

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTIONS 4.12.018 AND 4.12.028 TO CHAPTER 4.12, AND AMENDING SECTIONS 4.04.080 AND 4.04.085 OF CHAPTER 4.04 AND SECTIONS 4.12.210, 4.12.225, 4.12.350, 4.12.415 AND 4.12.420 OF CHAPTER 4.12 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY THE CITY'S PROCUREMENT PROCESS FOR GOODS AND SERVICES

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.04.080 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.080 Quarterly Reports

- A. The City Manager shall prepare a quarterly report which describes all contracts having a value greater than or equal to the Informal Procurement Threshold, as defined in Section 4.12.028 of this Code, of One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085) or more that were entered into and executed by the City Manager, City Attorney, City Clerk, Independent Police Auditor, and City Auditor, in the preceding calendar quarter. The report shall identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.
- B. The City Attorney, City Clerk, Independent Police Auditor, and City Auditor shall provide to the City Manager the information necessary to enable the preparation of quarterly reports. Such quarterly reports will be posted on the City's web site on a web page designated for such postings.

SECTION 2. Section 4.04.085 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.085 Periodic Automatic Adjustments to Contract Authority Limitations and Related Figures

- A. For the purposes of this Section, "CPI" shall mean the Consumer Price Index, All Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San José area, with all items included. In the event the CPI is no longer published, the Director shall use another index published by either the State of California or a federal department or agency that

is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- B. For the purposes of this Section, "Applicable Monetary Amounts" shall mean those monetary amounts set forth in Sections 4.04.020, 4.04.030, 4.04.040, 4.04.045, 4.04.050, ~~4.04.080, 4.12.210, 4.12.350, 4.12.415, 4.12.420~~, 4.16.240 A., 4.20.010 and 4.20.040.
- C. Commencing on July 1, 2013, and continuing every three (3) years thereafter on July 1st, the Applicable Monetary Amounts shall increase based on the percentage increase from the CPI which is published most immediately preceding the July 1st as of which the immediate past calculation occurred (or, for the purposes of the first calculation, July 1, 2010) to the CPI which is published most immediately preceding the July 1st as of which the new calculation shall occur. The Applicable Monetary Amounts thus adjusted shall thereafter be rounded to the nearest ten thousand, which rounded amounts shall be the Applicable Monetary Amounts for the next three (3) years. If there is no increase in the CPI, then the Applicable Monetary Amounts shall remain unchanged.
1. Notwithstanding the foregoing, the first calculation for Applicable Monetary Amounts in Sections 4.04.020 B.7., 4.20.010 and 4.20.040 shall be July 1, 2016, with any increase based on the percentage increase from the CPI which is published most immediately preceding July 1, 2013.
 2. Notwithstanding the foregoing, the first calculation for Applicable Monetary Amount in Section 4.04.045 shall be July 1, 2022, with any increase based on the percentage increase from the CPI which is published most immediately preceding July 1, 2019.

- D. The foregoing calculations shall be made by the Director, as defined in Section 4.12.020 of this Code, and the effective Applicable Monetary Amounts shall be posted on the City's web site on a web page designated for such postings.

SECTION 3. A new Section 4.12.018 is added to Chapter 4.12 of Title 4 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

4.12.018 Competitive Procurement Threshold

“Competitive Procurement Threshold” means Ten Thousand Dollars (\$10,000.00), as automatically adjusted to remain aligned with the Federal Micro-Purchase Threshold as defined in Title 48, Code of Federal Regulations, Part 2, section 101.

SECTION 4. A new Section 4.12.028 is added to Chapter 4.12 of Title 4 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

4.12.028 Informal Procurement Threshold

“Informal Procurement Threshold” means Two Hundred Fifty Thousand Dollars (\$250,000.00), as automatically adjusted to remain aligned with the Federal Simplified Acquisition Threshold as defined in Title 48, Code of Federal Regulations, Part 2, section 101.

SECTION 5. Section 4.12.210 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.210 Selection of Procurement Method

The City shall, where practicable, engage in competitive procurement. The Procurement Authority shall use the following methods of procurement under the circumstances described below:

- A. Purchases with an estimated value less than or equal to the Competitive Procurement Threshold ~~which are estimated not to exceed Ten Thousand Dollars (\$10,000.00) (as adjusted pursuant to Section 4.04.085)~~ may be made without a competitive procurement method.
- B. Request for quotes process shall be used for purchases with an estimated value greater than the Competitive Procurement Threshold but less than or equal to the Informal Procurement Threshold ~~between Ten Thousand Dollars (\$10,000.00) (as adjusted pursuant to Section 4.04.085) and One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085).~~
- C. Request for proposal process shall be used for purchases of services with an estimated value greater than the Informal Procurement Threshold ~~of more than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085).~~
- D. Formal bidding process shall be used for purchases of supplies, materials and equipment with an estimated value greater than the Informal Procurement Threshold ~~of more than One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085)~~, or for services when the Director determines that it is in the best interest of the City to do so.

SECTION 6. Section 4.12.225 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.225 Public Agencies Purchases

The Procurement Authority may, without observing the competitive procurement requirements prescribed by this Chapter:

- A. Purchase or acquire any supplies, materials or equipment or services from any public or governmental body or agency; or

- B. Contract with any “public agency” (as said term is defined in subsection (b) of Section 800 of the Charter) for the purchase or acquisition by such public agency for or on behalf of the City of any supplies, materials or equipment or services under the following circumstances:
 - 1. Agreements for the purchase of supplies, materials or equipment or services directly from another public agency; or

 - 2. Joint purchasing agreements entered into by the City and one or more public agencies wherein the City is included as a potential purchaser under a competitive procurement process engaged in pursuant to the joint agreement; or

 - 3. Direct purchases from vendors on terms obtained pursuant to competitive procurement processes undertaken by another public agency which:

- a. ~~Substantially comply with the City's procurement procedures; and name the City of San José either specifically or categorically as a third party beneficiary of the competitive procurement process.~~
- b. ~~Give notice to the bidders that the procurement may be leveraged by other public agencies, which is satisfied if either the solicitation documents or the executed contract resulting from the procurement includes language allowing other entities to use said procurement, procedure, or contract.~~

For the purposes of the first sentence of this subsection B.3. only, the term "public agency" shall also include any nonprofit organization made up of at least one or more public agencies in California or elsewhere, which nonprofit organization has been approved by the Director for the conduct of competitive procurements.

SECTION 7. Section 4.12.350 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.350 Rejection of Responses

The Procurement Authority may reject any or all responses received. If all responses are rejected, the Procurement Authority may in his or her discretion:

- A. Re-notice the solicitation; or
- B. Negotiate and execute with a vendor for the goods or services without further solicitation under the following circumstances:

1. For solicitations for contracts with a value ~~equal to or~~ greater than the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085)~~, upon approval of the City Council; or
2. For solicitations for contracts with a value less than or equal to the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000.00) (as adjusted pursuant to Section 4.04.085)~~, upon documentation of the reasons for such a decision and notice to all person(s) who submitted responses to the solicitation.

SECTION 8. Section 4.12.415 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.415 Formal and Informal Protest Procedures

The remaining sections of this Part shall govern protests of decisions regarding procurements having a value greater than the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085)~~. Protests of decisions regarding procurements having a value equal to or less than the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085)~~ shall be governed by an administrative procedure promulgated by the Director. However, until such time as this administrative procedure is promulgated, the protest procedures in this Part shall apply to procurements having a value equal to or less than the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085)~~, except that for such procurements, the Procurement Authority's decision shall be final.

SECTION 9. Section 4.12.420 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.420 Notice of Decision

After a decision regarding a procurement having a value greater than the Informal Procurement Threshold~~One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085)~~ has been made, the Procurement Authority shall send a Notice of Intended Award to all persons who submitted a response to a City solicitation.

PASSED FOR PUBLICATION of title this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk