

ORDINANCE NO. 2025

AN ORDINANCE AMENDING CHAPTER 11.50 OF TITLE 11 OF THE SAN RAFAEL MUNICIPAL CODE, TITLED PUBLIC WORKS CONTRACT POLICY

WHEREAS, Chapter 11.50 of the San Rafael Municipal Code (“SRMC”) sets forth the City of San Rafael’s public works contract policy, which includes separate bidding and award procedures for “minor contracts” and “major contracts”; and

WHEREAS, under the City’s policy, “minor contracts” are those of \$125,000 or less, or an amount otherwise set by resolution of the City Council. Minor contracts follow an informal bidding process and may be awarded by the Director of Public Works and do not require City Council award; and

WHEREAS, “major contracts” are those exceeding \$125,000, or an amount otherwise set by resolution of the City Council. All “major contracts” require formal bidding requirements and City Council award; and

WHEREAS, the City’s policy also permits an exception to the bidding requirements for contracts in an amount not exceeding \$30,000; and

WHEREAS, the City Council desires to amend the City’s public works contract policy by replacing the dollar amount limits specified in Chapter 11.50 for the City’s competitive bidding exception, and award of minor (informal) contracts and major (formal) contracts, with dollar amount limits to be set by resolution of the City Council; and

WHEREAS, the City Council further desires to amend Chapter 11.50 to incorporate gender-neutral language; and

WHEREAS, this Ordinance No. 2025 was introduced and read by title only at a duly-noticed public meeting of the San Rafael City Council on the 17th day of January 2023.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. Chapter 11.50 of Title 11 of the Municipal Code of the City of San Rafael is hereby amended as follows. Additions are shown in underline and deletions in strikethrough.

Chapter 11.50 – PUBLIC WORKS CONTRACT POLICY

11.50.010 Purpose.

The purpose of this chapter is to establish procedures for the benefit and convenience of the city in the letting of public works contracts, which procedures are and shall be a part of every contract.

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11.50.020 Definitions.

As used in this chapter, the following words are defined as follows:

- A. "Contract work" means employment of workers by contract, including change orders. Contract work excludes employment of city employees and day work.
- B. "Day work" means work performed by city employees and/or by the employment of workers paid by the city on a daily basis.
- C. "Department" means the department of public works.
- D. "Director" means the director of public works.
- E. "Force account" means work performed by a contractor on a time and materials basis.
- F. "Major contract" means any contract let by the city for the performance of public works in an amount ~~exceeding one hundred twenty-five thousand dollars (\$125,000.00), or such other amount as may be~~ established from time to time by resolution of the city council.
- G. "Minor contract" means any contract let by the city for the performance of public works in an amount ~~of one hundred twenty-five thousand dollars (\$125,000.00) or less, or such other amount as may be~~ established from time to time by resolution of the city council.
- H. "Public works" or "public works project" means:
 - 1. The construction, improvement, alteration, modification and repair of public buildings, works and facilities;
 - 2. Work in or about streams, bays, waterfronts, embankments or other works for protection against overflow;
 - 3. Construction of streets and related improvements including installation of lighting and signaling systems;
 - 4. Construction of drainage systems;
 - 5. Construction of parks, playgrounds and other recreational improvements, scenic improvements, and enhancement projects;
 - 6. Furnishing materials and supplies for any such project;
 - 7. Maintenance and repair of public works; and
 - 8. Other similar work.
- I. "Professional services" means services such as, but not limited to, the services of attorneys, physicians, architects, engineers, surveyors and other consultants or individuals or organizations possessing a high degree of technical skill.
- J. "Support systems" means any and all work performed or services rendered by independent contractors, with or without the furnishing of material, such as but not limited to: custodial services, building and equipment maintenance, machinery and equipment rental, and telephone, gas, water, electric light and power services.

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11.50.030 Professional or support services—Chapter inapplicability.

This chapter has no application to the hiring of or contracting for professional or support services.

11.50.040 Encumbrance of funds.

No public works contract shall be approved for public works unless there exists an unencumbered appropriation in the fund account against which said contract is to be charged.

11.50.050 Contract requirements.

Except as otherwise provided by the San Rafael City Charter or ordinances pursuant thereto, the director or ~~his~~ their authorized representative may establish written requirements to be included in all public works contracts.

11.50.060 Letting of public works contracts.

All contracts for public works shall be let in accordance with this chapter and such rules and regulations as may be adopted by the director, or ~~his~~ their designee, to carry out the purposes of this chapter.

11.50.070 Competitive bidding.

All public works contracts shall be based on competitive bids unless otherwise provided in this chapter.

11.50.080 Emergency contracts.

Emergency contracts for public works may be made free of any of the bidding requirements of this chapter when determined and declared by the city that an emergency exists.

11.50.090 Exception to bidding requirement—Waiver.

- A. Contracts in an amount ~~not exceeding thirty thousand dollars~~ ~~(\$30,000.00)~~ established from time to time by resolution of the city council may be awarded and executed by the director without recourse to the competitive bidding provisions of this chapter.
- B. The city council, after reviewing and considering the facts of a particular public works project, may waive the bidding requirements of this chapter by finding that any one or more of the following circumstances exist:
 1. Limitations on the source or the scope and nature of the contract are such that no more than one contractor is available to meet the technical specifications and/or quality considerations of the project;
 2. The work is of a highly specialized nature;
 3. There would be no competitive advantage to requiring bidding for the contract;
 4. The cost of the work would be significantly increased or its completion significantly delayed;

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5. There exist other specific considerations justifying the waiver of the bidding requirements.
- C. Contracts may be awarded and executed by the director without recourse to the competitive bidding provisions of this chapter if ~~he or she~~ the director determines that an emergency exists which requires work to be performed within a shortened time frame. For purposes of this section, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

11.50.100 Rejecting bids.

After the bids are received on a particular public works contract, the awarding authority may in its sole discretion reject any and all bids presented and may either readvertise bids or may have the work done by the awarding authority.

11.50.110 Contract award.

- A. Bid Opening. Sealed bids shall be submitted to the city at the location specified in the public notice. The bids shall be so identified on the envelope with reference to the specific request inviting bids to which it relates. Bids shall be opened in public at the time and place stated in the public notice or in the request inviting bids. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.
- B. Tie Bids. If two (2) or more bids received are for the same total amount or unit price, the awarding authority may consider factors other than price and accept the one it chooses.
- C. Awarding Authority. Bids on major contracts shall be awarded by the city council. Bids on minor contracts may be awarded by the director.

11.50.120 Bidder's security.

Unsuccessful bidders shall be entitled to the return of their security within thirty (30) days from execution of the contract by the city.

The successful bidder shall forfeit ~~his~~ their security upon ~~his~~ the bidder's failure to execute the contract within ten (10) days after the notice of award has been delivered personally or by mail. If the successful bidder fails to execute the contract, then the award may be made to the next lowest responsible bidder. The amount of the lowest bidder's security may then be applied by the city to the difference between the low bid and the next low bid, and the surplus, if any, shall be returned to the lowest bidder.

11.50.130 Indemnification.

The contractor shall defend, indemnify and hold harmless the city, its officers, agents and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the performance of

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the contract or work, regardless of responsibility for negligence (including costs and expenses, which include attorney's fees, incurred in connection therewith) and from any and all claims, loss, damage, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the contract, regardless of responsibility for negligence (including costs and expenses, which include attorney's fees, incurred in connection therewith) but excluding liabilities due to the sole negligence or willful misconduct of the city.

11.50.140 Notice inviting bids.

Notice inviting bids shall include a general description of the project, the location where bid blanks and specifications may be secured, and the time and place for opening bids.

11.50.150 Major contracts—Bidding procedures.

- A. Public Notice. Public notice inviting bids shall be published once at least ten (10) days before the date of opening the bids in a newspaper of general circulation printed and published in the city. In addition, the director or ~~his/her~~ their designee may issue public notice to the trade publications. The director or ~~his/her~~ their designee may waive the necessity to publish the invitation to bid in a newspaper published in the city if the scope and nature of the contract is such that contractors are not available in the local area, except that public notice by other appropriate means, including but not limited to notice in trade publications, shall be issued as determined by the director or ~~his/her~~ their designee.
- B. Award of Contract. The contract shall be awarded to the lowest, responsive and responsible bidder.
- C. Bid Security. All bidders shall furnish bidder's security in the amount of ten percent (10%) of the contract price by way of cash, cashier's check, certified check or bid bond in a form acceptable to the city.

11.50.160 Major contracts—Requirements.

- A. Bonds. The successful bidder shall furnish the following bonds to the city within ten (10) days following notification of the award of the contract:
 1. Performance bond in the amount of one hundred percent (100%) of the contract price;
 2. Labor and materials bond in the amount of one hundred percent (100%) of the contract price;
 3. Materials guaranty (maintenance) bond in the amount of fifty percent (50%) of the contract price. This bond shall unconditionally guarantee materials for a period of one year from and after the date of recordation of the notice of completion.

All bonds must be issued by a surety insurer, admitted in California, and must be issued in the form of a bond, not a deposit in lieu of a bond.

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However, a certificate of deposit, may be substituted upon approval of the awarding authority.

- B. Insurance. The contractor shall assume all responsibility for damage to property or injury to person(s) caused in any manner by ~~his~~ the contractor's performance under the contract, by any equipment furnished by ~~him~~ the contractor under the contract, or by the operation thereof. The contractor shall obtain and maintain, during the entire life of the contract, such public liability and property damage insurance satisfactory to the city and its attorney, as shall protect ~~him~~ the contractor and the city from loss, liability, or claims for damages or personal injury, including accidental death as well as for claims for property damage, which may arise from or out of performance of the contract, whether such performance be by ~~himself~~ the contractor, ~~his~~ the contractor's subcontractor(s), anyone directly or indirectly employed by ~~him~~ the contractor, or the city, its officers, agents or employees. The amount and requirements of such insurance shall be as follows:

1. Public liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per person, one million dollars (\$1,000,000.00) per incident, or one million dollars (\$1,000,000.00) combined single limit;
2. Professional liability (errors or omissions) insurance in a like amount, if applicable;
3. Public liability insurance for property damage in an amount not less than five hundred thousand dollars (\$500,000.00);
4. Such policies shall name the city of San Rafael, its officers, employees and agents as additional insureds; said policies shall be primary insurance;
5. A current certificate of insurance shall be furnished to the director showing the required insurance coverage and providing for thirty (30) days written notice by registered mail to the city by the insurance company and the contractor, prior to cancellation or any change in policy coverage. Additionally, an endorsement to the policy specifically enumerating the additional insureds as stated in subsection (B)(4) of this section, shall be furnished to the director.
6. Workers compensation insurance and all employee taxes and employee benefits required by law shall be the sole responsibility of the contractor. Contractor shall provide written evidence of workers compensation insurance coverage.

The contractor's insurer must be an admitted insurer in the state of California. Upon request, contractor shall provide city a copy of any insurance policies mentioned in this section.

- C. Wage Rates. Pursuant to the requirements of California Labor Code, Section 1771, the general prevailing wage rates in the locality in which

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the work is to be performed, for each craft or type of worker needed to execute the contract, shall be followed.

- D. Payments and Retention.
 - 1. Method of payment may be set forth in the contract, otherwise no payment shall be made to the contractor until the contract is performed satisfactorily and the notice of completion is recorded by the city.
 - 2. Ten percent (10%) of the contract price shall be retained from all contracts for a period of thirty-five (35) days from and after the date of recordation of the notice of completion unless otherwise specified in the contract. The director may determine a higher retention is necessary to cover any unpaid claims, provided proper stop notices, pursuant to the California Civil Code, of said claims have been filed in the office of the city finance director or the public works director.
- E. Form of Contract. The contract document shall be the city's standard contract, for public works, as modified to the specifics of the project.

11.50.170 Minor contracts—Bidding procedures.

- A. Public Notice. Proposals shall be solicited from at least three (3) contractors by telephone, written request, or by public notice pursuant to Sections 11.50.140 and 11.50.150(A). The contract shall be awarded to the lowest responsive and responsible bidder and shall be based on at least three (3) bids or proposals where possible.
- B. Bid Security. Bidder's security in the amount of ten percent (10%) of the contract price may be required with the proposal if deemed necessary by the director.

11.50.180 Minor contracts—Requirements.

- A. Bonds. The director or ~~his/her~~ their designee may require a performance bond, a materials and labor bond, and a maintenance bond before awarding a contract, in such amounts as ~~he/she~~ the director determines are reasonably necessary to provide for the best interest of the city. The form and amount of said bond(s) shall be described in the oral or written notice inviting bids.
- B. Insurance. The contractor shall assume all responsibility for damage to property or injuries to person(s) caused in any manner by ~~his~~ the contractor's performance under the contract, by any equipment furnished by ~~him~~ the contractor under the contract, or by the operation thereof. The contractor shall obtain and maintain during the entire life of the contract such public liability and property damage insurance, satisfactory to the city and its attorney, as shall protect ~~him~~ the contractor and the city from loss liability, or claims for damages or personal injury, including accidental death as well as for claims for property damage, which may arise from or out of performance of the

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contract, whether such performance be by ~~himself~~ the contractor, ~~his~~ the contractor's subcontractor(s) or anyone directly or indirectly employed by ~~him~~ the contractor, or by the city, its officers, agents or employees. The amount and requirements of such insurance shall be as follows:

1. Public liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per person, one million dollars (\$1,000,000.00) per incident, or one million dollars (\$1,000,000.00) combined single limit;
2. Professional liability (errors and omissions) insurance in a like amount, if applicable;
3. Public liability insurance for property damage in an amount not less than five hundred thousand dollars (\$500,000.00);
4. Such policies shall name the city of San Rafael, its officers, employees and agents as additional insureds, said policies shall be primary insurance;
5. A current certificate of insurance shall be furnished to the director showing the required insurance coverage and providing for thirty (30) days written notice by registered mail to the city by the insurance company and the contractor prior to cancellation or any change in policy coverage. Additionally, an endorsement to the policy specifically enumerating the additional insureds as stated in subsection (B)(4) of this section, shall be furnished to the director;
6. Workers compensation insurance and all employee taxes and employee benefits required by law shall be the sole responsibility of the contractor. Contractor shall provide written evidence of workers compensation insurance coverage.

The contractor's insurer must be an admitted insurer in the state of California. Upon request, contractor shall provide copies of all insurance policies mentioned in this section.

- C. Wage Rates. Pursuant to the requirements of California Labor Code Section 1771, the general prevailing wage rates in the locality in which the work is to be performed, for each craft or type of worker needed to execute the contract, shall be followed.
- D. Payments and Retention.
 1. No payment shall be made to the contractor until the contract is performed satisfactorily and the notice of completion is recorded.
 2. Ten percent (10%) of the contract price may be retained as a labor and materials surety for a period of thirty-five (35) days from and after the date of recordation of the notice of completion unless the director, at any time, determines a higher retention is necessary to cover any unpaid claims, provided proper stop notices pursuant to the California Civil Code if said claims have been filed in the office of the city finance director or city public works director.

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3. Guarantee. The contractor shall unconditionally guarantee all materials and workmanship for a period of one year following the notice of completion.

E. The contract document shall be the city's standard contract or purchase order, as modified to the specifics of the particular purchase or project.

11.50.190 No waiver.

These procedures are for the benefit and convenience of the city. Failure to follow or enforce or expressly include the provisions of this chapter in the contract shall not be a waiver of the requirements of this chapter.

DIVISION 2.

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance or the Codes hereby adopted are hereby repealed.

DIVISION 3.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council of the City of San Rafael hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases shall be declared invalid.

DIVISION 4.

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to 14 CCR Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

DIVISION 5.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in full force and effect 30 days after its adoption. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Council members voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a regular meeting of the San Rafael City Council on the 17th day of January 2023, and was passed and adopted at a

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regular meeting of the San Rafael City Council on the 6th day of February 2023 by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Kate Colin, Mayor

Attest:

LINDSAY LARA, City Clerk

SUMMARY OF ORDINANCE NO. 2025

AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL AMENDING CHAPTER 11.50 OF TITLE 11 OF THE SAN RAFAEL MUNICIPAL CODE, TITLED PUBLIC WORKS CONTRACT POLICY

This Summary concerns a proposed Ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 2025, which will amend Chapter 11.50 of Title 11 of the City of San Rafael Municipal Code, as detailed in the complete text of Ordinance No. 2025.

Ordinance No. 2025 is scheduled for adoption by the San Rafael City Council at its regular meeting of February 6, 2023. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

This Ordinance would amend Chapter 11.50 of the San Rafael Municipal Code. The chapter provides separate bidding and awarding procedures for “minor contracts” and “major contracts” and permits an exception to the bidding requirements for contracts not to exceed a certain amount. The amendments remove the dollar amount limit for minor construction contracts, replace the dollar limit to except contracts from competitive bidding, and incorporate gender-neutral language changes.

For a complete copy of the text of the Ordinance amending the Municipal Code, please contact the City Clerk’s Office at city.clerk@cityofsanrafael.org or by phone at (415) 485-3066. Copies of the Ordinance containing this Municipal Code amendment are also available for public review at the San Rafael City Clerk’s office, 1400 Fifth Avenue, 2nd Floor, Room 209, Monday through Thursday from 9:00 a.m. to 4:00 p.m., and on Fridays by appointment only.

/s/ Lindsay Lara
LINDSAY LARA, City Clerk
San Rafael City Clerk
Dated: 1/20/23