TO: HONORABLE CITY COUNCIL

ATTN: FINANCE COMMITTEE

FROM: CITY MANAGER
DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: MARCH 16, 2004  CMR: 179:04

SUBJECT: APPROVAL OF NEW CONTRACTING AND PURCHASING ORDINANCE

RECOMMENDATION
Staff recommends that Council:

1. Approve an ordinance amending and replacing Chapter 2.30 of the Palo Alto Municipal Code in its entirety to establish new contracting and purchasing procedures.

2. Repeal City Policy and Procedure 1-10 covering Selection Procedures for Professional Consultants, incorporating relevant elements into the Purchasing Manual.

3. Approve an increase in the contract approval authority of the Purchasing Manager and City Manager, from $65,000 to $85,000, to reflect increases in the Consumer Price Index (CPI).

BACKGROUND
Infrastructure has been one of the Council’s Top 5 priorities for several years. The 2001-02 work plan for this priority included streamlining the construction and professional services contracting processes in order to expedite the completion of critical infrastructure projects. A Contract Streamlining Subcommittee (CSS), comprised of staff from the Public Works, Utilities, Community Services, Planning, and Administrative Services departments, the City Attorney and the City Auditor’s offices, was formed to develop a plan to streamline key contracting processes. In February 2003, the CSS presented its recommendations to the Finance Committee (CMR:124:03). Many of the
CSS recommendations have been implemented or are in the process of being implemented. The process changes which have been implemented include: the utilization of step-by-step checklists for the Request for Quote, Invitation for Bid, and Request for Proposal processes; standardization of the format for routing contracts for internal signatures; and updating the contract CMR template with a new standardized table containing project information. The recommendations in the process of being implemented include: standardizing forms and templates; pre-qualifying professional service providers; an electronic tracking system for contracts; developing training and certification programs; and streamlining the contract signature process. A few of the CSS recommendations require Council approval and modification of the Municipal Code. These include:

1) An increase in the Purchasing Manager’s contract approval authority from $25,000 to $65,000; and an increase in the Purchasing Manager’s authority to delegate to the Contract Managers and Buyers from $10,000 to $25,000 and $5,000 to $10,000, respectively.

2) An increase in the City Manager’s contract approval authorization for public works construction contracts from $65,000 to $250,000.

In February 2003, the Finance Committee approved these recommendations and directed the City Attorney to return to the Council with the associated Municipal Code amendments for its approval. However, after evaluation of the City’s existing Contracts and Purchasing Ordinance, the City Attorney’s Office in conjunction with the Administrative Services Department identified the need to rewrite this section of the Municipal Code in its entirety to improve its organization, clarity and content. This report presents the new Contracting and Purchasing Ordinance (Ordinance) to the Council for its review and approval.

DISCUSSION
The proposed Municipal Code rewrite implements the contract streamlining recommendations approved by the Finance Committee and makes the Ordinance significantly easier to use and understand. The Ordinance changes fall into three primary categories: 1) incorporation of contract streamlining measures; 2) clarifications; and 3) new provisions. A discussion of each of these categories is provided below.

Contract Streamlining Measures
The changes that were necessary to implement the contract streamlining measures are as follows:

A. A new section giving the City Attorney the authority to approve as to form all contracts, purchase orders, documents and other agreements on a general or an
individual basis. This section supports the implementation of standard contract forms and agreements developed by the CSS by providing a control system for their creation and use.

B. An increase in the Purchasing Manager’s contract award authority from $25,000 to $65,000 per year for contracts up to three years.

C. An increase in the Purchasing Manager’s delegation of authority to Contract Managers from $10,000 to $25,000 per year for contracts up to three years and to Buyers from $5,000 to $10,000 per year for contracts up to three years.

D. An increase in the City Manager’s contract award authority for public works projects from $65,000 to $250,000. In addition, for consistency purposes, the City Manager’s overall authority to contract for goods was capped at $250,000 per year for contracts up to three years (amount currently unlimited) and the limit on the purchase of capital equipment of $65,000 was eliminated.

E. Along with the proposed increase in the City Manager’s contract award authority for public works projects, staff is proposing increasing the formal bid amount for public works projects from $25,000 to $65,000. This increase is consistent with the increase in contract award authority and reflects the escalation in construction costs since this amount was first established in the 1970s. (From mid-1970 through 2003, the construction cost index has increased by over 300 percent.) It is important to note that the City’s charter only requires formal bidding for public works projects funded by bonds or property assessments. Staff believes the formal bid process adds value for higher dollar value construction work regardless of the funding source. Public works projects under $65,000 would adhere to an abbreviated bid process, requiring at least three bids. The abbreviated process provides for bid solicitation by mail, fax, e-mail, phone, and posting on the City’s web site and eases the advertising and bid opening requirements. Staff estimates that less than 10 public works projects would be impacted each year by the formal bid amount increase from $25,000 to $65,000. Although it impacts a limited number of projects, this change would save the City over 100 hours in staff time (valued at about $10,000) during the year. It would also shave approximately four to six weeks from the bid processing timeline. This staff time could be redirected to the timely completion of infrastructure projects.

F. A provision providing for a decentralized purchasing process (purchases made by qualified departmental staff instead of the Purchasing Division) for smaller dollar items under $5,000. This provision is consistent with the City Auditor’s Office recommendation provided to the Council in her Audit Status Report dated October 9, 2003. The decentralization of lower dollar value purchases is known
to reduce procurement cycle times and would free up Purchasing staff to focus on higher dollar value purchases. Prior to decentralizing the City’s smaller dollar purchases, staff will work with the City Auditor’s Office to develop procedures to properly monitor and control these purchases.

G. A provision giving the Purchasing Manager the ability to create and maintain a list of qualified professionals to satisfy recurring professional service requirements.

Clarifications
The new ordinance has been reorganized, detailed explanations have been provided, and ambiguous language has been eliminated. As a result, users are provided with a better “roadmap” to the City’s contracting and purchasing procedures. More specifically, the key changes in this category include:

A. A definition of each type of contract that the City solicits.

B. Enhancement of the definition of professional service contracts. In addition, the professional services exemption from competitive solicitation has been capped at $25,000. With this change, professional services from $25,000 to $65,000 would adhere to an abbreviated proposal process, requiring at least three proposals. Professional services of $65,000 and above would follow the City’s formal request for proposal process. At the present time, there is a conflict between the Municipal Code which provides an unlimited exemption from competitive solicitation requirements for professional services and Policy and Procedure 1-10 (Selection Procedures for Professional Consultants) which requires competitive solicitation for certain professional consultants over $25,000. In addition to proposing a cap on the professional services exemption at $25,000, staff recommends that the Council repeal City Policy and Procedure 1-10. The portion of this Policy dealing with the Council Committee review of proposed scopes of service has already been incorporated into the annual budget process and the portion dealing with the competitive solicitation process is being rewritten to include the CSS contract streamlining recommendations and added to the Purchasing Manual.

C. The addition of detailed descriptions of the competitive solicitation requirements for each contract type and the addition of the factors that should be considered in making contract award decisions. The definition of both responsive and responsible bidder has been improved.
D. Each level of contract award authority (City Council, City Manager, Purchasing Manager, and City Attorney) has been clarified by both dollar amount and contract duration.

E. The City Manager’s authority to rent, lease, acquire or purchase interests in real property has been limited to 7 years (currently unlimited term).

F. The authority to modify contracts, including those awarded by Council, has been better defined. The City Manager may only authorize minor modifications to contracts awarded by Council. These modifications include extending the contract term up to six months, and making minor scope, schedule, or clerical corrections.

G. The section on exemptions from competitive bidding has been expanded to provide more specificity and examples. The City Manager is the decision maker as to whether an exemption applies. At the present time, this responsibility is shared between the City Manager and the Purchasing Manager.

H. An improved definition of the bid security, bond, insurance and certification of nondiscrimination requirements and when they must be included in a contract. In addition, the bid security requirement for formal public works project bids has been increased from 5 to 10 percent of the bid to be consistent with State Public Contract Code.

I. The reporting requirements related to public works contracts awarded by the Purchasing Manager or City Manager have been changed to make them consistent with the changes in approval levels for public works contracts (reporting would be required when a public works contract exceeds $65,000 instead of $25,000). In addition, the regular reports would be delivered on a biannual instead of a quarterly basis.

New Concepts
Several new sections have been added to the ordinance. These new provisions include:

A. A section permitting the Council to adopt by resolution policies that relate to contracting procedures and requirements (e.g., local preference policy, local boycotts, price preferences for use of recycled products, etc.). This will allow the City to approve and implement these policies on a more efficient and flexible basis. Staff is currently working through the legal steps required to justify the establishment of a local preference policy. As part of both the “Enhancing the City’s Economic Base” and the Council Sustainability Policy, staff plans to return to Council with a local preference policy recommendation that can be easily implemented by Council resolution as a result of this section.
B. A provision permitting the Council to determine by resolution that a particular public works project should be solicited and contracted for using an alternative project delivery method (e.g., competitive negotiation, design build, construction manager at risk, etc.).

C. A provision giving the City Manager the authority to execute contracts to provide municipal services to other public agencies in any amount for terms not exceeding three years. Authority to add permanent employee positions is specifically excluded. Staff is currently developing policies and procedures covering these contracts for Council approval. This provision will be carried out in accordance with the Council-approved policies and procedures.

D. A number of provisions covering contract approval and competitive solicitation requirements for wholesale utility commodities. These provisions give the City Manager the authority to approve these contracts where the contract price does not exceed $250,000 and the term does not exceed three years. These purchases would be subject to an abbreviated solicitation process from $25,000 to $65,000 and a formal solicitation process over $65,000. The provisions also provide CPAU with the ability to transact business utilizing electricity and gas master agreements in compliance with the City’s Energy Risk Management Policies and Procedures. Distinct requirements are provided for contracts with public (i.e. governmental) counterparties and for contracts with private sector counterparties. Overall these new provisions provide CPAU with both the flexibility and the oversight necessary to effectively carry out these purchases.

E. Added ethics in contracting provisions, including the prohibition against the acceptance of gratuities and the withdrawal from participation in the procurement process when there is a conflict of interest.

F. A section that precludes parties that assist the City in preparation of bid or proposal documents from submitting a bid or proposal.

G. A section to address the correction or withdrawal of bids, the handling of tie bids, the cancellation of solicitations, and the rejection of bids.

H. A provision allowing the City Manager to determine that standardization of equipment, materials and supplies is necessary so that the City does not need to allow vendors to submit “or equal alternatives.” The factors used by the City Manager in making a standardization determination are included.
Additional Change

In addition to the proposed ordinance changes, staff is recommending a one-time 30 percent increase in the contract approval levels of Purchasing Manager and the City Manager, from $65,000 to $85,000, to recognize actual and anticipated increases in CPI. The San Francisco Bay Area CPI has increased by an average of 3.4 percent each year (with an overall increase of approximately 23 percent) since late 1997, the year the City’s contract approval levels were last adjusted. Using this 3.4 percent annual average, CPI would increase another 6.8 percent over the next two years. This brings the total of the actual CPI increases since 1997 and the anticipated increase over the next two years to about 30 percent. With these year-to-year inflationary increases, the purchasing power of the dollar declines and the number of contracts presented to Council steadily increases. As a result, staff proposes a one-time $20,000, or 30 percent, adjustment to contract approval levels. Staff plans to return to Council periodically (approximately every 5 years) to propose similar approval level increases to account for CPI. Following Finance Committee approval of this proposed recommendation, staff will incorporate this increase into the pertinent sections of the new Contracting and Purchasing Ordinance (Section 2.30.200 Purchasing Manager Contract Award Authority and Section 2.30.210 City Manager Contract Award Authority) prior to returning to Council for approval.

The proposed changes in contract approval levels and solicitation requirements are detailed in Attachments B and C.

RESOURCE IMPACT
There is no expense impact to department budgets or the Budget Stabilization Reserve as a result of adopting these changes.

POLICY IMPLICATIONS
These recommendations are consistent with existing City policies.

TIMELINE
Following the approval of the proposed Ordinance by Council, staff will implement the necessary changes to the City’s Purchasing Manual, internal policies and procedures, finalize contract training and certification programs, and establish accountability guidelines for all staff involved in the contracting process.

ATTACHMENTS
Attachment A: Proposed Contracting and Purchasing Ordinance
Attachment B: Proposed Contract Approval Levels
Attachment C: Proposed Solicitation Requirements
Attachment D: Contract Streamlining Staff Report (CMR:124:03)
Attachment E: Existing Contracting and Purchasing Ordinance (available online)
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