

ORDINANCE 1138

AN ORDINANCE OF THE CITY OF TRACY AMENDING VARIOUS SECTIONS OF, AND ADDING NEW SECTION 2.20.262 TO, CHAPTER 2.20 OF TITLE 2 OF THE TRACY MUNICIPAL CODE (CONTRACTS AND PURCHASING)

WHEREAS, The City Council wishes to revise certain provisions of Chapter 2.20 of Title 2 of the Tracy Municipal Code relating to contracts and purchasing.

WHEREAS, The revisions include increasing the City's local vendor preference in the procurement of commodities and equipment as well as the procedures for obtaining bids for certain equipment, goods, and services from 5% to 10%; and

. WHEREAS, For consultant and professional services, the revisions allow taking into account the fact that a proposer is a local consultant or professional when awarding the contract. An exception to the local preference allows the City to receive State and Federal funding when State or Federal regulations prohibit the use of local preferences; and

WHEREAS, The City Council finds that providing a local preference for vendors, consultants and professionals promotes and encourages local businesses and assists in attraction of businesses to Tracy, which stimulates the local economy, job opportunities, job growth and development; and.

WHEREAS, The City Council finds that providing a local preference for vendors, consultants and professionals also provides non-monetary savings including: faster delivery; proximity of locations for repairs; and a potential reduction in traffic congestion, which furthers state and local goals of improving air quality. Furthermore, many local vendors, consultants and professionals support local community service needs; and

WHEREAS, The revisions also amend provisions of the Tracy Municipal Code relating to public construction projects by adopting the authorizing a design-build process in certain circumstances and by clarifying the change order process for such projects; and

WHEREAS, The revisions also include procurement and other procedures under the Uniform Public Construction Cost Accounting Act set forth in California Public Contracts Code sections 22000 through 22045.

NOW, THEREFORE, the City Council of the City of Tracy does hereby ordain as follows:

SECTION 1: Section 2.20.030 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

“2.20.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

(a) “Amendment” or “change order,” means change, or modification, or addendum to a contract after it has been executed.

(b) “Commodities” means any tangible goods or items such as supplies, parts and materials. Generally, they are consumable in City operations, become part or a component of City equipment or City facilities and/or have a useful life of one year or less.

(c) “Consultant services” or “professional services” means the services of an attorney, engineer, doctor, financial consultant, planning or environmental consultant, investment advisor, banking and trustee services, provision of temporary worker services, computer software services, concessionaire services, pesticide application services, janitorial services, landscape maintenance and tree trimming services or such other services as established by City Council resolution.

(d) “Contract” means any agreement to do or not do a certain thing. “Contract” and “agreement” and “Memorandum of Understanding” or “MOU” are synonymous. The term “contract” includes, among other things, a purchase order, a contract for services, and an addendum or change order.

(e) “Equipment” means tangible personal property with a useful life of more than one year. It may be mobile, portable or fixed; and is an independent functioning unit, as opposed to parts which are components. It would include office equipment, furniture, field equipment, shop, lab, and plant equipment, vehicles and rolling stock.

(f) “General services” includes:

(1) Any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:

(i) Non-custodial 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, electrical, mechanical, and elevator maintenance.

(ii) Installation, repair, modification, and maintenance of City equipment,

(iii) Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of City supplies, equipment, and waste products,

(iv) Providing other technical services to facilitate City operations such as communications, transportation, utilities,

(v) Performing repair, demolition or other work required to abate nuisances under this Code;

(2) Leasing or rental of equipment (personal property) for use by the City;

(3) A maintenance agreement for equipment owned or leased by the City.

"General services" does not include work defined as a public project under the Public Contract Code or services that are defined as professional services by this section or by City Council resolution.

(g) "Local vendor" or "local consultant or professional" means a person or legal entity which has a place of business (other than a post office box) within the City and has a valid, current business license issued by the City. To qualify as a local vendor or local consultant or professional for the purposes of sections 2.20.230, 2.20.130, or 2.20.140, the vendor, consultant, or professional shall submit with its bid or proposal a completed City-provided affidavit that documents the following: the business has a facility with a City of Tracy address, the business will attribute the sales tax from the sale to the City of Tracy, and the business has had a City of Tracy business license for at least one year prior to the opening of the bid.

(h) "Post-consumer recycled material" means material and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(i) "Public project" means the same as that term is defined in Public Contract Code section 22002 as:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

(2) Painting or repainting of any publicly owned, leased, or operated facility.

(3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

"Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:

(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, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(j) "Recycled material" means material and by-products that have been recovered or diverted from solid waste and that can be utilized in place of raw or virgin material in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or by-products generated from, and commonly reused within, an original manufacturing process.

(k) "Recycled product" means material and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process."

SECTION 2: Section 2.20.090 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

"2.20.090 City Manager authority.

(a) The City Manager is authorized to enter into and sign on behalf of the City, without the prior approval of the City Council, a contract:

(1) Which contains an initial maximum compensation figure of up to Fifty Thousand and no/100ths (\$50,000.00) Dollars or less. As to a change order excepting those change orders covered under subsection (b) of this code section, the limit of authority may not exceed ten (10%) percent of the original contract amount not to exceed a cumulative total of Fifty-Five Thousand and no/100ths (\$55,000.00) Dollars. Cumulative additional change orders exceeding Fifty-Five Thousand and no/100ths (\$55,000.00) Dollars must be approved by the City Council;

(2) Which is not required by any applicable State law to be let to the lowest bidder;

(3) Contracts for City-managed professional services in an amount up to One Hundred Thousand and no/100ths (\$100,000.00) Dollars if the following criteria are met: (a) a City Council approved reimbursement agreement exists, (b) an applicant for development entitlements has deposited the full amount of the contract with the City, and (c) the funds are to be used for development related studies, such as an environment impact report; and

(4) Indemnification and hold harmless agreements with other public entities.

(5) Right of entry agreements by which the City is granting rights to enter and/or temporarily use City-owned real property and right of entry agreements by which the City is being granted rights to enter and/or temporarily use real properties owned by third parties which agreements may include indemnification and hold harmless clauses.

(b) Notwithstanding the maximum compensation limits set forth in subsection (a) (1) of this code section, for public projects awarded by City Council resolution, the City Manager may authorize change orders up to the contingency amount approved by City Council when awarding the bid and/or approving the budget for such public projects and a Department Head, or designee, may authorize a change order of up to \$25,000 provided such change order is still within the contingency amount approved by City Council.

(c) In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable.”

SECTION 3: Section 2.20.130 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

“2.20.130 Procurement of services with a value from \$25,000 up to \$50,000.

(a) Informal request for proposal (RFP) procedure. The procurement of services with a value from Twenty-Five Thousand and no/100ths (\$25,000.00) Dollars up to Fifty Thousand and no/100ths (\$50,000.00) Dollars shall be made following the procedure prescribed below:

(1) Solicitation of proposals. The department may solicit proposals by written (including e-mail) or verbal request to prospective consultants. Informal requests for proposals shall, whenever possible, be based on at least three proposals. The contract shall be awarded to the best qualified and most responsible proposer. To the extent that such is not prohibited under State or Federal law, regulations, or funding restrictions, the fact that a proposer is a local consultant or professional may also be taken into account when awarding the contract. The dollar amount of the proposal shall be considered but the award of the contract need not be made to the lowest dollar proposal.

(2) Retention of proposal. The department shall retain all proposals in accordance with the City Council approved retention schedule.

(3) Award of contracts. The department head is authorized to award a contract in accordance with the authorization granted in section 2.20.100.

(b) Exceptions. The request for informal proposal procedure may be dispensed with in an emergency or when the City Manager in his/her best judgment makes a written finding that compliance with these procedures is not in the best interest of the City."

SECTION 4: Section 2.20.140 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

"2.20.140 Procurement of services with a value of \$50,000 or more.

(a) Formal request for proposal (RFP) procedures. The City shall procure services with a value of Fifty Thousand and no/100ths (\$50,000.00) Dollars or more following the procedure prescribed below:

(1) Request for proposals. The request for proposal (RFP) shall include a general description of the services to be procured, shall include a proposed professional services agreement, and the time and place for submission of proposals. A notice inviting proposals shall be distributed to at least three (3) consultant firms and shall be posted on the City website at least ten (10) days prior to the deadline for submission of proposals. Proposers shall submit sealed proposals and shall identify them as proposals on the envelope.

(2) Evaluation of proposals. All responsive proposals shall be reviewed and evaluated by the City in order to determine which proposer best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services. The criteria by which the City shall evaluate proposals will be set forth in the request for proposals. To the extent that such is not prohibited under State or Federal law, regulations, or funding restrictions, the fact that a proposer is a local consultant or professional may also be taken into account when evaluating proposals. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process.

(3) Award of contract. The City Manager shall award a contract for the services with a value greater than Twenty-Five Thousand and no/100ths (\$25,000.00) Dollars but less than Fifty Thousand and no/100ths (\$50,000.00) Dollars. The City Council shall award a contract for services with a value equal to, or greater than, Fifty Thousand and no/100ths (\$50,000.00) Dollars.

(b) Exceptions. Formal requests for proposals under this section may be dispensed with:

(1) In an emergency;

(2) When the services can be obtained from only one source which has been reviewed and approved in writing by the City Manager;

(3) When, in the judgment of the City Manager, compliance with the procedure is not in the best interest of the City for services between Fifty Thousand and no/100ths (\$50,000.00) Dollars and One Hundred Thousand and no/100ths (\$100,000.00) Dollars;

(4) When processed through a cooperative purchasing agreement with another public agency whose procurement process is consistent with the provisions of this chapter;

(5) Contracts for City-managed professional services in an amount up to One Hundred Thousand and no/100ths (\$100,000.00) Dollars if the following criteria are met: (a) a City Council approved reimbursement agreement exists, (b) an applicant for development entitlements has deposited the full amount of the contract with the City, and (c) the funds are to be used for development related studies, such as an environmental impact report; or

(6) When, in the determination of the City Council, compliance with the procedure is not in the best interest of the City for those professional services, the costs of which exceed One Hundred Thousand and no/100ths (\$100,000.00) Dollars.”

SECTION 5: Section 2.20.180 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

2.20.230 Local vendor preference.

“To the extent that such is not prohibited under State or Federal law, regulations, or funding restrictions, a bid or proposal from a local vendor, as defined in section 2.20.030(g), will be tabulated as if it were ten (10%) percent below the figure actually set forth in the bid or proposal to account for the financial advantages accruing to the City by the award of a bid to a local vendor. The City, when seeking bids or proposals for commodities or equipment, will notify bidders or proposers that bids or proposals will be evaluated on the basis of a local preference of ten (10%) percent of the bid or proposal price. The total amount of preference granted in a single bid shall not exceed Three Thousand and no/100ths (\$3,000.00) Dollars.”

SECTION 6: Section 2.20.250 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

“2.20.250 Public project defined.

The term “public project” is defined in section 2.20.030(i).”

SECTION 7: Section 2.20.260 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

“2.20.260 Bidding requirement.

(a) The City Council authorizes and approves the following bidding procedures for Public Projects:

- (1) Informal and formal bidding procedures. Public projects, as defined by Public Contract Code section 22002 and in accordance with the monetary limits described in Public Contract Code section 22032 (as amended from time to time by the California Uniform Construction Cost Accounting Commission) shall be let to contract by procedures described in Public Contract Code section 22030 et seq.
- (2) Procedures not established by the act. When the Act does not establish a procedure for bidding public projects, the procedure described in Public Contract Code section 20160 et seq. shall govern.
- (3) Award to low bidder; no bids. All contracts must be awarded to the lowest responsible bidder. If two or more bids are the same and lowest, the city may accept the one it chooses. When no bids are received, the City may perform public projects with City employees or through a negotiated contract without further complying with this code section.
- (4) Notice inviting informal bids. When a public project which is anticipated to fall within the monetary limits on informal bids described in Public Contract Code section 22032 (as amended from time to time by the Commission) is to be performed, the City shall prepare a notice of the opportunity to bid which describes the project in general terms, states the time and place for the submission of bids and describes how to obtain more detailed information about the project. The City shall mail the notice to all construction trade journals as specified by the Commission in accordance with Public Contract Code section 22036. Other contractors and/or construction trade journals may also be notified at the discretion of the department soliciting bids. Mailing shall be completed at least ten days before bids are due.
- (5) Award of informally-bid contracts. The City Manager is authorized to award informal contracts as defined in Public Contract Code section 22032, except those with total initial compensation in excess of \$50,000 which shall be awarded by City Council resolution.
- (6) Bids exceed informal bidding limit. If all informal bids received exceed the monetary limits on informal bids described in Public Contract Code section 22032 (as amended from time to time by the Commission) and the city determines that the cost estimate was reasonable, the City may award the contract at up to the limit described in Public Contract Code section 22034, subdivision (f), by resolution approved by a four-fifths (4/5) vote of the City Council.
- (7) Bid documents for formal bids. The City Council shall adopt plans, specifications and working details for all public projects which are anticipated to fall outside the monetary limits on informal bids described in Public Contract Code section 22032 (as amended from time to time by the Commission).
- (8) Notice inviting formal bids. When a public project which is anticipated to fall outside the monetary limits on informal bids described in Public Contract Code section 22032 (as amended from time to time by the Commission) is to be performed, the city shall publish a notice inviting formal bids in a newspaper of general circulation as described in Public Contract Code section 22037. The notice shall also be mailed to all construction trade journals as specified by the Commission in accordance with Public Contract Code section 22036. Other contractors and/or construction trade journals may also be notified,

at the discretion of the department soliciting bids. Mailing shall be completed at least thirty (30) days before bids are due.

(9) Proprietary product or service. Notwithstanding subsections (3) and (6), if the product or service is proprietary in nature, such that it can be legally obtained only from a certain contractor(s) pursuant to Public Contract Code section 3400, the notice inviting informal bids may be sent exclusively to such contractor(s).

(10) Rejection of bids; re-solicitation; use of City employees. If the City intends to reject all bids, it must mail the apparent low bidders a written notice of the City's intent to reject the bid at least two business days prior to the hearing at which the bids will be considered.

(11) After rejecting the bids, the City may:

(i) Abandon the project;

(ii) Re-advertise the project; or

(iii) Perform the work with City employees, after passing a resolution by a four-fifths (4/5) majority of the City Council declaring that the project can be performed more economically by City employees.

(b) Uniform cost accounting procedures. Whenever the City uses its own employees to perform a public works or maintenance project valued at more than the monetary limit on informal bidding described in Public Contract Code section 22032 (as amended from time to time by the Commission) it must implement the Uniform Construction Cost Accounting Policies and Procedures described in Public Contract Code sections 22042 et seq. and the Commission's policies and procedures manual."

SECTION 8: Section 2.20.270 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

"2.20.270 Exceptions.

(a) Emergencies. Emergency work resulting from a great public calamity such as an extraordinary fire, flood, storm, epidemic or other disaster is exempt from formal bidding requirements. The City Manager is authorized to repair or replace a public facility, take any directly related and immediate action required by that emergency and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. The City Manager shall report to the City Council, at its next regular meeting, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency. (Reference: Public Contract Code sections 20168, 22035, and 22050 and Government Code section 8630.)

(b) Sole source bids. If a contract is for a unique product available from only one source so that competitive bidding would be meaningless, the City may enter into a contract without formal bidding. For this exception to apply, the City Council must approve the contract by a resolution which includes findings as to why the product is unique and only one source exists.

(c) Personal and professional services. Services of lawyers, architects, engineers, land surveyors, artists, accountants, consultants and similar professionals are exempt from competitive bidding requirements.”

SECTION 9: Subsection (b)(1) of section 2.20.275 of Chapter 2.20 of Title 2 of the Tracy Municipal Code is amended to read as follows:

“(b) Prequalification of bidders.

(1) The City hereby establishes a system for prequalification of prospective bidders for public works construction projects in excess of the monetary limits described in Public Contract Code section 22032 (as amended from time to time by the California Uniform Construction Cost Accounting Commission). The City may use the prequalification system identified in this section for any public works project that exceeds the monetary limits described in Public Contract Code section 22032 (as amended from time to time by the California Uniform Construction Cost Accounting Commission).”

SECTION 10: A new Section 2.20.262 is added to Chapter 2.20 of Title 2 of the Tracy Municipal Code to read as follows:

“2.20.262 Design-build.

Notwithstanding the requirements of section 2.20.260, for building construction projects in excess of one million dollars (\$1,000,000), the design-build process set forth in section 20175.2 of the California Public Contract Code may be used.”

SECTION 11: Resolution 2004-229 is rescinded.

SECTION 12: The City Council shall review and evaluate the ongoing benefits of the local vendor preferences contained in this Ordinance approximately twenty-four (24) months after the effective date of this ordinance

SECTION 13: This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 14: A summary of this ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).).

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The foregoing Ordinance 1138 was introduced at a regular meeting of the Tracy City Council on the 4th day of August, 2009, and finally adopted on the 1st day of September, 2009, by the following vote:

AYES:	COUNCIL MEMBERS: ABERCROMBIE, TOLBERT, TUCKER, IVES
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: MACIEL
ABSTAIN:	COUNCIL MEMBERS: NONE

Signed: Brent H. Ives, Mayor

Attest: Sandra Edwards, City Clerk