

ORDINANCE NO. 1198

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
AMENDING CHAPTER 3.30, "PURCHASE OF SUPPLIES, EQUIPMENT AND
SERVICES AND PROCEDURES FOR PUBLIC WORKS PROJECTS", OF THE
SAUSALITO MUNICIPAL CODE

The City Council of the City of Sausalito does ordain as follows:

Section 1: Section 3.30.020 of the Sausalito Municipal Code, DEFINITIONS, is hereby amended to read as follows:

3.30.020. Definitions.

As used in this chapter:

"Contractor list" means a list of responsible prospective vendors capable of providing the items being bid upon.

"Emergency" means a sudden, unexpected occurrence that poses a clear and eminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

"Equipment" means furnishings, machinery, vehicles, rolling stock, and other personal property used in the City's business.

"General Services" means services such as janitorial, uniform cleaning, maintenance work and other services which do not require any unique skill, special background, or training. Obtaining such services at the lowest cost is the single most important factor in selection, as opposed to personal performance.

"Maintenance" work means:

- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
- (2) Minor repainting.
- (3) Resurfacing of streets and highways at less than one inch.
- (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
- (5) Work performed to keep, operate, and maintain publicly owned water or waste disposal systems.

“Professional or special services” means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, instructor, consultant or those services such as computer services and other services which require special performance criteria, specific experience, training, personal judgment, quality of work or factors other than simply obtaining the service at the lowest cost to the City.

“Public works” means a type of public construction project subject to the regulation of the State Public Contract Code or the State Labor Code, such as:

(1) The erection, construction, reconstruction, alteration, painting, re-painting, repair, alteration, carpet-laying, renovation, improvement or demolition of public buildings, structures, streets, walkways, water facilities, sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the City, done under contract and paid for in whole or in part out of public funds. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Furnishing supplies or materials for any of the works or projects described in subsection (1) above.

(3) For purposes of compliance with the State Public Contracts Code (and the CUPCAC bidding requirements thereunder) Public works does not include maintenance work as defined in this section.

(4) For purposes of compliance with the State Labor Code, except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages (“prevailing wages”) for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

(5) For purposes of compliance with the State Labor Code (but not the State Public Contract Code), public works does not include:

(1) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that is receiving payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

"Purchase" means the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.

"Purchasing officer" shall be the City Manager or her designated representative.

"Special equipment/supplies" means unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the City and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.

"Supplies" means office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the City's business, excepting supplies for a public work which is regulated under the Public Contracts Code Sections 20160, et. seq.

"Uniform construction cost accounting procedures" means those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to the Public Contracts Code Sections 22010, et seq.

Section 2: Section 3.30.130 of the Sausalito Municipal Code, CONTRACTING AUTHORITY, is hereby amended to read as follows:

3.30.130. Contracting authority.

The City Manager may approve purchases of supplies, general services, special equipment/supplies and equipment not covered within a construction contract or public work specification up to and including \$25,000. City Council approval shall be required for purchases greater than \$25,000.

Section 3: Section 3.30.150 of the Sausalito Municipal Code, BIDDING PROCEDURES FOR VARIOUS PURCHASE AMOUNTS, is hereby amended to read as follows:

3.30.150. Bidding procedures for various purchase amounts.

Except as authorized in Sections 3.30.190 and 3.30.200, or in the case of emergencies as described in Section 3.30.220, the purchase of supplies, general services, equipment and special equipment/supplies, not included in a construction contract or bid specification for a public work, shall be made as follows:

A. A purchase of \$5,000 or less may be made by departmental purchase in accordance with Section 3.30.160.

B. A purchase greater than \$5,000 to \$25,000 may be made by an informal bid procedure in accordance with Section 3.30.170.

C. A purchase of more than \$25,000 shall be made by formal bid procedure in accordance with Section 3.30.180.

Section 4: Section 3.30.160 of the Sausalito Municipal Code, DEPARTMENTAL PURCHASES, is hereby amended to read as follows:

3.30.160. Departmental purchases.

A department may purchase specified and limited supplies, equipment, special equipment/supplies and general services independently of the purchasing officer of a value not to exceed \$5,000, provided such department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes and purchasing such items. All such purchases shall be made with funds in an unencumbered appropriation.

Section 5: Section 3.30.170 of the Sausalito Municipal Code, INFORMAL BID PROCEDURE, is hereby amended to read as follows:

3.30.170. Informal bid procedure.

The purchase of supplies, equipment, special equipment/supplies and general services with the estimated value greater than \$5,000 but not exceeding \$25,000 shall be made by a purchase order as required by this article, which at the department head's discretion, based upon a small amount, urgent need and timeliness, may be let without the formal bidding procedures described in Section 3.30.180. In such case, the following procedures shall be followed:

A. **Solicitation of bids.** The purchasing officer or designee, before issuing the purchase order to a specific contractor/vendor, shall obtain at least three bids or price quotes, and the purchasing officer or designee may negotiate to obtain the lowest possible contract amount from any vendor contacted who can provide supplies, general services, or equipment within the time constraints of the department's request. The purchasing officer or designee may solicit or determine bids of prospective vendors by written request, telephone, or may base award recommendations upon current catalogs or advertisements. For purchases from \$5,000 to \$10,000, bids or price quotes may be oral provided a written record is maintained; for purchases greater than \$10,000 to \$25,000, bids or price quotes shall be written.

B. **Maintenance of records.** After placing the order, a written record of the contract, bids, quotes or advertisements used or received shall be open public records and maintained by the purchasing officer or the department in accordance with the City's records retention policy.

C. **Award.** The purchasing officer or designee shall award the purchase contract to the lowest responsive and responsible bidder, vendor or offerer whose quote, bid, or proposal fulfills the purpose intended, provided the amount is within the unencumbered appropriation for that item, or reject such bids or proposals, or negotiate further for more acceptable terms to the City.

Section 6: Section 3.30.180 of the Sausalito Municipal Code, FORMAL BID PROCEDURE, is hereby amended to read as follows:

3.30.180. Formal bid procedure.

For supplies, equipment, special equipment/supplies and general services with an estimated value in excess of \$25,000, purchases shall be made in accordance with the following formal written bid procedures:

A. **Published notices.** A notice inviting bids shall be published at least 10 calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation in the City, and also in appropriate trade publications, if any, circulated within the general area. Such other notice as the purchasing officer or designee deems appropriate shall be made.

B. **Notices inviting bids.** Notices inviting bids shall include a general description of the goods, articles, services or equipment to be purchased, any required

bidder's security or performance bonds, state where bid blanks and specifications may be secured and the time and place for the opening of bids.

C. **Contractor list.** The purchasing officer or designee shall maintain a list of responsible contractors for various categories of supplies, equipment, and general services. A solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the contractor list for the category of equipment, supplies or general services subject to the bid request.

D. **Bidder's security/failure to sign contract.** If the City requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting bids in an amount equal to 10 percent of the amount bid. Bidder's security shall be either a cash deposit with the City, a cashier's or certified check, payable to the City, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within 60 days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of its bid security, as may be determined by the City Council, upon the bidder's refusal or failure to execute the contract within 10 days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the Council may award the contract to the next lowest responsible bidder.

E. **Bid opening procedure.** Sealed bids shall be submitted to the City Clerk's Office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by City staff in public at the time and place stated in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of time designated in the City's records retention policy.

F. **Bid evaluation procedures.** All bids shall be analyzed by the purchasing officer or designee and the responsible department for compliance with bid specifications. The purchasing officer or designee shall prepare a recommendation to the department for award or rejection; the department shall then prepare a recommendation for award or rejection to the City Council.

G. **Rejection of bids.** If the City Council determines that bids are excessively high or that specifications were unclear, or if no bids are received, the Council may reject all bids presented and use whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract.

H. **Award of contracts.** Contracts shall be awarded by the Council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to criteria designated in the solicitation, provided the award amount is within the unencumbered appropriation for that item. The Council may waive any minor bid irregularities.

I. **Tie bids.** If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Council may accept either bid or accept the lowest bid made by negotiation with the tied bidders.

J. **Performance bonds.** The City may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the City requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

Section 7: Section 3.30.190 of the Sausalito Municipal Code, SPECIAL EQUIPMENT/SUPPLIES; SOLE SOURCE PURCHASES; AND BID EXCEPTIONS, is hereby amended to read as follows:

3.30.190. Special equipment/supplies; sole source purchases; and bid exceptions.

A. **Special Equipment/Supplies.** In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the purchasing officer may:

(1) Limit bidding to a specific product type, or a brand name product; or

(2) Utilize a request for proposal approach where warranties, servicing obligations, and product performance will be evaluated in addition to the price of the product, and the award of the contract is made by the Council to the proposer it deems is in the best public interest.

B. **Sole Source Purchases.** Commodities or services that can be obtained from only one vendor or one distributor authorized to sell in this area, are exempt from the competitive bidding requirements in Section 3.30.150 and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer. All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the appropriate department head and forwarded to the purchasing officer. Approval of any sole source acquisition shall be obtained from the City Council for an award of a contract or purchase order of \$25,000 or more.

C. **Bid exceptions.** The competitive bid process is not applicable to certain purchases. The following are exempt from bid processes of this chapter:

1. Departmental purchases, as defined in Sec. 3.30.160
2. Subscriptions
3. Trade circulars or books
4. Newspaper Advertisements and Notices
5. Utility Payments
6. Land

7. Cooperative purchasing with other agencies (see also Section 3.30.200)
8. Emergencies, as defined in Section 3.30.020 (see also Section 3.30.220)

Section 8: Section 3.30.200 of the Sausalito Municipal Code, COOPERATIVE PURCHASING WITH OTHER AGENCIES, is hereby amended to read as follows:

3.30.200. Cooperative purchasing with other agencies.

The bidding requirements of Section 3.30.150 shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the City, the purchasing officer is authorized to "piggy-back" onto or join into an existing written purchase contract, which contract was obtained within the last 12 months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, the City Council's consent shall be required prior to and for the joining of a "piggy-back" purchase or cooperative purchase for a purchase of \$25,000 or more.

Section 9: Section 3.30.310 of the Sausalito Municipal Code, BIDDING PROCEDURES FOR VARIOUS PROJECT AMOUNTS, is hereby amended to read as follows:

3.30.310. Bidding procedures for various project amounts.

A. A public work project of \$50,000 or less may be performed by City force account, by negotiated contract, or by purchase order.

B. A public work project greater than \$50,000 and less than or equal to \$100,000 may be let to contract by informal bid procedures.

C. A public work project of more than \$100,000 shall, except as otherwise provided in this chapter, be let to contract by formal bidding procedure in accordance with all applicable provisions of the California Public Contracts Code or successor statute.

D. The described project costs limits of subsections A through C shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Public Contracts Code Section 22020 or successor statute.

Section 10: Section 3.30.320 of the Sausalito Municipal Code, NEGOTIATE CONTRACT OR PURCHASE ORDER PROCEDURES, is hereby amended to read as follows:

3.30.320. Negotiate contract or purchase order procedures.

For those projects qualifying under subsection A of Section 3.30.310, the applicable department head shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. For any City force account work, the department head shall first comply with the guidelines established by the California Uniform Construction Cost Accounting Commission in determining the cost of the public work. The City Manager shall have the authority to award and to execute any contract for the public work qualifying under subsection A of Section 3.30.310 in an amount up to and including \$50,000 and City Council approval shall be required for any contract exceeding \$50,000.

Section 11: Section 3.30.510 of the Sausalito Municipal Code, REQUESTS FOR PROPOSALS/QUALIFICATIONS, is hereby amended to read as follows:

3.30.510. Requests for Proposals/Qualifications.

- A. Contracting for professional or special services is decentralized and shall be the responsibility of the department head requesting the service.
- B. The acquiring of professional or special services less than \$25,000 shall be procured through negotiated contract and, in general should include requests for proposals' from at least three firms whenever practical.
- C. The acquiring of professional or special services greater than \$5,000 and less than \$25,000 shall be procured through negotiated contract and in general should include requests for proposals from at least three firms whenever practical.
- D. Contracts for professional or special services estimated to cost more than \$25,000 must be approved by a resolution of the City Council. Recommendation for award should be pursuant to the following guidelines and based on competitive proposals; however, it is recognized that the City's need for professional or special services will vary from situation to situation, and accordingly, flexibility will be provided in determining the appropriate evaluation and selection process to be used in each specific circumstance.
 - a. The City Council Finance Committee should generally approve request for proposal (RFP) documents before they are issued.
 - b. In the event that the timely evaluation and selection of a consultant precludes City Council Finance Committee approval of the RFP before it is issued, the RFP may be approved by the City Manager for issuance by the Department Head. The RFP will be provided to the Finance Committee at its next regularly scheduled meeting.

- c. Neither total cost nor hourly rates are the sole criterion in selecting a provider of professional or special services. Proposals will be evaluated based on a combination of factors that result in the best value to the City, including but not limited to:
 - i. Understanding of the work required by the City
 - ii. Quality and responsiveness of the proposal
 - iii. Demonstrated competence and professional qualifications necessary for satisfactory performance of the work required by the City
 - iv. Recent relevant experience in successfully performing similar services to similar clients
 - v. Proposed methodology for completing the work
 - vi. References
 - vii. Background and related experience of the specific individuals to be assigned to the project
 - viii. Proposed compensation, rates and the basis of the proposed compensation (e.g., lump sum, time and expenses, reimbursable against a budget, or time and expenses not to exceed, cost plus fixed fee, etc.
 - ix. Proposed level of effort and schedule
 - x. Commitment regarding the continuity and level of involvement of key personnel.
- d. If it is determined that it is in the best interest of the City for services to be provided by a specific consultant—with contract terms, work scope and compensation to be determined based on direct negotiations—contract award will be made by the Council.

Section 12: Section 3.30.520 of the Sausalito Municipal Code, CONTRACTING AUTHORITY, is hereby amended to read as follows:

3.30.520. Contracting Authority.

The City Manager may approve professional service contracts up to and including \$25,000. The City Council shall approve professional or special service contracts greater than \$25,000.

Section 13. The provisions of this Ordinance are declared to be servable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances.

Section 14. This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

Section 15. This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

THE FOREGOING ORDINANCE was read at a regular meeting of the Sausalito City Council on the 6th day of October, 2009, and was adopted at a regular meeting of the City Council on the _____ day of October, 2009 by the following vote:

AYES:	COUNCILMEMBER:
NOES:	COUNCILMEMBER:
ABSENT:	COUNCILMEMBER:
ABSTAIN:	COUNCILMEMBER:

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK