

**ORDINANCE NO. 1563 (10)**

**An Ordinance Of The City of Lompoc  
County Of Santa Barbara, State Of California  
Amending Sections 3.36.030, 3.36.040, 3.40.020, 3.40.030, 3.40.050, 3.40.060,  
3.36.170, And Adding Section 3.36.165 To Chapter 3.36, Of The Lompoc  
Municipal Code Relating To Purchasing And Public Projects.**

THE CITY COUNCIL OF THE CITY OF LOMPOC DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** The opening paragraph of Section 3.36.030. of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

Except as otherwise provided in this Chapter, all contracts of the City for the purchase of materials, supplies, equipment, or services of an aggregate annual value exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00) shall be awarded after compliance with the sealed bid procedures contained in this Section:

**Section 2.** Subsection 3.36.030.D. of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

D. Public Notice. Public notice of invitations to bid shall be published at least ten (10) calendar days prior to the date of bid opening on the City Web Site and publicly announced by mail, email, fax or in a newspaper printed, published, or circulated in the City of Lompoc. The notice shall include a general description of the product or service required, and the place, date, and time of bid opening.

**Section 3.** Subsection 3.36.030.H. of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

H. Award to Lowest Responsible Bidder. All contracts of the City for the purchase of materials, supplies, equipment, and services of a value exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00) shall be awarded to the responsible bidder whose bid is lowest in price and conforms to all material terms, conditions and criteria set forth in the invitation to bid. Factors to be considered in determining the successful bidder are contained in Section 3.36.130 of this Code. If prices quoted or received in two sealed bids are equal, then either bid may be selected. Except for procurements made with federal or state funds, or in cooperation with another public entity, the City's ultimate receipt of sales tax shall be considered in determining the lowest price. The City Council may provide incentives, from time to time, for vendors supplying recycled products.

**Section 4.** Subsection 3.36.030.I of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

I. Awarding Authority. Purchases exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00) shall be awarded by the City Council. Other purchases may be awarded by the City Administrator or any person designated in writing by the Administrator unless, at the time of approval of the City's budget, Council expresses a desire to review a specific requirement prior to purchase. The

Administrator and the appointed designees may execute contracts and other necessary related documents on behalf of the City within their respective designated monetary authorities. At the request of the relevant department, contracts or purchase orders under this section may be adjusted by the Purchasing Agent, so long as no such change order exceeds the lesser of twenty-five percent (25%) of the contract/purchase order amount or Thirty Thousand Dollars (\$30,000.00).

**Section 5.** Subsection 3.36.040.A of Chapter 3.36 of the Lompoc Municipal Code is hereby amended so that whenever “\$100,000.00” appears it shall be replaced by “One Hundred Twenty-five Thousand Dollars (\$125,000.00).”

**Section 6.** Subsection 3.36.040.D of Chapter 3.36 of the Lompoc Municipal Code is hereby amended by adding the following as a separate paragraph after subparagraph 3 to read as follows:

Such Cooperative Purchasing may include, but is not limited to joint or multi-party contracts between public agencies and public agency contracts negotiated to be available to other public agencies.

**Section 7.** Subsection 3.36.040.F.2 of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

2. **Notice of Solicitation.** Notice of a request for proposals shall be published at least ten calendar days prior to the date of proposal opening on the City Web Site and publicly announced by mail, email, fax or in a newspaper of general circulation printed, published, or circulated within the City of Lompoc. The notice shall include a general description of the item or service required and the place, date, and time of proposed opening. The Purchasing Agent or department director may give such other notice as they deem appropriate.

**Section 8.** Subsection 3.36.040.F.4 of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

4. **Proposal Evaluation.** The City may, at any time, waive or modify any element of the request for proposals and/or any evaluation criterion. If so stated in the request for proposals, selection may be made, without negotiation, solely on the written submittals. If negotiation is elected, the City may negotiate with one or all offerors that the City determines have a reasonable chance of selection, based on price and other factors stated in the solicitation.”

**Section 9.** Subsection 3.36.040.F.6 of Chapter 3.36 of the Lompoc Municipal Code is hereby amended so that whenever “\$25,000.00” appears in that section it shall be replaced by “Thirty Thousand Dollars (\$30,000.00).”

**Section 10.** Section 3.36.165 is hereby added to Chapter 3.36 of the Lompoc Municipal Code read as follows:

**Section 3.36.165. Notice of Intent to Award.**

After the opening of a sealed or formal bid/proposal, and after the City has identified the awardee, a "Notice of Intent to Award" will be sent to all actual bidders or "Interested Parties" in accordance with Section 3.36.170.A by mail, email, or fax at the option of the City, and all applicable response periods will begin on the date the notice was sent identifying the awardee and including at least the following text:

Protests must comply with the requirements of Sections 3.36.170 *et seq.* and be submitted no later than five (5) business days after the date of this notice.

**Section 11.** Section 3.36.170 of Chapter 3.36 of the Lompoc Municipal Code is hereby amended to read as follows:

Section 3.36.170. Procurement Protest Procedures.

Procurements for public projects, materials, supplies, goods and services shall be protested in accordance with this Section. Protests not complying with the provisions of this Section shall not be reviewed.

A. Definitions. For the purposes of this Section:

1. "Bid" includes "offer" and "proposal" in the context of formal, informal, or negotiated procurements.
2. "Days" means business days unless otherwise indicated.
3. "Filing Date" or "Submission Date" means the final date for receipt by the City Clerk or the Purchasing & Materials Manager of the City of Lompoc.
4. "Interested Party" means an actual bidder or offeror.
5. "Procurement Staff" means the Purchasing & Materials Manager, Public Works Director, Community Development Director, Utilities Director, or other department director initiating the procurement being requested, or the designees of any of these persons.
6. "Reviewing Officer" means the City Administrator or his or her designee.
7. "Mail" means any delivery service such as US Mail, UPS or FEDEX.

B. Grounds for Protest. Any interested party may file a written protest on any of the following grounds:

1. The existence of a significant defect, error or omission in the solicitation documents issued by the City;
2. Failure of the City to follow the procedures of this Chapter;
3. 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 therefore;

4. Award of the contract by the City to a bidder other than on the basis stated in the solicitation documents; or

5. Such other grounds as would state a cause of action at law or in equity.

C. Disallowed Protest Grounds. Protests based on the following grounds shall not be considered:

1. An evaluator's professional judgment on the quality of a response; or
2. The Proposer's assessment of the agency's needs or requirements; or
3. Any grounds other than those listed above.

D. Protest Filing and Delivery. Protests shall be in writing and hand delivered or sent by certified U.S. mail, return receipt requested.

1. To the Purchasing & Materials Manager (for protests of purchases of materials, supplies, equipment, and services), or
2. To the City Clerk (for protests related to public projects).

E. Protest/Appeal Contents. Protest documents shall:

1. Include the name, address, business telephone, email, and fax number of the protestor;
2. Identify the procurement or project under protest by name, solicitation number, and submission date;
3. Contain a concise statement of the grounds for protest and the facts supporting such grounds; include all supporting documentation. Documentation submitted after filing will not be reviewed.
4. State the form of relief requested.
5. Be accompanied by a certified check or cashier's check made payable to the City of Lompoc in the amount of \$52.00, or in such other sum as the City Council may establish from time to time. Protests filed without the fee will not be reviewed.

F. Protestors may be represented by Legal Counsel at their own expense. Protestors shall bear all costs of the protest other than salary and personnel costs of City employees.

F. Pre-Opening Protest Period – Solicitation Documents. Interested parties wishing to protest City solicitation documents must do so before the final date to accept bids and within five (5) business days after the date the solicitation documents are issued or amended.

G. Post-Opening Protest Period – In cases of protests involving aspects of City procurement other than solicitation documents, the following procedures apply:

Interested parties shall protest City procurement matters other than solicitation documents within five (5) business days after Notice of Intent to Award are mailed. In the case of Informal Public Project Bids (per Subsection 3.40.020.B), interested parties shall protest no later than two business days after Notice of

Intent is mailed.

H. Protest Process

1. Procurement Staff Review. Upon receipt of a timely protest, procurement staff shall review all the submitted materials and create and retain a written record of their review. Not later than twenty (20) days after receipt of the protest, procurement staff shall respond in writing to the protest and to each material issue raised in the protest.

a. In the event of a timely protest, procurement staff shall not proceed with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted unless the City Administrator determines that the award of a contract without delay is necessary to protect substantial interests of the City.

b. Procurement staff may elect, but are not obligated, to attempt to resolve the protest with the affected parties. "Resolution" means the formal withdrawal of a protest by the protestor, or written acknowledgement of protest resolution signed by the City and the protestor.

If procurement staff attempts resolution, protestors shall be notified in writing of the date on which their matters shall be considered and shall be afforded an opportunity to present evidence for consideration to the City and such technical or other staff as the City deems necessary.

c. Procurement staff shall make a formal decision ["Protest Determination"] to deny or uphold the protest and shall notify the protestor of that decision by mail. The decision notification shall include a statement that the protestor has the right to appeal within five (5) business days of the decision notification.

2. Administrative Hearings Protests of Procurements.

a. Any Protestor may appeal in writing the decision of the Procurement Staff to an Administrative Hearing Officer within 7 days of the date of the procurement staff's written decision in conformity with this section.

b. A written request for administrative hearing shall be accompanied by a certified or cashier's check in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), payable to the City of Lompoc, and shall be received by the Purchasing & Materials Manager (for Goods or Services) or City Clerk (for Public Projects) not later than seven (7) days after dispatch of the procurement staff's Protest Determination sent by mail. The request for hearing shall include the specific grounds of the appeal.

c. The City of Lompoc shall select and engage an impartial and qualified person to act as hearing officer in the pending protest. The protestor shall have the right to twice reject the selected hearing officer, provided that the City is notified of such rejection in writing within three days after notice to the protestor of the name of the hearing officer.

d. Protests not heard within thirty days shall be deemed withdrawn, unless the City and the protestor otherwise mutually agree in writing. Protests shall be heard by a Hearing Officer as soon as possible and not in any event later than sixty days (60) after the receipt of the protestor's request for hearing.

e. Within fourteen (14) days after the hearing, the hearing officer shall forward to the City Council his or her written findings and recommendations regarding disposition of the protest. The City Council may adopt or reject all or part of the findings and may accept, reject, or modify the recommendations of the hearing officer or, alternatively, render an independent decision and directions for disposition of the protest and the progress of the solicitation and procurement at issue.

f. All costs of the hearing officer and expenses of the protest shall be borne by the protestor. The sums deposited with the request for hearing shall be credited to the costs of the hearing officer and other hearing expenses. Any unexpended portion of the deposit shall be refunded to the protestor within 60 days following the exhaustion of the protestor's remedies.

l. Protests of Federally Funded Procurements. If the protested procurement involves federal funds, the hearing officer shall accompany his or her decision with notice to the protestor of the right to appeal to the appropriate federal agency, which shall be identified by name and address. Such an appeal shall be filed with such agency within seven days of the date of the Hearing Officer's written decision/notice to the protestor. Appeals to the Federal Transit Administration shall comply with FTA Circular 4220.1 or the most current version as amended and supplemented from time to time.

**Section 12.** Section 3.40.020. of Chapter 3.40 of the Lompoc Municipal Code is hereby amended so that whenever "\$25,000.00" appears in that section it shall be replaced by "Thirty Thousand Dollars (\$30,000.00)" and whenever "\$100,000.00" appears it shall be replaced by "One Hundred Twenty-five Thousand Dollars (\$125,000.00)."

**Section 13.** Section 3.40.030. of Chapter 3.40 of the Lompoc Municipal Code is hereby amended so that whenever "\$25,000.00" appears in that section it shall be replaced by "Thirty Thousand Dollars (\$30,000.00)."

**Section 14.** Section 3.40.050. of Chapter 3.40 of the Lompoc Municipal Code is hereby amended to read as follows:

**3.40.050 Contract Award.**

If a contract is awarded, then it shall be let to the lowest responsible bidder. If two valid bids are identical and the lowest, then the City may accept either. Public projects exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00) shall be awarded by the City Council. Budgeted public projects of One Hundred Twenty-five Thousand Dollars (\$125,000.00) or less may be awarded, and the contract and other necessary documents executed, by the City Administrator or Acting City

Administrator. When informal bids are solicited for public projects and all valid bids received exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00), the City Council may, by resolution passed by a vote of at least four members, award a contract up to One Hundred Thirty-seven Thousand Five Hundred Dollars (\$137,500.00) to the lowest responsible bidder, if the Council determines the City's cost estimate was reasonable.

**Section 15.** Section 3.40.060 of Chapter 3.40 of the Lompoc Municipal Code is hereby amended so that whenever "\$25,000.00" appears in that section it shall be replaced by "Thirty Thousand Dollars (\$30,000.00)."

**Section 16.** This Ordinance shall be effective thirty (30) days following its adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following electronic vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

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Michael A. Siminski, Mayor  
City of Lompoc

ATTEST:

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Donna N. Terrones, CMC  
City Clerk  
City of Lompoc