

ORDINANCE NO. 1478

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
REPEALING AND REPLACING CHAPTER 3.12 OF THE DALY CITY MUNICIPAL CODE  
RE: PURCHASING

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The City Council of the City of Daly City, DOES ORDAIN as follows:

**SECTION 1.** Chapter 3.12 is hereby repealed and replaced in its entirety to read as follows:

**CHAPTER 3.12 PURCHASING**

- 3.12.010 Purpose**
- 3.12.020 Definitions**
- 3.12.030 Purchasing Procedures – Administrative Purchasing Procedures**
- 3.12.040 Authority to Approve Contracts**
- 3.12.050 Local preference**
- 3.12.060 Award Procedures – Competitive Bidding Requirements**
- 3.12.070 Competitive bidding requirement—Exemptions**
- 3.12.080 Emergency procurements**
- 3.12.090 Surplus personal property**
- 3.12.100 Conflicts of interest**
- 3.12.110 Standing Supply Purchase Agreements and Master Service Agreements – Authorized**
- 3.12.120 Cooperative Purchasing – Authorized**
- 3.12.130 Liability**
- 3.12.010 Purpose.**

The purpose of this ordinance is to establish purchasing procedures for the City of Daly City. The City Council finds that a flexible purchasing system that allows for consideration of price, quality, reliability, workmanship, compatibility of products (such as computers and cellular equipment or design and furniture), and other relevant factors is in the public's best interests and that no single factor should be determinative in every case.

**3.12.020 Definitions.**

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

"Bid or proposal documents" means the documents, including their attachments and addenda, which set forth instructions to bidders, and are disseminated for the purpose of soliciting bids or proposals.

"Bidder" means a person responding to the city's request for pricing of goods or services, either in the form of a bid or a proposal to provide goods and/or services.

"City employee" means an individual who performs services for the city in the capacity of an elected or appointed official, or as a compensated employee of the city or of a temporary

services agency retained by the city. "City employee" does not include independent contractors.

"City Manager" means the City Manager of Daly City, or designee.

"Competitive Bidding Process" means a selection process where contractors, service providers and/or vendors compete for the performance of public works projects, for a purchase of goods and services, or for the performance of professional services, and are selected through a formal or informal process that allows full, fair and open competition for all qualified contractors, consultants, and/or vendors with selection based on specified criteria established to best meet the needs of the City.

"Contract" means agreements, regardless of what they may be labeled, between the city and one or more other parties for the purchase or disposition of goods and/or services.

"Contractor" means any person who has entered into an agreement with the city for the provision or disposition of goods and/or services.

"Financial interest" means:

A. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has received compensation within the past year, or is entitled to, or is currently receiving compensation.

B. Ownership, whether wholly or in part, of any property or business; or

C. Status as an officer, director, trustee, partner, employee, or manager of a business.

"GSA pricing" means pricing established by the federal General Services Agency, deemed to be the lowest possible pricing available. Because the vendor commits to the GSA that no lower price will be extended to any other purchaser, such purchases do not lend themselves to competitive bids.

"Goods" means articles moveable at the time of sale, including but not limited to equipment, supplies and materials.

"Gratuity" means a gift, payment, loan, advance, deposit of money, or service, presented or promised in return for or in anticipation of favorable consideration in the procurement process. "Gratuity" does not include the compensation paid by or due from the city or from a temporary service agency under contract with the city to an employee in connection with the employee's services for the city.

"Immediate family" means any spouse, child, stepchild, parent or stepparent, grandparent, father-in-law, or mother-in-law of a city employee. The relationship of parent to child includes both natural and adoptive relationships.

"Local business" means a business entity with one or more fixed offices and/or locally taxable distribution points within the boundaries of the city which holds a current and valid city business license with a Daly City street address.

"Maintenance and repair services" means 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.

"Person" means any individual, partnership, limited partnership, association, corporation, labor union, committee, club, or governmental, public or quasi-public entity.

"Piggy-back purchase" means a purchase made from a vendor where a competitive bid process has already been completed by another governmental agency, and therefore a valid lowest price/responsive and/or responsible bidder has been established. Such purchases are contingent on the vendor agreeing to extend the same price and terms in the successful competitive bid to the city.

"Procurement" means the acquisition of goods and/or services by the city, including but not limited to purchasing or leasing, and all functions and procedures pertaining to such acquisitions.

"Professional services" means services which involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience. Such services include, but are not limited to, those provided by accountants, appraisers, architects, attorneys, engineers, instructors, insurance advisors, physicians and other specialized consultants.

"Purchasing agent" means the city employee designated by the city manager as the purchasing agent of the city.

"Responsible bidder" means a bidder determined by the awarding authority:

A. To have the ability, capacity, experience and skill to provide the goods and/or services in accordance with bid specifications.

B. To have the ability to provide the goods and/or services promptly, or within the time specified, without delay.

C. To have equipment, facilities and resources of such capacity and location to enable the bidder to provide the goods and/or services.

D. To be able to provide future maintenance, repair, parts and service for the use of the goods purchased, if appropriate.

E. To have a record of satisfactory or better performance under prior contracts with the city and other purchasers where such bidder has previously been awarded such contracts.

F. To have complied with laws, regulations, guidelines and orders governing prior or existing contracts performed by the bidder, if applicable.

"Responsive bidder" means a bidder determined by the purchasing officer to have submitted a bid or proposal that conforms in all material respects to the requirements of the bid or proposal documents.

"Services" means work performed or labor, time and effort expended by an independent contractor, including maintenance and repair services.

"Sole source" means contracts for which the city's purchasing officer has determined, after conducting a good faith review of available products and sources, that the city's requirements can be met solely by a single patented, copyrighted or proprietary article or process available from a single source. Examples of acceptable sole source purchases are equipment for which there is no comparable competitive product, a component or replacement part for which there is no commercially available substitute, and which can be obtained only from the manufacturer, and an item where compatibility with items in use by the city is the overriding consideration.

"Specifications" means a description of the physical or functional characteristics or of the nature of the required goods and/or services.

"Standing Supply Purchase Agreement" means a contract for goods and services common to one or several departments on an "as-needed" basis, with a total compensation stated as a maximum limit, which establishes a general order and payment parameters and includes the terms and conditions common to City contracts for goods and services.

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

### **3.12.030 Purchasing Procedures – Administrative Purchasing Procedures**

The City's purchasing functions shall be governed by this Chapter and by the City's Administrative Purchasing Procedures, which shall be established by the Finance Director and approved by the City Manager, as may be amended from time to time.

The City Manager is appointed the purchasing agent of the City. The City Manager may delegate purchasing agent duties to other City staff.

The Administrative Purchasing Procedures supplements the provisions of this Chapter and contains rules and regulations necessary to administer this Chapter, as well as provisions that require regular review and updating to conform to changing best practices and City needs.

### **3.12.040 Authority to Approve Contracts.**

The City Council shall be the awarding authority for any purchase or contract of 0.10% of the adopted General Fund budget in any fiscal year or more. The City Manager shall be the awarding authority for any purchase or contract of less than 0.10% of the adopted General Fund budget in any fiscal year and may in his or her discretion delegate authority to the department and/or division heads at designated dollar levels. The City Attorney shall be the awarding authority for legal matters. The City Attorney is authorized, without City Council approval, to approve and award all contracts for legal services valued at less than 0.10% of the adopted General Fund budget in any fiscal year.

### **3.12.050 Local preference.**

In the evaluation of bids or proposals containing goods subject to California state sales and use tax, a local business shall be given local preference under certain conditions. In an instance where other factors are considered substantially equal between bidders, and price is the remaining determining factor, a local preference equal to one percent of the price of the portion of the bid or proposal subject to California state sales and use tax shall be extended to the local business. This preference shall not apply to any otherwise qualified local business in which the business has any ownership interest by an employee of the City of Daly City.

### **3.12.060 Award Procedures – Competitive Bidding Requirements.**

A. City Council Award Procedure. The following procedures shall apply:

1. Notice Inviting Bids. The notice inviting bids shall describe the project to be done or the purchase to be made and shall set a date for the opening of bids. The notice shall be published once in the official newspaper not less than five days prior to the date and time set for opening of bids.

2. Opening of Bids. All bids shall be sealed, identified as such and submitted to the City Clerk or the department supervising the project on or before the date and time set for opening. Bids received after the specified time shall be returned to the bidder unopened; provided, however, the bids received prior to the opening of the first bids shall be considered to be timely. Bids shall be opened in public at the time specified in the notice.

3. Award. The City Council may, in its discretion, waive any minor irregularities or informalities in the bids received. The award may be to the lowest responsible bidder or other bidder. In determining to whom the award is to be made, the City Council may consider, in addition to the bid price received, the experience of the bidder for the particular service sought, the quality of work the bidder has done, the quality of the product or materials provided by the bidder, the ability of the bidder to complete the project in a timely manner, the safety compliance record of the bidder, the insurance carried by the bidder, the information provided by the pre-qualification process, and the after sales service and support that is provided, as well as other factors that the City Council determines to be relevant in the particular situation.

4. Rejection. The City Council may, in its discretion, reject all bids received, negotiate a contract for the work or supplies if the project is not within budget, do the work

through City employees, or terminate the project or purchase. If no bids are received, the City Council may have the project done or purchase made without further compliance with this chapter.

### **3.12.070 Competitive bidding requirement—Exemptions.**

A. Contracts for goods and/or services for which the cost to the city in any one transaction will exceed one hundred thousand dollars shall be let by formal competitive bidding or proposals pursuant to this chapter. Procurement requirements shall not be artificially divided so as to avoid the competitive bidding requirement.

B. The following are exemptions to the competitive bidding requirements:

1. Professional or specialized services.
2. Emergency procurements, as defined in Section 3.12.080
3. Situations where solicitations of bids or proposals would for any reason be impractical, unavailing or impossible.
4. Sole source goods or services.
5. Insurance and bonds.
6. Public library collection materials or services for the provision of public library collection materials or other books or periodicals.
7. 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.
8. Goods and/or services obtained from or through agreement with any governmental, public, or quasi-public entity, including piggy-back purchases or GSA pricing; or Cooperative Purchasing as set forth in Section 3.12.110
9. Works of art, entertainment or performance.
10. Surplus goods owned by another governmental, public or quasi-public entity.
11. Membership dues, conventions, training, and travel arrangements.
12. Goods procured for resale to the public.
13. Where competitive bids or proposals have been solicited and no bid or proposal has been received. In such a situation the purchasing officer may proceed to have the services performed or the goods procured without further competitive bidding.

C. The purchasing officer 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 competitive bidding.

D. Nothing in this section shall preclude the solicitation of competitive bids or proposals, when practicable.

### **3.12.080      Emergency procurements.**

The purchasing officer or a department head, or a designee of such individual, may make or authorize others to make emergency procurements, regardless of the cost, if there is an urgent necessity to do so for the preservation of life, health, or property. Such emergency procurements shall be made with such competition as is practical under the circumstances and shall be limited to those goods and services necessary to satisfy the emergency need. In the event that such emergency action is necessary, and the procurement cost is greater than fifty thousand dollars in any one transaction, the purchasing officer shall make a full and complete report to the city council at its next regularly scheduled meeting.

### **3.12.090      Surplus personal property.**

A.      Authority. The purchasing officer is authorized to sell or dispose of surplus goods having a salvage value in the open market by public auction, by competitive sealed bids, by exchange or trade-in for new goods, or by other means appropriate in the circumstances. The sale or lease of surplus personal property to a governmental, public, quasi-public, or charitable agency may be without advertisement for or receipt of bids.

B.      Property With No Salvage Value. Surplus goods with no salvage value, as determined by the purchasing officer, shall be disposed of in a manner that salvages recyclable components, if practical.

C.      Unclaimed, Seized or Abandoned Property. The purchasing officer is authorized to sell or dispose of all goods in the possession or custody of the police department which are unclaimed, seized and/or abandoned and may be legally disposed of by the city.

D.      Records. The purchasing officer shall maintain records for public inspection relative to the disposal of surplus goods for a period of time in compliance with state law and the city's records retention schedule.

E.      Donations. The purchasing officer is authorized to donate surplus goods to governmental, public or quasi-public agencies, charitable or nonprofit organizations when it is the interest of the community to do so.

F.      Proceeds of Sale. Proceeds from the sale of surplus goods shall be deposited into the appropriate city fund.

### **3.12.100      Conflicts of interest.**

A.      City employees shall discharge their duties impartially so as to assure fair competitive access to city procurement opportunities by responsible bidders. 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 shall participate directly or indirectly in a city procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or the



employee or any member of the employee's immediate family is negotiating or has an employment arrangement which is contingent upon or will be affected by the procurement.

C. Withdrawal from Participation. Upon discovery of an actual or potential conflict of interest, an employee shall promptly withdraw from further participation in the procurement.

D. Gratuities. No person shall offer, give, or agree to give any city employee any gratuity or offer of employment in connection with a procurement by the city. No city employee 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.

### **3.12.110 Standing Supply Purchase Agreements and Master Service Agreements -- Authorized.**

Standing Supply Purchase Agreements: Standing supply purchase agreements may be entered into with specific vendors for purchase of repetitive-use goods, materials, equipment and/or supplies common to one (1) or several departments.

Master Services Agreements: Master services agreements may be entered into with specific vendors for support services to be provided on an "as-needed" basis.

The procedures for the use of Standing Supply Purchase Agreements and Master Service Agreements shall be set forth in the Administrative Purchasing Procedures as established by the Finance Director and approved by the City Manager.

### **3.12.120 Cooperative Purchasing – Authorized.**

The City may participate in, sponsor, conduct, utilize, or administer cooperative purchasing with other public agencies (including the United States of America, any state, municipality or other public corporation, or agency, including a joint power authority or quasi-public entity) for the purpose of cooperative purchasing under the following conditions:

A. Purchasing goods and services, professional services, and construction of public works projects through contracts, bid award lists, or schedules of others; provided that competitive purchasing procedures reasonably similar to those required in the City, as determined by the City Manager, were employed to create such contracts, bid award lists, or schedules; or

B. Purchasing goods and services, professional services, and construction of public works projects, through programs, contracts, bid award lists, or schedules created or administered by public agencies to secure the best product or service at the lowest possible price.

### **3.12.130 Liability.**

The failure to comply with the provisions of this chapter shall not invalidate or set-aside any expenditure or contract. No section of this chapter shall impose a mandatory duty on the City, or on any officer, official, agent, employee, board, or council thereof. Instead, if any section purports to impose a mandatory duty of enforcement, said section shall be deemed to



invest the City, and the appropriate officer, official, agent, employee, board, or council with discretion to enforce the section or not to enforce it.

**SECTION 2. Environmental Determination.** The City Council of the City of Daly City finds and determines that the implementation of measures described in this Chapter is in furtherance police powers of the City of Daly City, and that these purposes are exempt from the provisions of the California Environmental Quality Act (CEQA); Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, as provided in categorical exemption Classes 1, 4, 5, 7, 8, 9, and or 21 of the CEQA Guidelines (Title 14, *California Code of Regulations*, Sections 15301-15329).

**SECTION 3. Severability:** If any section, subsection or sentence of this Ordinance is found by a court of competent jurisdiction to be invalid or unlawful, the City Council finds and declares that the remainder of this ordinance would be and is enforceable and would have been adopted notwithstanding the finding of invalidity as to any section, subsection or sentence.

**SECTION 4. Effective Date and Publication:** Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall become effective thirty (30) days from and after its adoption.

Introduced this 25<sup>th</sup> day of November, 2024.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 9<sup>th</sup> day of December, 2024, by the following vote:

AYES, and in favor thereof, Councilmembers: Daus-Magbual, DiGiovanni,

Proaño, Sylvester, Manalo

NOES, Councilmembers: None

ABSENT, Councilmembers: None

K. Annette Hipona

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

JUSLYN C. MANALO

MAYOR OF THE CITY OF DALY CITY