

**ORDINANCE NO. 24-2255**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING CITY CODE CHAPTERS 3.22 AND 3.23**

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The City Council of the City of Cupertino finds that:

WHEREAS, this Ordinance makes revisions to the Cupertino Municipal Code to introduce improvements, provide clarity and implement best practices for the purchase of goods, services or public work contracts for improved administration of the City purchasing processes.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO  
DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3: Effective Date.**

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**SECTION 4: Publication.**

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a special meeting of the Cupertino City Council on February 21, 2024 and **ENACTED** at a regular meeting of the Cupertino City Council on March 5, 2024 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Sheila Mohan, Mayor City of Cupertino	_____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM:  _____ Christopher D. Jensen, City Attorney	_____ Date

**Attachment A – An Ordinance of the City Council of the City of Cupertino Amending City Code Chapters 3.22 And 3.23**

*The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:*

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

*Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.*

**1. Amendments to Chapter 3.22 (Purchase of Supplies, Materials, Equipment and Services)**

- 3.22.010 Purpose of Chapter.
- 3.22.020 Definitions.
- 3.22.030 Purchasing Officer.
- 3.22.040 Purchase orders, check requests, Purchasing Cards or Use of petty cash funds.
- 3.22.050 Availability of funds.
- 3.22.060 Purchasing requirements.
- 3.22.070 Exemptions.

**3.22.010 Purpose of Chapter.**

This Chapter is enacted to set forth policy to establish efficient procedures for the purchase of supplies, materials, equipment and Services at the lowest possible cost commensurate with quality needed, and to clearly define authority for the purchasing function of the City.

**3.22.020 Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the meanings given in this section.

1. “Bid” means any competitive price-based bid submitted to the City for purchases and contracts for supplies, materials, equipment, and/or Services.
2. “Lowest responsible bidder” means the lowest monetary bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform the contract.

3. "Proposal" means a competitive submittal that is evaluated based on vendor qualifications, project approach, costs and other requirements for purchases and contracts for Services.

4. "Purchases" Purchases of supplies and equipment shall include leases or rentals, as well as transactions by which the City acquires ownership.

5. "Purchasing Manager" means the principal purchasing official responsible for developing policy and ensuring compliance in the procurement of goods and services in accordance with applicable law.

6. "Purchasing Officer" means the City Manager or any other official or officials designated in writing by the City Manager for administration of this Chapter.

7. "Services" means any and all services including, but not limited to, professional services, consulting, technology solutions and equipment and maintenance service contracts.

The term does not include services rendered by City officers or employees, or professional or other services which are by nature unique or for which the procedure for procurement is specifically provided by law.

8. "Supplies", "materials" and "equipment" means any and all articles, things or tangible personal property furnished to or to be used by the City.

### **3.22.030 Purchasing Officer.**

A. The Purchasing Officer of the City is vested with the authority for the purchase of supplies, materials, equipment, and Services. When the provisions and intent of this Chapter may be best served by so doing, the Purchasing Officer may authorize in writing any department, or the Purchasing Manager, to investigate, solicit bids or to negotiate the purchase or award of contracts for supplies, materials, equipment or Services for that department, provided that such shall be done in conformity with the procedures prescribed by this Chapter or by duly adopted administrative rules and regulations pertaining thereto.

B. The Purchasing Officer shall have the responsibility and authority to:

1. Prepare and adopt policies, administrative rules, regulations and procedures not in conflict with the provisions of this Chapter for the purpose of carrying out the requirements and intent of this purchasing system.

2. Purchase or contract for materials, supplies, equipment, or Services to be performed as may be required by any department of the City in accordance with procedures prescribed by this Chapter or by such administrative rules, policies and procedures as the Purchasing Officer may adopt pursuant thereto.

**3.22.040 Purchase Orders or Check Requests Needed–Use of Petty Cash Funds.**

A. Purchases of supplies, materials, equipment or Services shall be made only by means of purchase orders, purchasing card or check requests processed and issued pursuant to this Chapter. A purchase order or check request shall be valid only when signed by the Purchasing Officer or designee.

B. Nothing herein shall preclude the use of authorized petty cash funds for purposes intended by their establishment.

**3.22.050 Availability of Funds.**

The Purchasing Officer shall not issue any purchase order, approve a check request, or award any contract for the acquisition of supplies, materials, equipment or Services, unless there exists an unencumbered appropriation in the funds as approved by City Council resolution adopting procedures for administration of the annual budget. The appropriate account and funds shall be encumbered after the issuance of the purchase order, approval of a check request or award of contract.

**3.22.060 Purchasing Requirements.**

A. Open Market Purchases. The Purchasing Officer may award contracts, issue purchase orders or approve check requests for the acquisition of supplies, materials, equipment or Services in the open market without observing the competitive bidding procedure contained in this Chapter as provided for by the administrative policy. A non-competitive open market purchase will foreseeably equal, or be less than, the amount for public works contracts described in section 22032(a) of the Public Contracts Code.

B. Purchases Approved by the Purchasing Officer. In instances where the purchase of supplies, materials, equipment or Services will foreseeably result in the issuance of a purchase order, approval of a check request or the award of a contract that equals, or is less than the amount for public works contracts described in section 22032(b) of the public contracts code, the Purchasing Officer has the authority to take this action.

Such action shall be taken only after the informal competitive bidding or proposal procedure described in section F below is followed unless the City Manager finds in writing that the use of the informal competitive bidding or proposal procedure is not practical, undesirable or impossible due to limitations on source of supply, necessary restrictions in specifications, necessary standardization, quality considerations, or if other valid reasons for waiving or exempting the informal competitive bidding or proposal procedures apply. Upon making such a finding, the Purchasing Officer may

dispense with the informal competitive bidding or proposal procedure and make the purchase through any procedure which meets the City's requirements.

C. Purchases Approved by City Council. In instances where the acquisition of supplies, materials, equipment or Services will foreseeably result in the issuance of a purchase order, approval of a check request or the award of a contract in excess of the amount for public works contracts described in section 22032(b) of the Public Contracts Code, the City Council has the authority to take this action.

Such action shall be taken after the formal competitive bidding or proposal procedures described in sections D or E are followed unless, pursuant to a recommendation of the City Manager, the City Council finds that the use of the formal competitive bidding or proposal procedures are not practical, undesirable or impossible due to limitations on source of supply, necessary restrictions in specifications, necessary standardization, quality considerations, or if other valid reasons for waiving or exempting the formal competitive bidding or proposal procedures apply. Upon making such a finding, the Council may direct the Purchasing Officer to dispense with the formal competitive bidding or proposal procedure and make the purchase through any procedure which meets the City's requirements.

D. Formal Competitive Bidding Procedures. The formal bidding procedures required for purchases described in Section 3.22.060 (C) shall be to the lowest responsive and responsible bidder pursuant to administrative policy implemented by the Purchasing Officer.

E. Formal Competitive Request for Proposal Procedures. The formal proposal procedures required for the selection of the best qualified proposal shall be pursuant to administrative policy implemented by the Purchasing Officer.

F. Informal Competitive Bidding or Proposal Procedure. Purchases described in section B shall be pursuant to administrative policy implemented by the Purchasing Officer.

### **3.22.070 Exemptions.**

A. Notwithstanding any provision of this Chapter to the contrary, the Purchasing Officer is authorized to issue a purchase order, approve a check request, or award a contract, without adherence to Section 3.22.060 of this Chapter under the following instances:

1. Emergency Purchases. The immediate requirement of supplies, materials, equipment, or Services necessary for the continued operation of a department or for the

preservation of life, health or property shall be deemed an emergency. A full report of the circumstances of an emergency purchase in excess of the amount described in section 3.22.060 (C) shall be filed with the City Council at its next regular meeting after the purchase was made.

2. Recurring or Essential Services. Purchases where reasonable advanced estimates of costs cannot be determined for essential services of a recurring nature. Included in, but not limited to, this authorization are such items as utility services, approved settlements or claims for liability under the City's insurance program, renewal premium for authorized insurance policies, necessary bonds, all expenditures for the City's payroll and employee benefits and other matters involving unknown estimates of costs.

3. Legal Services. Purchase of legal advice, legal consultation, attorneys, assistants, or special counsel to address legal matters shall be in accordance with Chapter 2.18.

B. The following situations are exempt from the informal and formal competitive bid or proposal procedures described in this Chapter. Exemption determinations will be documented and approved by the Purchasing Officer.

1. Purchases From Other Public Agencies. Purchases of supplies, materials, equipment or Services from any other public agency created under the laws of the State of California or the United States Government.

2. Specialized Services Purchase. Specialized services and advice, in accordance with Government Code 37103, for financial, economic, accounting, or administrative matters are exempt from a competitive process.

3. Sole Source Purchase. Purchases from a single entity that possess the unique ability, capability, equipment, technology, patent or copyright to meet the City's need based on standardization, compatibility or operational requirement.

4. Use of Another Public Agency Cooperative Competitive Solicitation. After another governmental or public agency has completed a competitive procurement process in a manner similar to the bidding or proposal procedures described in this Chapter, and is for the goods or Services desired by the City, the City may award a contract to the selected vendor(s) resulting from that procurement process.

## **2. Amendments to Chapter 3.23 (Public Works Contract and Bidding Procedures)**

### **3.23.010 Purpose.**

This Chapter is enacted to enhance competition, to prevent corruption and undue influence in the awarding of public works contracts, and to clarify the City's competitive bidding requirements established pursuant to Part 3 of the California Public Contract Code, Sections 20100 et seq.

### **3.23.020 Definitions.**

As used in this Chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

1. “Bid” means any monetary bid submitted to the City in competitive bidding for the construction, alteration, repair or improvement of any structure, building, road or other improvement of any kind.
2. “Lowest responsible bidder” means the lowest monetary bidder who has demonstrated the attribute of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform the public works contract sought.
3. “Public works contract” means an agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind.
4. “Public works project” means any of the following:
  - a. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility;
  - b. Painting or repainting of any publicly owned, leased, or operated facility;
  - c. In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.
5. “Public works project” does not include maintenance work. For purposes of this section, “maintenance work” includes all of the following:
  - a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
  - b. Minor repainting.
  - c. Resurfacing of streets and highways at less than one inch.
  - d. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
  - e. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.
6. For purposes of this Chapter, “facility” means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (c) of subdivision (4), real property, streets and highways, or other public work improvement.
7. “Purchasing Manager” means the principal purchasing official responsible for developing policy and ensuring compliance in the procurement of goods and services in accordance with applicable law.
8. “Purchasing Officer” means the City Manager, Director of Public Works or any other official or officials designated in writing by the City Manager for administration of this Chapter.



### **3.23.030 Competitive Bidding.**

Except as otherwise provided for in this Chapter, public works projects with an estimated dollar value in excess of the required dollar value for competitive bidding established by section 22032(a) of the California Public Contracts Code, as may be amended, shall be contracted for pursuant to the procedures prescribed in this Chapter or by State Law.

### **3.23.040 Notice Inviting Bids.**

The notice inviting bids shall be in the form and published as follows:

A. Notices inviting bids shall include:

1. A distinct description of the public works project to be performed;
2. The location where bid documents, plans and specifications may be secured;
3. The time and place for opening bids;
4. The type and amount of bidder's security required;
5. The class of license required for the public works to be performed; and
6. A statement that the City has the authority to reject any and all bids and may waive any minor technicality or variance from the bid specifications.

B. The notice inviting bids shall be:

1. Published in a newspaper of general circulation printed and published in the City at least the number of days specified in Section 22037 of the California Public Contract Code, as may be amended, before the opening of bids; and
2. Provided to all construction and trade journals specified in Section 22036 of the California Public Contract Code, or as may be amended, at least the number of days and by the methods set forth in Section 22037 of the California Public Contracts Code, as may be amended; and
3. Posted on the City's website or another public bidding platform.

### **3.23.050 Presentation of Bids–Security Required–Subcontractor Designated in Bid.**

A. All bids shall be presented under sealed cover (identified by the bid name and number), submitted to the attention of the Purchasing Officer, or designee, via the process described in the notice inviting bids and accompanied by one of the following forms of bidder's security:

1. Cash;
2. A cashier's check made payable to the City;
3. A certified check made payable to the City;
4. A bidder's bond executed by an admitted surety insurer, made payable to the City.

B. The security shall be in an amount equal to at least ten percent of the amount of the bid, or such other sum as may be authorized by the California Public Contract Code. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it.

C. Upon award of the contract to the lowest responsible bidder, the security of an unsuccessful bidder shall be returned no later than ninety days from the date the contract is awarded.

D. All bidders on a public works project must designate in their bids the name, address, the portion of the work each subcontractor will perform, and other information as required by Section 4101 of the California Public Contract Code, as may be amended, of each subcontractor:

1. Who will perform work exceeding one-half of one percent of the prime contractor's total bid as specified in Section 4104(a)(1), or
2. Who meet or exceed the thresholds for specific types of work as specified in Section 4101(a)(1).
3. The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in their bid as specified in Section 4104 (b).

E. A contractor submitting a bid as the prime contractor shall not also submit a bid as a subcontractor for a competing prime contractor.

### **3.23.060 Opening Bids.**

Bids shall be opened on the date stated in the notice inviting bids. A tabulation of all bids received shall be posted on the City's website on the first working day after 48 hours of the bid opening and will remain posted for a period of not less than fifteen calendar days after the bid opening. Any bid which is submitted after the time specified in the notice shall not be considered.

### **3.23.070 Award of Contract.**

Contracts shall be awarded by the City Council to the lowest responsible bidder except as otherwise provided in this Chapter.

### **3.23.080 Forfeiture of Security.**

If the successful bidder fails to execute the contract within ten days after the date the notice of award of contract is mailed or provided, unless the City is responsible for the delay, the amount of the bidder's security shall be forfeited to the City except as provided in Section 3.23.090.

**3.23.090 Award of Contract to next Lowest Bidder–Failure to Execute Contract.**

The City Council may, on refusal or failure of the successful bidder to execute the contract within ten days after the date the notice of award of contract is mailed or provided, unless the City is responsible for the delay, award it to the next lowest responsible bidder. If the City Council awards the contract to the second lowest bidder, the amount of the lowest bidder's security may be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the bidder's surety if a bond is used.

**3.23.100 Award of Contract to Next Lowest Bidder–Lowest Bidder Irresponsible–Notice and Hearing.**

A. The City Council, in its sole discretion, may reject the lowest bid upon specific findings that the lowest bidder is not responsible. To determine responsibility, the City Council may consider, among other things, the bidder's financial responsibility, type of license, type of equipment, years of experience in construction work, other projects bidder worked on in the last five years, whether bidder has failed to complete any contract, bidder's ability to be bonded and its quality, fitness, or capacity to satisfactorily perform the work.

B. If the City Council rejects the lowest bid upon its determination that the lowest bidder is not responsible, the City shall do the following:

1. Give notice of the City Council's decision to the lowest bidder, setting forth the reasons why the bidder is not determined the lowest responsible bidder;
2. In the notice, give bidder an opportunity to ask for a pre-award hearing before the City Council on the issue;
3. If hearing is requested, agenda the matter pursuant to California Government Code hearing requirements;
4. After the hearing, the City Council shall make a finding, supported by the evidence on the record, as to the non-responsibility of the lowest bidder.

**3.23.110 Rejection of Bids–Identical Bids–Absence of Bids.**

The City Council, in its sole discretion, may:

- A. Reject all bids presented and readvertise for new bids;
- B. Reject any bid that fails to meet the bidding requirements in any respect;
- C. If two or more bids are the same and the lowest, allow the Purchasing Officer or Purchasing Manager to select one through a blind selection process;

D. If no bids are received, the City Council may have the project done without further complying with this Chapter;

E. Waive minor irregularities in any bid received.

### **3.23.120 Informal Bidding Procedure for Public Works Projects.**

Except as otherwise required by this Chapter or under state or federal law, the bidding procedures of this Chapter may be dispensed with for public works projects with an estimated dollar value equal to or less than the dollar value specified in Subdivision (b) of Section 22032 of the Public Contract Code, and the following informal bidding procedures substituted:

A. The City shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for compilation of the contractor list shall be determined by the California Uniform Construction Cost Accounting Commission ("Commission"). All contractors on the list for the category of work being bid and/or all construction trade journals specified by the Commission shall be mailed or emailed a notice inviting informal bids, unless the product or service is proprietary.

B. All mailing of notices to contractors and construction trade journals shall be completed not less than the number of days specified in Section 22304 of the California Public Contract Code, or as may be amended, before the date of opening the bids.

C. The City Council hereby delegates the authority to award contracts pursuant to informal bidding to the Purchasing Officer.

### **3.23.130 Exempt from Bidding Requirements.**

The following are exempt from competitive bidding requirements:

A. Emergency Work. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, the City Council may pass a resolution by a four-fifths vote declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property in accordance with Public Contract Code Section 22050. Upon adoption of the resolution, the City may expend any sum required in the emergency without complying with this Chapter;

B. Small Contracts. Any contract for public works projects with an estimated dollar value equal to or less than the dollar value for competitive bidding established by section 22032(a) of the California Public Contracts Code;

C. Meaningless Bids. Where the nature of the subject of the contract is such that competitive bids would not produce an advantage and when the advertisement for competitive bidding would be undesirable, impracticable or impossible;

D. Performance of Project After Rejection of Bids. After rejection of bids presented, the City Council may pass a resolution by a four-fifths vote declaring that the project can be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution, the City is relieved from further compliance with bidding requirements.

**3.23.140 Performance Bond of Successful Bidder.**

The Purchasing Officer has authority to require a performance bond before entering a contract, in such amount as the Purchasing Officer finds reasonably necessary to protect the best interests of the City or as may be required by law. If the City requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

**3.23.150 Deposit of Proceeds.**

The cash or proceeds collected pursuant to this Chapter shall be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost and publication of notice are paid.

**3.23.160 Additional Work by City Authority.**

Notwithstanding the provisions of this Chapter, if the Director of Public Works determines that additional or extra work on any public works project is required to complete the project as originally intended, the Director of Public Works is authorized to approve contract change orders for additional or extra work on any public works contract provided that the aggregate total of all such contract change orders for the public works project does not exceed the contract amount plus contingency at the time the contract is awarded. Under this same authority, the Director of Public Works is authorized to approve extensions of time to public works contracts.

**3.23.170 Deletions of Work by City Authority.**

The City reserves the right to delete up to twenty-five percent (25%) of the work on a public works contract where such deletions would advance the project as originally contemplated.