

ORDINANCE NO. 54-06 N.S.

ORDINANCE OF THE CITY OF RICHMOND AMENDING PORTIONS OF CHAPTER 2.52 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND RELATED TO CONTRACTING AND PURCHASING PROCEDURES

The Council of the City of Richmond, California, do ordain as follows:

Section 1. Amendment of Section 2.52.100. Section 2.52.100 of the Richmond Municipal Code is hereby amended and restated to read as follows:

2.52.100 Scope, purpose, and rules of construction.

- (a) The provisions of this chapter shall apply to all contracts funded by the City of Richmond for the procurement of goods and services, except that this chapter shall not apply to such contracts for the Richmond Community Redevelopment Agency, or for the services of physicians or attorneys, or to leases, sales, or purchases of real property.
- (b) Interpretation. This chapter shall be construed and applied to promote its underlying purposes and policies. The underlying purposes and policies of this chapter are:
 - (1) To simplify, clarify, and modernize the laws governing procurement by the City;
 - (2) To obtain in a cost-effective and responsive manner, the materials and services required by the City in order for the City to better serve its businesses and residents;
 - (3) To provide increased economy in City procurement activities and to maximize as fully as practical the purchasing value of public funds of the City;
 - (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this City;
 - (5) To provide safeguards for maintaining a procurement system of quality and integrity;
 - (6) To provide for increased public confidence in the procedures followed in public procurement;
 - (7) To clearly define authority for procurement functions; and
 - (8) To foster effective, broad-based competition within the free enterprise system.
- (c) Supplementary General Principles of Law. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code of this State, and law relative to capacity to contract, agency, fraud, misrepresentations, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this chapter.
- (d) Requirement of Good Faith. This chapter requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.
- (e) Effective Date. This chapter shall become effective immediately upon adoption by the City Council. No regulation shall change any commitment, right, or obligation of the City or of a contractor under a contract in existence on the effective date of such regulation.
- (f) Public Access to Procurement Information. Procurement information shall be a public record to the extent provided in the California Public Records Act, Government Code Section 6250, et seq., and shall be available to the public as provided in such statute.
- (g) Determinations. Written determinations required by this chapter shall be retained in the appropriate official contract file of the Purchasing Manager or the Procurement Services Division.
- (h) Definitions. The words defined in this section shall have the meanings set forth below whenever they appear in this chapter, unless the context in which they are used clearly

requires a different meaning; or, a different definition is prescribed for a particular section or provision.

- (1) “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) “Change order” means a written order signed by the City Manager, directing the contractor to make changes that the changes clause of the contract authorizes the City Manager to order without the consent of the contractor.
- (3) “City” means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official, officers, agents, and employees of the City of Richmond.
- (4) “Construction (or public works)” means the process of building, altering, repairing, improving, or demolishing any public building, or other public improvement of any kind to real property. It includes the routine operation or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.
- (5) “Contract” means all types of City contracts or agreements, regardless of what they may be called, for the procurement or disposal of supplies and services.
- (6) “Contract modification” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (7) “Contractor” means any person having a contract with a governmental body.
- (8) “Data” means recorded information, regardless of form or characteristic.
- (9) “Designee” means a duly authorized representative of a person holding a superior position.
- (10) “Electronic” means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- (11) “Employee” means an individual drawing a salary from the City, whether elected or not, and any noncompensated individual performing personal services for the City.
- (12) “Grant” means the furnishing of funds by an outside agency or other organization to support a program authorized by law.
- (13) *“Master Development Project” means a project being undertaken by the City for development on City-owned property consisting of multiple public buildings or facilities, to be constructed, rehabilitated, remodeled or refurbished over a period of time for which the City Council has determined it is in the best interests of the City to contract with a Contractor pursuant to Section 2.52.335. A Master Development Project may include portions of city-owned property which will be sold or leased to the Contractor for private purposes; provided that the development of such properties is part of an integrated plan for the overall project and the City will apply the proceeds of such sale or lease to defray the costs of the public portion of the Master Development Project.*
- (14) “May” denotes the permissive.
- (15) “Person” means any business, individual, union, committee, club, other organization, or group of individuals.
- (16) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including descriptions of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

- (17) “Purchasing Manager” means the person holding the position created in Section 2.52.200 (Position of purchasing manager), as the head of the central procurement office of the City.
- (18) “Public notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
- (19) “Procurement Services Division” means the governmental body that is authorized by this chapter and its implementing regulations, or by way of delegation from the City Council or City Manager as the central procurement office authorized to procure materials and services for the City.
- (20) “Regulation” means a governmental body’s statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with the Charter or Municipal Code of the City of Richmond.
- (21) “Service” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific product other than reports. This term shall not include employment agreements or collective bargaining agreements.
- (22) “Shall” denotes the imperative.
- (23) “Signature” shall be as defined in Government Code Section 16.5.
- (24) “Supply” means all property, including but not limited to, equipment, materials, vehicles, printing, insurance, and leases of personal property, excluding land or a permanent interest in land.
- (25) “Using department” means any governmental body of the City of Richmond that utilizes any supplies or services procured under this chapter.
- (26) “Writing” or “in writing” means the product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.
- (27) Authorization for the Use of Electronic Transmissions. The use of electronic media, including acceptance of electronic signatures, is authorized consistent with California’s applicable statutory, regulatory, or other guidance for use of such media, so long as such guidance provides for:
 - (i) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
 - (ii) Accurate retrieval or conversion of electronic forms of such information into a medium that permits inspection and copying.

Section 2. Amendment of Section 2.52.305. Section 2.52.305 of the Richmond Municipal Code is hereby amended and restated to read as follows:

2.52.305 Methods of source selection.

- (a) Unless otherwise authorized by law, all City contracts governed by this chapter shall be awarded by one of the following methods:
 - (1) Section 2.52.310, Competitive sealed bids;
 - (2) Section 2.52.315, Competitive sealed proposals;
 - (3) Section 2.52.320, Contracting for designated professional services;
 - (4) Section 2.52.324, Unsealed quotes and small purchases;

- (5) Section 2.52.326, Sole source procurement;
- (6) Section 2.52.328, Cooperative procurement;
- (7) Section 2.52.330, Piggyback procurement;
- (8) Section 2.52.332, Standardization;
- (9) Section 2.52.334, Emergency procurement; or
- (10) *Section 2.52.335, Competitive Negotiation for Master Development Projects*

Section 3. Section 2.52.335. Section 2.52.335 is hereby added to the Richmond Municipal Code, to read as follows:

2.52.335 Competitive Negotiation for Master Development Projects

(a) Notwithstanding any other provisions of this chapter, the City Council may enter into Contracts in connection with a Master Development Project without complying with the other provisions of this Chapter and on any basis the City Council approves; provided, that the City Council, prior to entering into any final Contract for all or any portion of the Master Development Project which binds the City to pay the Contractor for the Project (other than for preliminary design or feasibility studies or similar work necessary to complete negotiations on the contract), makes the following findings by resolution:

(i) the project is a Master Development Project within the meaning of Section 2.52.100;

(ii) the City will achieve cost savings (including without limitation savings in City staff time) and savings in the time required to implement the project by proceeding under this Section and by entering into Contracts with a single Contractor pursuant to direct negotiations with such Contractor rather than through a sealed-bid or similar process otherwise proscribed by this chapter;

(iii) the City, after adequate public notice, has conducted a competitive selection process with respect to the Master Development Project, prior to commencing negotiations of the contract, including without limitation a solicitation of requests for proposals or requests for qualifications, which was open to any qualified firm or group of firms, and which was publicly advertised in a manner designed to attract the attention of qualified firms or groups of firms, including firms or groups of firms located in Richmond; and

(iv) the City Council approved the selection of the parties to the Contract after evaluating the results of the competitive selection process.

The findings of the City Council pursuant to this Section shall be final and conclusive.

Section 4. Section 2.52.385. Section 2.52.385 of the Richmond Municipal Code is hereby amended and restated to read as follows:

2.52.385 Finality of determinations.

All contracts resulting from the sections listed below are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

- 2.52.310 Competitive sealed bids
- 2.52.315 Competitive sealed proposals
- 2.52.320 Contracting for designated professional services
- 2.52.324 Unsealed quotes and small purchases
- 2.52.326 Sole source procurement
- 2.52.328 Cooperative procurement

- 2.52.330 Piggyback procurement
- 2.52.332 Standardization
- 2.52.334 Emergency procurement
- 2.52.335 *Competitive Master Development Projects*

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 6. Effective Date. This Ordinance becomes effective after its final passage and adoption.

First read at a meeting of the Council of the City of Richmond, California held on July 18, 2006, and finally passed and adopted at a meeting thereof held July 25, 2006, by the following vote:

- AYES: Councilmembers Bates, Griffin, Marquez, McLaughlin, Rogers, Thurmond, Viramontes and Mayor Anderson
- NOES: None
- ABSTENTIONS: None
- ABSENT: Councilmember Butt

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

IRMA L. ANDERSON
Mayor

Approved as to form:

JOHN EASTMAN
City Attorney

State of California)
County of Contra Costa) ss.
City of Richmond)

I certify that the foregoing is a true copy of Ordinance No. 54-06 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting on July 25, 2006, and published in accordance with law.