

**CITY OF SAND CITY
ORDINANCE NO 19-03, 2019**

**AN ORDINANCE OF THE CITY OF SAND CITY AMENDING SAND CITY
MUNICIPAL CODE TITLE 12 RELATING TO EXEMPTIONS FROM PUBLIC
CONTRACTS CODE AND PURCHASING PROCEDURES**

WHEREAS, the City of Sand City currently does not have a comprehensive purchasing ordinance that establishes procedures for public bidding, contracting for public works projects, and for the purchase of materials, supplies, services and equipment; and

WHEREAS, in order for the City to take advantage of a variety of federal grants it is required to have such an ordinance; and

WHEREAS, the proposed purchasing ordinance sets forth procedures for contracting, and also establishes who has financial control over purchases, what authority limits that person has, and sets forth an array of additional controls to ensure fair contract procedures, prohibit conflicts and ensure the quality of purchases made by the City; and

WHEREAS, the attached ordinance, was presented to, and approved by, Sand City's Budget and Personnel Committee on March 22, 2019.

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

1. That the Sand City Municipal Code Title 12 be amended to add a new Chapter 18 relating to purchasing procedures and attached hereto as Exhibit A.
2. That the Sand City Municipal Code section 12.22.010 be amended to read in its entirety as follows, (amended text shown here in bold italics):

"12.22.010 Contracts Exempted From Bidding Requirements.

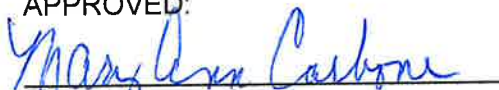
Notwithstanding the provisions of California Public Contracts Code Section 20162 or any other similar provision of the California Public Contracts Code, the threshold amount for contracts for public projects which must be let to the lowest responsible bidder after notice shall be **forty thousand dollars (\$40,000.00)**. The City Council may authorize expenditure of up to **forty thousand dollars (\$40,000.00)** for any contract for a public project without requiring formal bids for the public project as provided in the California Public Contracts Code."

3. This ordinance shall take effect thirty (30) days after its final passage.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Sand City, this 21st day of May, 2019 by the following votes:

AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:


Mary Ann Carbone, Mayor

ATTEST:


Linda K. Scholink, City Clerk

Exhibit A.

Chapter 12.18

PURCHASING PROCEDURES

12.18.010 Purchasing system adopted; purpose of Chapter.

The purchasing system set forth in this Chapter is adopted in order to establish efficient procedures for public bidding, contracting for public works projects and for the purchase of materials, supplies, services and equipment at the lowest possible cost commensurate with the quality needed; to exercise positive financial control over purchases; to clearly define authority for the purchasing function; and to assure the quality of purchases.

12.18.020 Designated Purchasing Agent.

For the purposes of this chapter, the term "Purchasing Agent" shall mean the City Manager, and/or his or her designated representative(s). City Manager has the power to delegate purchasing authority to City's department heads, provided that such delegation is provided in writing. The City Manager may, at his/her discretion, establish purchasing power limitations upon any of his/her designated representatives. In the event one (1) or more representatives are designated as City purchasing agents, those individuals shall be included in the City's Conflict of Interest Code as persons who must file an annual statement of economic interest with the City Clerk.

Sec. 12.18.030 Purchasing Agent Powers and Duties.

The Purchasing Agent shall have the following powers and duties:

- A. To negotiate, purchase or contract for materials, supplies, services and equipment, as limited in this Chapter, required by any department;
- B. To act to procure the needed quantity and quality of materials, supplies, services and equipment at the least expense to the City;
- C. To obtain as full and open competition as possible on all purchases;
- D. To keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- E. To prescribe and maintain such forms and other documents as are reasonably necessary to the purchasing operation;
- F. To supervise the inspection of all materials, supplies, services and equipment purchased to ensure quality and conformance with the specifications set forth in the purchase order or other contract.

12.18.040 Contracts/Authorization limits.

The award of any contracts for a value at or above twenty thousand dollars (\$20,000) is subject to City Council approval and/or ratification. Any additional authorization limits shall be as set by City Council resolution.

12.18.050 Bidding; When not required

The purchase of all equipment, supplies, materials, and general services, shall be made as set forth in sections 12.18.060 and 12.18.120 or by the alternate procurement methods set forth in this Chapter. However, formal bidding shall be dispensed with in the following situations:

A. When the purchase of equipment, supplies, materials or services is of a value less than forty thousand dollars (\$40,000). The forty thousand dollar (\$40,000) limit shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2024 and by the same amount every fifth year thereafter.

B. When an emergency threatens the life, safety, health or property of the community, the Mayor or City Manager may order the suspension of normal bidding and/or purchasing requirements for projects related to the abatement of the impacts or effects of such an emergency. The City Council shall, if possible, ratify such emergency suspension of procedures at the next properly noticed City Council meeting held following the emergency procurement and consider whether further suspension of procedures is required to abate the impacts of the emergency.

C. When the contract and/or purchase contemplated is capable of being performed as follows:

1. By a sole provider, such as a public utility or the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services, including but not limited to computer software and technology, or for purchase of goods or services when there is a demonstrated need for compatibility with an existing item or service;

2. By another governmental agency; or

3. Through purchasing contracts negotiated by another governmental agency or cooperative purchasing agency approved by the Purchasing Agent utilizing acceptable bidding procedures;

D. When purchasing used equipment.

E. When leasing or renting equipment.

F. When entering into contracts for a professional service, such as that available from an accountant, architect, attorney, land surveyor, engineer or other specialized consultant, provided however that the selection of professional services is based on the contractor's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

G. The purchases permitted under this Section shall be subject to fair, just, and equitable contract conditions.

12.18.060 Public works projects.

A. As used in this Chapter, with the exception of subsection (G) (prevailing wages) below, a “public works project” shall mean: (a) A project for the erection, improvement, painting, or repair of public buildings and works; (b) Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; (c) Street or sewer work except maintenance or repair; and/or (d) Furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

B. **Public Bidding -- Formal Bid and Contract Procedure.** Contracts for public works projects valued at forty thousand dollars (\$40,000) or more shall be by formal written bid and contract, in accordance with the provisions set forth in Section 12.18.120 (purchasing process) with contracts awarded to the lowest responsive and responsible bidder, except for public works contracts awarded pursuant to the provisions of Sections 12.18.070, 12.18.080 and 12.18.090. The forty thousand dollar (\$40,000) limit shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2024 and by the same amount every fifth year thereafter.

C. **Bids Exceeding Available Funds.** In the event all bids for a public works project exceed available funds as certified by the Purchasing Agent, and the lowest responsive and responsible bid does not exceed such funds by more than ten percent (10%), the Purchasing Agent or his/her designee is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate with the lowest responsive and responsible bidder for an adjustment of the bid price, including changes in the bid scope and bid requirements, in order to bring the bid within the amount of available funds. When the lowest responsive and responsible bid exceeds available funds by more than ten percent (10%), and an essential operation or City service affecting the public’s health, welfare or safety would be greatly hampered if the City were required to formally re-solicit bids, the procurement may proceed under the emergency procurement provisions of Section 12.18.050(B).

D. **Local Hire Standards.** All City contracts for public works projects subject to the above-stated formal bidding requirements shall contain provisions for a good-faith effort to hire qualified individuals who are local residents in accordance with the provisions set forth in Chapter 12.20 of this Code, unless such provision would be exempted under section 12.20.050

E. **Purchases of \$4,000 to \$40,000** Contracts for public works projects estimated in value to be four thousand dollars (\$4,000) or more but less than forty thousand dollars (\$40,000) may be made by the City in the open market. Open market contracts shall, unless infeasible, be based on at least three (3) informal bids or quotes and shall be awarded to the lowest responsive bidder. The four thousand dollar (\$4,000) and forty thousand dollar (\$40,000) limits shall be automatically increased by five hundred dollars (\$500) and five thousand dollars (\$5,000), respectively, on July 1, 2024 and by the same amount every fifth year thereafter.

F. **Purchases Less Than \$4,000.** Contracts for public works projects estimated in value to be less than four thousand dollars (\$4,000) may be made without informal bids or quotes, subject, however, to fair, just and equitable terms and conditions of purchase, and recognizing the need

for fair competition in the conduct of such purchases. The four thousand dollar (\$4,000) limit shall be automatically increased by five hundred dollars (\$500) on July 1, 2024 and by the same amount every fifth year thereafter.

G. **Prevailing Wages.** Contracts for City-funded public works construction projects valued in excess of twenty-five thousand dollars (\$25,000), and contracts for City-funded alteration, demolition, repair or maintenance projects valued in excess of fifteen thousand dollars (\$15,000), shall require payment of prevailing wages, in accordance with the requirements of the California Labor Code.

H. **Job Order Contracts.** Notwithstanding subsection (B) of this section, the City Council may award individual annual contracts, referred to as “job order contracts,” none of which may exceed five hundred thousand dollars (\$500,000) for repair, remodeling, paving, sidewalk repair, or other work to be done according to unit prices. No annual contracts may be awarded for any new construction; however, job order contracts may be utilized for new projects less than \$100,000. The contracts shall be awarded to the lowest responsive, responsible bidder and shall be based on plans and specifications for typical work. No job order contract shall exceed two (2) years (including any extensions), except as necessary to complete outstanding work orders that were awarded within the two (2) year period. For purposes of this section, the term “unit price” shall mean the amount paid for a single unit of an item of work, the term “typical work” shall mean a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project, and the term “repair, remodeling, paving, sidewalk repair, or other repetitive work to be done according to unit prices” shall not include design or contract drawings.

I. **Multiple Job Order Contracts Procedure.** Contracts for repair, maintenance, alterations, or other repetitive work necessitating award of more than one (1) job order contract, as authorized by subsection (H) of this section, may be awarded to multiple contractors/vendors following the procedures set forth herein. Job order contracts shall not be used for new construction projects, defined as construction or erection of new structures or public works projects on unimproved land.

1. **Selection Process.** Bidding, selection and award of multiple public works job order contracts shall be performed in accordance with the bidding procedures set forth in this chapter.
2. **Award of Multiple Contracts.** The City may award job order contracts to a pool of the lowest responsive, responsible bidders for the work set forth in the City’s call for bids and/or written plans and specifications based on unit prices. Up to four (4) multiple job order contracts for public repair, maintenance or alterations work may be awarded by the City Council. Award of multiple job order contracts shall be made to those bidders that submitted responsive and responsible bids, in sequential order based on their bid amount, with the first job order contract awarded to the lowest responsive, responsible bidder (hereinafter, the “first low bidder”), the second job order contract awarded to the second lowest responsive, responsible bidder (hereinafter, the “second low bidder”), and so on, up to a maximum of four (4) total multiple job order contracts.
3. **Contract Types.** The City’s call for bids and/or written plans and specifications for multiple job order contracts may be based on a particular category of work (such as sidewalk repair, curb ramps, etc.) or a specified trade or combination of trades.

4. Job Order Contracting Project Assignment. Following Council award of the multiple job order contracts, the City shall prepare drawings and/or specifications of sufficient detail to determine a scope of work and schedule for individual projects. These individual projects shall be offered first to the first low bidder, who will be entitled to perform the work unless the contractor declines the project or the City determines the contractor would be unable to timely and satisfactorily perform the work due to bidder responsibility factors established by City, including but not limited to adequate financial, material, equipment, facility, workforce and personnel resources. Upon such determination by City, the project shall be offered next to the second low bidder, who will be entitled to perform the work unless the project is declined or the City determines that the contractor would be unable to timely and satisfactorily perform the work due to the contractor responsibility factors set forth above. If there are additional on-call contractors, this process would continue as needed until the project is assigned.

5. Removal of Contractor from Approved Pool. The City may terminate a job order contract, at its discretion, should the contractor fail to adhere to the provisions set forth in the original call for bids. Removal of a contractor from the pool will not affect the term of the job order contracts for the remaining pool members.

J. The provisions of the Public Contract Code shall not apply unless otherwise adopted by the City.

12.18.070 Public works projects -- Design-build procurement.

Except as otherwise set forth in this Section, the provisions of Public Contract Code Section 22160 et seq., authorizing cities to utilize design-build procurement on designated public works projects exceeding one million dollars (\$1,000,000), are hereby adopted and incorporated by reference as if fully set forth herein. Utilization of design-build procurement must be approved by the City Council prior to commencement of the competitive solicitation process for any such authorized public works project. Prevailing wages shall be paid pursuant to Section 12.18.060(G).

12.18.080 Public works projects -- Renewable energy and energy efficiency projects.

The provisions of Government Code Section 4217.10 et seq., authorizing renewable energy and energy efficiency public works projects to be sole-sourced or procured through either formal or informal request for proposals following a public hearing process, including adoption of specific findings concerning the projected energy cost savings, are hereby adopted and incorporated by reference as if fully set forth herein. Prevailing wages shall be paid pursuant to section 12.18.060 (G).

12.18.090 Public works projects -- Public-private partnerships.

The City Council may authorize the City to enter into agreements with private entities for use of private sector investment capital for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, for infrastructure projects pursuant to Chapter 14 of the California Government Code,

beginning with Section 5956 (the “Infrastructure Financing Act”) in lieu of the other procedures specified herein.

12.18.100 Bid protests.

Bid protests shall be accompanied by bid protest filing fee of ninety-five dollars (\$95.00). Such protest fee is nonrefundable except in the instance where protestor prevails in the protest, City engaged in a processing error, or the call for bid documents is ambiguous. The following procedures shall apply to bidder protest(s):

(a) Grounds for Protest. Authority to protest shall be limited to bidding vendors. A written protest may be filed based on the following grounds:

1. Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents.
2. Such other grounds as would create a cause of action at law or in equity.

(b) Bidder protests must be submitted, in writing, prior to award of contract and within five (5) business days after the date aggrieved bidder knew or should have known of the facts giving rise to the bid protest award. Such protests may be filed immediately after the bid opening. Protests will be accepted in person or via mail, addressed to the City of Sand City, so long as accompanied by the bid protest filing fee as specified herein. Once the bid protest package has been received, follow-up communications in reference to the bid protest may be made to the City Manager by telephone, fax, or email.

The written formal protest must contain the following:

1. Identification of the specific City Purchasing Code or other statutory or regulatory provision(s) that the buyer or department is alleged to have violated;
2. Description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
3. A precise statement of the relevant facts that includes dates, timelines and involved parties, and all supporting documents. Supporting documentation not submitted within the five (5) business days described in this subsection (b) may not be reviewed;
4. An identification of the issue(s) that need to be resolved that support the protest;
5. A statement of the form of relief requested.

(c) If a timely protest is filed, City Manager shall notify the involved department(s) and any further action related to the bidding process shall be suspended until a determination is made on the merits of the protest.

(d) The City Attorney shall conduct an investigation, gather information, prepare documentation of its findings and make every effort to resolve the protest to the mutual satisfaction of all stakeholders. If the protest cannot be mutually resolved, the City Manager will make a decision as to the protest and so inform the involved department(s). The department(s) or City Manager will then notify the protest bidder(s), in writing.

(e) The notice to the protester shall state the basis of bidder’s protest(s), the results of the investigation, findings, recommendation(s) and reasons for the action taken and delivered, in writing, to the protesting bidder(s).

(f) Bidders may appeal, in writing, to the City Council within five (5) business days of receipt of the written notification. The City Council shall consider the appeal at the next properly noticed City Council meeting. The City Council’s decision on the appeal shall be final.

12.18.120 Purchasing process.

A. Formal Bid Procedure.

Purchases of materials, supplies, services and equipment valued at forty thousand dollars (\$40,000) or more shall be by written bid and contract pursuant to the procedure prescribed herein, except for (1) public works contracts pursuant to Section 12.18.060; (2) contracts exempted under Section 12.18.050; or (3) purchases awarded based on “best value” criteria as set forth in Section 12.18.140. The forty thousand dollar (\$40,000) limit shall be automatically increased by five thousand dollars (\$5,000) on July 1, 2024 and by the same amount every fifth year thereafter.

1. **Notice Inviting Bids.** Notices inviting bids and specifying the time and place of opening shall be published at least ten (10) days prior to the opening of the bids. Notice shall be published at least once in a newspaper of general circulation within the City and posted on the City’s website.
2. **Receipt and Opening of Bids.** All bids shall be sealed, with the bidder’s name and contact information identified on the envelope, and submitted to the City at or before the time specified on the Notice Inviting Bids. At the time and place specified on the Notice Inviting Bids, the bids shall be publicly opened and read. Any bid received after the time specified on the Notice Inviting Bids shall be rejected and returned unopened.
3. **Bidders’ Security.** At the discretion of the City, each bid may be required to be accompanied by a bid deposit or bond equal to at least ten percent (10%) of the bid amount, as set forth in the bid specifications.
4. **Award of Bid.** Except as otherwise provided herein, the City Council shall award the contract to the lowest responsive bidder whose bid complies with the bid specification. In determining responsibility, the City Council shall consider the known reliability, resources, experience, integrity, reputation for workmanship, and any other criteria set forth in the bid specifications, of the various bidders. The City Council may waive any informalities or minor irregularities in bids received.
5. **Rejection of Bids.** The City Council may reject any and all bids presented, and may, in its discretion, re-advertise for other bids.
6. **No Bids Received.** In the event no bids are received, the City Council may, in its discretion, re-advertise for other bids, or may determine and declare by resolution that the equipment, supplies, materials, services, or project may be more economically or satisfactorily procured in the open market and direct such procurement on the open market by direct negotiations.

7. Tie Bids. If two (2) or more low bids received are for the same total amount or unit price, quality and service being equal, the City may re-advertise for bids, draw lots or accept the bid it chooses.

B. Informal Bid Procedure – purchases of \$4,000-\$40,000.

Purchase of materials, supplies, services and/or equipment estimated in value at four thousand dollars (\$4,000) or more and below forty thousand dollars (\$40,000) may be made by the City informally without observing the formal bidding procedures prescribed in subsection (A) of this Section, or may be awarded based upon “best value” criteria as set forth in Section 12.18.140. Such purchases shall, unless unfeasible, be based on at least three (3) informal bids or quotes and shall be awarded to the lowest responsible bidder. The four thousand dollar (\$4,000) and forty thousand dollar (\$40,000) limits shall be automatically increased by five hundred dollars (\$500) and five thousand dollars (\$5,000), respectively, on July 1, 2024 and by the same amount every fifth year thereafter.

C. Purchases Less Than \$4,000.

Purchases of supplies, materials, services and equipment estimated in value to be less than four thousand dollars (\$4,000) may be made without informal bids or quotes, and must be subject to fair, just and equitable terms and conditions of purchase. The four thousand dollar (\$4,000) limit shall be automatically increased by five hundred dollars (\$500) on July 1, 2024 and by the same amount every fifth year thereafter.

D. Purchases Through Cooperative Purchases Contracts.

A cooperative procurement contract negotiated by another governmental agency or cooperative purchasing agency approved by the Purchasing Agent may be utilized for the purchase of goods, services and/or supplies if it meets all of the following:

1. It is in the best interest of the City.
2. It is to the City’s economic advantage.
3. It was competitively awarded using a process that complies with the policies, rules and regulations as approved by the Purchasing Agent or his/her designee.

12.18.140. Best-value Purchasing.

As an alternative to the competitive process set forth in Section 12.18.120 for the purchase of materials, supplies, services and equipment, vehicles, rolling stock and/or other items when design, performance, aesthetics and similar factors preclude award of a contract solely on the basis of lowest responsive and responsible bid, the City may utilize a best-value purchasing process. “Best value” means a procurement process based upon objective criteria for evaluating the bids with the resulting selection representing the best combination of price, quality, suitability and other factors as set forth in the solicitation for bids. Such process may be utilized for the purchase of materials, supplies, services and equipment, vehicles, rolling stock and other items if it meets the following criteria:

- (a) It is in the best interest of the City;
- (b) It is to the City's economic advantage; and
- (c) It was competitively awarded using a process that complies with the policies, rules and regulations adopted and approved by the Purchasing Agent or his/her designee.

12.18.160. Splitting Purchases Prohibited

No acquisition of materials, supplies, services and equipment, or contractual services from a single vendor or provider for a single project shall be accomplished by the issuance of several purchase orders for portions thereof.

12.18.180. Surplus Supplies and Equipment.

The Purchasing Agent shall have authority to, in the most equitable manner and in the City's best interest, dispose of all supplies and equipment that cannot be used by any City department or have become unsuitable for continued City use, or to exchange the same for, or trade in the same on, new supplies and equipment.

12.18.200. Conflicts of interest in Contracts with City.

No contract for any purchase of goods, labor or service, or any sale of City property in which any officer or employee is or becomes interested shall be allowed, and the resulting contract or sale shall be void.

12.18.220. Interference with Bidders Prohibited.

No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, materials or other supplies; nor favor one bidder over another; nor give or withhold information from any bidder not given or withheld from all other bidders, nor willfully mislead any bidder in regard to the character of the materials or supplies of a quality inferior to that called for by the contract or knowingly certify to a greater amount of labor performed or material or supplies furnished than has, respectively, been performed or received.

12.18.240. Acceptance of Gifts, etc., by City Employees Prohibited.

No officer or employee of the City may accept, directly or indirectly, any gift, rebate, money, or anything else of value whatsoever from any person or entity if the gift, rebate, money, or item of value is intended as a reward or inducement for conducting business, placing orders with, or otherwise using the employee's position to favor the contributor. Promotional items of nominal value shall not constitute a gift if received as a non-personal item by the officer or employee, and the item is distributed to customers or potential customers routinely by the contributor.