

## ORDINANCE NO. 678

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING CHAPTERS 3.32 (PUBLIC WORKS BID REQUIREMENTS) AND 3.34 (PURCHASING) OF THE CALISTOGA MUNICIPAL CODE REGARDING PURCHASING PROCEDURES

The City Council of the City of Calistoga does hereby ordain as follows:

#### **SECTION ONE:**

**WHEREAS**, currently, there are various processes established by the City of Calistoga for the Public Works Bid Requirements and the City of Calistoga Purchasing Requirements; and

**WHEREAS**, the City Council finds that the proposed amendments to the Calistoga Municipal Code will help manage the procurement process in accordance with the law; and

**WHEREAS**, the City Council finds that the proposed amendments to the Calistoga Municipal Code will help meet the needs of the City of Calistoga through continuous improvement of purchasing systems and procedures; and

**WHEREAS**, the City Council finds that the proposed amendments to the Calistoga Municipal Code will maximize the purchasing value of public funds in procurement, to the fullest extent practicable, while giving consideration to the lifetime cost as well as other factors needed to determine the best over all value to the City; and

#### **SECTION TWO**

Chapter 3.32 of the Calistoga Municipal Code is amended and restated in its entirety to read as follows:

#### Chapter 3.32 PUBLIC WORKS BID REQUIREMENTS

Sections:

- 3.32.010 Purpose.
- 3.32.020 Bid limitations.
- 3.32.030 Maintenance of contractor's lists.
- 3.32.040 Eligible construction contracts.
- 3.32.050 Informal bidding.
- 3.32.060 Adoption of plans, specifications and working details for certain public projects.
- 3.32.070 Formal bidding.
- 3.32.080 Tie bids.
- 3.32.090 Rejection of bids.
- 3.32.100 Performance bonds.
- 3.32.110 Procedure for emergencies.

**3.32.010 Purpose**

This chapter is enacted for the purpose of implementing the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000 et seq.) (hereafter "CUCCAC") and to provide bidding procedures in undertaking public works projects. (Ord. 459, 1991).

**3.32.20 Bid limitations.**

The following bid limitations shall be in effect:

- A. Public projects of \$30,000 or less may be performed by City employees by force account, by negotiated contract, or by purchase order;
- B. Public projects of \$175,000 or less may be let to contract by informal procedures as set forth in this chapter and promulgated by the State Controller; and
- C. Public projects over \$175,000 shall, except as otherwise provided by State law, be let to contract by formal bidding procedures. (Ord. 459, 1991).
- D. The above limits shall be adjusted from time to time as provided by State Law. When in conflict, the latest CUCCAC bid limitations shall govern.

**3.32.30 Maintenance of contractor's lists.**

Each year, the City Manager shall mail a written notice to all construction trade journals designated by the CUCCAC, inviting all licensed contractors to submit the names of their firms to the City Manager for inclusion on the list of qualified bidders for the following calendar year according to category. The notice shall require that the contractor provide the name and address to which a notice to contractors or proposal should be mailed, a telephone number at which the contractor may be reached, the type or category of work in which the contractor is interested and currently licensed, together with the class of the contractor's license or licenses held and the contractor's license number or numbers. The City Manager shall create a new contractor's list on January 1st of each year which shall include at a minimum all contractors who submitted one or more valid bids to the City during the preceding calendar year and all contractors who have properly provided the City Manager with the information required to be added to the list. A contractor may be added to the list at any time by providing the required information. (Ord. 459, 1991).

**3.32.040 Eligible construction contracts**

- A. The following "public projects" shall be contracted for pursuant to the CUCCAC:
  - 1. Construction, reconstruction, erection, alteration, and renovation, improvement, demolition, and repair work involving any publicly owned, leased or operated facility;
  - 2. Painting or repainting any publicly owned, leased, or operated facility; and
  - 3. In the case of a publicly owned utility system, the construction erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

- B. The following "maintenance projects" may be contracted for under the CUCCAC:
1. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;
  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 serving or irrigation and sprinkler systems;
  5. Work to be performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts or higher; and
  6. Any other work which does not fall within the definition of a "public project" as defined in subsection (A) of this section.

**3.32.050 Informal bidding.**

Public projects of an estimated value between \$30,000 and \$175,000 may be made by informal bidding procedures. The Council delegates to the City Manager the authority to award informal contracts as follows:

- A. **Minimum Number of Bids.** The award of bids, whenever possible, shall be based on at least three bids and shall be awarded to the lowest responsible bidder.
- B. **Notices Inviting Bids – Contractors.** The City Manager shall solicit bids by written requests to contractors licensed and experienced for the type of public work to be performed. The City Manager shall maintain a list of qualified contractors, identified according to categories of work. The minimum criteria for the development and maintenance of the contractor's list shall be determined by the (CUCCAC). All qualified contractors on the list for the category of the work to be performed and/or all construction trade journals specified by the CUCCAC shall be mailed a notice inviting informal bids, unless the product of service is proprietary. All mailing of notices to such qualified contractors and construction trade journals shall be completed not less than 10 calendar days before the bids are due to be opened and awarded.
- C. **Notices Inviting Bids – Form.** The notice inviting informal bids shall be uniform and shall describe the project in general terms, describe how to obtain more detailed information concerning the project, and state the time and place for the submission of bids. The notice shall also specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded.
- D. **Written Bids.** Sealed written bids to be opened at the time specified shall be submitted to the City Manager who shall keep a record of all informal bids for a period of one year after the submission of the bids or the awarding of the contract. Such record, while so kept, shall be open to public inspection.
- E. **Award of Contract.** If a contract is awarded, it shall be awarded to the lowest responsible bidder. The City Manager is authorized to execute the construction contract provided the bid does not exceed the budgeted amount for the project and the contractor has posted the required bonds and insurance as established by resolution of the Council for all informal bids. In the event the lowest responsible bid exceeds the budgeted amount for

the project, the City Manager shall obtain authority by resolution of the Council to award the bid, together with the additional budget allocation. The City Manager shall report to the Council the results of the bidding procedure.

- F. Excess Bids. If all bids received are in excess of \$175,000, the Council may by passage of a resolution by a four-fifths vote, award the contract, at \$192,500 or less, to the lowest responsible bidder, if the Council determines the City's original cost estimate was reasonable. (Ord. 459, 1991).

**3.32.060 Adoption of plans, specifications and working details for certain public projects.**

The Council shall adopt plans, specifications, and working details for all public projects of more than \$175,000. Any plans prepared for a public project shall specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded. (Ord. 459, 1991).

**3.32.070 Formal bidding.**

Formal bidding for public projects of an estimated value over \$175,000 shall be made as follows:

- A. Authorization to Call for Bids. The Council shall authorize the call for bids by adopting a resolution in accordance with CMC 3.32.060.
- B. Notices Inviting Bids. The City Manager shall solicit bids by written requests to prospective contractors. The notice inviting formal bids shall state the time and place for receiving and opening sealed bids and distinctly describe the project. The notice shall be published in a newspaper of general circulation printed and published in the City at least 14 days before the date of opening the bids. The notice inviting bids shall also be mailed to all construction trade journals specified by the CUCCAC. The notice shall also be sent electronically, by either facsimile or electronic mail and mailed at least 15 calendar days before the date of opening bids. The notice shall also specify the classification of the contractor's license which a contractor shall possess at the time a contract is awarded.
- C. Written Bids. All bids shall be accompanied by either a certified or cashier's check or a bidder's bond, executed by a corporate surety authorized to engage in such business in the State, made payable to the City. Such security shall be in an amount not less than specified in the notice inviting bids or in the specifications referred to therein, or if no amount is so specified, then in an amount not less than 10 percent of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract within the time specified in the notice inviting bids or specifications referred to therein, the amount of the bidder's security may be declared to be forfeited to the City and may be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted in the amount thereof collected and paid into such fund. The bid shall also be accompanied by a certificate of insurance, together with any and all bonds required by resolution of the Council.
- D. Award of Contract. All bids shall be sealed and be filed with the City Manager no later than the opening time specified in the notice inviting bids. The City Manager shall receive and be the custodian of such bids and keep the bids confidential until they are opened and declared. All bids shall be publicly opened and declared at the time and at

the place fixed in the notice inviting bids. The bids shall be tabulated and analyzed by the City Manager. The City Manager shall review the bids and submit them to the Council with appropriate recommendations at the next regular Council meeting. The Council shall have the right to waive any informality or minor irregularity in a bid. If a contract is awarded, the Council shall award to the lowest responsible bidder by the adoption of a resolution. (Ord. 459, 1991).

**3.32.080 Tie bids.**

If two or more bids received are the same and the lowest, the Council may accept the bid it chooses. (Ord. 459, 1991).

**3.32.090 Rejection of bids.**

- A. In its discretion the Council may reject any and all (informal and formal) bids presented. If all bids are rejected, then after the first invitation of bids, after reevaluating its cost estimates of the project, the Council shall have the option of either of the following:
1. Abandoning the project or readvertising for bids in the manner described by this chapter; or
  2. By passage of a resolution by a four-fifths vote of the Council declaring that the project can be performed more economically by the employees of the City, having the project done by force account without further complying with this chapter.
- B. If no bids are received, the project may be performed by the employees of the City by force account, or by negotiated contract. (Ord. 459, 1991).

**3.32.100 Performance bonds.**

The Council shall have the authority to require a performance bond or labor and material bond in such amount as the Council shall establish to protect the best interest of the City before entering into a contract. If the Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids or in the specifications referred to therein. (Ord. 459, 1991).

**3.32.110 Procedure for emergencies.**

Pursuant to Public Contract Code Section 22035, the Council hereby delegates to the City Manager the power to declare a public emergency, subject to confirmation by the Council, by a four-fifths vote, at its next meeting. In cases of such great emergency, when repair or replacements are necessary to permit the continued conduct of City operations or services, or to avoid danger to life or property, any public facility may be replaced or repaired without giving notice for bids to let contracts. At the next Council meeting, the City Manager shall provide a full report on the declared emergency and necessary work performed.

**SECTION THREE**

Chapter 3.34 of the Calistoga Municipal Code is amended and restated in its entirety to read as follows:

Chapter 3.34  
PURCHASING

Sections:

- 3.34.010 Purpose
- 3.34.020 Exceptions – Public projects.
- 3.34.030 Purchasing Agent – Powers and duties.
- 3.34.040 Purchases of less than \$10,000.
- 3.34.050 Purchases which exceed \$10,000 but are less than \$30,000.
- 3.34.060 Purchases exceeding \$30,000.
- 3.34.070 Exceptions to competitive bidding requirements.
- 3.34.080 Splitting orders prohibited.
- 3.34.090 Availability of sufficient funds.
- 3.34.100 Recycled products.
- 3.34.110 Intergovernmental purchase.
- 3.34.120 Personal purchases not authorized.

**3.34.010 Purpose**

A purchasing system is hereby established in order to establish efficient procedures for the purchase of supplies, services and equipment with the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchase, and to clearly define authority for purchasing functions.

**3.34.020 Exceptions – Public projects.**

This chapter is expressly made inapplicable to:

- A. Contracts for public projects as defined by Public Contract Code Section 20161, which have a required expenditure in excess of the limit set by Public Contract Code Section 20162; and
- B. Contracts which are governed by the provisions of Chapter 3.32 CMC (which adopts the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000 et seq.)).

**3.34.030 Purchasing Agent – Powers and duties.**

The City Manager is designated as Purchasing Agent. The City Manager may delegate all or a portion of the purchasing duties to any City staff member. The Purchasing Agent shall have the authority to:

- A. Purchase or contract for supplies, services and equipment required by the City, in accordance with purchasing procedures outlined in this chapter;
- B. Negotiate and recommend execution of contracts for the purchase of supplies, services and equipment;
- C. Act to procure for the City the necessary quality in supplies, services and equipment at the lowest cost to the City;

- D. Establish and maintain such forms as reasonably necessary to the operation of purchasing guidelines;
- E. Supervise the inspection of all supplies, services and equipment purchased to ensure conformance with specifications;
- F. Recommend the sale or disposal of all excess supplies and equipment which cannot be used by the City, or which have become unsuitable for City use;
- G. Maintain a bidder's list, vendor's catalog file and records needed for the efficient operation of the purchasing system.

**3.34.040 Purchases of less than \$10,000.**

Where the amount or value involved is more than \$1,000, but less than \$10,000, the purchase may be made by the Purchasing Agent, without written bid. Every attempt shall be made to receive at least three price quotations.

**3.34.050 Purchases which exceed \$10,000 but are less than \$30,000.**

Where the amount of value involved exceeds \$10,000 but is less than \$30,000, the purchase shall require a minimum of three written informal bids.

A. Supplies and Equipment

- 1. Contract may be awarded by the Purchasing Agent.

B. Consultant Services

- 1. Contract negotiated by department requesting professional or consultant services.
- 2. Contract may be awarded by Purchasing Agent.

**3.34.060 Purchases exceeding \$30,000**

When the amount or value involved exceeds \$30,000 the purchase shall be made through formal competitive bid as outlined below:

- A. Notice inviting bids shall include a general description of the services and/or articles to be purchased, where bid blanks and specifications may be obtained, the time and place for bid openings, and whether bid deposit or bond and faithful performance bond will be required;
- B. Notice inviting bids shall be posted in a public place in the City that has been designated by ordinance as the place for posting public notices, at least 10 days before the date of opening the bids; and published one time in the newspaper of general circulation in the City at least 10 days before the opening of the bids;
- C. The Purchasing Agent shall also solicit bids from responsible prospective suppliers whose names are on the bidder's list and may advertise the notice inviting bids in applicable publications;

- D. When deemed necessary by the Purchasing Agent, any bidder may be required to submit a bid deposit or bond in an amount determined by the Purchasing Agent. A successful bidder (and his/her surety, if a bond is furnished) shall be liable for any damages upon the bidder's failure to enter into contract with the City or upon the bidder's failure to perform in accordance with the tenor of his bid;
- E. When deemed necessary by the Purchasing Agent, any person or entity entering into a contract with the City may be required to furnish a faithful performance deposit or bond in an amount determined by the Purchasing Agent;
- F. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening;
- G. At its discretion, the City may reject all bids presented and re-advertise for bids;
- H. Contracts shall be awarded by the City to the lowest responsible bidder, except as otherwise provided herein;
- I. If two or more bids received from responsible bidders are for the same total amount or unit price, quality and service being equal, preference shall be given to the local vendor.
- J. Contracting for professional and consultant services should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required.
- K. Once the department requesting the professional or consultant services determines a firm's adequate level of competence, the cost of service may be considered. However, the lower cost may not be the sole factor in deciding which firm or whom shall be awarded the contract. It may be in the City's best interest to award the contract to a higher priced contractor based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship and other factors required by the department or proposed by the contractor.
- L. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each City department responsible for recommending the professional or consultant service contract.
- M. The acquiring of professional or special services shall be procured through negotiated contract and may include request for proposals/qualifications (RFP/RFQ). Contracting for professional or consultant services is decentralized and shall be the responsibility of the department head requesting the service.
- N. The City Council will delegate the contract award for general purchases and professional and consultant services to the Purchasing Agent.

**3.34.070 Exceptions to competitive bidding requirements.**

- A. The provisions of this chapter requiring competitive bidding shall not apply to the



following:

1. Contracts involving the acquisition of professional or specialized services, such as, but not limited to, services rendered by architects, attorneys, engineers, and other specialized consultants;
  2. Where the City's requirements can be met solely by a single patented article or process;
  3. To situations where no bids have been received following bid announcements under other provisions of this chapter;
  4. When an emergency requires that an order be placed with the nearest source of supply;
  5. When a purchase involves goods of a technical nature where it would be difficult for a vendor to bid on a standard set of specifications, the Purchasing Agent shall undertake a thorough review of known products and a comparison of features which would most closely meet the City's needs at the least cost.
- B. When the procurement falls into any of the categories listed above, the Purchasing Agent may authorize contracts made by negotiation; provided, that the amount does not exceed \$30,000.
- C. Any request for an exception under this section shall include the nature of the contract, amount of the contract, and the reasons why competitive bidding is not feasible.

**3.34.080 Splitting orders prohibited.**

It is unlawful to split or separate into smaller orders the purchase of supplies or services for the purpose of evading the provisions of this chapter.

**3.34.090 Availability of sufficient funds.**

No purchase order shall be issued until it has been ascertained that there is to the credit of the department of the City for whose benefit such purchase is to be made, a sufficient unappropriated balance in excess of all unpaid obligations to defray the amount of such orders.

**3.34.100 Recycled products.**

All City purchases will be made with the effort to procure, when feasible, recycled products, reusable products and products designed to be recycled so long as the price differential is reasonable.

**3.34.110 Intergovernmental purchase.**

Cooperative contracts with other governmental agencies may be established to allow the City to utilize another government's contract that has been or will be competitively bid.

**3.34.120 Personal purchases not authorized.**

No goods or services for personal use or pleasure may be purchased with City funds. The City reserves the right to charge back the responsible party for all costs determined to be personally

motivated. (Ord. 477, 1992).

**SECTION FOUR**

This Ordinance shall take effect thirty (30) days after its passage. Before expiration of fifteen (15) days after its passage by the City Council, the City Clerk shall cause to be published a summary of this ordinance in a newspaper of general circulation within the City of Calistoga.

**SECTION FIVE - Severability**

If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION SIX - Judicial Review**

Any judicial review of this ordinance shall be by writ of mandate under Code of Civil Procedure Section 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after the adoption of this ordinance.

**SECTION SEVEN**

This ordinance shall be published in accordance with Government Code Section 36933 by either posting or publishing the ordinance in accordance with that law. Further, the City Clerk is directed to cause Chapters 3.32 and 15.44 of this ordinance to be entered in the Calistoga Municipal Code.

This ordinance was introduced with first reading waived at the City of Calistoga City Council meeting of **December 6, 2012**, and was passed and adopted at a regular meeting of the Calistoga City Council on **January 17, 2012**, by the following vote:

- AYES:**       **Vie Mayor Dunsford, Councilmembers Slusser, Canning, Kraus and Mayor Gingles.**
- NOES:**       **None.**
- ABSTAIN:**   **None.**
- ABSENT:**    **None.**

  
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**JACK GINGLES, Mayor**

**ATTEST:**

  
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**AMANDA DAVIS, Deputy City Clerk**