

ORDINANCE NO. 2024 - 636

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WOODSIDE TO AMEND TITLE III, ADMINISTRATION, CHAPTER 38 (BIDDING PUBLIC PROJECTS) OF THE WOODSIDE MUNICIPAL CODE

WHEREAS, by Resolution No. 2001-6284, the Town of Woodside elected to become subject to the Uniform Public Construction Cost Accounting Procedures in Public Contract Codes Section 22000 et seq., the Uniform Public Construction Cost Accounting Act (the “Act”);

WHEREAS, from time to time, Chapter 38 of the Woodside Municipal Code has been amended to reflect changes in law;

WHEREAS, the Town Council has reviewed the provisions of Chapter 38 and finds it appropriate to update its provisions to reflect changes in law and Town contracting procedures.

NOW THEREFORE, IT IS HEREBY ORDAINED, by the Town Council of the Town of Woodside to amend Woodside Municipal Code Chapter 38 as follows:

Sec. 38.01 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Public facility. Any plant, building, structure, ground facility, utility system, real property, streets and highways or other public work improvement owned, leased, or operated by the Town, a municipal corporation.

Public project. Any of the following:

- (1) Construction, reconstruction, erection, alteration, 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.
- (3) Public project does not include maintenance work such as routine, recurring work for the preservation of a publicly owned facility; minor repainting; landscape maintenance; resurfacing streets at less than one inch.

Sec. 38.02 ~~Formal bid~~—Public projects.

~~Contracts for Ppublic projects with an estimated value exceeding the amount specified as requiring formal bidding under Section 22032(e) of the as defined in the California Uniform Public Construction Cost Accounting Act (California Public Contract Code Section 22032 et seq.) shall be in writing and awarded by the Town Council to the lowest responsible and responsive bidder by written contract, except as otherwise provided herein.~~

Sec. 38.03 Force account—Public projects.

Public projects of an estimated value of \$60,000.00 or less may be performed by employees by force account, by negotiated contract, or by purchase order without formal or informal bid procedures.

Sec. 38.~~03-04~~ Informal bid procedures—Public projects.

(A) ~~For Ppublic projects with of an estimated value requiring informal bidding under Section 22032(b) of the California Public Contract Code shall be governed by the informal bid procedures as follows of \$60,000.00 to \$200,000.00:~~

(A1) A list of ~~qualified~~ contractors shall be developed and maintained by the Town Engineer in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

(B2) ~~Where a public project is to be performed, a~~A notice inviting informal bids shall be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Public Contract Code Section 38.0322034, and to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified when soliciting bids; Pprovided, however:

(~~1~~a) If there is no list of qualified contractors maintained by the Town for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the California Uniform Construction Cost Accounting Commission.

(~~b~~2) If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

(~~3~~c) Notices shall be mailed at least ten days before bids are due.

(~~4~~d) The notice shall describe the project in general terms; how to obtain more information; and state the time and place for bids.

~~(5) — The Town Manager or his/her designee shall have the authority to award informal bids.~~

(~~E~~3) If all bids received are in excess of the amount specified in Section 22032(b) of the California Public Contract Code, the Town Council may by 4/5 vote pass a resolution awarding the informal contract to the lowest responsible bidder provided:

(~~1~~a) The Council determines that the original cost estimate by the Town was reasonable.

(~~b~~2) The contract so awarded is for an amount not in excess of \$212,500.00 as authorized under Section 22034(d) of the California Public Contract Code.

~~Sec. 38.04 No bid — Public projects.~~

~~Public projects valued at less than the amount specified in Section 22032(a) of the California Public Contract Code may be performed by the employees of the Town by force account, by negotiated contract, or by purchase order without formal or informal bid procedures.~~

Sec. 38.05 Formal bid procedures—Public projects; notice inviting bids.

(A) For public projects of an estimated value above \$200,000.00:

- (1) The Town Council shall authorize issuance of notices inviting formal bids which shall include a general description of the public project to be constructed, shall state where bid forms and specifications may be secured, and the time and place for opening bids.
- (2) Notice inviting bids shall be published and posted at least fourteen calendar days before the date of opening the bids in a newspaper of general circulation as provided for in California Public Contract Code Section 22037. Notice shall also be sent by facsimile or email, and mailed, to all construction trade journals specified in California Public Contract Code Section 22036 fifteen calendar days before the opening of bids.
- (3) The Town Council shall also advertise bids by a notice posted at a publicly accessible location. Such posting places can include, but shall not be limited to, electronically accessible locations such as the Town's website or by other means that reasonably allow prospective bidders to be notified of pending projects.
- (4) The Town Council may require a bid to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification, only the method provided by Subsection (A)(3)(a) of this section will be used.

- (a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
- (b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
- (c) The lowest bid shall be the lowest total of the bid price on the base contract and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed before the first bid is opened.
- (d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders or proposed subcontractors or suppliers from being revealed before the ranking of all bidders from lowest to highest has been determined.
- (5) A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the Town from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.
- (6) Nothing in this section shall preclude the prequalification of general contractors or subcontractors.
- (7) The Town Council shall also solicit sealed bids from all responsible prospective bidders whose names are on the

bidders' list or who have made written request that their names be added thereto.

Sec. 38.06 Bidder's security – Public projects.

When deemed necessary, bidder's security may be prescribed in the formal or informal notices inviting bids. Bidders shall be entitled to return of bid security; provided, however, that a successful bidder shall forfeit his bid security upon his refusal or failure to execute the contract within ten days after the notice of award of contract. The Town Council may, at its option, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible and responsive bidder, and if the Town Council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the Town to the contract price differential between the lowest bid and the second lowest bid, subtracting actual administrative costs, and the surplus, if any, shall be returned to the defaulted bidder.

Sec. 38.07 Bid opening procedure – Public projects.

Sealed bids shall be submitted to the Town and shall be identified as "bids" on the envelope. Bids shall be opened in public at the time and place stated in the bid notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.

Sec. 38.08 Tie bids – Public Projects.

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 for re-advertising for bids, the Town Council may, in its discretion, accept the bid it chooses or accept the lowest bid made by and after negotiations with the tie bidders.
Sec. 38.09 Waiver of irregularity, rejection of bids – Failure to receive bids – Options on public projects.

(A) At its discretion, the Town Council may waive any irregularity in any bid received and award the contract.

(B) At its discretion, the Town Council may reject all bids presented. If the Town Council, prior to rejecting all bids, declares that the project can be completed more economically by force account and furnishes a written notice to an apparent low bidder mailed at least two business days prior to the hearing at which the Town intends to reject the bid, the Town Council may:

(1) Abandon the project or readvertise for bids.

(2) By a 4/5 vote declare by resolution that the project can be performed more economically by force account, and order the project done by force account.

(C) If no bids are received, the project may be performed by force account or by negotiated contract entered into without need for further bidding.

Sec. 38.10 Performance bonds – Public projects.

The Town Council shall have authority to require a performance bond before entering a contract in such amount as it finds reasonably necessary to protect the best interests of the Town. If the Town Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

Sec. 38.11 Lowest responsible bidder determination – Public projects.

In determining the “lowest responsible bidder,” the following factors may be considered in addition to price:

(A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(B) The character, integrity, reputation, judgment, experience and efficiency demonstrated in previous contracts or services for the Town or other contracting parties;

(C) The quality of performance demonstrated in previous contracts or services for the Town or other contracting parties;

- (D) The previous and existing compliance by the bidder with the laws and ordinances relating to a contract or service;
- (E) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;
- (F) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

Sec. 38.12 Change orders to public projects.

The Town Manager is delegated authority to approve, without seeking new bids, contract change orders to public projects up to the combined amounts funded for construction or purchase and for contingency as established in the Town Council's project authorization.

Sec. 38.13 Emergencies – Public projects.

- (A) The following procedures apply in cases where public projects must be conducted on an emergency basis:
 - (1) In cases of emergency when repair or replacements are necessary, the Town may proceed at once to replace or repair its facilities without adopting plans, specifications, working details, or giving notice for bids. The work may be done by day labor under the direction of the Town Manager, by contractor, or by a combination of the two.
 - (a) In the case of an emergency, the Town Council, pursuant to a 4/5 vote, may order repair or replacement of the Town's facilities, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving calling for bids.

- (b) Before the Town Council takes any action pursuant to Subsection (A)(1) of this section, it shall make a finding, based on substantial evidence, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency. The Town Council, by a 4/5 vote, may delegate, by resolution or ordinance, to the Town Manager, the authority to order action.
- (c) If the Town Council orders emergency action, it shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a 4/5 vote, that there is a need to continue the action.
- (d) If the Town Manager orders emergency action, the Town Council shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a 4/5 vote, that there is a need to continue the action.
- (e) When the Town Council reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the action may be completed by giving notice for bids to let contracts.

SECTION ONE: In the event that any provision of this ordinance is in conflict with any other ordinances of the Town of Woodside or the Woodside Municipal Code, the provisions of this ordinance shall prevail.

SECTION TWO: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of the Ordinance or any part thereof. The Town Council

hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

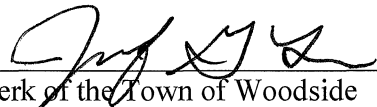
SECTION THREE: Pursuant to Section 36937 of the Government Code of the State of California, the Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION FOUR: The Town Clerk shall cause this Ordinance to be published in accordance with the requirements of Section 36933 of the Government Code of the State of California.

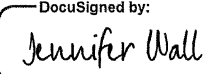
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I, the undersigned, hereby certify that the foregoing Ordinance is a full, true and correct copy of Ordinance No. 2024-636 of the Town of Woodside entitled as above; that it was introduced on the 12th of March, 2024, and was passed and adopted by the Town Council on the 26th day of March, 2024, by the following vote:

AYES, Councilmembers: Brown, Dombkowski, Fluet, Goeld, Shaw, and Mayor Wall
NOES, Councilmembers:
ABSENT, Councilmembers:
ABSTAIN, Councilmembers:


Clerk of the Town of Woodside

APPROVED:

DocuSigned by:

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Mayor of the Town of Woodside