

CHAPTER ONE: ORGANIZATION, FUNCTIONS, AND GENERAL PROVISIONS

Subchapter 1.06: Purchasing and Contracting

Division 1: General Provisions

1.06.010 Scope

(a) All purchases of goods, contracts for services, and contracts for public works projects shall be made in compliance with the requirements of this ordinance (Subchapter 1.06 of the Colma Municipal Code) and the Town's Sustainability Policy (Subchapter 1.15 of the Colma Administrative Code).

(b) No purchase of any good, service or equipment shall be made by any department head independently of the City Manager except as provided in this ordinance and the Town's Sustainability Policy.

[History: Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

[Reference: Cal. Gov't Code § 54202, 54203]

1.06.020 Purchasing System; Delegation

(a) The City Manager shall establish a purchasing system for the Town of Colma to obtain goods and services of suitable quality to meet the Town's needs at the highest reasonable value and at least available cost while increasing energy efficiency and reducing water consumption, greenhouse gas emissions (GHG) and waste in accordance with the Town's Sustainability Policy.

(b) Except where expressly prohibited, the City Manager may delegate his or her authority under this ordinance.

[History: Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.030 Prohibition against Splitting or Separating Projects

It shall be unlawful to split or separate any project into smaller work orders or projects for the purpose of evading the provisions of this subchapter requiring competitive bidding. The work or project shall be presumed to be split for the purpose of evading this subchapter if the proposed contract is for the same type of goods or services, the same type of consideration, and for the same general purpose, as any other contract made within the previous six months. In that case, the proposed contract shall be subject to the competitive bidding requirements set forth in this subchapter.

[History: Added by Ord 734 (7/9/14)]

1.06.040 Emergencies

(a) Notwithstanding anything to the contrary herein, the provisions of this section shall apply to all purchases of goods, contracts for services, and contracts for public works projects in an emergency.

(b) In an emergency:

(1) The City Manager may award and execute contracts up to \$250,000, except that the unexecuted portion of any contract having a value more than \$75,000 shall be subject to ratification by the City Council at its first regular meeting following the onset of the emergency;

(2) Competitive bidding is not required, provided that, as to a public works project subject to the *California Public Contracts Code*, the City Council shall have passed a resolution by four-fifths vote of its members declaring that the project interest and necessity demand the immediate expenditure of public money to safeguard life, health or property;

(3) The Awarding Authority may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two. If notice for bids to let contracts will not be given, the Town shall comply with Chapter 2.5 (commencing with Section 22050) of the *California Public Contracts Code*.

[History: Formerly § 1.06.060 *et al*; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.050 Definitions

As used in this ordinance, the following capitalized terms shall have the respective meanings shown.

“Attest” means to certify that the person signing a document on behalf of a principal has the authority to do so and is acting in his or her official capacity.

“Awarding authority” means the person or group granted by this ordinance to award a contract, as described in sections 1.06.060 and 1.06.100 herein.

“City Manager” includes any duly authorized employee of the Town.

“Duly authorized employee” means a Town of Colma employee authorized by the administrative policy to approve expenditures and bind the Town of Colma by contract within certain monetary limits.

“Goods” means materials, equipment, supplies, furnishings, consumer products, motor vehicles and other tangible personal property. Procurement of goods may include incidental services of

the vendor necessary or convenient for the delivery, installation, set-up, testing or use of goods acquired from the vendor.

“Emergency” is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent and mitigate the loss or impairment of life, health, property or essential public services. “Open market” means the seller sells goods or the provider sells services in a market open to the general public in such a manner that the price of the good or service is conspicuously available to the public and competitors of the seller;

“Public Works” project means a project involving an expenditure of more than \$5,000 for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds;

“Professional services” means services provided by persons with formal education in liberal arts or sciences and advanced study in a specialized field of analytical, scientific, or technical work such as, but not limited to, accountants, attorneys, appraisers, architects, auditors, biologists, chemists, computer programmers, economists, engineers, construction managers, environmental consultants, geologists, information technology consultants, land surveyors, landscape architects, lobbyists, management consultants, and security consultants.

“Purchasing agent” means the City Manager or any person delegated by the City Manager to make a purchase, lease or contract.

“Services” means a service or services provided by an independent contractor.

“Value” is the price in dollars to be paid by the Town of Colma under the contract. For purposes of this chapter, when determining the value of contracts for services of professionals such as appraisers, attorneys, accountants, auditors, economists, financial advisors, litigation experts, lobbyists and similar consultants compensated based on an hourly or fixed rate for professional services, costs of reimbursement for actual and necessary costs and expenses customarily excluded from the fee for services should not be considered as part of the value of the contract.

[History: Formerly § 1.06.030; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

Division 2: Authority to Make Contracts

1.06.060 General Contract Authority of the City Manager

The City Manager is authorized to enter into and execute for and on behalf of the Town of Colma, without the prior approval of the City Council:

- (1) a contract for goods or services, including public works projects, which provides for payment of not more than \$75,000 by the Town;
- (2) a lease of real property or equipment which provides for payment of money by the Town, where the total of all lease payments does not exceed \$75,000; and

(3) a contract with an option to renew by either party, provided that the annual payments do not exceed \$75,000 and that the contract may be terminated by the Town at any time without cause.

[History: Formerly § 1.06.040; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.070 Revenue-producing Contracts

(a) The City Manager is hereby authorized to enter into and execute for and on behalf of the Town of Colma, without the prior approval of the City Council, any contract that will result in the payment of money to the Town of Colma of \$75,000 or less:

- (1) From any public agency or public utility company for construction, use, maintenance or repair of public improvements or facilities;
- (2) For community social or recreational services provided by the Town, or for use of Town property or facilities, in accordance with established Town Guidelines; or
- (3) For entry to or encroachment upon Town's rights-of-way.

(b) The City Manager shall review the amount of any fee, charge, tax or assessment payable to the Town for compliance with all applicable laws and regulations.

[History: Formerly § 1.06.050; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.080 Modifications to Contracts

The City Manager is authorized to amend or modify a contract, without competitive bidding, as follows:

- (1) Where the original contract was \$75,000 or less, the City Manager may agree to modifications to the extent that the cumulative total price of the original contract and all modifications does not exceed \$75,000;
- (2) Where the original contract was more than \$75,000, the City Manager may agree to modifications to the extent that the cumulative sum of all modifications which have not been previously approved by the City Council does not exceed 10% of the original contract price or \$75,000, whichever is greater.

[History: Formerly § 1.06.070; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.090 Extensions

The City Manager is authorized to extend the term of a contract awarded by the City Council, without competitive bidding, provided that the cumulative term of the contract, with extensions, does not exceed four years and the contract price is not increased by a factor greater than the annual increase in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the San Jose-San Francisco-Oakland Bay Area.

[History: Formerly § 1.06.080; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.100 City Council Authority

(a) Notwithstanding anything to the contrary in this subchapter, the City Council shall be the Awarding Authority for all employment contracts.

(b) The City Council shall be the Awarding Authority for all contracts for which the City Manager is not the Awarding Authority.

[History: Formerly § 1.06.090; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

Division 3: Limitations and Requirements

1.06.110 Appropriation Required

No contract may be made, amended, modified or extended by the Awarding Authority unless and until:

(a) Moneys have been appropriated for the good, service or project; and

(b) There is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

[History: Formerly § 1.06.100; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.120 Executing and Signing Contracts

(a) Unless otherwise determined by the City Council at the time of award, a contract awarded by the City Council shall be executed by the Mayor or, in the absence of the Mayor, the Vice-Mayor. The signature of the Mayor or Vice-Mayor may be attested by the City Clerk or any Deputy City Clerk.

(b) A contract awarded by the City Manager may be executed by the City Manager or any person delegated by the City Manager. The signature of the City Manager may be attested by any deputy city clerk.

Unless required by law, the lack of attestation shall not affect the validity of a duly executed contract.

[History: Formerly § 1.06.110; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

[Reference: GOV'T CODE 40602; *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650]

1.06.130 Written Contract Documents

(a) Contracts for sale to the Town of Colma of goods over \$500 shall be in writing. A duly authorized and issued Town of Colma purchase order may be used to satisfy the requirements of this section provided that the purchase order contains all the requirements of a contract under California law. The Town of Colma shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Town of Colma.

(b) Contracts for services having a contract value of \$5,000 or greater shall be in writing. The Town of Colma shall not be bound by any contract that is not first executed by a duly authorized officer or employee of the Town of Colma

(c) All changes, modifications, amendments or novations of written contracts shall be in writing. Any change, modification, amendment or novation of an oral contract that causes the total contract value to exceed the limit of subdivision (a) or subdivision (b) shall be in writing. The Town of Colma shall not be bound by any change order, modification, amendment or novation that is not first executed by a duly authorized officer or employee of the Town of Colma.

(d) When permitted by state or federal statute and authorized by the Town of Colma, computer or electronic communication technology may be used whenever a written document is required by this chapter, provided, however, that the communication is capable of being translated into a written or other record of the Town of Colma capable of being retained, accessed and reproduced in accordance with the Town of Colma's policies governing records of the Town of Colma. The City Manager may develop policies and procedures for use of computer or electronic communication technology for procurement purposes. The policies and procedures shall be subject to approval by the City Attorney for consistency with this chapter and applicable law.

[History: Formerly § 1.06.120; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

[Reference: *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650]

1.06.140 Standardization of Specifications, Inspection and Testing

The City Manager shall have the authority to establish quality and performance standards for all materials, equipment, supplies and services that are consistent with the Town's Sustainability

Policy, while permitting competition among bidders. The using department shall inspect supplies delivered and services performed to determine their conformity with the specifications applicable thereto or set forth in the contract and shall report any deficiencies to the City Manager. The City Manager may require chemical and physical tests of supply samples submitted with bids and samples of supply deliveries which are necessary to determine their quality and conformance with specifications.

[History: Formerly § 1.06.130; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.150 Records and Reports

(a) At or before the time of executing a negotiated contract, the Awarding Authority shall make a record of the facts and circumstances justifying a negotiated contract under this ordinance.

(b) Within 30 days of entering into a contract over \$75,000 in an emergency, or at its next regularly scheduled meeting, whichever comes first, the City Manager shall report to the City Council on the details of the emergency and reasons justifying the actions taken.

(c) Within 60 days of completion of any project costing more than \$75,000, the City Manager will report to the City Council on all fiscal aspects of the project, including original and any supplemental budget appropriations, total cost, the cost of all modifications to the contract, and the cost of all extensions.

(d) Within 60 days of entering into a sole source contract over \$10,000, the City Manager shall present to the City Council a report explaining the basis for the determination of sole source and describing all other contracts made with that contractor in the three preceding years.

(e) The City Manager shall make and maintain a record of all formal and informal bids in compliance with the Town of Colma's Record Retention Program.

[History: Formerly § 1.06.140; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

Division 4: Procedures for Selecting the Contractor for Goods and Services

1.06.160 Competitive Bidding Required

No contract for goods or services may be made without competitive bidding, as described later in this ordinance, unless an exemption is provided herein.

[History: Formerly § 1.06.150; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.170 Open Market Acquisitions of Goods or Services

(a) The City Manager may acquire consumer goods having a price less than \$15,000 in an open market without competitive bidding, including but not limited to:

- (1) Purchases of office supplies, books, periodicals, newspapers, trade journals and other publications, including individual purchases and subscription; and
- (2) Purchases of gasoline, oil, or other automobile care products in connection with the immediate use or emergency repair of Town of Colma vehicles.

(b) The City Manager may acquire consumer services having a value less than \$15,000 in an open market without competitive bidding, including but not limited to:

- (1) Utility services, such as telephone, cable television, gas, electric, water, sewer and refuse collection;
- (2) Advertisements in newspapers or other publications;
- (3) Work performed by a utility for the installation and/or relocation of utilities; and
- (4) Airline tickets, train tickets, hotels and other travel expenses according to the travel policy.

[History: Formerly § 1.06.160; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.180 Negotiated Contracts

The Awarding Authority may negotiate and enter into the following transactions, purchases or contracts, without competitive bidding, with any qualified contractor selected at the discretion of the Awarding Authority:

- (a) Contracts for goods or services for \$75,000 or less;
- (b) Purchase of used equipment, which in the opinion of the Awarding Authority is satisfactory for the work of the Town of Colma;
- (c) Contracts for governmental or proprietary services provided by any government agency;
- (d) Insurance or bond premiums when placed through any insurance carrier, plan or Joint Powers Agreement for insurance services, approved by the City Council.
- (e) Membership in professional organizations or associations;
- (f) Utility services such as telephone, cable television, gas, electric, water, sewer and refuse collection;
- (g) Emergency purchases, equipment or vehicle repair;

- (h) Contracts for services to be performed by any city, county or public agency of the State of California;
- (i) Contracts for goods sold directly by any city, county or public agency of the State of California or any federal agency to the Town, provided that the purchasing policies of the agency is substantially the same as the policies set forth in this ordinance;
- (j) Purchases of goods and services by contract arrangement and agreement for cooperative purchasing programs with the state, the county, or any other public or municipal corporation of the state, provided that the agency, if a county, or any other public or municipal corporation of the state, has adopted purchasing policies in accordance with California Government Code section 54202, or purchases of goods or services directly from a vendor at a price established by a competitive bid by another public jurisdiction in substantial compliance with sections this subchapter, even if the city had not joined with that public agency in a cooperative purchase;
- (k) Contracts with Town employees;
- (l) Contracts with instructors for the Town's recreation programs;
- (m) Contracts for equipment rentals;
- (n) Modifications or extensions of existing contracts; and
- (o) Contracts where due to special circumstances the Awarding Authority determines in writing that implementation of the competitive process is infeasible, impractical or otherwise not in the best interest of the Town of Colma. The authority of this paragraph is non-delegable.

[History: Formerly § 1.06.170; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737, (1/14/15).]

1.06.190 Contracts for Goods and Services with Government Agencies, Non-profits and Others

- (a) The Awarding Authority may enter into contracts for goods and services with any federal, state or local agency, any nonprofit agency qualified under Section 501(c)(3) of the Internal Revenue Code, or any public educational institution, without competitive bidding, provided that all of the following conditions are met:
 - (1) The agency is selling the goods or services as part of a job training, work furlough, educational and similar human service programs that make goods and services available at a competitive cost while also furthering the public welfare;
 - (2) The agency agrees to direct supervision of the workers or employees providing any service under the contract;
 - (3) The agency agrees to provide workers' compensation insurance for the workers or employees;

(4) The agency agrees to indemnify, protect, defend and hold the Town of Colma harmless against any and all claims alleged to be caused or caused by any act or omission of the agency's worker or employee, in a form satisfactory to the City Manager and City Attorney.

(b) This section is intended to provide an expedient method for Town of Colma participation in such programs and is not intended to limit the exemptions for services provided elsewhere in this ordinance.

[History: Formerly § 1.06.180; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.200 Contracts for Professional or Technical Services

(a) Notwithstanding any other provision of this ordinance, the Awarding Authority may negotiate and enter into a professional services contract with any professional service provider meeting the prescribed qualifications, without competitive bidding.

(b) The Awarding Authority's selection of a professional services provider shall be based on demonstrated competence, the professional qualifications necessary for the satisfactory performance of the required services, and fair and reasonable prices to the Town of Colma.

(c) The Awarding Authority shall establish the professional competence and qualifications necessary to be possessed by a professional services provider in order to be awarded a proposed professional services contract. Criteria for determining the competence and qualifications of the provider shall include, but shall not be limited to, the following:

- (1) Ability, capacity and skills necessary to perform service;
- (2) Ability to meet time requirements imposed by project;
- (3) Character, integrity and reputation through a reference check;
- (4) Previous experience with the vendor; and
- (5) Sufficiency of financial resources needed to perform the services.

(d) The City Manager may develop and maintain a procedure whereby professional services providers may periodically submit statements of qualifications and performance data for pre-approval by the City Manager or City Council.

[History: Formerly § 1.06.190; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737, (1/14/15).]

1.06.210 Sole Source Procurement

When requirements are so critical or call for such specialized expertise that only one source is capable of satisfying those requirements, the Awarding Authority is empowered to waive the

competitive procurement procedures. Sole source means that only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies or the ability to deliver at a particular time. Purchasing from a sole source shall be permitted after written justification from the requesting department explaining why a sole source has been specified, and a factual finding by the person or body authorizing the purchase that it is in the best interest of the Town of Colma to purchase without competitive purchasing.

[History: Formerly § 1.06.200; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

Division 5: Competitive Bidding for Goods or Services

1.06.220 Invitations for Bids and Requests for Proposals or Qualifications

(a) Whenever competitive bidding is required or chosen for a contract for goods or services, the Awarding Authority may invite bids, request proposals, or request statements of qualifications in accordance with the procedures set forth in this division.

(b) The Awarding Authority shall obtain three or more bids or proposals by soliciting bids or proposals by publication in a newspaper, from qualified persons whose names appear on lists of persons maintained by the Town of Colma or known to the Town, or from persons whose names are obtained from trade journals or newspaper ads, or by relying on unexpired bids or price quotations from persons who had previously submitted bids or price quotations to the Town.

(c) The City Manager may, but is not required to, request sealed, written bids or proposals. The notice inviting informal bids and the bids shall be in writing. Bids may be transmittable to the Town of Colma by facsimile, mail, courier, electronic mail (e-mail), or any other means of delivery. A qualified person is a person capable of delivering the goods or services meeting the Town's specifications and requirements within the time specified by the contract.

(d) During the process of soliciting price quotations, a bidder's price quotations shall be kept confidential except for internal use by Town of Colma personnel for purposes of the pending contract.

(e) When soliciting bids or proposals, the awarding authority shall (1) describe in general terms the goods or services; (2) advise potential bidders how to obtain additional information about the goods or scope of work; (3) state the date, time and place for the submission of bids; (4) state whether the selection of the successful bidder will be based on price alone or whether the factors set forth in the next paragraph will be considered; (5) include a description of additional items such as insurance, bonding, and warranties to be included in the price; (6) include any other information required by law.

(f) If the request states that the contractor's competence, experience, qualifications, reliability, experience, availability, or expertise is a component in meeting the needs of the Town of Colma, then the Awarding Authority need not necessarily purchase from the bidder proposing the lowest price but may select a contractor that best meets the Town's

requirements. Factors which can be considered in determining the most advantageous bid include, but are not limited to:

- (1) Compliance with the bid specifications, including any provision governing nondiscrimination in employment;
 - (2) Price;
 - (3) The cost of consumable operating supplies, replacement parts, maintenance or other necessary costs. Current costs are to be used in this determination;
 - (4) Ability of the bidder to complete the transaction in accordance with the specifications or criteria set forth in the request for proposals or invitation for bids, such as manufacturing, performance or delivery capability, experience, and the location of bidders' manufacturing, storage or maintenance facilities.
- (g) After receipt of a Proposal or Statement of Qualifications, the Awarding Authority may discuss with one or more firms or individuals the alternative methods for providing the required professional services and may conduct further negotiations with one or more of the most qualified firms or individuals to fully clarify each firm's offer to provide services.
- (h) If no bids or proposals are received in response to a solicitation, the City Manager may negotiate a contract with any qualified individual or firm.
- (i) If a contract that was let pursuant to the provisions of this chapter is thereafter terminated because of breach by the service provider, the Town of Colma may complete the project by negotiated contract with any qualified individual or firm.

[History: Formerly § 1.06.220; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.230 Preferences for Local Businesses on Certain Purchases

- (a) Subject to the limitations contained in this section, in the evaluation of bids or proposals for the award of all contracts for the purchase or lease of supplies, materials, equipment or other personal property there shall, upon written application noted on the space provided on city bid or proposal documents, be extended a 1% price preference for a local business, as defined in this section.
- (b) As used in this section, local business means a business firm with fixed offices or locally taxable distribution points within the boundaries of the Town of Colma which holds a current and valid Town of Colma business license with a Colma business street address.
- (c) The following contracts are exempt from the provisions of this section:
- (1) Contracts to the extent to which application of the provisions of this section would be prohibited by state or federal law or regulation or would result in what the awarding authority finds to be an unacceptable loss of government revenue or funding;

(2) Contracts funded in whole or in part from donations and gifts to the city to the extent the provisions would conflict with any special conditions attached to the gifts or donations, provided the gift and the special conditions have been approved and accepted pursuant to the donations policy of the city;

(3) Contracts resulting from exigent emergency requisitions where any delay in completion or performance of the contract would jeopardize the public health, safety or welfare of the citizens of the city, or where in the judgment of the City Manager the operational effectiveness of a significant city function would be seriously threatened if the contract were not entered into expeditiously; and

(4) Contracts with any single or sole source supplier of any supplies, material, equipment or other personal property.

(d) If the City Manager or his or her designee determines that a contractor or bidder has made an intentional misstatement to obtain a price preference under this section, the contractor or bidder shall be subject to any remedy available to the city at law or equity, including but not limited to both of the following:

(1) A finding of intentional misstatement or non-compliance shall be regarded by the awarding authority as a basis for determining whether or not the bidder or contractor is a responsible bidder for the present and future contracts. Any disqualification imposed as a result of this determination shall last for a period of one year.

(2) An intentional misstatement made to obtain a price preference under this section shall subject the recipient of any such price preference to a civil penalty of treble the dollar price preference received, or \$1,000.00, whichever is greater.

[History: Formerly § 1.06.230; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.240 Bid Deposit or Bond for Purchase of Goods or Services

The City Manager may require that a bid for any purchase or lease of supplies, materials, equipment or other personal property be accompanied by either cash, a certificate of deposit or certified check or draft, or a cashier's check or draft of or on some responsible bank in the United States, in favor of and payable at sight to the city, in an amount not less than five percent of the aggregate amount of the bid.

[History: Adopted by Ord 734 (7/18/14)]

1.06.250 Inspection of Supplies and Equipment

The City Manager shall inspect goods delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The City Manager shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

[History: Formerly § 1.06.330; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

Division 6: Public Works Projects

1.06.260 Scope

This division shall apply to all public projects, as defined by the California Public Contract Act in sections 20161 and 22002.

[History: Formerly part of § 1.06.210; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737, (1/14/15).]

[References: Publ. Cont. Code §§ 22002, 22003, and 22030]

1.06.270 Competitive Bidding; Selecting the Contractor

(a) This section and section 1.06.280 shall apply to all public projects, as defined by section 22002 of the Public Contract Act. "Public project" means the construction, reconstruction, erection, alteration, renovation, improvement, demolition, painting, repainting or repair work involving any publicly owned, leased, or operated facility. "Facility" means any plant, building, structure, ground facility, real property, streets and highways, or other public work improvement. "Public project" does not include maintenance work.

(b) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency under force account procedures, by negotiated contract, or by purchase order.

(c) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal bid procedures as set forth in the Uniform Act and section 1.06.280 of this Code.

(d) Public projects in excess of one hundred seventy-five thousand dollars (\$175,000) shall be let to contract by formal bid procedure as set forth in the section 1.06.290 of this Code.

(e) If all bids received are in excess of one hundred seventy-five thousand dollars (\$175,000), the City Council may by passage of a resolution by four-fifths vote, award the contract, at one hundred eighty-seven thousand five hundred dollars (\$187,500) or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.

(f) The City Council shall approve plans, specifications and working details for all public works projects exceeding \$175,000.

(g) Competitive bidding shall not apply where, after rejecting bids, the City Council has passed a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by day labor, or the materials or supplies can be furnished at a lower price in the open market.

[History: Formerly part of § 1.06.210; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737, (1/14/15).]

[Reference: CAL. GOV'T CODE §§ 22032 *et seq.*; Cal. Pub. Cont. Code § 22002]

1.06.280 Informal Bids for Public Projects

(a) The purpose of this section is to implement the election set forth in Colma City Council Resolution 99-03 to be subject to the Uniform Construction Cost Accounting Act, (hereinafter, the "Uniform Act") and to implement the informal bidding procedures set forth in section 22032, *et seq.*, of the Public Contract Code for contracts described in section 1.06.270(b).

(b) This section shall be used for all contracts for public projects subject to informal bid procedures under section 1.06.270(c) and may be used when contracting for "maintenance work" or when contracting for any other work which does not fall within the definition of "public project," as defined in Section 1.06.270. In the event of a conflict between this section and section 1.06.290, this section shall apply.

(c) The City Engineer shall maintain a list of qualified contractors identified according to category of work. The list shall satisfy the minimum criteria determined by the Uniform Construction Cost Accounting Commission for the development and maintenance of the contractors list.

(d) Where a public project to be performed is subject to the provisions of this ordinance, the City Engineer shall mail a notice inviting informal bids not less than 10 calendar days before bids are due to all contractors for the category of work to be bid, as shown on the list developed in accordance with the preceding paragraph and to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission for San Mateo County. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids; provided however that (1) if there is no list of qualified contractors maintained by the Town 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; and (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.

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

(f) Competitive bidding shall be based on specifications approved by the Awarding Authority. The original specifications shall be filed in the office of the City Clerk and copies thereof shall be on file in that office and the office of the City Manager for public inspection. The notice inviting bids to purchase shall be advertised upon the authority of the City Manager and such advertising shall be published one time in a newspaper of general circulation in San Mateo County, and in addition, invitations to bid shall be mailed to prospective vendors at the discretion of the City Manager. The bids submitted shall be received and publicly opened by the city clerk at the time designated.

(g) The open bids shall be available for public inspection from the time opened until the award has been made by the awarding authority. The City Manager shall tabulate all bids received.

(h) If in the opinion of the awarding authority none of the bids is satisfactory, then the awarding authority may, in its sole and absolute discretion, reject all of the bids, provided that prior to rejecting all bids and declaring that a project can be more economically performed by employees of the Town, the Town shall furnish a written notice to an apparent low bidder. The notice shall inform the bidder of the Town's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the City Council intends to reject the bid. Thereafter, the awarding authority may invite new bids using new or different specifications.

[History: Formerly parts of §§ 1.06.210 and -220; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737, (1/14/15).]

1.0.290 Formal Bids for Public Projects

(a) This section shall apply to all public projects, as defined by section 20161 of the Public Contract Act. "Public project" means (1) a project for the erection, improvement, painting, or repair of public buildings and works; (2) work in or about streams, bays, etc.; (3) street or sewer work, except maintenance or repair; and (4) furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

(b) Except as otherwise provided in this chapter or where the Awarding Authority determines that competitive bidding is infeasible or impractical, when a contract has the value specified in section 1.06.270(d), the City Council shall award a contract in accordance with the formal competitive bidding process described in this section.

(c) The notice inviting bids shall include a general description of the goods to be purchased and bond requirements, if any, and shall state where bid blanks and specifications may be secured and the time and place for opening bids. It shall incorporate by reference all other bid documents.

(d) Notice inviting bids shall be given as follows:

(1) The notice shall be published in a newspaper designated pursuant to section 1.08.050 of the Colma Municipal Code at least once not less than 14 days before the date of opening of the bids.

(2) The notice shall also be mailed by first class mail or facsimile to responsible prospective suppliers known to the Town of Colma or who have requested their names be considered. The notices shall be mailed or sent not less than 14 days before the date of opening of the bids.

(3) The notice shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the Uniform Construction Cost Accounting Commission for San Mateo County. The notice shall be sent at least 15 calendar days before the date of opening the bids.

- (4) The Town may give such other notice as it deems proper.
- (e) When deemed necessary by the City Manager, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within 15 days after the notice of award of contract has been mailed, unless the Town of Colma is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder; the amount of the lowest bidder's security may be applied by the Town of Colma to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
- (f) Sealed bids shall be submitted to the address identified in the notice inviting bids and shall be identified as bids on the envelope.
- (g) Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open to public inspection during regular business hours for a reasonable period of time. No bidder may withdraw his bid for a period of at least 90 days after the date set for the opening thereof. Bids received after the time set for the opening of bids shall be returned unopened to the bidder.
- (h) In its sole discretion, the City Council may reject any and all bids presented and re-advertise for bids or exclude any item or items from the award of bid or waive any informalities in a bid, provided that prior to rejecting all bids and declaring that a project can be more economically performed by employees of the Town, the Town shall furnish a written notice to an apparent low bidder. The notice shall inform the bidder of the Town's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the City Council intends to reject the bid.
- (i) Contracts shall be awarded by the City Council to the lowest responsive, responsible bidder except as otherwise provided in this chapter.
- (j) If two or more bids are received for the same total amount or unit price, quality and service being equal, the City Council may accept the one it chooses or accept the lowest bid made by negotiations with the bidders after the bid opening.
- (k) The City Council may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interest of the Town of Colma. If the City Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.
- (l) If no bids are received in response to an invitation for competitive bids, a contract may be negotiated with any qualified person.
- (m) If the apparent successful bidder fails to meet deadlines for submitting documents required by the notice inviting bids or instructions to bidders, the City Council may award a contract to the next lowest bidder meeting all requirements.

(n) If a contract let pursuant to the provisions of this chapter is terminated because of breach by the contractor, the City Council may complete the project by negotiated contract with any qualified individual or firm.

[History: Formerly § 1.06.220; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14); Ord 737 (1/14/15).]

1.06.300 Withdrawal or Correction of Formal Bid

(a) Prior to bid opening date and time, bids submitted may be withdrawn by written or telegraphic request received by the Town of Colma before the hour set for opening. After such hour it may not be withdrawn.

(b) After bid opening date and time, any bidder who seeks to withdraw or modify a bid because of inadvertent computational error shall notify the Town of Colma department responsible for the bid no later than three working days following the bid opening. The bidder shall provide worksheets and other such information as may be appropriate or required by the department to substantiate the claim of inadvertent error. Failure to do so may bar such relief and allow recourse from the bid surety if applicable. The burden shall be upon the bidder to prove such error.

[History: Formerly § 1.0.260; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.310 Procedures for Bid Protests

(a) Protests by unsuccessful proposers or bidders shall be submitted to the Town of Colma department where bids or proposals were submitted and to the protested bidder setting forth in detail the grounds for such protest.

(b) Protests shall be submitted to the Town of Colma and the protested bidder no later than 10 calendar days after the date of the announcement of selection.

(c) All protests shall be in writing and must include the following information:

- (1) The name, address and telephone number of the protestor;
- (2) The signature of the protestor or protestor's representative;
- (3) The solicitation, bid or contract number;
- (4) A detailed statement of all legal and factual grounds for the protest;
- (5) All documentation supporting the protestor's grounds for the protest;
- (6) The form of relief requested and the legal basis for such relief.

(d) If a valid protest is timely filed the Town of Colma shall investigate or cause to be investigated the bid protest.

(e) The protested bidder shall have 5 calendar days to respond to the protesting bidder and to the Town of Colma and to provide any information requested by the Town of Colma.

(f) The City Manager shall make a recommendation to the City Council regarding the bid protest.

[History: Formerly § 1.06.270; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.320 Non-collusion

(a) Any employee of the Town of Colma shall be deemed guilty of malfeasance and shall be disciplined in accordance with Town of Colma personnel rules and regulations for engaging in any of the following activities:

(1) Aiding or assisting a bidder in securing a contract to furnish supplies, materials, equipment or contractual services at a higher price than that proposed by any other bidder;

(2) Favoring one bidder over another by giving or withholding information;

(3) Willfully misleading any bidder in regard to any matter relevant to the competitive bidding process or the character of the materials or supplies called for by the contract;

(4) Knowingly accepting commodities of a quality inferior to those called for by the contract contrary to the best interest of the Town of Colma;

(5) Knowingly certifying to a greater amount of service or work performed than has actually been performed;

(6) Knowingly certifying to the receipt of an amount or different kind of materials, supplies or equipment than have actually been received.

(b) All formal bids shall require an affidavit from the bidder that the bid or proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and non-collusive or sham; that the proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal

price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

[History: Formerly § 1.06.280; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.330 Award of Bid

For all public works projects which require an invitation for bids under the Public Contracts Code, the Awarding Authority shall award the bid to the lowest, responsible, responsive bidder.

[History: Formerly § 1.06.290; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.340 Bid Deposit or Bond

(a) A bid for all projects for construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds shall be accompanied by either cash, a certificate of deposit or certified check or draft, or a cashier's check or draft of or on some responsible bank in the United States, in favor of and payable at sight to the city, in an amount not less than five percent of the aggregate amount of the bid, except where the project is undertaken by force account.

(b) Where such bid security is required, if the bidder to whom the contract is awarded shall, for fifteen days after posting of such bid security fail or neglect to enter into the contract and file the required security, the director of finance shall draw the money due on such certificate of deposit or check or draft and pay the same or any cash deposited into the city treasury, and under no circumstances shall it be returned to the defaulting bidder.

(c) In lieu of the foregoing, any bid for which bid security is required under this section may be accompanied by a surety bond in said amount furnished by a surety authorized to do a surety business in the state of California, guaranteeing that said bidder will enter into the contract and file the required bonds within said period.

(d) With the approval of the City Manager, prospective bidders may file annual or continuous surety bonds covering all bids to be made during the period that the surety bond is in effect.

(e) When in the opinion of the City Manager, bid deposits or bonds cannot be obtained on a particular item; the requirements of this section shall not apply.

(f) All deposits shall be returned after execution of the contract by the successful bidder and deposit of any necessary performance, labor and materialman's bonds.

[History: Formerly § 1.06.300; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.350 Substitution of Subcontractors

The City Council hereby delegates to the City Manager the authority to approve the substitution of subcontractors for any contract awarded by the City Council.

[History: Formerly § 1.06.310; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

[Reference: Public Contract Law § 4107]

1.06.360 Control Procedures

The details of procedure and forms to be followed in the issuance of requisitions, in the discharge of the duties placed upon the City Manager, in the purchase of items, and in the disposition of personal property, shall be prescribed by the City Manager, subject to the provisions of this chapter. The type of written documents to be used to bind the city in making any purchase or lease shall be in conformance with control procedures established by the City Manager and City Attorney.

[History: Formerly § 1.06.320; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.370 Use of Brand Name in Specification; Offers of "Or Equals"; Testing

(a) Any reference to a specific Brand Name in specifications is illustrative only. A reference to a Brand Name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the Town of Colma.

(b) A bidder may offer an equivalent ("or equal") in response to a Brand Name reference. When an "or equal" is offered, the Town of Colma may test and evaluate the product prior to award of the contract.

(c) At bidder's expense, bidder bears sole responsibility for providing any information, test data, or document required by the Town of Colma to fully evaluate the acceptability of the "or equal". At bidder's expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

(d) The Town of Colma reserves the right to reject a bid containing any "or equal" offered.

[History: Formerly § 1.06.340; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]

1.06.380 Supplemental Regulations

The City Manager may issue written supplemental regulations and procedures for the making and administration of contracts. Such supplemental regulations shall be approved by the City Attorney and shall not be inconsistent with the provisions of this chapter.

[History: Formerly § 1.06.350; Ord. 205 (12/8/76); Ord. 488 (4/10/96); Ord. 489 (5/8/96); Ord. 519 (11/12/97); Ord. 548 (2/10/99); Ord. 623 (12/8/2004); Ord 734 (7/9/14).]