

**ORDINANCE NO. 3171-21**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE TO AMEND CHAPTERS 2.08  
(PURCHASES OF GOODS AND SERVICES) AND 2.09  
(PUBLIC WORKS CONTRACTING) OF TITLE TWO  
(ADMINISTRATION AND PERSONNEL) OF THE  
SUNNYVALE MUNICIPAL CODE RELATING TO  
PURCHASES OF GOODS AND SERVICES AND PUBLIC  
WORKS CONTRACTING**

WHEREAS, the City of Sunnyvale desires to amend certain sections of the Sunnyvale Municipal Code Chapters 2.08 (Purchase of Goods and Services) and 2.09 (Public Works Contracting).

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

SECTION 1. Chapter 2.08 AMENDED. Chapter 2.08 (Purchases of Goods and Services) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Chapter 2.08. PURCHASES OF GOODS AND SERVICES**

2.08.010. Title. [Text Unchanged]

2.08.020. Purpose. [Text Unchanged]

2.08.030. Definitions. [Text Unchanged]

2.08.040. Procurement and disposition responsibilities.

(a) [Text Unchanged]

(b) Purchasing Officer. The purchasing officer shall be responsible for the procurement of goods and/or services for the city in accordance with the provisions of this chapter. No procurement of goods and/or services shall be made by any city employee independently of the purchasing officer except in cases of emergency, unless otherwise authorized in writing by the city manager. The purchasing officer shall:

(1) – (2) [Text Unchanged]

(3) Process the contracts awarded and have authority to execute all purchase orders regardless of amount, provided that the purchase orders have been approved by the appropriate awarding authority;

(4) – (7) [Text Unchanged]

(c) City Manager. The city manager shall:

(1) Be the awarding authority for every procurement of goods and/or services for which the cost to the city is two hundred fifty thousand dollars or less in any one transaction;

(2) – (4) [Text Unchanged]

(5) Execute all contracts awarded by the City Council when all necessary conditions have been met.

(d) City Council. The city council shall be the awarding authority for every procurement of goods and/or services for which the cost to the city is greater than two hundred fifty thousand dollars in any one transaction.

#### **2.08.050. Delegated authority.**

The city manager, after consultation with the director of finance, may delegate authority to procure and award certain goods and/or services to city employees in addition to the purchasing officer, if such delegation is deemed necessary for the effective procurement of those items. Delegation shall be made in advance in writing by the city manager and filed with the city clerk and the director of finance.

#### **2.08.060. Methods of procurement.**

(a) Informal Competitive Bids or Proposals. Procurements anticipated to cost one hundred thousand dollars or less in one transaction may be made by informal bid or proposal solicitations in accordance with the provisions of this chapter. Solicitations may be verbal or written, but bids must be in writing. Where possible, a minimum of three bidders should be solicited.

(b) Formal Competitive Bids. Procurements anticipated to cost more than one hundred thousand dollars in one transaction shall be made by issuance of written invitations for bids. Bid documents include, at a minimum, the notice inviting bids; instructions to bidders; specifications describing the required goods and/or services; bid forms and schedules; any required bond forms and proposed contract terms and conditions.

(c) Formal Competitive Proposals. Where the city has defined a situation for which it seeks a solution, instead of using a bid, procurements anticipated to cost more than one hundred thousand dollars in one transaction may be made by issuance of written requests for proposals. The solution may be in the form of goods, services or a combination of goods and services and may require exceptional technical knowledge or professional expertise beyond that available within the end user. The circumstances may require that a contract award be based on factors in addition to price. The purchasing officer may enter into discussions with proposers to

achieve clarification, full understanding and responsiveness to the solicitation requirements, but neither the purchasing officer nor any other city employee shall disclose any information derived from proposals submitted by competing proposers prior to contract award or rejection, except to city employees directly responsible for the procurement.

(d) [Text Unchanged]

(e) Small Procurements. Procurements, the cost of which are fifteen thousand dollars or less in any one transaction shall be made using simplified and cost effective operational procedures and forms without use of formal or informal bids. Requirements shall not be artificially divided so as to constitute a small purchase under this subsection.

(f) [Text Unchanged]

(g) Federal or State Funding. When a purchase of goods and/or services involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with mandatory applicable federal or state laws or regulations. Such laws or regulations may be incorporated in administrative policies, and periodically updated, as required.

#### **2.08.070. Competitive bidding requirement—Exemptions.**

(a) Contracts for goods and/or services for which the cost to the city in one transaction will exceed one hundred thousand dollars shall be let by formal competitive bidding or proposals pursuant to this chapter. Procurement requirements shall not be artificially divided so as to avoid the competitive bidding requirement.

(b) – (d) [Text Unchanged]

#### **2.08.080. Pre-bid conferences or site inspections.** [Text Unchanged]

#### **2.08.090. Advertisement of bidding opportunities.** [Text Unchanged]

#### **2.08.100. Correction or withdrawal of bids.**

(a) – (b) [Text Unchanged]

(c) Withdrawal of Bid. A bidder alleging a mistake in a bid or proposal may be permitted to withdraw its bid or proposal provided that it establishes the following to the satisfaction of the awarding authority and in accordance with state law:

(1) – (4) [Text Unchanged]

(5) [Deleted and Renumbered to (d) below]

(d) If the awarding authority deems it to be in the best interest of the city, it may allow the lowest bidder to withdraw its bid and award a contract to the next lowest bidder. In the event

that bid security was required and provided by the lowest bidder, the amount of the lowest bidder's bid security shall be applied to the difference between the lowest bid and the next lowest bid and the surplus, if any, shall be returned to the lowest bidder or the bidder's surety, as applicable.

**2.08.110. Receipt of bids or proposals.**

(a) Receipt of Bids.

(1) Small Procurements. Bids of fifteen thousand dollars or less may be submitted verbally provided that the names of all bidders and the date and amount of each bid is recorded by the purchasing officer and maintained as a public record.

(2) – (3) [Text Unchanged]

(b) – (d) [Text Unchanged]

**2.08.120. Evaluation of bids or proposals.**

(a) [Text Unchanged]

(b) Tie Bids. In the event that an identical price is received from two or more responsive and responsible bidders, and in the judgment of the purchasing officer the public interest will not be served by re-advertising for bids, the purchasing officer may determine the successful bidder by the casting of lots with the tie bidders in public at a date and time set by the purchasing officer.

(c) [Text Unchanged]

**2.08.130. Preparation of bid or proposal documents.** [Text Unchanged]

**2.08.140. Cancellation of solicitations; Rejection of bids.**

(a) [Text Unchanged]

(1) – (3) [Text Unchanged]

(b) Rejection of Bids. The city manager may reject, in whole or in part, bids or proposals received in response to informal competitive bid solicitations or in response to formal bids for which the city manager is the awarding authority. The city council may reject, in whole or in part, bids or proposals received for which the city council is the awarding authority. If all bids are rejected, the city has the discretion to readvertise.

(b) [Text Unchanged]

**2.08.150. Contracts.** [Text Unchanged]

**2.08.160. Contract award.** [Text Unchanged]

**2.08.170. Procurement records—Public inspection.** [Text Unchanged]

**2.08.180. Bonds and other security—Insurance requirements.**

(a) [Text Unchanged]

(b) Bid Security. Bid security, if required, shall be submitted with the bid and shall be a certified check, cashier's check or surety bond issued by an admitted surety insurer authorized to conduct business in the state of California. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive. After bids are opened, bid security is irrevocable for the period specified in the invitation for bids. If the successful bidder fails to execute the contract within the time specified, the total amount of the bid security shall be forfeited to the city.

(c) – (d) [Text Unchanged]

(e) Insurance. The risk manager shall develop uniform insurance requirements for procurements and shall review and update the insurance requirements periodically. The successful bidder shall submit certificates of insurance and endorsement forms, as applicable, as evidence that it has the type and amount of insurance coverage required by the bid or proposal documents. Such evidence shall be submitted to the risk manager promptly upon request and shall be issued by an admitted insurer authorized to operate in the state of California and acceptable to the city.

(f) [Text Unchanged]

**2.08.190. Emergency procurements.**

The city manager, the purchasing officer or a department head, or a designee of such individual, may make or authorize others to make emergency procurements, regardless of the cost, if there is an urgent necessity to do so for the preservation of life, health or property. Such emergency procurements shall be made with such competition as is practical under the circumstances and shall be limited to those goods and services necessary to satisfy the emergency need. In such circumstances, the purchasing officer or department head shall provide a written report of the procurement to the city manager, including a description of the emergency and the basis for selection of the particular contractor; and a copy of this report shall be included in the procurement records maintained by the purchasing officer. In the event that such emergency action is necessary and the procurement cost is greater than two hundred fifty thousand dollars in any one transaction, the city manager shall make a full and complete report to the city council at its next regularly scheduled meeting.

**2.08.200. Local business preference.** [Text Unchanged]

**2.08.210. Right to inspect plant and audit records.** [Text Unchanged]

**2.08.220. Intergovernmental relations.**

(a) [Text Unchanged]

(b) Use of Another Entity's Solicitation Process. The purchasing officer may authorize the procurement of goods and/or services through the use of a solicitation process initiated by another governmental, public or quasi-public entity, and the resultant award of a contract by that entity, provided that the original parties to the contract agree, the contract was awarded within thirty-six months of the date of city authorization to utilize the contract, the contract is for identical or nearly identical goods and/or services, and the contract resulted from a competitive bid using methods similar to those required by this chapter. In the discretion of the awarding authority, the City may use the other entity's solicitation process when the contract was awarded beyond the thirty-six month period if the parties mutually agree to the arrangement and the contract terms are in the best interest of the City.

(c) – (e) [Text Unchanged]

**2.08.230. Failure to perform.** [Text Unchanged]

**2.08.240. Disposition of surplus personal property.** [Text Unchanged]

**2.08.250. Ethics.** [Text Unchanged]

SECTION 2. Chapter 2.09 AMENDED. Chapter 2.09 (Public Works Contracting) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Chapter 2.09. PUBLIC WORKS CONTRACTING**

**2.09.010. Title.** [Text Unchanged]

**2.09.020. Purpose.** [Text Unchanged]

**2.09.030. Definitions.**[Text Unchanged]

**2.09.040. Project responsibilities.**

(a) – (c) [Text Unchanged]

(d) City Manager. The city manager shall:

(1) Be the awarding authority for every public works contract for which the cost to the city is two hundred fifty thousand dollars or less;

(2) – (3) [Text Unchanged]

(4) Upon approval by the awarding authority, execute all contracts when all necessary conditions have been met.

(e) [Text Unchanged]

**2.09.050. Delegated authority.**

The city manager, after consultation with the director of finance and the director of public works, may delegate authority to solicit, award and process bids for public works projects to city employees in addition to the purchasing officer, if such delegation is deemed necessary for the effective development of a project. Delegation shall be made in advance in writing by the city manager and filed with the city clerk, the director of finance and the director of public works.

**2.09.060. Methods of acquisition.**

(a) Informal Competitive Bids. Public works projects anticipated to cost two hundred fifty thousand dollars or less may be acquired by informal solicitations in accordance with the provisions of this chapter. Solicitations may be verbal (unless otherwise required by law) or written, but bids must be in writing. Where possible, a minimum of three bidders should be solicited.

(b) Formal Competitive Bids. Public works projects anticipated to cost more than two hundred fifty thousand dollars shall be acquired by issuance of written invitations for bids. Bid documents include, at a minimum, the notice inviting bids; instructions to bidders; technical specifications; a form for the listing of subcontractors; a noncollusion affidavit; bid forms and schedules; all required bond forms and the proposed contract document.

(c) Federal or State Funding. When a public works project involves the expenditure of federal or state funds, the acquisition shall be conducted in accordance with mandatory applicable federal or state laws or regulations. Such laws or regulations may be incorporated in administrative policies, and periodically updated, as required.

**2.09.070. Competitive bidding requirement—Exemptions.**

(a) Contracts for public works projects for which the cost to the city in one transaction will exceed two hundred fifty thousand dollars shall be let by formal competitive bidding pursuant to Section 1309 of the city Charter and this chapter. Project requirements shall not be artificially divided so as to avoid the competitive bidding requirement.

(b) [Text Unchanged]

**2.09.080. Pre-bid conferences or site inspections.**

[Text Unchanged]

**2.09.090. Advertisement of bidding opportunities.** [Text Unchanged]

**2.09.100. Correction or withdrawal of bids.** [Text Unchanged]

**2.09.110. Receipt of bids.** [Text Unchanged]

**2.09.120. Evaluation of bids.**

(a) [Text Unchanged]

(b) Tie Bids. In the event that an identical price is received from two or more responsive and responsible bidders, and in the judgment of the purchasing officer the public interest will not be served by re-advertising for bids, the purchasing officer may determine the successful bidder by the casting of lots with the tie bidders in public at a date and time set by the purchasing officer.

(c) [Text Unchanged]

**2.09.130. Subcontracting on public works projects.** [Text Unchanged]

**2.09.140. Cancellation of solicitations—Rejection of bids.**

(a) [Text Unchanged]

(b) Rejection of Bids. The city manager may reject, in whole or in part, bids received in response to informal competitive bid solicitations or in response to formal bids for which the city manager is the awarding authority. The city council may reject, in whole or in part, bids received for which the city council is the awarding authority. If all bids are rejected, the city has the discretion to readvertise.

(c) [Text Unchanged]

**2.09.150. Contracts.**

(a) [Text Unchanged]

(b) Modification of Contracts. The awarding authority may establish a contingency amount for each public works contract in conjunction with the award of contract. Alterations, deviations, additions or deletions from the original scope of work which are determined by the city to be necessary during the progress of work shall be documented by written change orders. The cost of each change order shall be determined by a fair and reasonable valuation, agreed to in writing by the director of public works, or the director's designee, and an authorized representative of the contractor, and shall be added to or deducted from the contract price. Change orders, the cost of which do not exceed the total contract award amount approved by



the awarding authority at the time of contract award, shall be authorized in advance of the contractor's performance of the work by the director of public works or the director's designee. Change orders that exceed the total contract award amount shall be authorized by the awarding authority in advance of the contractor's performance of the work. In the event the city and the contractor are unable to agree upon the cost of a change order, the contractor will be paid the actual costs for labor, materials and equipment used in performing the work plus a mark-up as set forth in the contract.

**2.09.160. Contract award.** [Text Unchanged]

**2.09.170. Project records—Public inspection.** [Text Unchanged]

**2.09.180. Bonds and other security—Insurance requirements.**

(a) [Text Unchanged]

(b) Bid Security. Bid security shall be submitted with the bid and shall be a certified check, cashier's check or surety bond issued by an admitted surety insurer authorized to conduct business in the state of California. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive. After bids are opened, bid security is irrevocable for the period specified in the invitation for bids. If the successful bidder fails to execute the contract within the time specified, the total amount of the bid security shall be forfeited to the city. Bids for public works projects greater than twenty-five thousand dollars shall require the submission of bid security in an amount equal to at least ten percent of the bid. On projects less than or equal to twenty-five thousand dollars, the purchasing officer is authorized to determine if bid security is needed on a project-by-project basis.

(c) – (d) [Text Unchanged]

(e) Insurance. The risk manager shall determine insurance requirements. The successful bidder shall submit certificates of insurance and endorsement forms, as applicable, as evidence that it has the type and amount of insurance coverage required by the bid documents. Such evidence shall be submitted to the purchasing officer promptly upon request and shall be issued by an admitted insurer authorized to operate in the state of California and acceptable to the city. The risk manager may waive the insurance requirement when the contract is an intergovernmental contract or a city-public utility contract, and the governmental, public or quasi-public agency or the public utility to whom the contract is awarded agrees that it will have all the work done under contract(s) and will require such contractor(s) to obtain and provide evidence of the required insurance before commencement of the work naming the city, its officers, agents and employees as additional insureds to such policy.

**2.09.190. Progress payments—Retention.**

(a) The contract between the city and the contractor may provide for progress payments, which may be made on the basis of a certified estimate. If a subcontractor or material supplier has filed and served upon the city a stop notice valid under state law, the city shall not make progress payments to the extent the stop notice requires the city to withhold payment from the contractor.

(b) [Text Unchanged]

**2.09.200. Cleanup deposit.** [Text Unchanged]

**2.09.210. Ethics.** [Text Unchanged]

**2.09.220. Prevailing wages.** [Text Unchanged]

SECTION 3. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this 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.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on December 8, 2020, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on January 5, 2021, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney