

ORDINANCE NO. 2001-120

**ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA,
AMENDING POLICIES AND PROCEDURES FOR PURCHASING OF SUPPLIES
AND EQUIPMENT, FOR PROCURING PROFESSIONAL AND MAINTENANCE
SERVICES, AND FOR THE DISPOSAL OF SURPLUS PROPERTY**

The City Council of the City of Laguna Niguel does ordain as follows:

SECTION 1. Division 6 entitled "Policies and Procedures for Purchasing Supplies and Equipment, for Procuring Professional and Maintenance Services, and for the Disposal of Surplus Property," of Title 3 ("Revenue and Finance"), of the Laguna Niguel Municipal Code is amended to read as follows:

Sec. 3-6-1 Adoption of purchasing system.

In order to establish efficient procedures for the purchase of supplies and equipment, to secure supplies and equipment at the lowest possible cost commensurate with quality and quantity needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function through the use of purchase orders, contracts and other authorized procedures, the purchasing system set forth in this division is adopted for the City of Laguna Niguel and the Laguna Niguel Community Services District (LNCSD), which is a subsidiary district of the city.

Sec. 3-6-2 Authority and responsibility.

(a) The authority and responsibility for the purchase of supplies and equipment, procurement of professional services and disposition of surplus property is vested in the city manager. The city manager may designate a person to serve as the purchasing officer and delegate to that person the duties and responsibilities imposed by this division on the purchasing officer. The head of each city department is responsible for administering and implementing for his department the purchasing policies and procedures set forth in this division.

(b) In addition to administering and implementing these policies and procedures, each department head or his designee shall do each of the following:

(1) Before purchasing supplies and equipment, first consider sources of supplies and equipment located within the city. The city council has encouraged all residents and businesses located within the City of Laguna Niguel to shop locally at businesses located in the city. In keeping with this policy, city staff shall

make every attempt to purchase supplies and equipment from Laguna Niguel businesses whenever practicable. The purchasing officer shall maintain a list of Laguna Niguel vendors offering the types of supplies and equipment used by the city and shall circulate this list to all city departments. For purposes of bid comparison, bids submitted by local vendors shall be reduced by 1% for that part of the purchase upon which the City will pay sales tax. The 1% adjustment is afforded to local vendors to recognize the sales tax reimbursement to the City on such purchases.

- (2) Keep informed of current developments in market conditions and new products and direct the maintenance of a bidder's list, vendors catalogue files or other records needed for the efficient purchase of supplies and equipment.
- (3) Direct the inspection of supplies and equipment delivered to determine their conformance with specifications.
- (4) Consider and encourage the purchase and use of recycled and recyclable materials and products, whenever practicable.

(c) The term "department head" as used in this division means the person who is designated by the city manager as being responsible for each particular city department, including, but not limited to, community development, finance, public works, parks and recreation, city clerk, city attorney, and police services.

Sec. 3-6-3 Determination of purchasing requirements and surplus.

(a) The adopted budget for each department for each fiscal year shall include funding for the necessary supplies and equipment for that department during the fiscal year.

(b) Each department head or his designee shall ensure that sufficient documentation is submitted with a request for purchase to demonstrate compliance with established policies and procedures and to justify the acquisition and acceptance of supplies and equipment.

(c) Each department head shall notify the city manager of all equipment on hand in the department that is no longer useful to the department. The city manager may direct the transfer of such equipment to another city department, or the trade-in, disposal or donation of such equipment in accordance with the procedures set forth in this division.

Sec. 3-6-4 Purchasing limitations.

For the purchase of supplies and equipment, such purchases may be made by the city officers and employees designated in this section subject to compliance with the procedures and limitations contained in this section.

- (1) For purchases of \$100.00 or less, petty cash may be used and the applicable department head must approve the purchase. It is not required that bids be obtained for such purchases.
- (2) For purchases over \$100.00 but less than \$1,000.00, the applicable department head must approve the purchase. No purchase order is necessary, and it is not required that bids be obtained for such purchases.
- (3) For purchases that are equal to or exceed \$1000.00 but are less than \$2,500.00, the purchasing officer must approve and execute the purchase order or contract for the purchase. It is not required that bids be obtained for such purchases.
- (4) For purchases that are equal to or exceed \$2,500.00, but are less than \$25,000.00, the purchasing officer must approve and execute the purchase order or contract for the purchase. Before the purchase is made, three bids, written or verbal, must be obtained from vendors and each of these bids must be documented.
- (5) For purchases of \$25,000.00 or more, the city council must approve the purchase order or contract for the purchase. Prior to city council approval, three written bids must be obtained from prospective vendors. The city council may authorize that such purchase orders or contracts be executed by the city manager or the purchasing officer.

Sec. 3-6-5 Competitive bidding procedures.

For purchases of supplies or equipment with a value of \$2,500.00 or more at least three bids must be obtained; and the applicable department shall solicit bids by telephone or written request to prospective vendors. Further, the purchase order or contract for such purchases shall be awarded to the lowest responsible vendor, consistent with the quality, quantity and delivery requirements. The lowest responsible bidder shall be determined by such factors as reputation, ability, references, quality of supplies and equipment, and price.

Sec. 3-6-6 Use of vendors selected by another agency or through cooperative purchasing agreements.

The purchasing officer may authorize the purchase of supplies or equipment for which the city would normally follow its own bid procedures from a vendor who has been awarded

by another public agency a contract for the purchase of the same supplies or equipment, if said agency utilized procedures substantially the same as those normally utilized by the city in awarding its contract to the vendor. The amount of said purchase shall be based upon the price bid in the other jurisdiction.

Sec. 3-6-7 Exemption from bidding.

The bidding requirements set forth in this division may be waived, at the discretion of the city manager, when any of the following is applicable:

- (1) The product is proprietary.
- (2) After a reasonable attempt has been made to obtain bids, and it has been determined by the city manager that no additional vendors can be located.
- (3) The city manager finds that emergency conditions require the immediate purchase of supplies or equipment.
- (4) Sufficient, satisfactory bids are not received.
- (5) Supplies or equipment are procured through a cooperative purchasing program with the federal, state, county, or other public agencies.
- (6) The commodity is unique, including, but not limited to, acquisition of data processing, telecommunications and word processing equipment, goods and services.
- (7) The product or service can be obtained from only one vendor (sole source).
- (8) The purchase of a specific brand name, make or model is necessary to match existing City equipment or facilitate effective maintenance and support.
- (9) The bidding requirements of this division are waived by the city council.

Sec. 3-6-8 Professional service contracts; exempt from bidding.

(a) Professional services are defined as services provided by any specially trained and experienced person or firm in the areas of accounting, administration, architecture, construction management, economics, environmental analysis, engineering, finance, landscape architecture, law, surveying, or other matters involving specialized expertise or unique skills.

(b) Contracts awarded for the performance of services in the above-listed areas shall be awarded on the basis of the demonstrated competence of the contractors, and on the contractor's professional qualifications necessary for the satisfactory performance of the services required, and on the fairness and reasonableness of the cost of the services to the city, and shall not be awarded solely on the basis of cost. The competitive bidding requirements set forth in Section 3-6-5 are not applicable to the procurement of professional services.

(c) City staff is specifically prohibited from engaging in any unlawful activity, including, but not limited to, receipt of rebates, kickbacks, or other unlawful consideration, and city staff is specifically prohibited from participating in the selection process when those employees have a relationship with a person or firm seeking a contract which would subject those employees to the prohibition of Government Code Section 87100 *et seq.*

(d) Subject to compliance with the procedures set forth in this section, the purchasing officer may enter into and execute contracts or purchase orders for professional services when the cost of such services is less than \$25,000. City council approval is required for all contracts for professional services when the cost of the services is \$25,000 or more. The city council may authorize that such contracts be executed by the city manager or the purchasing officer.

(e) Notwithstanding the above provisions of this section, all contracts for the performance of the annual audit of the City's financial statements shall be competitively bid by obtaining at least three proposals for providing the required services, evaluating the proposals pursuant to criteria set forth in subsection (b), and awarding the contract based on the best proposal. Further, the award of all such contracts regardless of cost shall be approved by the city council.

Sec. 3-6-9 Maintenance contracts.

For the award of contracts for the maintenance and repair of city and LNCSD facilities, the following procedures shall be followed:

- (1) For contracts for which the estimated cost of services is \$10,000.00 or more, a request for proposal shall be prepared and submitted to prospective bidders, bids shall be obtained from prospective bidders and reviewed, and the contract shall be awarded based on the responsiveness of the bids to the request for proposal, the qualifications and experience of the contractors and the amount of the price or prices included in the bids.
- (2) Contracts for which the estimated cost of services is less than \$10,000.00 may be awarded without obtaining bids. Such contracts shall be awarded based on

the qualifications and experience of the contractor and the amount of the contract prices.

- (3) Maintenance and repair contracts for which the cost of services is \$25,000.00 or more, shall be awarded by the city council, and the city council may authorize the city manager or the purchasing officer to execute such contracts. Contracts in which the estimated cost of services is less than \$25,000.00 may be awarded by and executed by the purchasing officer.

Sec. 3-6-10 Disposal of surplus or obsolete property.

(a) The head of any city department may declare supplies or equipment held by such department surplus. Such declaration shall be in writing and the written declaration shall be delivered to the purchasing officer who shall maintain a written inventory for circulation to and review by each department. If any department has use of such property, the department head may request reassignment of such property from the purchasing officer. The purchasing officer shall have the authority to assign the property to the department best able to make use of such property. If no department head makes a request for use of such property after the inventory has been circulated once, the property shall be deemed surplus.

(b) The purchasing officer shall have the authority to exchange for or trade in on new supplies or equipment all supplies or equipment which have been deemed surplus.

(c) The purchasing officer shall have the authority to dispose of surplus property or equipment by auction or sale or otherwise after receiving bids or proposals which, in his judgement, provide the best return to the city.

- (1) *Sale on the open market.* The purchasing officer shall cause to be published at least three days before the sale, in a locally adjudicated newspaper, a notice of sale setting forth a general description of the property to be sold, the day, time and location of the sale. The terms of all such sales shall be cash in the amount of the full purchase price.
- (2) *Sale by sealed bid or auction.* As an alternative to the sale on the open market, the purchasing officer may, when in his judgement, it is in the best interest of the city, sell surplus property by means of sealed bid or public auction.

In the case of sale by sealed bid or public auction, the purchasing officer shall cause to be published at least three days before the sale, in a locally adjudicated newspaper, a notice setting forth a general description of the property to be sold, the day, time and location of the sale. The terms of all such sales shall be cash in the amount of the full purchase price.

In conducting an auction, the purchasing officer may contract with a professional auctioneer and allow a flat fee, hourly fee or percentage of the amount of the sale to be paid based upon that which is common and customary method and rate for such auctioneering services.

(d) The purchasing officer may, when in his judgement, sale or auction of surplus property is infeasible or will result in minimal return to the city, recommend to the city council that such surplus property be donated to any non-profit corporation or school located within or serving the City of Laguna Niguel, or sold to City employees at fair market value. Such surplus property shall only be donated or sold upon approval of the city council.

SECTION 2. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The city council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. Effective Date.

This Ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and post a certified copy of the text of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this 16th day of October, 2001.

Cathryn DeYoung, Mayor

ATTEST:

Juanita Zarilla, City Clerk