

ORDINANCE NO.

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF
THE CITY OF ARROYO GRANDE, CALIFORNIA,
AMENDING CHAPTER 3.08 OF THE CITY OF ARROYO
GRANDE MUNICIPAL CODE RELATING TO
PURCHASING**

WHEREAS, the City of Arroyo Grande (“City”) is a municipal corporation organized under the laws of the State of California; and

WHEREAS, the City is dedicated to operating efficiently, effectively and streamlining operations where possible; and

WHEREAS, the City’s current purchasing system is outlined in Chapter 3.08 of the City of Arroyo Grande Municipal Code; and

WHEREAS, the last comprehensive purchasing policy update was in March 2000; and

WHEREAS, the City’s Administrative Services Division has conducted a review of the City’s purchasing system and has identified areas of improvement; and

WHEREAS, as part of this purchasing system overhaul, the ordinance includes an increase in spending authority for the City Manager, allowing the City Manager to enter into agreements up to a value of \$100,000; and

WHEREAS, this increased flexibility will allow the City to more quickly respond to needs and increase the level of services provided.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Arroyo Grande does ordain as follows:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Amendment of Chapter 3.08. Chapter 3.08 of Title 3 of the Arroyo Grande Municipal Code is hereby amended in its entirety to read as follows:

**Chapter 3.08
PURCHASING SYSTEM**

Sections:

- | | |
|-----------------|--|
| 3.08.010 | Adoption of Purchasing System and Applicability |
| 3.08.020 | Purchasing Policy and Implementing Procedures |
| 3.08.030 | Definitions |

3.08.040	Purchasing Compliance Oversight
3.08.050	Purchasing Responsibilities of Department Heads
3.08.060	Contract Award Authority and Delegation of Contract Award Authority
3.08.070	Solicitation Procedures for Goods and Services
3.08.080	Solicitation Procedures for Public Projects
3.08.090	Purchasing of Paper Products; Procurement of Recovered Organic Waste Products
3.08.100	Encumbrance of Funds
3.08.110	Federal or State Funding
3.08.120	Disposition of Surplus Personal Property
3.08.130	Ethics
3.08.140	Protests

3.08.010 Adoption of purchasing system and applicability.

- A. This chapter adopts a purchasing system to facilitate the purchase of goods and services at the lowest cost commensurate with the quality needed; to exercise positive financial control over purchases; to define the authority for the purchasing function; to assure that consultant selection is based on demonstrated competence, when required; and to safeguard the quality and integrity of the purchasing system.
- B. This chapter is applicable to all city purchases as defined herein.

3.08.020 Purchasing policy and implementing procedures.

The purchasing systems established by this chapter incorporates a purchasing policy that governs the purchase of goods and services, including public projects. Such purchases shall be made in compliance with the provisions of this chapter. For operational efficiency and effectiveness, the city manager may adopt and subsequently revise administrative procedures to implement the provisions of this chapter unless approval by the City Council is required as a condition of the law or regulation. In the event of a conflict between the administrative procedures and the provisions of this chapter, the provisions of this chapter shall govern.

3.08.030 Definitions

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

“Best value procurement” refers to a competitive solicitation process that evaluates responsive proposals submitted by responsible offerors based on qualitative factors in addition to pricing.

“Bids” refers to submittals received in response to a competitive solicitation that seeks to award a contract based on the lowest responsive bid submitted by a responsible offeror.

ORDINANCE NO.

PAGE 3

“Competitive solicitation” is a written statement that sets forth the requirements and specifications of a required purchase that can include an invitation to bid, request for proposals, request for statement of qualifications, request for quotations, or other acceptable methods in compliance with this chapter and the implementing administrative procedures. Depending on the estimated dollar value, competitive solicitations may be informal or formal as further defined in sections 3.08.070 and 3.08.080 of this chapter.

“Contract” means an agreement, regardless of what it may be labeled, between the city and one or more other parties for the purchase or disposition of goods and/or services.

“Goods” refers to needed commodity goods, equipment, materials, or supplies, including items to be purchased by the city and furnished to contractors for use in public projects.

“Lowest bid” refers to the lowest responsive bid submitted by a responsible bidder that conforms to the requirements and specifications of a competitive bid solicitation.

“Maintenance and repair services (general services)” means routine, recurring, and usual services intended to preserve and/or restore a public work to a clean, safe, efficient and/or continually usable condition. Maintenance and repair services may include, but are not limited to: carpentry, electrical, painting, plumbing, glazing and other craftwork to preserve a facility in the condition for which it was intended; repairs, cleaning and other operations on machinery and other equipment permanently attached to a facility as fixtures; the mowing, pruning, and trimming of lawns, grass, trees, shrubs, bushes and hedges; and the regular removal or relocation of by-products or waste products accumulated at city facilities as the result of ongoing environmental processes.

“Professional services” means the services of attorneys, physicians, architects, engineers, consultants, financial experts, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique, specialized, or technical skill or expertise.

“Offeror” refers to an individual or entity that responds to a bid or proposal or other solicitation with an offer to provide the requested goods and/or services (may also be referred to as “bidders” or “proposers”).

“Proposals” refers to responsive submittals received in response to a best value procurement where a contract can be awarded based on factors in addition to price.

“Public projects” means a public works construction project as defined in Public Contract Code Section 22002.

“Responsible bidder” is a bidder determined to have the ability, capacity, experience, performance track record, and skill to provide the goods and/or services in accordance with bid or proposal specifications.

ORDINANCE NO.

PAGE 4

“Responsive bidder” means a bidder that has submitted a bid or proposal which conforms in all material respects to the requirements of the bid or proposal documents.

“Surplus personal property” means goods owned by the city that are no longer needed or are obsolete or unserviceable, property that is a by-product (scrap metal, used tires, etc.), or any unclaimed, seized or abandoned personal property in the possession or custody of the police department that may be legally disposed of by the city.

3.08.040 Purchasing compliance oversight.

The city manager, or their designee, shall be responsible for overseeing and facilitating compliance with this chapter and the purchasing policy. This responsibility includes:

- A. Staying informed of current developments in the field of purchasing;
- B. Prescribing and maintaining such forms as are reasonably necessary to the operation of this chapter and the purchasing policy;
- C. Recommending updates to this chapter and making revisions to the purchasing administrative procedures, as needed;
- D. Maintaining purchasing records and tracking citywide expenditures;
- E. Coordinating the purchase of goods that will be used by multiple city departments where feasible and practical; and
- F. Disposing of surplus personal property as prescribed herein.

3.08.050 Purchasing responsibilities of department heads.

Each department head shall be responsible for ensuring that all purchases by or for their department are made in compliance with this chapter and the purchasing policy, including but not limited to compliance with the following requirements:

- A. Preparing solicitation materials, as needed, for each purchase;
- B. Preparing good faith estimates of the cost of each purchase to determine the appropriate solicitation procedure;
- C. Ensuring that the proper solicitation procedure is followed based on the estimated cost of the purchase (informal, formal, etc.);
- D. Ensuring that bids or proposals are submitted by responsible offerors (contractors, consultants, and/or vendors) whose submittals are responsive to the requirements set forth in a competitive solicitation;
- E. Evaluating submitted bids or proposals in accordance with established selection criteria and processes;

ORDINANCE NO.

PAGE 5

- F. Ensuring that the purchase contract is approved and executed by a person or body with sufficient approval authority based on the dollar amount of the purchase;
- G. Ensuring that sufficient funds are appropriated to pay for the purchase;
- H. Ensuring that the selected offeror has provided insurance certificates and bonds meeting the requirements of the purchase contract, as applicable, before work under the contract begins, and ensuring that such insurance and bonds are renewed, as applicable, during the term of the agreement;
- I. Ensuring that the selected offeror has obtained a business license, as required by the municipal code, prior to beginning work and ensuring that such license is renewed, as applicable, during the term of the agreement;
- J. Inspecting supplies and equipment delivered to determine their conformance with the specifications set forth in the order;
- K. Monitoring the performance of selected offerors under approved contracts to ensure compliance with contract requirements;
- L. Recommending and preparing contract amendments and change orders as needed, and ensuring that such amendments and change orders are approved and executed by a person or body with sufficient approval authority based on the dollar amount of the amendment or change order, and that sufficient funds are appropriated to pay for the amendment or change order;
- M. Ensuring that due diligence is performed before determining that a purchase should only be made from a single offeror, and ensuring that decisions to forego a competitive purchase process are properly documented and submitted for approval by the city manager or designee, or the city council, in accordance with this chapter;
- N. Taking reasonable and necessary steps to avoid conflicts of interest in the purchasing process;
- O. Keeping sufficient records of all departmental contracts and expenditures, and ensuring that such records are properly stored and filed in accordance with city recordkeeping procedures;
- P. Submitting reports to the city manager or designee showing all departmental supplies and equipment that are no longer used or have become obsolete or worn out so that the city manager or designee can determine the appropriate steps to sell, exchange, or trade in such surplus supplies and equipment, if desired; and
- Q. Transferring surplus or unused goods between departments as needed, or selling, exchanging, trading in, or donating surplus goods to interested private or

public agencies or vendors as prescribed in this chapter, with appropriate findings pursuant to any applicable authority or limitation on the City.

3.08.060 Contract award authority and delegation of contract award authority.

- A. The authority to award contracts that legally bind the city to a purchase shall be vested in the city council, unless such authority is delegated to the city manager as prescribed herein and in the associated administrative procedures.
- B. Contract award authority delegated by the city council to the city manager may be further delegated by the city manager to department heads as necessary for operational efficiency and effectiveness. Delegation shall be in writing and kept on file with the city clerk. This provision shall not apply to delegation from the city council to the city manager as specified in C.3 in this section.
- C. Dollar thresholds for awarding contracts shall be established by resolution of the city council, in accordance with the following level designations:
 - 1. First Level Contracts. First level contracts may be awarded by the city manager, or department heads who have been delegated contract award authority in accordance with this section.
 - 2. Second Level Contracts. Second level contracts may be awarded by the city manager. Nothing in this section shall preclude the city manager from requesting city council approval for second level contracts if deemed to be in the best interest of the city.
 - 3. Third Level Contracts. Third level contracts shall be awarded by the city council, unless such authority is delegated to the city manager for a specific purpose.
- D. All purchase contracts and amendments thereto required by this chapter shall be approved by the appropriate award authority.
- E. Amendments to contracts. For the purposes of subsections B and C of this section, “amendments” means any amendment, modification, annual renewal not previously authorized, or change order that results in an increase to the total amount of money that may be spent under a single contract. Approval authority limits shall be based on the total contract amount, inclusive of amendments.

Modifications to the terms, conditions, or payment provisions, or material changes to specifications or scopes of services, of an existing contract, shall require a contract amendment. All contract amendments required by this chapter must be in writing and no verbal contract modifications shall be held binding on the city.
- F. Purchases of similar goods and/or services from a single vendor, contractor, or consultant, which could reasonably be included in a single contract, shall not be

split into multiple contracts in order to avoid approval by the city council or the city manager, as applicable.

3.08.070 Solicitation procedures for goods and services.

The following solicitation procedures shall govern the purchase of all purchases of goods and services needed for city operations, excluding public projects (see 3.08.080).

- A. Solicitation Procedures. Prior to making any purchase, the person or department initiating the purchase shall make a reasonable and good faith estimate of the anticipated cost of the purchase and then proceed with the appropriate solicitation procedure below. If the proposals or bids received exceed the cost threshold for the solicitation procedure used, a new solicitation may be required if directed by the city manager.

Purchases shall not be split or separated into smaller orders for the purpose of circumventing the solicitation or contract award requirements specified in this chapter.

1. No solicitation required. Purchases of goods and services up to \$5,000 do not require a competitive solicitation and may be made following the receipt of one price quote or proposal. However, as a matter of fiscal prudence, nothing shall preclude the person initiating the purchase from conducting price comparisons to ensure that the best overall value is obtained.
2. Informal solicitation required. Purchases of goods and services with an estimated cost between \$5,001 and \$50,000 shall be made following the solicitation of at least three written price quotes or proposals, which may be solicited using any means reasonably calculated to obtain a combination of the lowest price and highest quality of goods or services available, in the reasonable discretion of the reviewing authority.
 - a. The person or department initiating the purchase shall keep a record of all such solicitations and the price quotes or proposals submitted in response thereto.
 - b. If the person or department initiating the purchase is unable to obtain three price quotes or proposals from responsive and responsible bidders or proposers after making diligent efforts to do so, the purchase may be made without obtaining three price quotes or proposals, provided that the efforts made to obtain three quotes or proposals shall be documented in the contract file for the purchase and shall be presented to the city manager or designee as part of the request for contract award and execution.

c. Nothing in this subsection 2 shall preclude the city manager or a department head from requiring a more formal means of solicitation, such as that required by subsection 3 below.

3. Formal solicitation required. Purchases of goods and services with an estimated cost greater than \$50,000 shall be made following the posting of an invitation to submit in writing a sealed bid or proposal.

a. Such written solicitations and offers or responses thereto shall be established in the purchasing administrative procedures, or as set forth within the published solicitation. Each solicitation shall describe the purchase and establish product specifications and/or required services and all other requirements, including the quantity and quality thereof, any desired warranty, insurance, or bonds, the time, place and manner of delivery of the purchases, the desired terms of payment, and the form, method, and timing of the response to the solicitation.

b. Such written solicitations shall be posted in at least one publicly accessible location likely to reach the intended service provider, supplier, or vendor. The first publication or posting of the solicitation shall be at least ten days before the due date for responses to the solicitation. The posting location may include the city's website, an electronic bulletin board, a newspaper of general circulation in the city, or a trade journal, magazine, or other publication, whether in print or electronic.

c. Bids or proposals may also be directly solicited from individuals and businesses if such individuals or businesses are known to be capable of providing the item or service that is being solicited. However, such direct solicitations shall be in addition to solicitations made under subsection (A)(3)(b).

B. Bid or proposal evaluation.

1. The city may reject any or all bids or proposals in response to a city solicitation in its sole discretion.

2. If no bids or proposals are received, the city may make the purchase by any lawful reasonable and available means, notwithstanding the other requirements of this chapter.

3. If two or more bids or proposals received are for the same total amount or unit price, quality and service being equal, the contract may be awarded to either bidder or proposer.

4. Contracts for goods shall be awarded to the lowest responsive and responsible vendor, where the goods offered are identical or nearly identical. However, where the goods offered are not identical, the city may consider the fitness and quality of the goods offered, in addition to price, and may award the contract to the vendor that offers the best combination of price and fitness and quality of goods.
5. Contracts for general services may be awarded to the lowest responsive and responsible bidder if determined by the City Manager or designee to be in the best interest of the City; otherwise, such contracts shall be awarded in the manner specified in section 3.08.070.B.6 below.
6. Contracts for professional services shall be awarded on the basis of demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services, offered at a fair and reasonable price, as determined by a consideration of the following criteria:
 - a. Whether the price is fair, reasonable, and competitive;
 - b. The quality of the services offered;
 - c. The demonstrated competence, ability, capacity, and skill of the person or business to provide the services promptly, within the time specified, within budget, and without delay or interference;
 - d. The credentials and licenses of the person or business, if required;
 - e. The character, integrity, reputation, judgment, training, experience, and efficiency of the bidder or proposer;
 - f. The person's or business's knowledge of local conditions;
 - g. The person's or business's previous history of working on related projects or issues for the city, where such previous experience will allow the services to be performed more efficiently and will require less time spent on preparation and background research;
 - h. The sufficiency of the bidder's or proposer's financial capacity and other resources; and
 - i. The ability of the bidder or proposer to provide such future service as may be needed.
7. Local preference. Where two or more bidders or proposers are reasonably comparable based on a consideration of the criteria in subsection (B)(5), a preference may be given to a bidder or proposer that has a primary place of business located within the city. The city council

finds that this preference serves the public purposes of supporting local economic stability and of encouraging businesses to locate and remain in the city of Arroyo Grande.

- C. Exceptions. The solicitation procedures in this section shall not apply to purchases that satisfy one or more of the following criteria:
1. No price advantage would be gained from a competitive solicitation process, including but not limited to circumstances when goods or services are unique and are only available from one source, also known as a "sole source" contract. However, if the person or department initiating the purchase proposes to forego a competitive solicitation process based on this subsection (C)(1), a justification for the recommendation shall be presented in writing to the city manager or designee, whose approval is required to move forward with a recommendation for contract award to the appropriate award authority.
 2. When the purchase is based on a master agreement, cooperative agreement, multiple award schedule, or other types of agreements entered into by the state of California or the federal government. Examples include, but are not limited to, California Multiple Award Schedules (CMAS) and Federal General Services Administration (GSA) contracts.
 3. When the vendor or service-provider was awarded a contract by another public agency; said agency used solicitation procedures substantially similar to those that the city would have been required to use, the vendor or service-provider offers the same price(s) to the city that it offered to the other agency; and the initial awarding public agency agrees to the purchase.
 - a. This subsection 3 may include the use of for profit regional or national purchasing cooperatives, provided that the city is a registered member of the cooperative and a membership fee is not required.
 4. Where an emergency situation exists, as determined by the city manager consistent with the process laid out by City's Municipal Code, or where a disaster has been declared by the city council, state or federal government, such that the life, health or safety of employees or the general public is at risk, or when significant harm may occur to city property or operating systems and goods and/or services must be procured immediately to prevent loss or substantial disruption of city services or functions; provided that competitive bidding is not required by a state or federal reimbursing agency and is otherwise consistent with State law.

5. When the contract award authority determines that bidding would be impractical, inefficient, or otherwise not in the best interest of the city, provided that contract file contains sufficient documentation to justify bid impracticality.
6. When the purchase is for, or made in conjunction with, the following:
 - a. Insurance and bonds;
 - b. Public library collection materials or services for the provision of public library collection materials or other books or periodicals;
 - c. Procurements funded by grants, donations or gifts when the special conditions attached to the grants, donations or gifts require the procurement of particular goods and/or services;
 - d. Goods and/or services obtained from or through agreement with any governmental, public or quasi-public entity;
 - e. Works of art, entertainment or performance;
 - f. Surplus personal property owned by another governmental, public or quasi-public entity;
 - g. Membership dues, conventions, training, and travel arrangements;
 - h. Advertisements in magazines, newspapers, or other media;
 - i. Goods procured for resale to the public.

The person responsible for conducting a procurement pursuant to this section shall conduct negotiations, as appropriate, as to price, delivery and terms and may require the submission of cost or pricing data in connection with the award of a contract which does not require a competitive solicitation.

Notwithstanding the exception provisions listed above, nothing in this section shall preclude the solicitation of competitive bids or proposals, when in the best interest of the city or when required by law.

3.08.080 Solicitation procedures for public projects.

The following solicitation procedures shall govern the bidding and awarding of contracts associated with public projects.

- A. Uniform Public Construction Cost Accounting Act. The city has adopted the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq., as may be amended) (the "Act") and all expenditures for public projects by the city shall be made in accordance with the Act.
- B. Solicitation Procedures. Prior to making any purchase, the person or department initiating the purchase shall make a reasonable and good faith estimate of the

anticipated cost of the purchase and then proceed with the appropriate solicitation procedure below. Purchases shall not be split or separated into smaller orders for the purpose of circumventing the procedures hereunder.

1. No Competitive Bidding Required. Public projects with an estimated cost of up to the maximum dollar amount stated in Public Contract Code Section 22032(a), including any amendment thereto, may be performed by city employees by force account or else may be awarded by negotiated contract or by purchase order without competitive bidding.
2. Informal Bidding Required. Public projects with an estimated cost of up to the maximum dollar amount stated in Public Contract Code Section 22032(b), including any amendment thereto, shall require either the informal bidding procedures set forth in Section 3.08.080(C) or the formal bidding procedures set forth in Section 3.08.080(D).
3. Formal Bidding Required. Public projects with an estimated cost of greater than the maximum dollar amount stated in Public Contract Code Section 22032(c), including any amendment thereto, shall require the formal bidding procedures set forth in Section 3.08.080(D).

C. Informal Bidding Procedures. The following procedures shall apply to informal bids: A notice inviting bids shall be prepared, which describes the project in general terms, explains how to obtain more detailed information about the project, and states the time and place for the submission of bids. The notice shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 3.08.080(E), and to all construction trade journals as specified by the California Uniform Public Construction Cost Accounting Commission ("Commission"), in accordance with Public Contract Code Section 22036, including any amendment thereto.

Notices sent to contractors on the contractors list shall be sent not less than ten calendar days before bids are due and may be sent by mail, fax, or email. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided, however:

1. 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 Commission.
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.

D. Formal Bidding Procedures. The following procedures shall apply to formal bids: A notice inviting bids shall be prepared, which describes the project in general

terms, explains how to obtain more detailed information about the project, and states the time and place for the submission of bids. The notice shall be published at least fourteen calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the city; or, if there is no newspaper printed and published in the city, in a newspaper of general circulation which is circulated within the city; or, if there is no newspaper which is circulated within the city, publication shall be by posting the notice in at least three places within the city as have been designated by ordinance or regulation of the city as places for the posting of its notices.

The notice inviting formal bids shall also be sent electronically, if available, by either fax or email and mailed to all construction trade journals specified by the Commission pursuant to Public Contract Code Section 22036. The notice shall be sent at least fifteen calendar days before the date of opening the bids. In addition to notice required by this section, the city may give such other notice as it deems proper.

- E. Contractors List. The public works director or designee shall develop and maintain a list of contractors in accordance with the provisions of Public Contract Code Section 22034 and criteria promulgated from time to time by the Commission.
- F. Preparation and Adoption of Plans. In accordance with Public Contract Code Section 22039, the city council, hereby delegates authority to the public works director or his or her designee, to prepare and adopt plans, specifications, and working details for all public projects with an estimated cost greater than the maximum dollar amount stated in Public Contract Code Section 22032(c), including any amendment thereto.
- G. Award of Contract.
 - 1. If a contract is awarded, it shall be awarded to the lowest responsive and responsible bidder. If two or more bids are the same and the lowest, the contract may be awarded to either bidder.
 - 2. If the project was bid using informal bidding procedures, and all bids received exceed the maximum dollar amount stated in Public Contract Code Section 22032(c), including any amendment thereto, the city council may, by a four-fifths vote, adopt a resolution awarding the contract to the lowest responsive and responsible bidder if the amount of the contract does not exceed the dollar threshold stated in Public Contract Code Section 22034(d), including any amendment thereto, and it determines the city's cost estimate for the project, upon which the decision to use informal bidding procedures was based, was reasonable. Otherwise, the project shall be re-bid following the formal bidding procedures.

3. In its discretion, the city may reject any or all bids, and may do any of the following:
 - a. Abandon the project.
 - b. Re-advertise the bid in the manner described in this chapter.
 - c. By a four-fifths vote, the city council may declare by resolution that the project can be performed more economically by city employees and may have the project done by force account without further complying with this chapter. Prior to rejecting all bids and declaring that the project can be more economically performed by city employees, the city shall furnish a written notice to an apparent low bidder, informing the bidder of the city's intention to reject the bid. Such written notice shall be mailed at least two business days prior to the hearing at which the city intends to reject the bid.
4. If no bids are received through the formal or informal procedure, the project may be performed by city employees by force account or by a negotiated contract without further complying with this chapter.

H. Emergencies.

1. In cases of emergency when repair or replacements are necessary, the city council may, by a four-fifths vote, proceed at once to replace or repair any public facility, take any action required by that emergency, including procure equipment, services, and supplies without giving notice for bids to award contracts pursuant to Public Contract Code section 22050(a)(1).
 2. Before taking any action the city council shall make a finding that the emergency will not permit delay resulting from a competitive bid process, and the action is necessary to respond to the emergency. Such findings shall be based upon substantial evidence set forth in the minutes of its meeting pursuant to Public Contract Code section 22050(2).
 3. If the city council has ordered any emergency action, it shall review the emergency action at its next regularly scheduled meeting. Until the action is terminated the city council shall determine the need to continue such action by a four-fifths vote at each meeting pursuant to Public Contract Code section 22050(c)(1).
 4. In case of an emergency, if notice for bids to award contracts will not be given, the city shall comply with all requirements of Public Contract Code section 22050.
- I. Exemptions. The bidding procedures for public projects required by this chapter shall not apply when an exemption is provided by state or federal law.

3.08.090 Purchase of paper products; procurement of recovered organic waste products.

Pursuant to relevant state law and Chapter 8.33 of the Arroyo Grande Municipal Code (Mandatory Organic Waste Disposal Reduction), the city has adopted a Recovered Organic Waste Product Procurement Policy. This policy requires all city departments and divisions to incorporate environmental considerations including recycled-content and recovered organic waste product use into purchasing practices and procedures. All vendors providing paper products, printing and writing paper, and organic waste products must comply with relevant state law and city requirements.

3.08.100 Encumbrance of funds.

Except in cases of emergency or in cases where specific authority has been first obtained from the city manager, no purchase shall be made unless there exists a lawful funding source and an unencumbered appropriation in the department, or in the fund against which a purchase is to be charged.

3.08.110 Federal or state funding.

When a purchase of goods and/or services involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with mandatory applicable federal or state regulations, and the chosen bidder or proposal shall be responsible for compliance with all regulations and conditions. Such laws or regulations may be incorporated in the purchasing administrative procedures, and periodically updated, as required.

3.08.120 Disposition of surplus personal property.

- A. Approval Authority and Disposition. The approval authority to dispose of surplus personal property having salvage value shall be consistent with the first, second and third level designations in Section 3.08.060 used to determine the appropriate contract award authority. Such surplus property shall be disposed by public auction, by competitive sealed bids, or by exchange or trade-in for new goods. The sale or lease of surplus personal property to a governmental, public, or quasi-public agency may be without advertisement for or receipt of bids.
- B. Property with No Salvage Value. Surplus personal property with no salvage value, as determined by the city manager or designee, shall be disposed of in a manner that salvages recyclable components, if practical.
- C. Unclaimed, Seized or Abandoned Property. The city manager or designee is authorized to sell or dispose of all goods in the possession of the police department which are unclaimed, seized and/or abandoned and may be legally disposed of by the city.
- D. Records. Each department shall keep records which indicate surplus personal property disposed of, the method of disposal, and the amounts recovered from its disposal. Such records shall be available for public inspection and kept for a

period of time in compliance with state law and the city's records retention schedule.

- E. Donations. Upon advance written approval of the city manager and appropriate indemnification from liability as determined by the city attorney, surplus personal property may be donated in "as-is" condition to governmental, public or quasi-public agencies, charitable or non-profit organizations. Any such donation must be in further of a legitimate public purpose with appropriate findings pursuant to any applicable authority or limitation on the City.
- F. Proceeds of Sale. Proceeds from the sale of surplus personal property shall be deposited into the appropriate city fund.

3.08.130 Ethics.

- A. Statement of policy. City employees and officials shall discharge their duties impartially so as to assure fair competitive access to city procurement opportunities by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of city procurement activities.
- B. Conflict of interest. No city employee or city official shall participate directly or indirectly in a city procurement when the employee knows that:
 - 1. The employee or official or any member of their immediate family has a financial interest pertaining to the procurement; or
 - 2. The employee or official or any member of their immediate family is negotiating or has an employment arrangement which is contingent upon or will be affected by the procurement.
 - 3. Withdrawal from Participation. Upon discovery of an actual or potential conflict of interest, an employee/official shall promptly withdraw from further participation in the procurement.
 - 4. Gratuities. No person shall offer, give or agree to give any city employee or city official any gratuity or offer of employment in connection with a procurement by the city. No city employee or city official shall solicit, demand, accept or agree to accept from any other person a gratuity or an offer of employment in connection with a procurement by the city.
- C. In any instance in which a city employee or city official believes they meet the criteria under Section 3.08.130(B) above, they shall promptly inform the City Manager and City Attorney.

3.08.140 Protests.

- A. Effect of Failure to Protest. The procedures set forth in this section are mandatory and are the sole and exclusive remedy of a bidder, proposer or other

vendor to dispute the award of a contract that the city solicits through a competitive process. A protest that does not comply with these procedures may be summarily rejected and the person submitting the protest shall be deemed to have waived all rights to relief.

- B. **Protests of Solicitation Method.** By submitting a bid, proposal or other application for a contract award, the bidder, proposer or other vendor shall be deemed to have waived all rights to challenge the city's method for procuring the contract or any discrepancy in the solicitation process or documents. Bidders, proposers, or vendors may submit bids, proposals or other applications under protest. Protests under this section shall be submitted in writing to the official designated to receive the bid, proposal or other application and shall contain a full summary of the factual and legal basis for the protest.
- C. **Protests of Award.** A bidder, proposer or other vendor applying for a city contract through a competitive process may submit a written protest of the award of the contract. The protest shall identify and explain the factual and legal grounds for the protest. Any grounds not raised in the written protest are deemed waived by the protesting bidder.
- D. **Waiver.** Any person that: (1) did not directly submit a bid or proposal; (2) is not responsible or qualified to receive the contract; (3) failed to submit a responsive bid or proposal; (4) is not in line to receive the contract or is otherwise ineligible to receive the contract; (5) is otherwise not beneficially interested in the award; or (6) fails to submit a timely protest shall be deemed to have waived the right to protest the award of the contract. Any protest deemed waived will be subject to summary rejection without further consideration and the person will have no right to any relief.
- E. **Timing of Protest of Award.** Protests shall be submitted in writing to the official designated to receive the bid, proposal or other application within the following times:
 - 1. If of another bidder, within five calendar days after the bid opening date.
 - 2. If in response to a notice of intent to award a bid, proposal or other application, then within five calendar days following the issuance of the recommendation and prior to the date of the award.
 - 3. If in response to a notice of intent to reject a bid, proposal or other application, then within five calendar days following the issuance of the notice of intent.
- F. **City Response.** If the protest is timely and complies with the above requirements, the city shall review the protest, any response from the challenged bidder, proposer or other vendor, and all other relevant information. The City will provide a written decision to the protestor in a reasonable amount of time. If the protest is

ORDINANCE NO.

PAGE 18

in response to a recommendation of award to the City Council, then the protest will be considered concurrently with the award of the contract, and the approval authority's action is final.

- G. Conflicts. The protest procedures contained in this section shall not apply if a particular solicitation contains a different protest procedure. This section does not limit or eliminate a claimant's obligations under the Government Claims Act, Government Code Section 900 et seq.

SECTION 3. CEQA. The City Council determines that the Ordinance is categorically exempt from further review per State CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.). The whole of the Ordinance is exempt, because the code amendment is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment. (§ 15060(c)(2).) The whole of the Ordinance is also exempt because the code amendment is not a "project" as defined by section 15378, since it has no potential for resulting in a direct or indirect physical change to the environment. (§ 15060(c)(3).) The City Council hereby directs City staff to file a Notice of Exemption within five days of the adoption of this Ordinance.

SECTION 4. If required, within fifteen (15) days after passage of this Ordinance, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

SECTION 4. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, 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 Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

On motion of Council Member _____, seconded by Council Member _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

The foregoing Ordinance was passed and adopted this ____ day of _____, 2023.

CAREN RAY RUSSOM, MAYOR

ATTEST:

JESSICA MATSON, CITY CLERK

APPROVED AS TO CONTENT:

BILL ROBESON, INTERIM CITY MANAGER

APPROVED AS TO FORM:

ISAAC ROSEN, CITY ATTORNEY