

(O-2003-27)

ORDINANCE NUMBER O- 19095 (NEW SERIES)

ADOPTED ON SEP 03 2002

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 30, SECTIONS 22.3001, 22.3003, 22.3006, 22.3007, 22.3008, AND 22.3009; BY AMENDING DIVISION 31 BY AMENDING SECTIONS 22.3101 AND 22.3102; BY AMENDING DIVISION 32 BY AMENDING SECTION 22.3211; BY AMENDING DIVISION 35 BY AMENDING SECTION 22.3502; AND BY ADDING DIVISION 36 TITLED "BIDDING AND AWARD REQUIREMENTS FOR MINOR PUBLIC WORKS CONTRACTS" AND ADDING SECTIONS 22.3601 THROUGH 22.3616, ALL PERTAINING TO AWARD OF THE CITY'S CONTRACTS.

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

Section 1. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is hereby amended by amending Section 22.3001, to read as follows:

§22.3001 Purpose and Scope of Division

The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, 34, 35, and 36 of Article 2, Chapter 2 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.

Section 2. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is hereby amended by amending Section 22.3002, to read as follows:

§22.3002 Relationship to State Law

(a) Pursuant to Section 1100.7 of California's Public Contract Code, the City

Council declares that the City's Public Contracts Code, or any portion thereof, is expressly exempt from the California Public Contracts Code.

(b) [No change].

Section 3. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is hereby amended by amending Section 22.3003 and adding definitions for the terms *award*, *award date*, *emergency*, *major public works contracts*, *minor public works contracts*, and *valued at*, and inserting them in alphabetical order among the existing definitions, to read as follows:

§22.3003 Definitions

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, and 36 are indicated by italics. For purposes of Chapter 2, Article 2, Division 30, 31, 32, 33, 34, 35, and 36:

[No change in existing definitions.]

Award means the acceptance of a bid or proposal by the City's authorized representative.

Award date or *date of award* means the date that the City Manager or his designee signs the documents constituting a *public works contract* or a contract for consultant services manifesting the City's approval of all conditions precedent to *award*.

Emergency means a crisis of such proportion that the public peace, property, health, or safety is at stake.

Major public works contract means a *public works contract* valued at more than \$250,000.

Minor public works contract means a *public works contract* valued at \$250,000 or less.

Valued at means the amount authorized to be expended for performance of a *public works contract* at the time of bid opening.

Section 4. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is hereby amended by amending Sections 22.3006, 22.3007, 22.3008, and 22.3009, to read as follows:

§22.3006 Bid Initiation; When Advertising in Official Newspaper Required for Public Works Contract

- (a) *Major public works contracts* that provide for an expenditure of more than \$250,000 shall be advertised for a minimum of one day in the City Official Newspaper.
- (b) The City Manager may award *minor public works contracts* without advertising. In lieu of advertising, the City Manager shall follow procedures set forth in Division 36 of Chapter 2, Article 2, of this Municipal Code and in regulations adopted by the City Manager consistent with this Section and Division 36. The Manager's regulations shall ensure that the City seeks competitive prices either orally or in writing and shall ensure that the City Manager has taken those prices under consideration before a *minor public works contract* is awarded.

§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 all *public works contracts*. Where required, the bidder shall submit insurance or surety bonds, or both, acceptable to the City prior to award.

§22.3008 Issuance of Specifications for Contracts Requiring Bidding

For *contracts* requiring bidding under divisions 30 through 36 of Chapter 2, Article 2 of this Municipal Code:

- (a) no change;
- (b) no change;
- (c) no change.

§22.3009 Invitations to Bid

For *contracts* required to be bid under divisions 30 through 36 of Chapter 2, Article 2, of this Municipal Code, an invitation to bid shall be issued. The invitation to bid shall include specifications that describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation. The specifications shall also describe the functions and performance that are required and any applicable operational limitations or parameters.

Section 5. That Chapter 2, Article 2, Division 31, of the San Diego Municipal Code is hereby amended by amending Sections 22.3101 and 22.3102 to read as follows:

§22.3101 Purpose

This Division is intended to establish procedures for contracting for public works, and to clarify when competitive bidding is required for *major public works contracts*. It also authorizes *general requirements contracts* under limited circumstances.

§22.3102 When Major Public Works Contracts May be Awarded by City Manager

- (a) The City Manager may *award a major public works contract* that provides for an expenditure of an amount equal to or greater than \$1,000,000 provided that the following requirements are met:

- (1) the major public works project was previously approved and appropriated through the Annual Capital Improvements Program (CIP) budget; and
 - (2) the *major public works contract* has been advertised as described in Section 22.3006; and
 - (3) the *major public works contract* is in writing.
- (b) All other *major public works contracts* that do not meet the requirements of Section 22.3102 (a) are required to be authorized by the City Council before being awarded by the City Manager. The City Council may authorize the City Manager to award a *public works contract* if it has met the following requirements:
- (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 City Council has authorized the necessary expenditure of funds for the *public works contract*.

Section 6. That Chapter 2, Article 2, Division 32, of the San Diego Municipal Code is hereby amended by amending section 22.3211 to read as follows:

§ 22.3211 Contracts Required to be Competitively Awarded

- (a) no change
- (b) no change

- (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* only after advertizing it for a minimum of one day in the City Official Newspaper.
- (d) When a *contract* provides for an expenditure greater than \$1,000,000, the Purchasing Agent shall advertize for sealed proposals for a minimum of one day in the City Official Newspaper and shall obtain the City Council's approval to award the *contract*.
- (e) no change

Section 7. That Chapter 2, Article 2, Division 35, of the San Diego Municipal Code is hereby amended by amending the definition of "contract" in Section 22.3502, to read as follows:

§22.3502 Definitions

"*Contract*" means an agreement with any *person* let by or on behalf of the City for that *person* to provide labor, materials, goods, supplies, or services. It includes *major public works contracts* and *minor public works contracts* as defined in Section 30.3003 of this Municipal Code.

Section 8. That Chapter 2, Article 2, of the San Diego Municipal Code is hereby amended by adding Division 36, titled "**Bidding and Award Requirements for Minor Public Works Contracts**", and adding Sections 22.3601 through 22.3616, to read as follows:

Division 36

Bidding and Award Requirements for Minor Public Works Contracts

§22.3601 Purpose

The City Council wants to create programs intended to increase outreach to and use of historically underutilized construction contractors. The City Council intends to

create a minor construction program to fulfill that purpose and to assist these contractors. This division is, therefore, intended to provide different advertisement, bidding, award, and contract administration policies and procedures for *minor public works contracts* as distinguished from *major public works contracts*, while continuing to ensure that the City's contracting procedures are fair and that competitive pricing is considered.

§22.3602 **Applicability**

This division is to apply when the City seeks contractors to perform *minor public works contracts*, except that it does not apply to *minor public works contracts* when the work to be performed consists primarily of acquisition of equipment or fabricated parts where the onsite labor required to install the equipment or parts amounts to less than 25% of the total value of the *contract* as determined at the time of bid opening.

§22.3603 **Definitions**

Defined terms used in this division appear in italics. For purposes of this division:

Emerging business means a business whose gross income does not exceed the amount specified in the Emerging Business Size Standards Caps for each type of business listed on the document on file in the City Clerk's Office as Document No.

00-19095-1, as it is amended from time to time.

Small business means a business whose gross income does not exceed the amount specified in the Small Business Size Standards Caps for each type of business listed on the document on file in the City Clerk's Office as Document No. 00-19095-1,

as it is amended from time to time.

§ 22.3604 Determination of Value of a Public Works Contract

- (a) The value of a contract shall be determined at bid opening. For purposes of determining the value of a *contract* at the time of bid opening, only the proposed costs of construction, not design costs or the City's contract administration costs, are to be considered.
- (b) The City Manager must tentatively determine a proposed contract's value prior to commencing contractor selection so that proper procedures may be used for advertising, bidding, and award.
- (c) The fact that one or more bids are received that exceed the \$250,000 limit for using the minor construction bidding and award procedures does not render the procedures invalid or the award of a contract invalid. However, if *minor public works contract* procedures were used for bidding and the Manager finds that acceptance of the lowest responsible bidder on a particular *public works contract* would make the value of the executed *contract*, excluding design and City administration costs, exceed the \$250,000 limit for use of those procedures, the Manager must reject the bids and commence advertising and bidding procedures for *major public works contracts*.

§22.3605 Establishment of Minor Public Works Contract Availability Lists

- (a) The City Manager shall establish and maintain a list of eligible *small businesses* and a list of eligible *emerging businesses* that have indicated a desire to enter into *public works contracts* with the *City*. The City will use these two lists to award *minor public works contracts*. The *emerging business* list will be known as Document No. 00-19095-2 and the *small business*

list will be known as Document No. 00-19095-3. The City Manager may amend these lists from time to time in accordance with the directions set forth in this division and with regulations adopted by the Manager.

- (b) *Small businesses* and *emerging businesses* appearing on these lists will be further sub-divided into separate disciplines and license types based on the state of California's contractors' licensing scheme.
- (c) Eligible businesses will be placed on the appropriate sub-lists according to the type of California contractor's license they hold. A contractor may hold more than one type of California contractor's license and a contractor's name may appear on more than one sub-list in accordance with types of licenses held. Within each contractor's license type sub-list, eligible businesses will be placed and maintained on the list in accordance with the date of their completed application submitted in accordance with the application process adopted under Section 22.3605.

§22.3606 Eligibility for Minor Public Works Contract Availability Lists

- (a) Except as provided in Section 22.3606(b), to be eligible to be placed on the appropriate availability list, a *small business* or *emerging business* shall:
 - (1) be owned by construction professionals licensed by the California Contractors State Licensing Board; and
 - (2) be owned by construction professionals in good standing with the City of San Diego; and

- (3) have a City of San Diego Business Tax Certificate authorizing them to do business in this City; and
 - (4) upon request of the City, provide a signed statement of an authorized representative of the business affirming that the business's gross income does not exceed the applicable limits specified in the Small Business and Emerging Business Size Standards in Document No. 00-19095-1 on file in the City Clerk's office. The statement of gross income shall be signed under penalty of perjury under California law; and
 - (5) submit a completed application to the City Manager in accordance with the process established by Section 22.3607.
- (b) In addition to meeting the criteria in Section 22.3606(a), a *small* or *emerging business* may also be owned by construction contractors certified as a Small Business or as a Disabled Veteran Business Enterprise, or certified as both, by the California Department of General Services. However, such certification does not eliminate the necessity for meeting the other eligibility criteria specified in Section 22.3606.
- (c) The City Manager may determine that certain businesses are ineligible to be placed on the *small* or *emerging business* availability lists, because those businesses hold only those types of California licenses issued to *persons* not primarily engaged in public works construction. This determination shall be in writing and the availability lists shall be amended to reflect this determination.

§22.3607 Application Process for Placement on Availability List

The City Manager shall establish an application process for determining whether a particular business is eligible to be placed on the *small business or emerging business* availability lists.

§22.3608 Removal from Availability Lists

- (a) A *small or emerging business* may be removed from the applicable *public works contract* availability list if the business submits a non-responsive bid to the City's solicitation of bid at least four times within the City's fiscal year.
- (b) *Small businesses or emerging businesses* that have been awarded more than \$1,000,000 in City *public works contracts* within a City fiscal year will be removed from the list in that fiscal year and will be eligible for reinstatement to the list in future fiscal years upon establishing that the business meets the gross income limits in Document No. 00-19095-1 on file in the City Clerk's office.

§22. 3609 Reinstatement Following Removal from List; Re-application Required

If a *small or emerging business* has been removed from the applicable *minor public works contracts* availability list for the reasons listed in Section 22.3608, the business may be reinstated to the list only after the business has successfully completed the Manager's application process for reinstatement.

§22.3610 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at \$50,000 - \$250,000

- (a) *Minor public works contracts* valued at more than \$50,000 but less than or equal to \$250,000 shall be awarded through a competitive bid process open

only to businesses listed on the *small* or *emerging businesses* availability lists.

- (b) The City Manager shall solicit a minimum of five bids for each proposed contract in accordance with procedures in Sections 22.3610(c) and (d).
- (c) Bids shall be solicited first from the appropriate license sub-list on the *emerging business* list established by the City Manager pursuant to Section 22.3605, if at least five are available. Businesses within each license type sub-list on the *emerging business* list will be rotated to determine which businesses will be eligible to participate in a particular bid process.
- (d) If five bid solicitations from qualified contractors are not available from the *emerging business* list, the Manager may solicit bids from the appropriate license sub-list on the *small business* list to make up the deficit. Businesses within each sub-license type on the *small business* list will be rotated to determine which businesses will be eligible to participate in a particular bid process.

§22.3611 Solicitation of Bids for and Award of Minor Public Works Contracts Valued at under \$50,000

- (a) *Minor public works contracts valued at \$50,000 or less* shall be awarded through a competitive bid process open only to businesses listed on the *small* or *emerging businesses* availability lists in accordance with procedures set forth in this Section.
- (b) The City Manager shall solicit bids from five businesses from the appropriate license sub-list on the *emerging business* list, if at least five are available. Businesses within each license type sub-list on the *emerging business* list will

be rotated to determine which businesses will be eligible to participate in a particular bid process.

- (c) If five bid solicitations from qualified contractors are not available from the *emerging business* list, the Manager may solicit bids from the appropriate license sub-list on the *small business* list to make up the deficit. Businesses within each license type on the *small business* list will be rotated to determine which businesses will be eligible to participate in a particular bid process.

§22.3612 Names on Lists to be Rotated to Ensure Fairness

The Manager shall establish a rotation scheme that will ensure that eligible businesses are given a fair opportunity to participate in the City's contracting process under Sections 22.3610 and 22.3611.

§22.3613 Plans and Specifications to be Provided Free of Charge to Small or Emerging Businesses

Plans and specifications for *minor public works contracts* will be provided free of cost to *small and emerging businesses*.

§22.3614 Emergency Contracts

- (a) Based on the City Manager's written determination that an *emergency* exists requiring immediate action, the Manager may execute a *minor public works contract* valued at \$10,000 to \$50,000 so long as the Manager has received oral or written quotes for the proposed work from at least five *persons* from either the *emerging* or *small business* lists.
- (b) Based on the City Manager's written determination that an *emergency* exists requiring immediate action, the Manager may execute a *minor public works*

contract valued at less than \$10,000 so long as the Manager has received an oral or written quote for the proposed work from at least one *person* from either the *emerging* or *small business* lists.

§22.3615 Effect of Amendments to Minor Public Works Contracts

As long as the original value of a *minor public works contract* as determined at bid opening is less than or equal to \$250,000, any future amendments increasing the value of that *contract* do not render the bidding, award or administration process invalid.

§22.3616 City Manager to Adopt Regulations

The City Manager shall adopt regulations to implement this Division.

Section 9. That the City Clerk is instructed to place all defined terms appearing in Divisions 30,31,32,33,34,35, and 36 of Chapter 2, Article 2 in italics and to remove the quotation marks and initial capital of defined terms.

Section 10. That the City Clerk is instructed to insert and publish all document numbers in the following Sections, once the document numbers are known: Sections 22.3003, 22.3604, 22.3605, and 22.3607.

Section 11. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 12. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By *Cristie C. McGuire*
Cristie C. McGuire
Deputy City Attorney

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