

ORDINANCE NUMBER O- 18532 (NEW SERIES)

ADOPTED ON JUN 29 1998

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER II, ARTICLE 2, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 22.0209, 22.0210, 22.0211, 22.0212, AND 22.0226; AMENDING CHAPTER II, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 22.0504, 22.0507, 22.0508, 22.0509, 22.0510, 22.0511, 22.0512, 22.0513, AND 22.0515; AMENDING CHAPTER II, ARTICLE 2, BY CREATING A NEW DIVISION 30, TITLED CONTRACT DEFINITIONS, COMPETITIVE BIDDING PROCEDURES, AND CONTRACT ALTERATIONS SECTIONS 22.3001, 22.3002, 22.3006, 22.3007, 22.3008, 22.3009, 22.3010, 22.3011, 22.3016, 22.3017, 22.3018, 22.3019, 22.3026, 22.3027, 22.3028, 22.3029, 22.3036, AND 22.3037; AMENDING CHAPTER II, ARTICLE 2 BY CREATING A NEW DIVISION 31, TITLED PUBLIC WORKS CONTRACTS, SECTIONS 22.3101, 22.3102, 22.3103, 22.3104, AND 22.3105; AMENDING CHAPTER II, ARTICLE 2, BY CREATING A NEW DIVISION 32, TITLED CONTRACTS FOR PERSONAL SERVICES, GOODS, AND CONSULTANTS, SECTIONS 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222, AND 22.3223; AND AMENDING CHAPTER II, ARTICLE 2, DIVISION 8 BY AMENDING SECTION 22.0804, ALL RELATING TO CONTRACTING; AND AMENDING CHAPTER VI, ARTICLE 5, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 65.0213 RELATING TO MAINTENANCE DISTRICTS.

WHEREAS, San Diego City Charter section 94 generally requires competitive bidding in the awarding of contracts for public works construction; and,

WHEREAS, from time to time the need arises to contract for public works construction on an expedited or emergency basis; and,

WHEREAS, California law allows for exceptions to the competitive bidding requirement when the public would not benefit from such a requirement; and,

WHEREAS, exceptions to the competitive bidding requirement will serve the public interest by allowing construction contracts to be negotiated on a "requirements" or "as-needed" basis; and,

WHEREAS, "requirements" contracts (also known as "unit price" or "job order" contracts) are subject to the San Diego City Charter section 94; and,

WHEREAS, the public interest requires limits on the use of "requirements" contracts for public works construction; and,

WHEREAS, San Diego City Charter section 35 requires competitive bidding in the award of contracts for supplies, materials, equipment, and insurance; and,

WHEREAS, the San Diego Municipal Code requires competitive bidding in the award of personal services contracts; and,

WHEREAS, for the public purposes set forth in the documents supporting this ordinance, the City Manager recommends that the Municipal Code be amended to allow within limits a means to award personal service contracts without competitive bidding; and

WHEREAS, making the desired substantive changes to the San Diego Municipal Code can be best achieved by making certain organizational and housekeeping amendments to the Municipal Code; and,

WHEREAS, existing San Diego Municipal Code provisions relating to contracts for goods, services, and public works need clarification in order to be more readily understood, administered, and enforced: NOW THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 2, Division 2 and Division 5 of the San Diego Municipal Code are hereby amended by repealing Sections 22.0209, 22.0210, 22.0211, 22.0212, 22.0226, 22.0504, 22.0507, 22.0508, 22.0509, 22.0510, 22.0511, 22.0512, 22.0513, and 22.0515.

Section 2. That Chapter II, Article 2, of the San Diego Municipal Code is hereby amended by creating a new Division 30, titled "Contract Definitions, Competitive Bidding Procedures, and Contract Alterations," and adding new Sections 22.3001, 22.3002, 22.3006, 22.3007, 22.3008, 22.3009, 22.3010, 22.3011, 22.3016, 22.3017, 22.3018, 22.3019, 22.3026, 22.3027, 22.3028, 22.3029, 22.3036, and 22.3037, to read as follows:

DIVISION 30
CONTRACT DEFINITIONS,
COMPETITIVE BIDDING PROCEDURES,
AND CONTRACT ALTERATIONS

SEC. 22.3001 Purpose and Intent; Scope of Division

The purpose of this Division is to provide uniform definitions for Divisions 30, 31 and 32, of Article 2, Chapter II of the Municipal Code; to provide a comprehensive, clear procedure for competitively bidding Contracts and Public Works Contracts; and, to provide clarity and consistency in the City's alteration of contracts.

SEC. 22.3002 Definitions

Terms defined in Chapter II, Article 2, Divisions 30, 31 and 32 are indicated by initial capital letters. For purposes of Chapter II, Article 2, Division 30, 31 and 32:

“Agency” includes the State of California, counties, districts, public authorities, joint powers agencies, public non-profit corporations, and any other public or quasi-public entity that the Council may designate by resolution.

“Brand Name” refers to a specific product in specifications for Goods, Services, or Public Works.

“Consultant” includes providers of expert or professional services and excludes providers of Services.

“Contract” includes a Contract for Goods, a Contract for Services, or a Cooperative Procurement Contract unless otherwise stated.

“Contract for Goods” means an agreement between the City and another party in which the City is the purchaser of articles, commodities, materials, supplies, equipment, or insurance.

“Contract for Inmate Services” means an agreement between the City and an Agency for the use of inmates confined in state prisons, or probationers, or parolees to perform Services.

“Contract for Services” means an agreement between the City and another party in which the City is the purchaser of Services, excluding Consultant services. It includes Maintenance Contracts.

“Cooperative Procurement Contract” means a Contract entered by the Purchasing Agent and another Agency to obtain Goods or Services.

“Emergency” mean 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.

“General Requirements Contract” means a Public Works Contract which contains a unit price book of detailed specifications and unit prices for typical tasks. Specific construction projects are not contemplated or authorized at the time of contract award. Work is authorized as required by a separate task order.

“Goods” means any articles, commodities, materials, supplies, equipment, or insurance.

“Maintenance Contracts” has the meaning contained in Section 65.0201 of this Code.

“Person” means Person as defined in Section 11.0210 of this Code.

“Public Meeting” means an assemblage of interested persons gathered in response to a notice specifying the time and place where bids will be opened.

“Public Works Contract” means a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works.

“Services” means all work provided by Persons other than Consultants. It includes Maintenance Contracts. It excludes construction, reconstruction, or

repair of public buildings, streets, utilities or any other public works. It also excludes Goods.

“Sole Source” means a Person who is the only source from which a procurement is available and there is no adequate substitute.

“Task Order” means an authorization for construction, reconstruction, repair and maintenance work under a General Requirements Contract.

[Sections 22.3003 through 22.3005 reserved for future use.]

SEC. 22.3006 Bid Initiation; Advertising in Official Newspaper

Contracts for Goods, Services, Public Works or Cooperative Procurements for an expenditure over \$50,000 shall be advertised for a minimum of one day in the City Official Newspaper.

SEC. 22.3007 Insurance and Bonds May be Required

The City is authorized to require vendors and contractors to provide insurance and surety bonds for Contracts and Public Works Contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City prior to award.

SEC. 22.3008 Issuance of Specifications

(a) When making a procurement, the City will issue a description (“specifications”) for the Goods, Services, Public Works, or Cooperative Procurement Contract to be procured.

(b) Bidders are responsible for carefully examining the specifications and all provisions relating to the items to be furnished or the work to be done. Failure to respond as requested may result in rejection of a bid.

(c) The Purchasing Agent shall issue invitations to bid or requests for proposals for materials, supplies, equipment, services, insurance and other public contracts required for the City.

SEC. 22.3009 Invitations to Bid

An invitation to bid shall describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall describe the requested procurement by description, function and/or performance required together with any operational limitations or parameters applicable.

SEC. 22.3010 Addenda to Specifications

(a) The City may issue addenda to the specifications where necessary. All addenda shall be considered to be incorporated into the specifications.

(b) Prior to bid submission, each bidder is responsible for determining whether addenda were issued prior to bid submission. Failure to respond to addenda may result in rejection of a bid.

Section 22.3011 Request for Proposals

When a requesting department seeks a systems acquisition comprising the design and installation of state of the art technological components, the Purchasing Agent may issue a request for proposals which shall sufficiently detail the

requested procurement by function, together with any applicable description, operational requirements and all structural and operating environment considerations. The Purchasing Agent may additionally reserve the right to thereafter issue an invitation to bid based on a refinement of concept from any proposal submitted.

[Sections 22.3012 through 22.3015 reserved for future use.]

SEC. 22.3016 Timely and Responsive Submission of Bids and Proposals

To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing date set by the City. The City may consider a bid or proposal that was submitted before the bid closing date via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing date, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.

SEC. 22.3017 Bid Opening

(a) If advertising for submission of bids is required, the bid opening will occur at a Public Meeting.

(b) Substantial compliance with all of the following provisions renders the bid opening valid for all purposes:

(1) All bids will be opened at, or immediately after, the time noticed for the bid opening.

(2) No bidder or interested person will be excluded from the Public Meeting.

(3) Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present.

(4) Bids will be unsealed and opened in the presence of those attending.

(5) The name of the Public Works, Goods, Services, or Cooperative Procurement will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, and the total amounts or unit amounts bid.

(c) Any person present shall have the right to ask that announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined in the sole discretion of the City employee opening bids.

SEC. 22.3018 Bid Opening Exceptions

(a) Where a Public Meeting is held but no members of the public attend, the bid opening may proceed in accordance with Section 22.3017(b)(3).

(b) In the event of public calamity or some unforeseen event (including an unusually large number of people in attendance) that renders it impossible or highly impracticable to open the bids at the time and place specified,

the special procedures in Section 22.3018(b)(1)-(2) shall govern. Use of the special procedures shall not invalidate the bid opening:

(1) A sign will be continuously posted at the door of the originally specified room, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the alternate bid opening. An officer or employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour nor more than one hour after the originally specified time for the opening of bids, the bids may be opened in the alternate room.

(2) If it is impossible or impracticable to use the procedure under Section 22.3018(b)(1), the bids will either be returned to the bidders or be held unopened for a period of forty-eight hours. After forty-eight hours but not later than seventy-two hours after the originally specified time and place of the bid opening, bids may be opened at any hour, provided that every reasonable means has been taken to notify the respective bidders of the alternate time and place of the reset Public Meeting.

SEC. 22.3019 Withdrawal or Modification of Bid After Bid Opening

Any bidder who seeks to withdraw or modify a bid because of the bidder's inadvertent computational error shall notify the City Department where bids were submitted no later than three working days following the bid closing. The bidder shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief

and allow the City recourse from the bid surety. The burden is upon the bidder to prove the inadvertent error.

[Sections 22.3020 through 22.3025 reserved for future use.]

SEC. 22.3026 Award of Contracts and Public Works Contracts

(a) Except as provided in Section 22.3026(b), for Contracts or Public Works Contracts that are required to be advertised, the City may make the award not less than ten calendar days after advertising in accordance with the following:

(1) Contracts for Public Works under Sections 22.3102 and 22.3103 shall be awarded to the lowest responsible and reliable bidder that meets the specifications.

(2) Contracts, excluding Contracts for Public Works and Consultant Contracts, shall be awarded on the basis of the low acceptable bid that best meets City requirements under Section 22.3211.

(3) Contracts for procurement under a request for proposal will be awarded on the basis of the proposal best meeting City requirements.

(b) The City is authorized to award Contracts and Public Works Contracts to the next bidder that meets all requirements when the apparent successful bidder under Section 22.3026(a)(1) or (2):

(1) does not meet deadlines for submitting the required bond and insurance documents; or

(2) does not, within ten calendar days after any original bond and insurance document were required to be submitted, request a hearing with the City Department where bids were submitted to show cause why the City should not proceed with action to award the contract to another bidder.

SEC. 22.3027 Waiver of Defects and Technicalities

The City may waive defects and technicalities when to do so is in the best interests of the City.

SEC. 22.3028 Notice of Contract Award

Upon request and upon determination of the proposed selection for award, the City will notify all interested bidders of the proposed award.

SEC. 22.3029 Protests of Contract Award

(a) Protests by unsuccessful bidders shall be submitted in writing to the City Department where bids were submitted setting forth in detail the grounds for such protest.

(b) Protests shall be submitted no later than ten calendar days after the date of the announcement of selection.

(c) The unsuccessful bidder shall have the right to appear before the City Council to protest any award required to be confirmed by the Council.

(d) Failure to submit a timely protest to the City shall bar consideration of a protest.

[Sections 22.3030 through 22.3035 reserved for future use.]

SEC. 22.3036 Alterations in Contracts, Consultant Contracts, and Public Works Contracts

(a) Except as provided in Section 22.3036(b), whenever it becomes necessary to make alterations in Contracts, Public Works Contracts and Consultant Contracts, the City Manager shall make alterations only when authorized by the Council, unless such alterations meet all of the following criteria:

- (1) The cost of each alteration is less than \$200,000; and
- (2) The cost of alteration does not exceed the total amount authorized for the project by ordinance or resolution; and
- (3) The City Manager certifies in accordance with Section 22.3037 that the alterations are necessary to fulfill the purpose of the contract; and
- (4) The alterations are made by agreement in writing between the contractor and the City Manager.

(b) Notwithstanding the limitation provided by Section 22.3036(a), in any contract for the construction of the South Bay Ocean Outfall let pursuant to cooperative agreement with the Environmental Protection Agency and the International Boundary and Water Commission, the City Manager may approve alterations without authorization of the Council, provided that the cost of each alteration does not exceed five percent of the original prime contract value and provided that all other criteria in Section 22.3036(a) are met.

SEC. 22.3037 City Manager's Certification

Except as provided in Section 22.3104(b), where Divisions 31 and 32 require City Manager certification, the City Manager may delegate that authority to the Assistant City Manager, Deputy City Manager, or any person expressly designated to make the certification.

Section 3. That Chapter II, Article 2, of the San Diego Municipal Code is hereby amended by creating a new Division 31, titled "Public Works Contracts," and adding new Sections 22.3101, 22.3102, 22.3103, 22.3104, and 22.3105, to read as follows:

DIVISION 31

PUBLIC WORKS CONTRACTS

SEC. 22.3101 Purpose

This Division is intended to establish procedures for contracting for public works, and to clarify when competitive bidding is required for Public Works Contracts. It also authorizes General Requirements Contracts under limited circumstances.

SEC. 22.3102 Public Works Contracts Required to be Competitively Awarded

(a) If a Public Works Contract provides for an expenditure of equal to or less than \$50,000, and if the City seeks competitive prices either orally or in writing and the City Manager has taken those prices under consideration before the Public Works Contract is awarded, the City Manager may award the contract without advertising.

(b) If a public works project was previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget, the City Manager may award the contract provided that the following are met:

(1) the Public Works Contract has been advertised as described in Section 22.3006; and

(2) the Public Works Contract is in writing; and

(3) the Public Works Contract provides for an expenditure of greater than \$50,000, but less than \$1,000,000.

(c) All Public Works Contracts not falling within Section 22.3102(a) and 22.3102(b) shall be awarded by the City Council provided that all of the following are met:

(1) the Public Works Contract has been advertised as described in Section 22.3006; and

(2) the Public Works Contract is in writing; and

(3) the Public Works Contract provides for an expenditure of greater than \$50,000; and

(4) the City Council authorizes the necessary expenditure of funds for the Public Works Contract and authorizes the City Manager to execute the contract.

SEC. 22.3103 General Requirements Contracts

(a) General Requirements Contracts for public work may be awarded by the City Council under written agreement under the provisions of Section 94 of the City Charter, subject to the limitations of Section 22.3103(a)-(d):

(1) The specifications were advertised in accordance with Section 22.3006.

(2) The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual Task Orders.

(3) The General Requirements Contract does not exceed a term of two years in duration.

(b) If a General Requirements Contract is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the requirements contract, including extensions, may not exceed two years.

(c) A General Requirements Contract may not contain any provision which would guarantee the contractor cumulative Task Orders in excess of \$50,000.

(d) A General Requirements Contract may not exceed the sum of \$10,000,000 for the time in which the requirements contract is effective, including any extensions.

SEC. 22.3104 Task Orders

(a) Following award of a General Requirements Contract by the Council, the City Manager may thereafter identify and issue Task Orders under the General Requirements Contract and shall certify in accordance with Section 22.3104(b) that the public will not benefit from strict compliance with the competitive bidding requirements of Charter section 94 for the Task Order because, under the particular circumstances, one or more of the following criteria have been met:

(1) strict compliance with the competitive bidding requirements will work an incongruity and not affect the final result; or

(2) strict compliance will not produce an advantage; or

(3) advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required.

(b) The duty to provide the certification set forth in Section 22.3104(a) may not be delegated or executed by any person other than the City Manager, except that the City Manager may authorize the Assistant City Manager, any Deputy City Manager, or any Department Director to make the certification.

(c) An individual Task Order may not exceed the sum of \$500,000, except in the case of a bona fide emergency affecting health, safety, or property.

(d) Upon a decision by the City Manager to issue a Task Order exceeding \$250,000, the City Manager shall immediately inform the City Auditor and Comptroller in writing of the decision, the project or task for which the Task Order is issued, and the facts justifying the certification issued pursuant to Section 22.3104(a).

(e) The City Manager is prohibited from subdividing any public work which logically should be performed as a single contract transaction requiring the expenditure of more than \$500,000 into separate Task Order requirements for purposes of avoiding this limitation.

SEC. 22.3105 Use of City Forces

(a) City forces shall not be used on public works projects if the cost therefor exceeds the sum of \$100,000 unless the Council has approved use of City forces on

those projects. When Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.

(b) The City Manager may exercise his or her discretion on the use of City forces on public works when the cost therefor does not exceed the amount of \$100,000.

Section 4. That Chapter II, Article 2, of the San Diego Municipal Code is hereby amended by creating a new Division 32, titled "Contracts for Personal Services, Goods, and Consultants," and adding new Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222, and 22.3223, to read as follows:

DIVISION 32

CONTRACTS FOR PERSONAL SERVICES, GOODS, AND CONSULTANTS

SEC. 22.3201 Purpose and Intent

This Division is intended to specify the circumstances under which Contracts for Goods, Services and Cooperative Procurement and Consultant Contracts may be entered into and whether a Contract for Goods, Services and Cooperative Procurement must be competitively bid.

SEC. 22.3202 Authority to Enter Contracts; Competitive Bid Process Required

The Purchasing Agent is authorized to enter into Contracts upon request of City departments. Except as provided in Sections 22.3212, 22.3221 and 22.3222,

all Contracts shall be awarded through a competitive process in accordance with Section 22.3211.

SEC. 22.3203 Use of Brand Name in Specifications; 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 City.

(b) A bidder may offer an equivalent (“or equal”) in response to a Brand Name reference. When an “or equal” is offered, the City 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 City 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 City reserves the sole right to reject a bid containing any “or equal” offered.

(e) Exceptions to Section 22.3203(a)-(d) are permissible for procurement for replacement parts, or for testing and evaluation purposes or where compatibility with existing City equipment is mandated.

SEC. 22.3204 Subdividing Purchase Prohibited

The Purchasing Agent is prohibited from subdividing into two or more purchases any purchase of Goods or Services for an expenditure of \$50,000 or more that logically should be made as a single transaction if the purpose of the subdividing is to avoid the bidding requirements of the San Diego Municipal Code and the City Charter.

SEC. 22.3205 Civil Service Commission Review

All Contracts for Services shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.

[Reserve Sections 22.3206 through 22.3210 for future use.]

SEC. 22.3211 Contracts Required to be Competitively Awarded

(a) When a Contract provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Purchasing Agent may award the Contract but shall seek competitive prices either orally or in writing.

(b) When a Contract provides for an expenditure greater than \$10,000, but equal to or less than \$50,000, the Purchasing Agent may award the Contract but shall solicit written price quotations from at least five potential sources.

(c) When a Contract provides for an expenditure greater than \$50,000, but equal to or less than \$1,000,000, the Purchasing Agent may award the Contract but shall advertise for sealed proposals as described in Section 22.3006.

(d) When a Contract provides for an expenditure greater than \$1,000,000, the Purchasing Agent shall advertise for sealed proposals as described in Section 22.3006 and shall obtain City Council approval to award the Contract.

(e) Maintenance Contracts are required to be competitively bid pursuant to Section 22.3211. Maintenance Contracts, however, may be awarded to other than the lowest bidder pursuant to Sections 65.0213(b) and 65.0214(c).

SEC. 22.3212 Contracts Not Required to be Competitively Bid

The Contracts listed in Section 22.3212(a)-(g) are not required to be competitively bid:

(a) A Contract that provides for an expenditure of less than \$5,000;

(b) A Cooperative Procurement Contract in an amount less than \$10,000;

(c) A Contract to remedy a bona fide emergency that affects public health or safety, provided that:

(1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council, and

(2) The Council by resolution acknowledges and ratifies the procurement;

(d) A Contract that is available from a Sole Source only, if, in advance of the Contract, the City Manager certifies in writing in accordance with Section 22.3037 the Sole Source status of the provider;

(e) Annual blanket purchase orders for an expenditure greater than \$5,000 for commercially available materials and supplies, provided that they are:

(1) required by City forces for immediate completion of work in progress;

(2) not normally kept in City stores; and

(3) less than \$50,000.

(f) Contracts for Inmate Services which comply with Section 22.3221.

(g) Contracts for Services with Agencies or Non-Profit Organizations which comply with Section 22.3222.

SEC. 22.3213 Factors to Determine Whether Bid Meets Specifications

The City may consider the following factors in evaluating whether a bid or proposal best meets City requirements and gains the best economic advantage for the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the bidder, and any additional factors the City deems relevant.

[Reserve Sections 22.3214 through 22.3220 for future use.]

SEC. 22.3221 Manager's Authority to Enter Contracts For Inmate Services

The City Manager may enter a Contract for Inmate Services without Council action provided that all of the following conditions are met:

(a) The City Manager has certified in writing that the Contract is in the public interest;
and

(b) The Contract does not exceed \$500,000 per year; and

(c) The City Manager has considered all of the following:

(1) whether the Agency agrees to direct supervision of the workers; and

(2) whether the Agency agrees to provide workers' compensation insurance
for the workers; and

(3) whether the Agency agrees to indemnify, protect, defend, and hold the City
harmless against any and all claims alleged to be caused or caused by any act or omission of the
worker or Agency employee.

**SEC. 22.3222 City Manager's Authority to Enter Contracts for Services with Agencies or
Non-Profit Organizations**

The City Manager may enter Contracts for Services with any Agency or with any non-
profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without
Council action, provided that all of the following conditions are met:

(a) The City Manager has certified in writing that the Contract furthers a specific
public policy; and

(b) The City Manager has certified in writing that the Contract is in the public interest;
and

(c) The Contract does not exceed \$500,000 per year; and

(d) The City Manager has considered all of the following:

(1) whether the Agency or non-profit organization agrees to direct supervision of the workers; and

(2) whether the Agency or non-profit organization agrees to provide workers' compensation insurance for the workers; and

(3) whether the Agency or non-profit organization agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or Agency employee.

SEC. 22.3223 Consultant Contracts

Except as otherwise provided by Charter or ordinance, the City Manager may enter a contract with a Consultant to perform work or give advice without first seeking Council approval provided that both of the following conditions exist:

(a) the contract does not exceed \$250,000; and

(b) the total amount of contract awards to the Consultant, including the current award, in any given fiscal year does not exceed \$250,000.

Section 5. That Chapter II, Article 2, Division 8, Section 22.0804(b) is hereby amended by changing the reference to Section 22.0505 appearing within the text to read as shown:

from "pursuant to San Diego Municipal Code section 22.0505" to
"pursuant to Chapter II, Article 2, Divisions, 30, 31, and 32, of this Code."

Section 6. That Chapter VI, Article 5, Division 2, Section 65.0213 of the San Diego Municipal Code is hereby amended to read as follows:

SEC. 65.0213 City Award of Contracts

(a) For the award of any Public Works Contract, Contract for Goods, and Contract for Services, other than Maintenance Contracts, by the City on behalf of a District, the City Manager shall follow the provisions of Sections 22.3101, 22.3102, 22.3103, 22.3104, 22.3105, 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223 of this Code.

(b) For the award of any Maintenance Contract by the City on behalf of a District, the City Manager shall follow the provisions of Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223 of this Code. Notwithstanding the provisions of Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223, a Maintenance Contract for a District may be awarded to other than the low acceptable bidder if the City Manager receives a protest from the relevant community planning group or designated representatives of a District, or other property owners within the District, in accordance with the provisions of Sections 65.0213(b)(1) or (2).

(1) and (2) [No changes in text.]

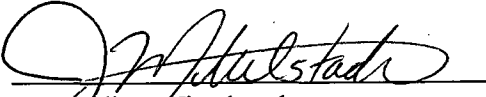
(c) [No change in text.]

Section 7. **Special Instruction to Clerk:** The effective date of Section 65.0213 is contingent upon the adoption of Ordinance No. O- **18523** (City Attorney No. O-98-120) on **JUN 08 1998**. Section 65.0213 will be effective thirty days after Ordinance No.

O- 18523 (City Attorney No. O-98-120 is adopted. If Ordinance No. O- 18523 (City Attorney No. O-98-120) is not adopted by JUN 29 1998, then the amendment to Section 65.0213 shall not take effect.

Section 8. This ordinance shall take effect and be in force on the thirtieth day from and after its passage

APPROVED: CASEY GWINN, City Attorney

By 
Jacqueline Mittelstadt
Deputy City Attorney

TB:JM:pev:mb
3/17/98
3/31/98 Corr.2
4/6/98 Corr.3
4/16/98 Corr.4
5/12/98 Cor.Copy5
5/18/98 Cor.Copy6
Dept: Purchasing
O-98-36

NEW LANGUAGE: ~~REDLINED~~
OLD LANGUAGE: ~~STRIKEOUT~~

(O-98-36 CORR.6)

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER II, ARTICLE 2, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 22.0209, 22.0210, 22.0211, 22.0212, AND 22.0226; AMENDING CHAPTER II, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 22.0504, 22.0507, 22.0508, 22.0509, 22.0510, 22.0511, 22.0512, 22.0513, AND 22.0515; AMENDING CHAPTER II, ARTICLE 2, BY CREATING A NEW DIVISION 30, TITLED CONTRACT DEFINITIONS, COMPETITIVE BIDDING PROCEDURES, AND CONTRACT ALTERATIONS SECTIONS 22.3001, 22.3002, 22.3006, 22.3007, 22.3008, 22.3009, 22.3010, 22.3011, 22.3016, 22.3017, 22.3018, 22.3019, 22.3026, 22.3027, 22.3028, 22.3029, 22.3036, AND 22.3037; AMENDING CHAPTER II, ARTICLE 2 BY CREATING A NEW DIVISION 31, TITLED PUBLIC WORKS CONTRACTS, SECTIONS 22.3101, 22.3102, 22.3103, 22.3104, AND 22.3105; AMENDING CHAPTER II, ARTICLE 2, BY CREATING A NEW DIVISION 32, TITLED CONTRACTS FOR PERSONAL SERVICES, GOODS, AND CONSULTANTS, SECTIONS 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222, AND 22.3223; AND AMENDING CHAPTER II, ARTICLE 2, DIVISION 8 BY AMENDING SECTION 22.0804, ALL RELATING TO CONTRACTING; AND AMENDING CHAPTER VI, ARTICLE 5, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 65.0213 RELATING TO MAINTENANCE DISTRICTS.

SEC. 22.0209 Alterations in Contracts

~~(a) Except as provided in Section 22.0209(b), whenever it becomes necessary to make alterations in contracts entered into by the City, the City Manager shall make alterations only when authorized by the Council unless such alterations meet all of the following criteria:~~

- ~~(1) The cost of each alteration is less than \$200,000, and~~

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~~————— (2) ——— The cost of alterations does not exceed the total amount authorized for the project by ordinance or resolution; and~~

~~————— (3) ——— It is the opinion of the City Manager that the alterations are necessary to fulfill the purpose of the contract; and~~

~~————— (4) ——— The alterations are made by agreement in writing between the contractor and the City Manager.~~

~~————— (b) ——— Notwithstanding the limitation provided by Section 22.0209(a)(1), in any contract for the construction of the South Bay Ocean Outfall let pursuant to cooperative agreement with the Environmental Protection Agency and the International Boundary and Water Commission, the City Manager may approve alterations without authorization of the Council, provided that the cost of each alteration does not exceed five percent of the original prime contract value and provided that all other criteria in Section 22.0209(a) are met.~~

~~**SEC. 22.0210 Public Works Contracts -- Purpose and Intent**~~

~~Section 94 of the Charter of The City of San Diego was amended at the election of September 20, 1977, to permit the Council to set by ordinance the minimum monetary limits above which public works contracts are required to be let to the lowest responsible and reliable bidder following advertising for sealed proposals therefor. The said Section 94 was also amended to permit the Council to establish by ordinance an amount below which the City Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without first obtaining Council approval. The subsections that follow are enacted for the purpose of implementing the foregoing amendments to the Charter.~~

~~SEC. 22.0211 Public Works Contract -- Public Bidding Required~~

~~———— In the construction, reconstruction or repair of public buildings, streets, utilities and other public works when the expenditure therefore shall exceed the sum of \$50,000, the same shall be done by writing contract and advertising for bids under the provisions of Section 94 of the City Charter.~~

~~———— The City Manager may, without additional Council action, award such contracts to the lowest responsible and reliable bidder provided that at the time the Council authorizes advertising for bids, the Council also authorizes the necessary expenditure of funds for the contract and authorizes the City Manager to execute the contract.~~

~~———— As to those public works contracts for which the expenditure shall not exceed one million dollars (\$1,000,000), the City Manager may let the same without further Council authorization those projects previously approved and appropriated through development of the Annual Capital Improvements Program (CIP) budget.~~

~~———— As to those public works contracts for which the expenditure shall not exceed \$50,000, the City Manager may let the same without advertising for bids, if the Purchasing Agent has secured competitive prices from contractors interested and the City Manager has taken those prices into consideration before the contract is let.~~

~~———— Anything to the contrary hereinabove notwithstanding, as to all landscape maintenance contracts let on behalf of the City or on behalf of Landscape Maintenance Districts, when the expenditure therefore shall not exceed \$250,000, the City Council may let the same after advertising for bids and after the City Council has taken into consideration the prices bid before the contract is let. With regard to landscape maintenance contracts, the City Council may take into consideration other factors besides the price in determining to whom to award~~

~~the contract. However, if the contractor with the low bid is not awarded the contract, the City Council shall, in its resolution, specify the reasons for which it has determined to award the contract to other than the low bidder. The Council's determination shall be final and conclusive.~~

~~**SEC. 22.0212 Public Works -- Use of City Forces**~~

~~City forces shall not be used on public works projects if the cost therefor exceeds the sum of \$15,000 unless the same shall have first been approved by the Council upon recommendation of the City Manager. When such Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.~~

~~The City Manager may exercise his discretion on the use of City forces on public works projects when the cost therefor does not exceed the amount of \$15,000.~~

~~**SEC. 22.0226 Consultant Limitations**~~

~~In connection with the provisions of Section 28 of the Charter of The City of San Diego, the City Manager, except as otherwise provided by Charter or ordinance, shall have the power to employ experts or consultants to perform work or give advice connected with departments of the City without first seeking Council approval under the following conditions:~~

~~1. All architectural or engineering consultants who are retained to design City Council approved individual capital improvement projects, in which the cost of such employment does not exceed two hundred fifty thousand dollars (\$250,000), provided the cumulative dollar amount of the awards to that consultant during the fiscal year does not exceed two hundred fifty thousand dollars (\$250,000).~~

~~2. All other consultants when the cost of each individual agreement for employment does not exceed two hundred fifty thousand dollars (\$250,000), provided the cumulative dollar amount for these awards to that consultant during the fiscal year does not exceed two hundred fifty thousand dollars (\$250,000).~~

~~SEC. 22.0504 Purchase Limitations~~

~~The Purchasing Agent shall have the power to purchase materials, supplies, equipment and insurance and, subject to the provisions of the City Charter and Section 23.1801 of this Code, to provide for contracts for personal services, as defined in this section, upon direct request by the various departments or offices of the City, without first seeking sealed proposals or Council approval, if said purchase or contract for personal services does not exceed the sum of fifty thousand dollars (\$50,000), provided that for purchases exceeding ten thousand dollars (\$10,000), requests for written price quotations are solicited from at least five potential sources. The Purchasing Agent shall seek competitive prices for all purchases and for all contracts for personal services over five thousand dollars (\$5,000), except that annual blanket purchase orders may be issued for commercially available materials and supplies which are not normally kept in City stores and which are required by City forces for immediate completion of work in progress. For purposes of this section the term "contracts for personal services" excludes contracts for professional or expert services. The Purchasing Agent is prohibited from subdividing any purchase or contract for personal services which should logically be made as a single transaction requiring the expenditure of more than fifty thousand dollars (\$50,000) into two or more purchases, or contracts, each involving an expenditure of less than fifty thousand dollars (\$50,000), for the purpose of avoiding compliance with the procedure elsewhere in this Code and in the City Charter~~

~~provided for the making of purchases or contracts for personal services where the expenditure involved exceeds the sum of fifty thousand dollars (\$50,000).~~

~~The Purchasing Agent shall not purchase materials, supplies, equipment and insurance, nor enter into contracts for personal services requested by various departments or offices of the City, where said purchase or contract exceeds the sum of fifty thousand dollars (\$50,000) without having first advertised for sealed proposals, except in the case of bonafide emergency affecting public health or safety in which case he shall thereafter immediately report the fact to the City Council. The Purchasing Agent shall not be required to advertise for sole source procurement provided certification to this effect is approved by the City Manager.~~

~~If the cost of any purchase or any contract for personal services required by the City is in excess of one million dollars (\$1,000,000), said purchase or contract for personal services may be made by the Purchasing Agent only after said Purchasing Agent has advertised for sealed proposals and has obtained Council approval to award the contract, except in the case of bonafide emergency affecting public health or safety in which case he shall thereafter immediately report the fact to the City Council who shall then by Resolution so note and ratify the procurement. The authority to so purchase shall be limited to \$200,000. The Purchasing Agent shall not be required to advertise for sole source procurement provided certification to this effect is approved by the City Manager.~~

~~Within the same dollar amounts as are set forth herein, the Purchasing Agent is authorized to participate in joint and cooperative purchasing and to participate in joint and cooperative contracts for personal services with the State of California, County of San Diego, school districts, water districts, and such other agencies as the Council may by resolution~~

~~direct, so long as purchases above ten thousand dollars (\$10,000) are made through a competitive bidding process.~~

~~SEC. 22.0507 Procurement and Public Contracts~~

~~a. General. The Purchasing Agent shall issue Invitations to Bid or Requests for Proposals for materials, supplies, equipment, services and insurance and other public contracts required for the City.~~

~~b. Invitations to Bid. An Invitation to Bid shall describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall describe the requested procurement by description, function and/or performance required together with any operational limitations or parameters applicable.~~

~~c. Requests for Proposals. When a requesting department seeks a systems acquisition comprising the design and installation of state-of-the-art technological components, the Purchasing Agent may issue a Request for Proposals which shall sufficiently detail the requested procurement by function, together with any applicable description, operational requirements and all structural and operating environment considerations. The Purchasing Agent may additionally reserve the right to thereafter issue an Invitation to Bid based on a refinement of concept from any Proposals submitted.~~

~~SEC. 22.0508 Bid and Proposal Submissions~~

~~Bidders must submit responsive Bids and Proposals on or before the bid closing to the Purchasing Agent to be eligible for consideration. It shall be competent for the Purchasing Agent to consider a Bid or Proposal which was timely submitted via a delivery medium which~~

~~arrives after the bid closing, provided acceptance of the Bid or Proposal is in the best interests of the City and there is no possibility of collusion or fraud upon the procurement process.~~

~~Formal Bids and Proposals shall otherwise be opened at a public bid opening.~~

~~SEC. 22.0509 Manner of Opening Bids~~

~~———— A public meeting for purposes of this article means an assemblage of interested persons gathered in response to a notice specifying the time when and place where certain bids will be opened. So long as opportunity is given for such assemblage and the provisions of this section are complied with, the mere failure of persons to so gather shall not deprive the proceeding of its character as a public meeting. All bids shall be opened at or immediately after the time noticed for such opening. No bidder or interested person shall be excluded from the meeting at which the bids are opened and in the event no member of the public is in attendance thereat, at least one (1) officer or employee of the City shall be present in addition to the officer opening the bids. Bids shall be unsealed and opened in the presence of those attending. The name of the acquisition or improvement shall be announced audibly to those present followed by the name of the bidder, the name of the surety and the amount of the bond, and the amounts bid on the respective lump or unit items of the bid, provided, however, that a reading of the estimated total may be substituted for the respective lump and unit items. Any person present shall have the right to request a reiteration of announcements made or the supplying of any data omitted and such requests shall be complied with to the extent they do not unreasonably delay or interfere with the bid opening procedure. Substantial compliance with the provisions of this section shall render the bid opening valid for all purposes.~~

SEC. 22.0510 Exceptions to the Foregoing--Public Calamity

~~In the event of public calamity or some unforeseen event (including unusually large attendance) which renders it impossible or highly impracticable to open the bids at the time and place specified, the following special procedures shall govern and their utilization shall in no way detract from or vitiate the validity of the bids or the proceedings in chief.~~

~~a. If continuously from the time specified for the opening of bids or the move to another room is made until all bids have been read, a sign is posted at the door of the originally specified room stating in which alternate room and building the bid opening is to be held, and an officer or employee of the City during such interval remains by such sign to answer inquiries, then, not less than one-quarter (1/4) hour nor more than one (1) hour after the originally specified time for the opening of bids, such bids may be opened in the alternate room.~~

~~b. If it is impossible or impracticable to utilize the procedure under paragraph a, the bids shall either be returned to the bidders or be held unopened for a period of forty-eight (48) hours after which they may be opened at any hour (not later than seventy-two (72) hours after the originally specified time) and place within the City, provided that theretofore every reasonable means has been taken to notify the respective bidders of the alternate time and place, and the bids are opened and read in public.~~

SEC. 22.0511 Relief

~~Any bidder who seeks to withdraw or modify a Bid because of inadvertent computational error shall notify the Purchasing Agent no later than three (3) working days~~

~~following the bid closing. The bidder shall provide worksheets and such other information as may be appropriate or required by the Purchasing Agent to substantiate the claim of inadvertent error. Failure to do so may bar such relief and allow recourse from the bid surety. The burden is upon the bidder to prove such error.~~

~~SEC. 22.0512 Award~~

~~(a) Contracts for procurement under an invitation to bid will be awarded on the basis of the low acceptable bid meeting specifications. Contracts for procurement under a request for proposal will be awarded on the basis of the proposal best meeting City requirements. The Purchasing Agent shall consider the following factors in evaluating whether a bid or proposal best meets City requirements and gains the best economic advantage for the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including consideration for the costs associated with proprietary invention), experience and responsibility of bidder, and any additional factors the Purchasing Agent deems relevant.~~

~~The Purchasing Agent and the City Manager may waive defects and technicalities when to do so is in the best interests of the City. Upon request, the Purchasing Agent shall notify any interested bidder(s) of the proposed selection for award upon determination thereof.~~

~~(b) Contracts requiring insurance or surety bonds, or both, shall not be awarded until the bidder submits bond or insurance documents, or both, acceptable to the City.~~

~~(c) The City Manager and the Purchasing Agent are authorized to award contracts to the subsequent low bidder meeting contract submittal requirements when the apparent low bidder fails to do both of the following:~~

~~_____ (1) _____ fails to meet original submittal deadlines for required bond and insurance documents, and~~

~~_____ (2) _____ fails, with ten (10) calendar days after the original contract submittal deadlines have expired, to submit the required bond and insurance documents, or to arrange a hearing with the Purchasing Agent to show cause why the City should not proceed with action to award the contract to the subsequent low bidder.~~

SEC. 22.0513 Protests

~~_____ Protests by unsuccessful bidders to the selection for award shall be submitted in writing setting forth the grounds for such protest to the Purchasing Agent no later than ten (10) calendar days after the date of announcement of selection. The unsuccessful bidder shall have the right to appear at the City Council to protest any award required to be confirmed by Council. Failure to submit a timely protest to the Purchasing Agent shall bar consideration of such protest, however.~~

SEC. 22.0515 Bonds and Insurance

~~The Purchasing Agent is authorized to require vendors and contractors to provide such insurance and surety bonds as may be required for City procurement.~~

DIVISION 30

CONTRACT DEFINITIONS,

COMPETITIVE BIDDING PROCEDURES,

AND CONTRACT ALTERATIONS

SEC. 22.3001 Purpose and Intent; Scope of Division

~~The purpose of this Division is to provide uniform definitions for Divisions 30, 31 and 32, of Article 2, Chapter II of the Municipal Code, to provide a comprehensive, clear procedure for~~

competitively bidding Contracts and Public Works Contracts, and, to provide clarity and consistency in the City's alteration of contracts.

SEC. 22.3002 Definitions

Terms defined in Chapter II, Article 2, Divisions 30, 31 and 32 are indicated by initial capital letters. For purposes of Chapter II, Article 2, Division 30, 31 and 32:

"Agency" includes the State of California, counties, districts, public authorities, joint powers agencies, public non-profit corporations, and any other public or quasi-public entity that the Council may designate by resolution.

"Brand Name" refers to a specific product in specifications for Goods, Services, or Public Works.

"Consultant" includes providers of expert or professional services and excludes providers of Services.

"Contract" includes a Contract for Goods, a Contract for Services, or a Cooperative Procurement Contract unless otherwise stated.

"Contract for Goods" means an agreement between the City and another party in which the City is the purchaser of articles, commodities, materials, supplies, equipment, or insurance.

"Contract for Inmate Services" means an agreement between the City and an Agency for the use of inmates confined in state prisons, or probationers, or parolees to perform Services.

"Contract for Services" means an agreement between the City and another party in which the City is the purchaser of Services, excluding Consultant services. It includes Maintenance Contracts.

"Cooperative Procurement Contract" means a Contract entered by the Purchasing Agent and another Agency to obtain Goods or Services.

"Emergency" mean 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.

"General Requirements Contract" means a Public Works Contract which contains a unit price book of detailed specifications and unit prices for typical tasks. Specific construction projects are not contemplated or authorized at the time of contract award. Work is authorized as required by a separate task order.

"Goods" means any articles, commodities, materials, supplies, equipment, or insurance.

"Maintenance Contracts" has the meaning contained in Section 65.0201 of this Code.

"Person" means Person as defined in Section 11.0210 of this Code.

"Public Meeting" means an assemblage of interested persons gathered in response to a notice specifying the time and place where bids will be opened.

"Public Works Contract" means a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works.

"Services" means all work provided by Persons other than Consultants. It includes Maintenance Contracts. It excludes construction, reconstruction, or repair of public buildings, streets, utilities or any other public works. It also excludes Goods.

"Sole Source" means a Person who is the only source from which a procurement is available and there is no adequate substitute.

"Task Order" means an authorization for construction, reconstruction, repair and maintenance work under a General Requirements Contract.

[Sections 22.3003 through 22.3005 reserved for future use.]

SEC. 22.3006 Bid Initiation; Advertising in Official Newspaper

Contracts for Goods, Services, Public Works or Cooperative Procurements for an expenditure over \$50,000 shall be advertised for a minimum of one day in the City Official Newspaper.

SEC. 22.3007 Insurance and Bonds May be Required

The City is authorized to require vendors and contractors to provide insurance and surety bonds for Contracts and Public Works Contracts. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City prior to award.

SEC. 22.3008 Issuance of Specifications

- (a) When making a procurement, the City will issue a description ("specifications") Goods, Services, Public Works, or Cooperative Procurement Contract to be procured.
- (b) Bidders are responsible for carefully examining the specifications and all provisions relating to the items to be furnished or the work to be done. Failure to respond as requested may result in rejection of a bid.
- (c) The Purchasing Agent shall issue invitations to bid or requests for proposals for materials, supplies, equipment, services, insurance and other public contracts required for the City.

SEC. 22.3009 Invitations to Bid

An invitation to bid shall describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall describe the requested procurement by description, function and/or performance required together with any operational limitations or parameters applicable.

SEC. 22.3010 Addenda to Specifications

(a) The City may issue addenda to the specifications where necessary. All addenda shall be considered to be incorporated into the specifications.

(b) Prior to bid submission, each bidder is responsible for determining whether addenda were issued prior to bid submission. Failure to respond to addenda may result in rejection of a bid.

Section 22.3011 Request for Proposals

When a requesting department seeks a systems acquisition comprising the design and installation of state of the art technological components, the Purchasing Agent may issue a request for proposals which shall sufficiently detail the requested procurement by function, together with any applicable description, operational requirements and all structural and operating environment considerations. The Purchasing Agent may additionally reserve the right to thereafter issue an invitation to bid based on a refinement of concept from any proposal submitted.

[Sections 22.3012 through 22.3015 reserved for future use.]

SEC. 22.3016 Timely and Responsive Submission of Bids and Proposals

To be eligible for consideration, bidders are required to submit responsive bids and proposals to the City on or before the bid closing date set by the City. The City may consider a bid or proposal that was submitted before the bid closing date via a delivery medium such as the U.S. mail, even though the bid or proposal arrives after the bid closing date, provided the City finds that acceptance of the bid or proposal is in the best interests of the City and there is no possibility of collusion or fraud in the procurement process.

SEC. 22.3017 Bid Opening

(a) If advertising for submission of bids is required, the bid opening will occur at a Public Meeting.

(b) Substantial compliance with all of the following provisions renders the bid opening valid for all purposes.

(1) All bids will be opened at, or immediately after, the time noticed for the bid opening.

(2) No bidder or interested person will be excluded from the Public Meeting.

(3) Where no member of the public is in attendance, at least one City officer or employee, in addition to the City employee opening the bids, will be present.

(4) Bids will be unsealed and opened in the presence of those attending.

(5) The name of the Public Works, Goods, Services, or Cooperative Procurement will be audibly announced to those present followed by the name of the bidder, the name of the surety, the amount of the bond, and the total amounts or unit amounts bid.

(c) Any person present shall have the right to ask that announcements be repeated or to ask that omitted data be supplied. Such requests will be honored to the extent they do not unreasonably delay or interfere with the bid opening procedure, as determined in the sole discretion of the City employee opening bids.

SEC. 22.3018 Bid Opening Exceptions

(a) Where a Public Meeting is held but no members of the public attend, the bid opening may proceed in accordance with Section 22.3017(b)(3).

(b) In the event of public calamity or some unforeseen event (including an unusually large number of people in attendance) that renders it impossible or highly impracticable to open the bids at the time and place specified, the special procedures in Section 22.3018(b)(1)-(2) shall govern. Use of the special procedures shall not invalidate the bid opening.

(1) A sign will be continuously posted at the door of the originally specified room, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the alternate bid opening. An officer or employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour nor more than one hour after the originally specified time for the opening of bids, the bids may be opened in the alternate room.

(2) If it is impossible or impracticable to use the procedure under Section 22.3018(b)(1), the bids will either be returned to the bidders or be held unopened for a period of forty-eight hours. After forty-eight hours but not later than seventy-two hours after the originally specified time and place of the bid opening, bids may be opened at any hour, provided that every reasonable means has been taken to notify the respective bidders of the alternate time and place of the reset Public Meeting.

SEC. 22.3019 Withdrawal or Modification of Bid After Bid Opening

Any bidder who seeks to withdraw or modify a bid because of the bidder's inadvertent computational error shall notify the City Department where bids were submitted no later than three working days following the bid closing. The bidder shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure

to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the bidder to prove the inadvertent error.

[Sections 22.3020 through 22.3025 reserved for future use.]

SEC. 22.3026 Award of Contracts and Public Works Contracts

(a) Except as provided in Section 22.3026(b), for Contracts or Public Works Contracts that are required to be advertised, the City may make the award not less than ten calendar days after advertising in accordance with the following:

(1) Contracts for Public Works under Sections 22.3102 and 22.3103 shall be awarded to the lowest responsible and reliable bidder that meets the specifications.

(2) Contracts, excluding Contracts for Public Works, and Consultant Contracts, shall be awarded on the basis of the low acceptable bid that best meets City requirements under Section 22.3211.

(3) Contracts for procurement under a request for proposal will be awarded on the basis of the proposal best meeting City requirements.

(b) The City is authorized to award Contracts and Public Works Contracts to the next bidder that meets all requirements when the apparent successful bidder under Section 22.3026(a)(1) or (2):

(1) does not meet deadlines for submitting the required bond and insurance documents, or

(2) does not, within ten calendar days after any original bond and insurance document were required to be submitted, request a hearing with the City Department where bids

were submitted to show cause why the City should not proceed with action to award the contract to another bidder.

SEC. 22.3027 Waiver of Defects and Technicalities

The City may waive defects and technicalities when to do so is in the best interests of the City.

SEC. 22.3028 Notice of Contract Award

Upon request and upon determination of the proposed selection for award, the City will notify all interested bidders of the proposed award.

SEC. 22.3029 Protests of Contract Award

- (a) Protests by unsuccessful bidders shall be submitted in writing to the City Department where bids were submitted setting forth in detail the grounds for such protest.
- (b) Protests shall be submitted no later than ten calendar days after the date of the announcement of selection.
- (c) The unsuccessful bidder shall have the right to appear before the City Council to protest any award required to be confirmed by the Council.
- (d) Failure to submit a timely protest to the City shall bar consideration of a protest.

[Sections 22.3030 through 22.3035 reserved for future use.]

SEC. 22.3036 Alterations in Contracts, Consultant Contracts, and Public Works Contracts

- (a) Except as provided in Section 22.3036(b), whenever it becomes necessary to make alterations in Contracts, Public Works Contracts and Consultant Contracts, the City Manager

shall make alterations only when authorized by the Council, unless such alterations meet all of the following criteria:

- (1) The cost of each alteration is less than \$200,000; and
- (2) The cost of alteration does not exceed the total amount authorized for the project by ordinance or resolution, and
- (3) The City Manager certifies in accordance with Section 22.3037 that the alterations are necessary to fulfill the purpose of the contract, and
- (4) The alterations are made by agreement in writing between the contractor and the City Manager.

(b) Notwithstanding the limitation provided by Section 22.3036(a), in any contract for the construction of the South Bay Ocean Outfall let pursuant to cooperative agreement with the Environmental Protection Agency and the International Boundary and Water Commission, the City Manager may approve alterations without authorization of the Council, provided that the cost of each alteration does not exceed five percent of the original prime contract value and provided that all other criteria in Section 22.3036(a) are met.

SEC. 22.3037 City Manager's Certification

Except as provided in Section 22.3104(b), where Divisions 31 and 32 require City Manager certification, the City Manager may delegate that authority to the Assistant City Manager, Deputy City Manager, or any person expressly designated to make the certification.

DIVISION 31

PUBLIC WORKS CONTRACTS

SEC. 22.3101 Purpose

This Division is intended to establish procedures for contracting for public works, and to clarify when competitive bidding is required, for Public Works Contracts. It also authorizes General Requirements Contracts under limited circumstances.

SEC. 22.3102 Public Works Contracts Required to be Competitively Awarded

(a) If a Public Works Contract provides for an expenditure of equal to or less than \$50,000, and if the City seeks competitive prices either orally or in writing and the City Manager has taken those prices under consideration before the Public Works Contract is awarded, the City Manager may award the contract without advertising.

(b) If a public works project was previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget, the City Manager may award the contract provided that the following are met:

- (1) the Public Works Contract has been advertised as described in Section 22.3006, and
- (2) the Public Works Contract is in writing, and
- (3) the Public Works Contract provides for an expenditure of greater than \$50,000, but less than \$1,000,000.

(c) All Public Works Contracts not falling within Section 22.3102(a) and 22.3102(b) shall be awarded by the City Council provided that all of the following are met:

- (1) the Public Works Contract has been advertised as described in Section 22.3006, and
- (2) the Public Works Contract is in writing, and
- (3) the Public Works Contract provides for an expenditure of greater than \$50,000, and
- (4) the City Council authorizes the necessary expenditure of funds for the Public Works Contract and authorizes the City Manager to execute the contract.

SEC. 22.3103 General Requirements Contracts

(a) General Requirements Contracts for public work may be awarded by the City Council under written agreement under the provisions of Section 94 of the City Charter, subject to the limitations of Section 22.3103(a)-(d):

- (1) The specifications were advertised in accordance with Section 22.3006.
- (2) The specifications provided for sealed competitive bidding on unit-cost terms for all labor, material, and equipment necessary to perform all work contemplated for individual Task Orders.
- (3) The General Requirements Contract does not exceed a term of two years in duration.

(b) If a General Requirements Contract is awarded for a term less than two years, one or more extensions may be awarded but the entire term of the requirements contract, including extensions, may not exceed two years.

(c) A General Requirements Contract may not contain any provision which would guarantee the contractor cumulative Task Orders in excess of \$50,000.

(d) A General Requirements Contract may not exceed the sum of \$10,000,000 for the time in which the requirements contract is effective, including any extensions.

SEC. 22.3104 Task Orders

(a) Following award of a General Requirements Contract by the Council, the City Manager may thereafter identify and issue Task Orders under the General Requirements Contract and shall certify in accordance with Section 22.3104(b) that the public will not benefit from strict compliance with the competitive bidding requirements of Charter section 94 for the Task Order because, under the particular circumstances, one or more of the following criteria have been met:

- (1) strict compliance with the competitive bidding requirements will work an incongruity and not affect the final result; or
- (2) strict compliance will not produce an advantage; or
- (3) advertising for bids is undesirable because it will be practically impossible to obtain what is needed or required.

(b) The duty to provide the certification set forth in Section 22.3104(a) may not be delegated or executed by any person other than the City Manager, except that the City Manager may authorize the Assistant City Manager, any Deputy City Manager, or any Department Director to make the certification.

(c) An individual Task Order may not exceed the sum of \$500,000, except in the case of a bona fide emergency affecting health, safety, or property.

(d) Upon a decision by the City Manager to issue a Task Order exceeding \$250,000, the City Manager shall immediately inform the City Auditor and Comptroller in

writing of the decision, the project or task for which the Task Order is issued, and the facts justifying the certification issued pursuant to Section 22.3104(a).

(e) The City Manager is prohibited from subdividing any public work which logically should be performed as a single contract transaction requiring the expenditure of more than \$500,000 into separate Task Order requirements for purposes of avoiding this limitation.

SEC. 22.3105 Use of City Forces

(a) City forces shall not be used on public works projects if the cost therefor exceeds the sum of \$100,000 unless the Council has approved use of City forces on those projects.

When Council approval is required, the City Manager shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.

(b) The City Manager may exercise his or her discretion on the use of City forces on public works when the cost therefor does not exceed the amount of \$100,000.

DIVISION 32

CONTRACTS FOR PERSONAL SERVICES,

GOODS, AND CONSULTANTS

SEC. 22.3201 Purpose and Intent

This Division is intended to specify the circumstances under which Contracts for Goods, Services and Cooperative Procurements and Consultant Contracts may be entered into and whether a Contract for Goods, Services and Cooperative Procurement must be competitively bid.

SEC. 22.3202 Authority to Enter Contracts; Competitive Bid Process Required

The Purchasing Agent is authorized to enter into Contracts upon request of City departments. Except as provided in Sections 22.3212, 22.3221 and 22.3222, all Contracts shall be awarded through a competitive process in accordance with Section 22.3211.

SEC. 22.3203 Use of Brand Name in Specifications; 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 City.

(b) A bidder may offer an equivalent ("or equal") in response to a Brand Name reference. When an "or equal" is offered, the City 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 City 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 City reserves the sole right to reject a bid containing any "or equal" offered.

(e) Exceptions to the foregoing are permissible for procurement for replacement parts, or for testing and evaluation purposes or where compatibility with existing City equipment is mandated.

SEC. 22.3204 Subdividing Purchase Prohibited

The Purchasing Agent is prohibited from subdividing into two or more purchases any purchase of Goods or Services for an expenditure of \$50,000 or more that logically should be made as a single transaction if the purpose of the subdividing is to avoid the bidding requirements of the San Diego Municipal Code and the City Charter.

SEC. 22.3205 Civil Service Commission Review

All Contracts for Services shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.

[Reserve Sections 22.3206 through 22.3210 for future use.]

SEC. 22.3211 Contracts Required to be Competitively Awarded

(a) When a Contract provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Purchasing Agent may award the Contract but shall seek competitive prices either orally or in writing.

(b) When a Contract provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Purchasing Agent may award the Contract but shall solicit written price quotations from at least five potential sources.

(c) When a Contract provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the Contract but shall advertise for sealed proposals as described in Section 22.3006.

(d) When a Contract provides for an expenditure greater than \$1,000,000, the Purchasing Agent shall advertise for sealed proposals as described in Section 22.3006 and shall obtain City Council approval to award the Contract.

(e) Maintenance Contracts are required to be competitively bid pursuant to Section 22.3211. Maintenance Contracts, however, may be awarded to other than the lowest bidder pursuant to Sections 65.0213(b) and 65.0214(c).

SEC. 22.3212 Contracts Not Required to be Competitively Bid

The Contracts listed in Section 22.3212(a)-(g) are not required to be competitively bid.

(a) A Contract that provides for an expenditure of less than \$5,000;

(b) A Cooperative Procurement Contract in an amount less than \$10,000;

(c) A Contract to remedy a bona fide emergency that affects public health or safety, provided that:

(1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council, and

(2) The Council by resolution acknowledges and ratifies the procurement;

(d) A Contract that is available from a Sole Source only, if, in advance of the Contract, the City Manager certifies in writing in accordance with Section 22.3037 the Sole Source status of the provider;

(e) Annual blanket purchase orders for an expenditure greater than \$5,000 for commercially available materials and supplies, provided that they are:

(1) required by City forces for immediate completion of work in progress,

(2) not normally kept in City stores, and

- (3) less than \$50,000.
- (f) Contracts for Inmate Services which comply with Section 22.3221.
- (g) Contracts for Services with Agencies or Non-Profit Organizations which comply with Section 22.3222.

SEC. 22.3213 Factors to Determine Whether Bid Meets Specifications

The City may consider the following factors in evaluating whether a bid or proposal best meets City requirements and gains the best economic advantage for the City: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (including the costs associated with proprietary invention), experience and responsibility of the bidder, and any additional factors the City deems relevant.

[Reserve Sections 22.3214 through 22.3220 for future use.]

SEC. 22.3221 Manager's Authority to Enter Contracts For Inmate Services

The City Manager may enter a Contract for Inmate Services without Council action provided that all of the following conditions are met:

- (a) The City Manager has certified in writing that the Contract is in the public interest,
and
- (b) The Contract does not exceed \$500,000 per year, and
- (c) The City Manager has considered all of the following:
 - (1) whether the Agency agrees to direct supervision of the workers, and
 - (2) whether the Agency agrees to provide workers' compensation insurance for the workers, and

Corrected 6/18/98

(3) whether the Agency agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or Agency employee.

SEC. 22.3222 City Manager's Authority to Enter Contracts for Services with Agencies or Non-Profit Organizations

The City Manager may enter Contracts for Services with any Agency or with any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without Council action, provided that all of the following conditions are met:

- (a) The City Manager has certified in writing that the Contract furthers a specific public policy, and
- (b) The City Manager has certified in writing that the Contract is in the public interest, and
- (c) The Contract does not exceed \$500,000 per year, and
- (d) The City Manager has considered all of the following:
 - (1) whether the Agency or non-profit organization agrees to direct supervision of the workers, and
 - (2) whether the Agency or non-profit organization agrees to provide workers' compensation insurance for the workers, and
 - (3) whether the Agency or non-profit organization agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or Agency employee.

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SEC. 22.3223 Consultant Contracts

Except as otherwise provided by Charter or ordinance, the City Manager may enter a contract with a Consultant to perform work or give advice without first seeking Council approval provided that both of the following conditions exist:

- (a) the contract does not exceed \$250,000, and
- (b) the total amount of contract awards to the Consultant, including the current award,

in any given fiscal year does not exceed \$250,000

SEC. 65.0213 City Award of Contracts

(a) For the award of any Public Works Contract, Contract for Goods, and Contract for Services, other than Maintenance Contracts, by the City on behalf of a District, the City Manager shall follow the provisions of ~~Chapter H, Article 2, Sections 22.3101, 22.3102, 22.3103, 22.3104, 22.3105, 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223~~ of this Code.

(b) For the award of any Maintenance Contract by the City on behalf of a District, the City Manager shall follow the provisions of ~~Chapter H, Article 2, Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223~~ of this Code. Notwithstanding the provisions of ~~Chapter H, Article 2, Sections 22.3201, 22.3202, 22.3203, 22.3204, 22.3205, 22.3211, 22.3212, 22.3213, 22.3221, 22.3222 and 22.3223~~, a Maintenance Contract for a District may be awarded to other than the low acceptable bidder if the City Manager receives a protest from the relevant community planning group or designated representatives of a District, or other property owners within the District, in accordance with the provisions of Sections 65.0213(b)(1) or (2).

(1) and (2) [No changes in text.]

(c) [No change in text.]

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