responsive shall count towards the minimum number of bids required when there is a declared emergency or disaster in the City.

- C. When an emergency or disaster is proclaimed, the City's normal requirements for sealed formal bids will be suspended to allow for telephonic or other electronic bids from potential vendors or suppliers, in lieu of written and/or sealed bids. In addition, the requirement for public posting may be waived. Also, if the purchase exceeds twenty thousand dollars (\$20,000.00), those expenditures will be presented to the City Council for ratification within sixty (60) days.
- D. If the emergency requires the immediate procurement of supplies, equipment or services and the amount is between five thousand (\$5,000.00) and twenty thousand (\$20,000.00) dollars, the General Services Manager or designee will obtain the EOC (Emergency Operations Center) Director's approval prior to making a purchase.
- E. If during the proclaimed emergency, the General Services Manager or designee is not available, the EOC Director may order the needed commodity or service from the nearest available source. As soon as possible thereafter, the EOC Director shall submit to the General Services Manager a requisition and a notation that the commodity or service has been ordered on an emergency basis from the vendor designated and the General Services Manager shall prepare an after-the-fact purchase order.
- F. If the emergency requires the immediate procurement of supplies, equipment or services needed to preserve life and/or property, the purchase may be made without following bidding procedures. However, written justification enumerating one or more of the following rationale, must be included with the purchase request: emergency protective measure, scarce commodity, emergency consulting services, emergency road clearance, other emergency requirement, and/or lack of bids. The use of a pre-existing contract may be utilized under these circumstances.
- G. During a declared emergency or disaster, the General Services Manager or designee has the authority to rescind a contract for non-performance within 24 hours when a contractor or vendor, once awarded a contract, is unable to perform under the terms of the contract and the resulting delay or non-performance presents an immediate threat to life, safety or improved property.
- H. All purchases made under emergency or disaster conditions shall require separate invoicing from routine (non-disaster related) purchases. All invoices shall state the goods, services or equipment provided and shall specify where the purchases were delivered and/or used.

SECTION 6. Section 2.36.150 (Cooperative Purchasing) is amended in its entirety to read as follows:

Where purchases are to be made in concert with or through agreements executed by other governmental agencies, formal bid requirements as outlined in Section 2.36.070 of this chapter may be waived with City Council approval.

SECTION 7. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 8. If any section, subsection, sentence, clause, or phrase 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 the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 9. This ordinance shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

SECTION 10. The City Clerk shall certify to the adoption of this ordinance; shall cause the same to be entered in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted; and shall within fifteen (15) days after the passage and adoption thereof cause the same to be published by one insertion in *The Beach Reporter*, the official newspaper of the City and a weekly newspaper of general circulation, published and circulated within the City of Manhattan Beach hereby designated for

that purpose.

PASSED, APPROVED, and ADOPTED this 16th day of February, 2010.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By 

City Attorney