



Agenda Report

April 8, 2024

TO: Honorable Mayor and City Council

THROUGH: Finance Committee

FROM: Department of Finance

SUBJECT: **DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE WITHIN 60-DAYS AMENDING PASADENA MUNICIPAL CODE CHAPTER 4.08 TO INCREASE FORMAL AND INFORMAL PROCUREMENT LIMITS, AND RELATED CLEAN-UP CHANGES**

RECOMMENDATION:

1. Find that the action proposed in the agenda report herein is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines per Section 15061(b)(3)(Common Sense Exemption); and
2. Direct the City Attorney to prepare and return with an ordinance within 60 days that (a) sets the formal and informal procurement limits; and (b) updates and/or clarifies the Purchasing Ordinance as further described in this Agenda Report.

EXECUTIVE SUMMARY:

Pasadena's Charter, Article X, establishes regulations regarding contracts, purchases, and claims. A Charter amendment was approved by voters on March 6, 2024, amending Section 1001, which requires the City Council to establish contracting authority by ordinance. Further, Section 1003 of the Charter already requires the City Council to establish by ordinance bidding procedures, which the City Council has previously done, through Chapter 4.08 of the Pasadena Municipal Code, the Purchasing Ordinance.

The purpose of this Agenda Report is to recommend the City Council establish its contracting authority at \$250,000 and more, increase the formal procurement threshold from \$25,000 to \$75,000, the informal procurement threshold from \$3,000 to \$10,000, and make other changes to modernize terms and procedures within the Purchasing Ordinance to reflect current practice.

BACKGROUND:

Section 1001 of the City Charter, prior to the March 2024 Charter Amendment, established that all contracts of \$75,000 or more shall be approved by the City Council.

The \$75,000 amount was increased from \$10,000 in 1984. In 1983, the year before, the City Council had originally considered putting a \$75,000 amount (instead of \$10,000) to voters as a possible Charter amendment. However, that election was not conducted due to financial considerations. The contracting threshold in the Charter does not provide for periodic or annual increases based on corresponding increases to the Consumer Price Index (CPI). However, staff analyzed what the \$75,000 in 1984 would equate to in today's dollars. Using the methodology of Chapter 1.08.060 of the Pasadena Municipal Code (PMC) to account for annual CPI increases, \$75,000 in 1984 would be equivalent to \$245,000 in 2023.

In consideration of the Charter and Municipal Code requirements, staff conducted peer research and hired a consultant to make recommendations regarding the various limits to improve the overall procurement process and facilitate more contracts with Pasadena businesses. The Charter, as it currently reads, allows the City Council to establish contracting thresholds by Ordinance, allowing for the City Council to make changes to that figure in the future, based on the City's business needs.

Separate from contracting thresholds, the Purchasing Ordinance currently requires that a formal competitive bid or competitive selection process be used for all procurements of \$25,000 or more. Additionally, Pasadena Municipal Code Section 4.08.050 requires (a) an informal selection process for procurements less than \$25,000, including at least three proposals or quotes; and (b) procurements of less than \$3,000 to be made directly based on one proposal or quote. The \$3,000 threshold was put in place in June 2002, when the entirety of the Purchasing Ordinance was rewritten to comply with Proposition 209 in California, which referenced preferential treatment in city employment and contracting, along with eliminating affirmative action provisions. The City's Procurement Handbook prescribes that all procurements of less than \$3,000 shall be directed to Pasadena businesses if possible. This guidance has provided significantly more small procurements to Pasadena businesses.

At the October 23, 2023, City Council Finance Committee meeting, Committee members expressed interest in revisions to the Purchasing Ordinance related to procurement limits. The following procurement limit changes proposed are:

1. Increase the threshold for formal procurements from \$25,000 to \$75,000.

Formal procurements generally add at least a month to the procurement process for request for proposal or bid document development along with the formal scoring and review. In addition to the time spent by City staff, vendors interested in bidding or responding must dedicate significant time responding to the solicitation and may be required to provide bid bonds or security for their proposals at their own expense. Due to the additional work and financial requirements involved, vendors may choose not to respond, especially since the procurement, at most, would result in \$25,000 of payment under the current threshold. Increasing the threshold for formal procurements from \$25,000 to \$75,000, which would therefore allow informal procurements for contracts under \$75,000, will provide greater capacity for staff and vendors on procurements under \$75,000.

2. Increase the threshold for direct procurements from \$3,000 to \$10,000.

Small purchases under \$3,000 have had the greatest impact on the City being able to direct procurements to Pasadena businesses. Procurements can be done by soliciting one quote, and the City's Procurement Handbook provides that staff shall solicit bids or proposals from Pasadena vendors first. By increasing the amount for small purchases to \$10,000, it will greatly expand the capacity and ability to directly award contracts to Pasadena businesses. In June 2018, the U.S. Office of Management and Budget increased the federal limits of micro-purchases from \$3,500 to \$10,000; therefore, the proposed Pasadena increase would be consistent with the federal government's procurement practice.

The proposed increases to the various limits on contracting authority and procurement processes are exclusive to procurements. Dollar value limits and thresholds related to claims for damages against the City, compliance with the Taxpayer Protection Act, or other non-procurement related authorizations would not be affected by the proposed changes to the Purchasing Ordinance.

In addition to the procurement threshold changes, staff recommends additional amendments and clean-up language to the Purchasing Ordinance regarding how solicitations for procurement are advertised, how bids are submitted, the applicability to all operating companies, and the requirement to encumber funds for all contracts. The proposed changes include:

1. Amend PMC Section 4.08.020 definitions, and sections that refer to these terms, to modernize the use of certain terms and ensure compliance with state and federal regulations.
2. Remove PMC Section 4.08.040 – The City no longer provides checks to vendors with blank amounts to be filled in by the vendor regardless of the amount.
3. Amend PMC Section 4.08.060 – Notice inviting bids. Amend the requirement for the bids to be published for at least one day in a newspaper of general circulation by permitting notifications in trade journals, lists of qualified or registered vendors, or a combination of notice methods.
4. Amend PMC Section 4.08.090 – Bid opening. Amend the requirement for bids to be submitted in a sealed envelope only and provide for the notice of inviting bids to determine the manner in which bids must be submitted.
5. Amend PMC Section 4.08.100 – Contract award. Remove the requirement to pre-determine the use of a particular form of contract, such as a purchase order.
6. Amend PMC Section 4.08.120 – Rejection of bids. Amend to permit the City Manager to reject bids below the City Council's approval authority, currently proposed at \$250,000.

7. Amend PMC Section 4.08.151 – Monitoring and reporting. Amend to require the Director of Finance, instead of the City Manager, to report procurement activity annually on all procurements including procurements with small and local businesses.
8. Amend PMC Section 4.08.180 – Encumbrance of department funds. Remove the requirement to encumber funds for all contracts or purchase orders. Encumbering funds secures those funds in a specific account number for the future payment(s) related to the contracts. The encumbrance of funds was a valuable accounting method prior to the use of modern accounting systems to ensure funds would be available to support purchases, and is still utilized today; however, not all contracts should include encumbrances. The City awards contracts and purchase orders for what are known as blanket contracts or purchase orders that may cover multiple fiscal years or may be used to support multiple departments from undetermined account numbers. In many cases, these contracts may have a not-to-exceed amount that may extend multiple years, but without an amount assigned to each year. Lastly, the City also engages in revenue contracts, and encumbrances are an expense transaction.
9. Amend various sections within the Purchasing Ordinance to reference operating companies generally, instead of naming each operating company individually.
10. Amend various sections within the Purchasing Ordinance to clarify that the city attorney approval of specifications, solicitations, or contracts is an approval as to form.
11. Amend various sections of the Purchasing Ordinance to make clarifying, clerical, and conforming changes.

ENVIRONMENTAL ANALYSIS:

The action proposed herein has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the “Common Sense” exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with the proposed Municipal Code amendments to establish and increase procurement limits and make other administrative changes.

FISCAL IMPACT:

There is no direct fiscal impact the to the proposed changes.

Respectfully submitted,



MATTHEW E. HAWKESWORTH
Director of Finance

Approved by:



MIGUEL MARQUEZ
City Manager