

ORIGINAL

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO.1599

ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF NOVATO AMENDING AND  
RESTATING SECTION 2-8 OF THE NOVATO  
MUNICIPAL CODE ESTABLISHING A  
PURCHASING AND CONTRACTING SYSTEM

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

Section 1.

Sections 2-8.1 through 2-8.16 of the Novato Municipal Code are hereby amended in their entirety to read as follows:

**2-8 CONTRACTS AND PURCHASING**

**2-8.1 Adoption of a purchasing and contracting system.**

A purchasing and contracting system is hereby adopted in order to establish efficient procedures for the procurement of services, supplies and equipment at the lowest possible cost commensurate with the level of quality required, to exercise financial control over purchases, and to clearly define authority for the purchasing function. Section 2-8 is also adopted in order to memorialize some of the requirements of the Uniform Public Construction Cost Accounting Act whose procedures were made applicable to the City pursuant to City Council Resolution No.05-84.

**2-8.2 Definitions.**

For the purposes of this chapter, the words set out in this section shall have the following meanings:

- A. "Contract" means any agreement to do or not do a certain thing. For the purposes of this chapter, "contract" and "agreement" are synonymous. The term "contract" includes, but is not limited to, a purchase order; a contract for services; an addendum or change order, which means a change or addendum to an executed contract; a letter of agreement; and a memorandum of understanding.
- B. "Force account" is a term used in the Uniform Public Construction Cost Accounting Act and means an account which is used to account for work performed on public projects using the city's own resources, including but not limited to labor, equipment, materials, supplies, and subcontracts of the public agency.
- C. "Consultant or professional services" means the services rendered by architects, attorneys, engineers, doctors, financial consultants, planning or environmental consultants, investment advisors, bank or trustee officers, and other professional or specialized consultants.

D. "General services" means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:

1. Maintenance or nonstructural repair of city buildings, structures or improvements which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, elevator maintenance, custodial services and pest control, etc.;
2. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of city supplies and equipment;
3. Replanting, care or maintenance of public grounds, including, but not limited to, maintenance of trees, shrubbery, flowers, and lawns;
4. Providing temporary personnel services;
5. Performing repair, demolition or other work required to abate nuisances under this code;
6. Leasing or rental of equipment (personal property) for use by the city;
7. Maintenance of equipment owned or leased by the city; and
8. Providing other miscellaneous services to facilitate city operations.

"General services" does not include consultant or professional services or goods and services of a technical nature, or work performed as part of a public project.

F. "Supplies and equipment" means and includes tangible goods, supplies, equipment, vehicles, printing, materials, and furniture and furnishings purchased on behalf of the city.

G. "Goods and services of a technical nature" means hardware, software, or communications equipment, or any item that is substantially similar to the foregoing as determined by the Purchasing Agent, or any maintenance, training, installation, or other specialized services that relate to said items.

H. "Public project" shall have the meaning given that term by the Uniform Construction Cost Accounting Procedures ("UCCAP") set forth in the Uniform Public Construction Cost Accounting Act ("The Act") and referenced in Section 2-8.15.

I. "Purchasing Agent Authority Limit" means the dollar amount referred to in the California Public Contract Code Section 22032(a)

### **2-8.3 Purchasing Agent designated.**

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

A. Contract for or procure consultant or professional services, general services, supplies and equipment, and goods of a technical nature required by the city, in accordance with purchasing procedures outlined in this section;

- B. Negotiate and recommend execution of contracts for the purchase of consultant or professional services, general services, supplies and equipment, and goods of a technical nature;
- C. Act to procure for the city the necessary quality in consultant or professional services, general services, supplies and equipment, and goods of a technical nature at the lowest cost to the city;
- D. Prepare and recommend to the City Council revisions and amendments to the purchasing rules;
- E. Establish and maintain such forms and administrative policies as are reasonably necessary to the implementation and enforcement of this section;
- F. Supervise the inspection of all consultant or professional services, general services, supplies and equipment, and goods of a technical nature purchased to ensure conformance with specifications;
- G. Pursuant to Section 2-8.14, arrange the sale or disposal of any and all supplies and equipment and goods of a technical nature which are of no use, are no longer used, or have become obsolete or worn out, or which have otherwise become unsuitable for city use;
- H. Maintain a bidder's list and other records necessary for the efficient acquisition of consultant or professional services, general services, supplies and equipment, and goods of a technical nature;
- I. Join with other governmental agencies in joint purchasing endeavors where the purchasing procedures substantially conform to the provisions of this section and conform to state law; and
- J. Provide for the standardization of goods, supplies, materials, vehicles, and other equipment purchased, to maximize consistency, efficiency, and cost savings.

**2-8.4 City Council approval of contracts and purchases.**

City Council approval is required for all contracts and purchases with a dollar amount above the Purchasing Agent Authority Limit, unless otherwise specified by this section or code, or by another provision of federal or state law.

**2-8.5 Unauthorized purchases.**

No city officer or employee shall order any purchases or make any contract within the purview of this section other than in accordance with the provisions of this section, with the administrative regulations and procedures established hereunder and with the approval of the Purchasing Agent. Any purchase or contract made contrary to this section shall be null and void.

**2-8.6 Conflict of Interest**

In accordance with the requirements of State law, city officers and employees shall not be financially interested in any contract made by them in their official capacity or by any body or board of which they are members, nor shall city officers or employees be purchasers at any sale or vendor at any purchase made by them in their official capacity.

**2-8.7 Purchasing Agent authority for contracts and purchases**

- A. With the exception of public projects as defined in Section 2-8.2 and contracts authorized pursuant to 2-8.7(D) below, the Purchasing Agent is authorized to enter into contracts and purchases for any consultant and professional services, general services, supplies and equipment,

and goods of a technical nature by the city without the prior approval of the City Council if the total cost of the purchase is equal to or less than the Purchasing Agent Authority Limit.

B. Notwithstanding anything provided to the contrary herein, the Purchasing Agent may approve contracts to purchase supplies and equipment above the Purchasing Agent Authority Limit if said supplies and equipment are budgeted to be replaced from accumulated funds in the city's Equipment Replacement Fund and there exist sufficient funds in the city's Equipment Replacement Fund to make the purchase.

C. Emergency purchases made pursuant to Section 2-13 are subject to the authority limits specified in that Section.

D. The Purchasing Agent is authorized to approve and sign consultant and professional services contracts: (1) less than or equal to the Purchasing Agent Authority Limit, as that term is defined in Section 2-8.2(I); (2) of any value if the city funds being spent on the contract are completely reimbursed by an outside entity; and (3) for public projects, as defined in Section 2-8.2(H), related consultant and professional services contracts up to the dollar amount specified in Public Contract Code Section 22032(b).

**2-8.8 Purchasing award—Factors to be considered for responsiveness and responsibility.**

The following factors shall be considered in determining the responsiveness of potential contracts and purchases and the responsibility of vendors and bidders in accordance with applicable law:

- A. The amount of the contract or the purchase price;
- B. The ability, capacity, expertise and skill of the bidder or vendor to perform the contract or provide the service required;
- C. The ability of the bidder or vendor to perform the contract or provide the service promptly or within the time specified, without delay or interference;
- D. The reputation and experience of the bidder or vendor;
- E. The previous experience of the city, and the previous experience of other cities and jurisdictions, with the bidder or vendor;
- F. The previous and existing compliance by the bidder or vendor with the laws and ordinances;
- G. The sufficiency of the bidder's or vendor's financial resources and ability to perform the contract or provide the service;
- H. The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- I. The ability of the bidder or vendor to provide future maintenance and service for the subject of the contract or purchase;
- J. The number and scope of conditions attached to the contract or purchase;
- K. Compliance with any administrative policies referencing "green purchasing" procedures; and
- M. Any local preference for which a bidder may be eligible under Section 2-8.17.

**2-8.9 Contracts or purchases of consultant or professional services and goods of a technical nature**

A. Contracts or purchases involving the acquisition of consultant or professional services are exempt from competitive bidding. The Purchasing Agent shall award the contract to the consultant or service provider who is evaluated to be the most responsive to the needs of the City, as determined by the Purchasing Agent. The Purchasing Agent may utilize a request for quotation or request for proposal to ensure the services are matched with the needs of the city.

B. With respect to contracts for or procurement of professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, the Purchasing Agent shall establish administrative procedures to assure that such services are engaged pursuant to a fair and competitive selection process and on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices in compliance with Government Code Sections 4529.10-4529.20 and 4526 or their successors.

C. Contracts or purchases for goods of a technical nature, where it would be difficult for a vendor to bid on a standard set of specifications, are exempt from competitive bidding. The Purchasing Agent shall undertake a thorough review of known products and a comparison of features and award the contract to the vendor or contractor whose proposal would most closely meet the city's needs. In determining which proposal is the most responsive, the Purchasing Agent shall consider the factors specified in Section 2-8.8, including but not limited to, price.

**2.8.10 Contracts or purchases of general services, supplies and equipment.**

A. For purchases of general services or supplies and equipment of less than five thousand dollars (\$5,000), informal quotations should be obtained, but are not required. The Purchasing Agent shall conduct a review of prices and terms through his or her own investigation and contract with the supplier or vendor that can best provide the city with the needed general services, supplies, or equipment.

B. Purchases of general services, supplies and equipment greater than or equal to five thousand dollars (\$5,000) and less than or equal to the Purchasing Agent Authority Limit shall be based on at least three (3) quotations. Quotations may be in the form of a written quotation, electronic mail, facsimile, or other similar format. Verbal quotations are allowed only when the Purchasing Agent has made a determination that written quotations are unavailable. Quotations shall be documented on an appropriate form as prescribed by the Purchasing Agent and forwarded to the Finance Division for record-keeping purposes. Purchases governed by this sub-section shall be consummated after applying the factors stated in Section 2-8.8, including, but not limited to, price.

C. Purchases of general services and supplies and equipment with a cost greater than the Purchasing Agent Authority Limit shall comply with the formal bidding procedure set forth in Section 2-8.15 (C), unless excluded from such bidding by Section 2-8.11 or another relevant section of this Section 2-8. However, as an alternative to Sections 2-8.15 (C) (2) and 2-8.15 (C) (3), the Purchasing Agent may use his/her discretion to determine which notification methods shall be used to notify potential bidders.

D. At the discretion of the Purchasing Agent, the competitive bidding procedure set forth in Section 2-8.15(C) may be used for any acquisition of general services, supplies and equipment, regardless of the value.

#### **2-8.11 Exceptions to competitive bidding.**

The following are exceptions to the competitive bidding requirements specified in Sections 2-8.9 to 2-8.10 :

1. Whenever emergency purchases are made pursuant to Section 2-13; signature authorities, contracting procedures, approval limits and all other relevant portions of 2-13 shall govern;
2. Situations where no bids have been received following bid announcements. In said situations, the Purchasing Agent is authorized to determine which vendor or contractor will best meet the needs of the City and may negotiate a contract directly with such vendor or contractor. City Council approval for contracts above the Purchasing Agent Authority Limit is still required;
3. Sole source contracts shall be exempted from competitive bidding requirements; a sole source contract shall exist when the City's requirements can only be met by a specific patented article or process, or when there is only one feasible source that meets the City's requirements, or when the Purchasing agent has established standardization of a specific type of product that is only available from one feasible source; the Purchasing Agent shall determine which provider is the only feasible source; City Council approval for contracts above the Purchasing Agent Authority Limit is still required;
4. Consultant and professional services, pursuant to Section 2-8.9;
5. Goods of a technical nature, pursuant to Section 2-8.9;
6. When another public agency has administered a competitive bidding process and has a current valid agreement for the same or substantially similar consultant or professional services, general services, supplies or equipment; when purchasing any general services, supplies or equipment in such a fashion, the Purchasing Agent shall also attempt to obtain at least one quotation from a Local Vendor, as defined in Section 2-8.17 provided that the purchase or contract is not otherwise exempt under Section 2-8.17(c);

#### **2-8.12 Splitting orders prohibited.**

The purchasing dollar limits set forth in this Section are determined on a per order basis. It is unlawful to split or separate into smaller orders the contract or purchase of general services, supplies and equipment for the purpose of evading the competitive bidding provisions of this Section.

#### **2-8.13 Inspection and review.**

Except as to public projects, the Purchasing Agent shall require the inspection of supplies and equipment delivered, and contractual services performed, to determine their conformance with the specifications and requirements set forth in the purchase order or contract.

#### **2-8.14 Surplus supplies and equipment.**

A. The Purchasing Agent shall have the authority to determine all supplies and equipment which are no longer used or of use to the city or which have become obsolete or worn out. The Purchasing Agent shall have the authority to sell, trade, exchange, donate, dispose of, recycle, discard or destroy all said supplies and equipment. Such disposals may be made by auction, negotiated sale, or other methods, as determined by the Purchasing Agent. If items are to be donated, said donation must be for a public purpose (education, hospitals, parks, streets, or other obvious public benefit) and the Purchasing Agent shall determine the public purpose served by a donation prior to the donation occurring.

## **2-8.15 Public projects.**

Public projects as defined by the Act shall follow the purchasing procedures as set forth in Section 22032 et seq. of the Public Contract Code.

A. Public projects performed by force account, etc. The purchase or contract for public projects less than the dollar amount specified in California Public Contract Code Section 22032(a) may be performed by city employees by force account, by negotiated contract, or by purchase order

B. Public projects awarded by informal bidding procedures. The purchase or contract for public projects less than the dollar amount specified in California Public Contract Code Section 22032(b) may be let to contract by informal procedures as set forth in Section 22032 et seq. of the Public Contract Code.

1. A list of contractors shall be developed and maintained 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.
2. Where a public project is to be performed pursuant to informal bidding procedures, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with this section, or 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, or both. Additional contractors and/or construction trade journals may be notified; provided, however:
  - a. If there is no list of qualified contractors maintained by the city 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. 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. All mailing of notices to contractors and construction journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.
4. The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and shall state the time and place for the submission of bids.
5. The Purchasing Agent is authorized to award informal contracts pursuant to this section.
6. If all bids received are in excess of the dollar amount specified in California Public Contract Code Section 22032(b), the governing body of the public agency may, by adoption of a resolution by a four-fifths vote, award the contract, at the dollar amount specified in California Public Contract Code Section 22034(f) or less, to the lowest responsible bidder, if it determines the cost estimate of the project was reasonable.
7. If no bids are received through this informal bid procedure, the project may be performed by the employees of the public agency by force account, or negotiated

C. Public projects awarded by formal bidding procedures. The purchase or contract for public projects greater than or equal to the dollar amount specified in California Public Contract Code Section 22032(c) shall be authorized by City Council and shall comply with the competitive bidding procedures set forth below:

1. Notices inviting bids shall include a general description of the services and/or articles to be purchased or sold, where bid forms, plans and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond and a faithful performance bond will be required.
2. Notices inviting bids shall be published at least once in a newspaper of general circulation in the City of Novato. The first publication of said notice shall be at least 14 days before the date of bid opening. Notices shall also be sent 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 at least 15 days prior to the date of bid opening. Departments are also encouraged to utilize available "electronic bid board" available via City's website or other electronic notification services to advertise for bids.
3. The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidder's list and may advertise the notice inviting bids in applicable publications and websites readily accessible to the public.
4. When deemed necessary by the Purchasing Agent or City Council, any bidder may be required to submit a bid deposit or bond in an amount determined by the Purchasing Agent or City Council. A successful bidder (and his/her/its surety, if a bond is furnished) shall be liable for any damages upon the bidder's failure to enter into a contract with the city or upon the bidder's failure to perform in accordance with his or her bid.
5. When deemed necessary by the Purchasing Agent or City Council, 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 or City Council.
6. 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 thirty (30) calendar days after the bid opening.
7. In its discretion, the public agency may reject any bids presented, if the agency, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the agency, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the agency's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the agency intends to reject the bid. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the public agency shall have the option of either of the following: (1) abandoning the project or readvertising for bids in the manner described by this article; or (2) by passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account.
8. If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses.

9. If no bids are received through this formal bid procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract.  
**2-8.16** Intentionally left blank.

Section 2.

Section 2-8.17(c)(8) of the Novato Municipal Code is hereby amended to read as follows:

2-8.17(c)(8) Goods of a technical nature as defined in Section 2-8.2(G);

Section 3.

Section 2-5.8(s) of the Novato Municipal Code is hereby repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Effective date. This ordinance shall become effective 30 days after the date of adoption.

Section 5. Posting. This ordinance shall be published in accordance with applicable provisions of law, by either:

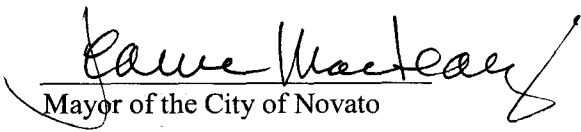
publishing the entire ordinance once in the Novato Advance, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

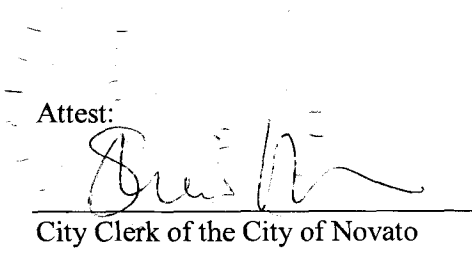
publishing the title or appropriate summary in the Novato Advance at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

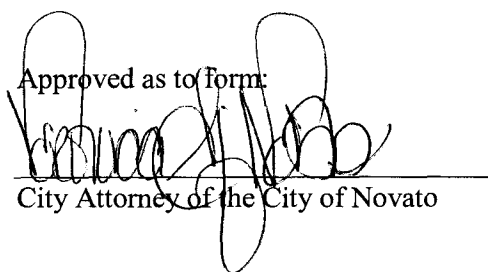
\* \* \* \* \*

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 19<sup>th</sup> day of May, 2015, and was passed and adopted at a regular meeting of the Novato City Council on the 2<sup>nd</sup> day of June, 2015.

AYES:	Councilmembers	Athas, Eklund, Kellner, Lucan, MacLeamy
NOES:	Councilmembers	None
ABSTAIN:	Councilmembers	None
ABSENT:	Councilmembers	None

  
Mayor of the City of Novato

Attest:  
  
City Clerk of the City of Novato

Approved as to form:  
  
City Attorney of the City of Novato