

**ORDINANCE NO. 582 N. S.**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE  
TOWN OF TIBURON AMENDING CHAPTER 3A OF THE  
TOWN'S MUNICIPAL CODE REGARDING  
CONTRACT AWARD PROCEDURES**

The Town Council of the Town of Tiburon does ordain as follows:

**SECTION 1. AMENDMENT OF MUNICIPAL CODE.**

(A) Chapter 3A, of the Tiburon Municipal Code is hereby amended to read as follows:

**Chapter 3A - TOWN CONTRACTS**

**Sections:**

**Article I. - General Provisions**

**3A-1 - Definitions.**

As used in this chapter, the following terms are defined in this section:

"Contract" means any binding agreement between the town and any individual, public agency, corporation, partnership or other entity. Contract shall also mean, without limitation, any document which purports to transfer liability to the town or in which purportedly obliges the town to indemnify, defend and/or hold harmless any individual, public agency, corporation, partnership or other entity.

"Formal bidding" means a contractor selection procedure that substantially complies with the process set forth in article V of this chapter for public works projects.

"Informal bidding" means any nonformal contractor selection procedure authorized by this chapter.

A "major public works contract" means a contract for a public works project whose value exceeds two hundred thousand dollars.

A "minor public works contract" means a contract for a public works project whose value does not exceed two hundred thousand dollars.

This threshold of two hundred thousand dollars that distinguishes major from minor public works projects shall be automatically adjusted to conform to the maximum set by section 22032(b) of the Public Contracts Code or its successor statute for projects that may be let by informal bidding. Except where otherwise indicated, "public works project" means any

project meeting the definition of a "public project" under section 22002 of the Public Contracts Code, as amended, or any successor statute.

### 3A-2 - General requirements.

- (a) No contract shall be valid or binding upon the town unless it is entered into and executed in accordance with this chapter.
- (b) Notwithstanding anything in this chapter to the contrary, no contract shall be valid or binding upon the town unless it has been approved as to form by the town attorney prior to execution on behalf of the town or unless, in the town manager's judgment, there are special circumstances such that the town's interest in entering into the contract on an expedited basis render it impracticable to obtain the town attorney's approval.
- (c) The town need not use formal or informal bidding to award a contractor except as expressly required by this chapter.

### 3A-3 - Contract authority of the town manager.

The town manager is authorized to negotiate and execute on the behalf of the town, without prior approval of the town council, any contract:

- (a) For purchases, general services, professional services or employment, or community, social or recreational services, and the total expenditure does not exceed sixty thousand dollars, provided that such monies have been appropriated or budgeted for such purpose and there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract;
- (b) For the lease of town property for a period of less than six months, or for the use of town property or facilities for a period not to exceed five days, in accordance with town policy, which require no payment of money by the town;
- (c) For settlement of a claim or litigation against the town, after consultation with the mayor, where the total expenditure does not exceed ten thousand dollars;
- (d) Allowing the right of entry onto town property.
- (e) In the case of Public Works contracts, the Town Manager's signature authority shall be in accordance with the provisions of Article IV – Minor Public Works Contracts.

### 3A-4 - Contract authority of department heads.

- (a) The director of public works shall be authorized to negotiate and execute contracts for the town for budgeted services, public works, supplies, materials and equipment required by his department up to a maximum of ten thousand dollars, provided that such

monies have been appropriated or budgeted for such purpose, and there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

(b) The chief of police, director of administrative services, town attorney and community development director shall be authorized to negotiate and execute contracts for the town for budgeted services, supplies, materials and equipment required by their respective departments up to a maximum of five thousand dollars, provided that such monies have been appropriated or budgeted for such purpose, and there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

(c) The town manager shall have discretion to lower the contract authority maximums in this section by written notice to the town official or officials involved, with a copy of said notice to the director of administrative services and the town attorney.

### 3A-5 - Emergency contract procedures.

(a) Except as set forth in subsections (b) and (c) of this section, the town manager is authorized to negotiate and execute on the behalf of the town, without prior approval of the town council, any contract for emergency purchases, services or public works projects, where the amounts are greater than set forth in section 3A-3(a) and (e) of this chapter. If the emergency requires letting a contract before the council can be convened, the town manager shall have the authority to let the contract, notwithstanding the procedures set forth in subsections (b) and (c) of this section. In an emergency situation, this authority shall extend beyond appropriated or budgeted funds to the extent necessary to protect the health and safety of persons or property.

(b) In the event of any emergency, the town council may proceed to enter into a contract for a minor public works project without giving notice for bids to let contracts.

(c) In case of an emergency, the council may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with this chapter.

### 3A-6 - Rejection of price quotations and bids.

The town manager shall have discretion to reject any or all price quotations or bids presented for any contract for purchase of supplies, materials and equipment, or for services. If the town manager rejects all price quotations or bids, the town manager may, in his discretion, re-advertise for new price quotations or bids. If the town manager determines that the amount of price quotations or bids was excessive, he may enter into a contract at a lower price without re-advertising for price quotations or bids within his contract authority. In the event that such lower price exceeds the contract authority of the

town manager, the manager may refer the contract at such lower price to the town council for award or take such alternate action with respect to the purchase as he determines to be in the town's best interests.

## **Article II. - Purchase Contracts for Supplies, Materials and Equipment**

3A-7 - Purchasing procedures.

(a) Purchases of supplies, materials and equipment that exceed thirty thousand dollars shall, whenever practicable, be based on at least three price quotations and shall be awarded on the basis of the price quotation most advantageous to the town. Price quotations may be solicited by direct mail requests to prospective vendors or by telephone.

(b) The town may consider factors other than price in determining the most advantageous price quotation. These factors shall include, without limitation, the quality and performance of the subject supplies, materials and equipment; the ability of the vendor to complete the transaction in a timely fashion; quality of the vendor's performance in past transactions with the town or others; and the ability of the vendor to provide future maintenance, repairs, parts and service.

(c) Price quotations shall not be required in any of the following circumstances:

(1) In the judgment of the town manager, the solicitation of price quotations would for any reason be an idle act;

(2) The purchase is for supplies, materials or equipment that can only be obtained from one vendor or manufacturer;

(3) In the judgment of the town manager, there exist particular time considerations such that it appears likely that the solicitation of price quotations would be contrary to the interests of the town.

3A-8 - Optional alternative procedure for purchases which exceed twenty-five thousand dollars.

For purchases of supplies, materials and equipment that exceed twenty-five thousand dollars, the town manager shall have the discretion to select a vendor pursuant to a formal bidding process, if the town manager determines that such a process is likely to be to the advantage of the town, or to be in the town's interest. Such procedure shall incorporate the methods used for selecting a contractor for a public works project by formal competitive bidding, as determined to be applicable by the town attorney.

## **Article III. - Contracts for Services**

3A-9 - Service contract procedures.

(a) Service contracts that exceed thirty thousand dollars shall, whenever practicable, be based on at least three price quotations and shall be awarded on the basis of the price quotation most advantageous to the town. Notwithstanding the foregoing, contracts for environmental review services may be let on the basis of two price quotations. Price quotations may be solicited by direct mail requests to prospective service providers or by telephone.

(b) The town may consider factors other than price in determining the most advantageous price quotation. These factors shall include, without limitation, the quality and performance of the subject services; the ability of the provider to provide the services in a timely fashion; the quality of the provider's performance in past transactions with the town or others; and the ability of the provider to provide future related services that the town may require.

(c) Price quotations shall not be required in any of the following circumstances:

(1) In the judgment of the town manager, the solicitation of price quotations would for any reason be an idle act;

(2) The contract is for services that can only be obtained from one provider;

(3) In the judgment of the town manager, there exist particular time considerations such that it appears likely that the solicitation of price quotations would be contrary to the interests of the town.

#### **Article IV. - Minor Public Works Contracts**

3A-10 - Minor public works contracts: small projects.

Minor public works contracts that do not exceed sixty thousand dollars may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. The dollar amounts set forth in this subsection shall be automatically adjusted to conform to the maximum set by section 22032(a) of the Public Contracts Code or its successor statute regarding informal bidding ordinances.

3A-11 - Informal bidding for minor public works contracts: other projects.

Minor public works contracts that exceed sixty thousand dollars shall be let according to this section.

(a) The town shall maintain a list of qualified contractors, identified according to categories of work. This list shall comply with all criteria established by the California Uniform Construction Cost Accounting Commission.

(b) All contractors on the list for the category of work being bid shall be mailed, faxed, or emailed a notice inviting informal bids unless the product or service is proprietary.

(c) All mailing of notices to contractors pursuant to subsection (b) of this section shall be completed not less than ten calendar days before bids are due.

(d) The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project and state the time and place for the submission of bids.

(e) The town manager shall have the authority to award informal contracts to contractors for public works contracts selected pursuant to this section.

(f) If all bids received are in excess of two hundred thousand dollars, the town council may, by adoption of a resolution by a four-fifths vote, award the contract, at two hundred twelve thousand five hundred dollars or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable. (g) The dollar amounts set forth in this section 3A-11 shall be automatically adjusted to conform to the maximum set by section 22034(d) of the Public Contracts Code or its successor statute regarding informal bidding ordinances.

3A-12 - Alternative procedure—Minor public works contracts.

Notwithstanding anything in this article to the contrary, the town manager shall have discretion to let any public works contract by formal bidding as described in article V of this chapter.

## **Article V. - Major Public Works Contracts**

3A-13 - General.

Major public works contracts shall be let by formal competitive bidding as required by the Local Agency Public Construction Act, Public Contracts Code sections 20100 et seq.

3A-14 - Notice inviting bids.

The notice inviting bids shall set a date for the opening of bids and shall be published at least twice, not less than five days apart, in a newspaper of general circulation, as required by statute. The first notice shall be published at least ten days prior to the date of opening of bids. In addition to the foregoing, the notice shall be published in such other newspapers and journals as the town engineer determines are likely to solicit the most favorable bids.

3A-15 - Bids—Rejection and re-advertisement.

The council shall have the discretion to reject any bids presented and re-advertise. After rejecting bids, the council may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by the town's own forces, day labor, or the materials or supplies furnished at a lower price in the open market. Upon

adoption of the resolution, the council need not re-advertise and may have the project done in the manner stated without further compliance with this chapter.

3A-16 - Choice of identical bids.

If two or more bids are the same and the lowest, the council may accept the one that it chooses.

3A-17 - No bids received.

If no bids are received, the council may have the project done without further compliance with this chapter.

3A-18 - Bidders—Presentation and security.

- (a) All bids shall be presented under sealed cover.
- (b) All bids shall be accompanied by bidder's security in an amount equal to at least ten percent of the amount bid. The security shall be in the form of cash, a cashier's check payable to the town, a certified check payable to the town, or a bidder's bond executed by an admitted surety insurer, payable to the town. A bid will not be considered unless accompanied by the required security.
- (c) If the successful bidder fails to execute the contract, the amount of bidder's security shall be forfeited to the town, except as otherwise may be provided by law.

## SECTION 2. SEVERABILITY.

If any section, subsection, clause, sentence, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council of the Town of Tiburon hereby declares that it would have passed this Ordinance, any section, subsection, sentence, clause or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

## SECTION 3. EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days after the date of passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation published in the Town of Tiburon.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on May 1, 2019, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on May 15, 2019, by the following vote:

AYES: COUNCILMEMBERS: Kulik, Fraser, Fredericks, Welner, Thier

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

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DAVID KULIK, MAYOR  
Town of Tiburon

ATTEST:

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LEA STEFANI, TOWN CLERK