

ORDINANCE NUMBER O- 20148 (NEW SERIES)

DATE OF FINAL PASSAGE APR 23 2012

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 30 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 22.3001 AND 22.3003; BY ADDING NEW SECTION 22.3004; BY REPEALING SECTION 22.3006; BY AMENDING AND RENUMBERING SECTION 22.3007 TO 22.3005; BY AMENDING AND RENUMBERING SECTION 22.3008 TO 22.3006; BY ADDING NEW SECTION 22.3007; BY AMENDING AND RENUMBERING SECTION 22.3009 TO 22.3008; BY ADDING NEW SECTION 22.3009; BY AMENDING SECTION 22.3010; BY REPEALING SECTIONS 22.3011 AND 22.3016; BY AMENDING AND RENUMBERING SECTION 22.3017 TO 22.3011; BY AMENDING AND RENUMBERING SECTION 22.3018 TO 22.3012; BY AMENDING AND RENUMBERING SECTION 22.3019 TO 22.3013; BY REPEALING SECTION 22.3026; BY RENUMBERING SECTION 22.3027 TO 22.3014; BY ADDING NEW SECTIONS 22.3015 AND 22.3016; BY AMENDING AND RENUMBERING SECTION 22.3029 TO 22.3017; BY AMENDING AND RENUMBERING SECTION 22.3036 TO 22.3018; AND BY REPEALING SECTION 22.3037; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 31 BY AMENDING SECTIONS 22.3101, 22.3102, 22.3103, 22.3104, AND 22.3105; AND BY ADDING NEW SECTIONS 22.3106, 22.3107, 22.3108 AND 22.3109; BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 32 BY AMENDING SECTIONS 22.3201 AND 22.3202; BY REPEALING SECTION 22.3203; BY ADDING NEW SECTION 22.3203; BY AMENDING SECTIONS 22.3204 AND 22.3205; BY ADDING NEW SECTIONS 22.3206 AND 22.3207; BY REPEALING SECTION 22.3211; BY AMENDING AND RENUMBERING SECTION 22.3212 TO 22.3208; BY REPEALING SECTION 22.3213; BY AMENDING AND RENUMBERING SECTION 22.3221 TO 22.3209; BY AMENDING AND RENUMBERING SECTION 22.3222 TO 22.3210; AND BY REPEALING SECTIONS 22.3223 AND 22.3224 ALL RELATING TO CONTRACTING PROCEDURES.

WHEREAS, the City desires to implement its Capital Improvement Program in a more timely and efficient manner; and

WHEREAS, the City has identified ways to streamline the project delivery process through amendments to the Municipal Code; and

WHEREAS, the City is proposing to increase the Mayor's authority to award contracts and the City shall provide more information and transparency on the Capital Improvement Program, including the posting of detailed project information on the City's website; and

WHEREAS, the City Attorney's Office has identified opportunities to clarify, memorialize, renumber and reorganize other provisions of the Municipal Code that do not alter the City's current practices; and

WHEREAS, every section, subsection, sentence, clause, phrase, portion and provision of this Ordinance is intended to be severable pursuant to San Diego Municipal Code Section 11.0205; NOW, THEREFORE,

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 amended by amending Sections 22.3001 and 22.3003; by adding new Section 22.3004; by repealing Section 22.3006; by amending and renumbering Section 22.3007 to 22.3005; by amending and renumbering Section 22.3008 to 22.3006; by adding new Section 22.3007; by amending and renumbering Section 22.3009 to 22.3008; by adding new Section 22.3009; by amending Section 22.3010; by repealing Sections 22.3011 and 22.3016; by amending and renumbering Section 22.3017 to 22.3011; by amending and renumbering Section 22.3018 to 22.3012; by amending and renumbering Section 22.3019 to 22.3013; by repealing Section 22.3026; by renumbering Section 22.3027 to 22.3014; by adding new Sections 22.3015 and 22.3016; by amending and renumbering Section 22.3029 to 22.3017; by amending and renumbering Section 22.3036 to 22.3018; and by repealing Section 22.3037 to read as follows:

Chapter 2: Government
Article 2: Administrative Code
Division 30: Contract Definition and Procedures

§ 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, 36, and 38 of Article 2, Chapter 2 of the Municipal Code; to establish general requirements that apply to contracts awarded under these Divisions and to provide clarity and consistency in the City's alteration of contracts.

§ 22.3002 Relationship to State Law

[No change in text.]

§ 22.3003 Definitions

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, 36, and 38 are indicated by italics. For purposes of these Divisions:

Agency means federal and state agencies, counties, cities, districts, local agencies, joint power authorities, non-profit corporations wholly owned by a public agency, and any quasi-public entity that the Council may designate by resolution.

Bidder means a person or firm who submits a bid, proposal, or other document to the City seeking award of a contract. A *bidder* does not include a subcontractor.

City's Public Contracts Code means the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, policies, regulations, or practices, pertaining to contracts or agreements between the City and other party.

Consultant contract means a contract to provide expert or professional services including, but not limited to, accounting, architectural, engineering, marketing, public relations, management, financial, and legal services.

Contract for goods means a contract for the purchase of articles, commodities, materials, supplies, equipment, or insurance.

Contract for inmate services means a contract for the use of inmates confined in federal, state or county prisons, or probationers, or parolees.

Contract for services means a contract to provide assistance, labor or maintenance. A contract for services does not include consultant contracts, contracts for goods, or public works contracts.

Cooperative procurement contract means a contract to obtain goods or services for at least two agencies.

Job order contract means a public works contract awarded on a unit cost basis for all necessary labor, materials, and equipment pursuant to San Diego Charter Section 94.1.

Maintenance means routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

Major public works contract means a public works contract of more than \$500,000.

Minor public works contract means a *public works contract* of \$500,000 or less.

Public works contract means a contract for the construction, reconstruction or repair of public buildings, streets, utilities and other public works, including design-build contracts, construction manager at risk contracts, and *job order contracts*.

Responsible or Responsibility refers to the quality, fitness, and capacity of a *bidder* to satisfactorily perform the proposed work. A *responsible bidder* has the quality, fitness, and capacity to satisfactorily perform the proposed work, while a *non-responsible bidder* does not.

Sole source contract means a contract awarded without a competitive process.

Task order means an authorization to perform public works issued under a *job order contract* or a multiple award design-build contract pursuant to Section 22.3310.

§ 22.3004 Contractor Standards

(a) Prior to awarding a contract, the City shall make a determination that the *bidder* has the capability to fully perform the contract requirements and the business integrity to justify the award of public funds. The factors the City may consider include, but are not limited to:

- (1) Financial resources, including financial sufficiency under California Labor Code section 2810;
- (2) Technical qualifications;
- (3) Experience;
- (4) Material, equipment, and expertise necessary to carry out the work;

- (5) A satisfactory record of performance; and
 - (6) A satisfactory record of compliance with applicable statutes and regulations.
- (b) *Bidders* are required to submit documentation to the City, signed by the *bidder* under penalty of perjury, to determine if the *bidder* meets the standards set forth in Section 22.3004(a). To be eligible to bid on *public works contracts*, *bidders* must submit the documentation as part of a prequalification process adopted by the City Manager, and be approved by the City prior to bidding on a *public works contract*. For *contracts for goods*, *contracts for services*, and *consultant contracts*, the documentation may be submitted as part of the *bidder's* bid, proposal, or other application for a contract.
- (c) During the term of a contract, the contractor shall comply with all applicable local, state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the contract. Each contractor shall notify the City within fifteen calendar days upon receiving written notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with the laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of *non-responsibility* by the City.

- (d) All contractors shall complete a pledge of compliance provided by the City attesting under penalty of perjury to compliance with the provisions of this Section upon award of each contract, or upon amendment, renewal or extension of a contract if a pledge of compliance was not previously completed. Only one pledge of compliance is required for each contract. Contractors shall ensure that their subcontractors complete a pledge of compliance attesting under penalty of perjury to compliance with the provisions of this Section.
- (e) Violations of the provisions of this Section may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Section, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from the date the notice is deposited in the mail. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one, all, or any combination of the following:
- (1) Declare a material breach of the contract and exercise the contractual remedies thereunder, which may include but not be limited to termination of the contract.
 - (2) Declare the contractor to be non-*responsible* in accordance with the procedures set forth in Section 22.3004(f).
 - (3) Debar the contractor pursuant to Chapter 2, Article 2, Division 8 of the Municipal Code.

- (f) A *bidder* who is denied the award of a contract because the *bidder* is not considered to be *responsible* may contest the City's determination pursuant to the bid protest provisions in Section 22.3017(b).
- (g) A contractor who is determined to be non-*responsible* and ineligible to bid on *public works contracts* through the prequalification process may contest the City's determination pursuant to this Section.
 - (1) The City Manager shall notify the contractor of the determination of non-*responsibility* in writing sent by first class, certified or express mail. The notice shall set forth the reasons for the City's determination. The effective date of the notice is the date that the notice is deposited in the mail.
 - (2) The contractor must request a hearing if it desires to contest the City's determination of non-*responsibility*. The request must be in writing and received by the City Department administering the prequalification program, no later than 5:00 p.m. on the tenth calendar day after the effective date of the City's notice. The contractor's request shall address the reasons for the City's determination of non-*responsibility* set forth in the City's notice and explain why the contractor is *responsible*.
 - (3) If the tenth calendar day falls on a weekend or City holiday, the deadline to submit a request for a hearing shall be extended to 5:00 p.m. on the first business day following such weekend or holiday.

- (4) The hearing shall be held before the City Council's Budget and Finance Committee. At such hearing, the contractor will be allowed to contest the City's determination of *non-responsibility* and to present evidence that the contractor has the necessary quality, fitness and capacity to perform the work. The Budget and Finance Committee shall make a determination upholding or rejecting the City's determination. A decision by the Budget and Finance Committee shall be final and exhaust the contractor's administrative remedies.
- (5) The procedure and time limits set forth in this Section are mandatory and are the contractor's sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further contest the City's determination of *non-responsibility*.
- (h) The City Manager shall maintain a list of contractors that have been determined to be *non-responsible* by the City. After two years from the date the contractor has been determined to be *non-responsible*, the contractor may request removal from the list by the City Manager. If the contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Section 22.3004(a), its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of *non-responsibility*.

- (i) This Section applies to *public works contracts, contracts for goods, contracts for services, and consultant contracts.*

§ 22.3005 Insurance and Bonds

- (a) The City is authorized to require vendors, consultants and contractors to provide insurance and surety bonds for contracts. Where required, the bidder shall submit proof of insurance or surety bonds, or both, acceptable to the City prior to award. The City may award a contract to the next *bidder* that meets all requirements when the winning *bidder* does not meet deadlines for submitting acceptable bond and insurance documents established by the invitation to bid or request for proposals.
- (b) A *bidder* seeking award of a *major public works contract* shall include a bid bond with its bid insuring the execution of the contract by the *bidder*. The amount of the bid bond shall be determined by the City Manager. This bid bond requirement does not apply to *sole source contracts, job order contracts, design-build contracts or construction manager at risk contracts*, unless otherwise required by the City Manager.

§ 22.3006 Issuance of Specifications for Contracts Requiring Bidding

For contracts awarded through a competitive process pursuant to Divisions 30 through 36, and 38 of Chapter 2, Article 2 of this Municipal Code:

- (a) The City will issue specifications describing the goods, services, public works, or consultant services 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 City shall issue invitations to bid or requests for proposals for public works, materials, supplies, equipment, services, consultants, insurance and other public contracts required for the City.

§ 22.3007 Use of Brand Name in Specifications

- (a) Any reference to a specific brand name in specifications shall be interpreted as describing a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A *bidder* may offer an equivalent product in response to a brand name reference. When an equivalent product is offered, the City may test and evaluate the product at the *bidder's* sole cost and expense. If a *bidder* refuses to pay for the City to test or evaluate the product and refuses to provide the brand name specified prior to award of the contract, the City may reject the bid.
- (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 equivalent product. At *bidder's* expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.
- (d) The City reserves the right, in its sole discretion, to reject a bid containing any equivalent product offered.

- (e) The City may specify when an equivalent product will not be considered or accepted where necessary for compatibility with existing City equipment or systems, to reduce the different types of spare parts held in City inventory, or where patents or other intellectual property rights preclude acceptance of an equivalent product.

§ 22.3008 Invitations to Bid, Requests for Qualifications and Proposals

- (a) An invitation to bid shall be issued for contracts to be awarded on the basis of lowest bid. The invitation to bid shall include specifications that describe the public works, material, supplies, equipment, services, consultants, 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.
- (b) A request for proposals shall be issued for contracts to be awarded on a basis other than lowest bid. The request for proposals shall include specifications that describe the public works, material, supplies, equipment, services, consultants 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. The request for proposals shall include a description of the evaluation criteria and the process the City will use to determine the winning proposal.

- (1) The City may negotiate the terms of a contract with the winning *bidder* based on the request for proposals and *bidder's* proposal, or award the contract without further negotiation.
- (2) For requests for proposals that do not require the *bidder* to propose a contract price, if the City and the winning *bidder* fail to agree on a price, the City may reject the winning *bidder's* proposal and enter into negotiations with the *bidder* with the next best proposal.
- (c) The City may issue a request for qualifications or other document to determine the interest of potential *bidders* or to shortlist or prequalify the field of *bidders* eligible to submit bids or proposals.

§ 22.3009 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 before the bid closing deadline set by the City. The City may consider a bid or proposal that was mailed before the bid closing deadline, even though the bid or proposal is delivered after the bid closing deadline, 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.

§ 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 contract.

- (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.

§ 22.3011 Bid Opening

- (a) Invitations to bid shall indicate the date, time, and location where bids will be opened. The location of the bid opening shall be a place open to the public.
- (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 bid opening.
 - (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 project 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 the 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.

- (d) Proposals received in response to a request for proposals may be opened at a public bid opening at the discretion of the City.

§ 22.3012 Bid Opening Exceptions

- (a) 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 City may change the date, time and location without invalidating the bid opening.

- (1) A sign shall be continuously posted at the original location, giving notice of an alternate location of the bid opening, from the time of the public calamity or unforeseen event until completion of the 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 location.

- (2) If it is impossible or impracticable to use the procedure under Section 22.3012(a)(1), the bids will either be returned to the *bidders* or be held unopened for a period of forty-eight hours. After forty-eight, 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 bid opening.

§ 22.3013 Withdrawal or Modification of Bid or Proposal After Bid Opening

Any *bidder* who seeks to modify or withdraw a bid or proposal because of the *bidder's* inadvertent computational error affecting the bid or proposal price shall notify the City Department where bids or proposals 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.

§ 22.3014 Waiver of Defects and Technicalities

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

§ 22.3015 Rejection of Bids and Proposals

The City may reject any and all bids or proposals when to do so is in the best interests of the City, and may re-advertise for bids or proposals.

§ 22.3016 Certification of Sole Source Contract

- (a) When certification of a *sole source contract* is required by this Article, the City Manager or the Purchasing Agent shall certify that the award of a *sole source contract* is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not

produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

- (b) The City Manager or the Purchasing Agent may delegate the sole source certification authority provided by Section 22.3016(a) to the Assistant City Manager, Deputy City Manager, any Department Director, or equivalent City officers.

§ 22.3017 Protests of Contract Award

The purpose of the bid protest procedures in this Section is to protect the public interest. This Section is not intended to give losing *bidders* an opportunity to evaluate the bid or proposal of the winning *bidder* to have the award overturned and secure the contract for itself.

- (a) A *bidder* who is not selected for contract award may protest the award of a contract to another *bidder* by submitting a written protest.
 - (1) For contracts awarded pursuant to an invitation to bid, the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar day after the date of the bid opening.
 - (2) For contracts awarded pursuant to a request for proposals, the protest must be received by the City Department administering the contract award, no later than 5:00 p.m. on the tenth calendar day after the City notifies the *bidders* of the winning proposal.
 - (3) Notwithstanding subsections (1) and (2) above, if a *bidder's* bid or proposal is rejected as non-responsive, the protest must be received by the City Department administering the contract award, no later

than 5:00 p.m. on the tenth calendar day after the City notifies the *bidder* that the bid or proposal is being rejected.

- (4) The City's notification under subsections (2) and (3) above may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
 - (5) If the tenth calendar day falls on a weekend or City holiday, the deadline to submit a protest shall be extended to 5:00 p.m. on the first business day following such weekend or holiday.
- (b) A *bidder* who is denied the award of a contract because the *bidder* is not considered to be *responsible* may contest the City's determination by submitting a written protest.
- (1) The protest must be received by the City Department administering the contract award no later than 5:00 p.m. on the tenth calendar day after the City notifies the *bidder* it is not a *responsible bidder*. The City's notification may be by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), automated phone message or internet posting. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
 - (2) A *bidder* may request a hearing to present evidence contesting the City's determination that it is not a *responsible bidder*. The protest

hearing shall be conducted in accordance with Council Policy. The request for a hearing must be made in writing and submitted with the *bidder's* protest.

- (c) The protest must be identified as a "bid protest" in the subject line or title of the document, and shall clearly state all legal and factual grounds claimed for the protest. Any grounds not raised in the written protest are deemed waived by the *bidder*.
- (d) The City shall not award the contract being protested until after the City issues a written decision on the *bidder's* protest. The City's written decision shall be final and exhaust the *bidder's* administrative remedies.
- (e) The procedure and time limits set forth in this Section are mandatory and are the *bidder's* sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further pursue a protest.
- (f) The *bidder's* filing of a protest shall not preclude the City from rejecting all bids or proposals and re-advertising a contract. Rejecting all bids or proposals shall render a protest moot and terminate all protest proceedings.

§ 22.3018 Alterations in Contracts

- (a) For public works projects previously approved and appropriated through the Annual Capital Improvements Program budget, the City Manager is authorized to make alterations to *major public works contracts* without City Council approval provided that:

- (1) The cost of each alteration does not increase the contract amount by more than \$500,000; and
 - (2) The cost of the alterations do not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The alterations are necessary to fulfill the purpose of the contract; and
 - (4) The alterations to the contract are made by written agreement.
- (b) For all other contracts, the City Manager or the Purchasing Agent is authorized to make alterations without City Council approval provided that:
- (1) The cost of each alteration does not increase the contract amount by more than \$200,000; and
 - (2) The cost of the alterations does not cause the project to exceed the total amount authorized for the project by ordinance or resolution; and
 - (3) The alterations are necessary to fulfill the purpose of the contract; and
 - (4) The alterations to the contract are made by written agreement; and
 - (5) The cost of the alterations does not cause the contract to exceed the amount of the City Manager's or Purchasing Agent's authority to award contracts without City Council approval established in this Article.

Section 2. That Chapter 2, Article 2, Division 31 of the San Diego Municipal Code is amended by amending Sections 22.3101, 22.3102, 22.3103, 22.3104, and 22.3105; and by adding new Sections 22.3106, 22.3107, 22.3108 and 22.3109 to read as follows:

Division 31: Public Works Contracts

§22.3101 Purpose

This Division establishes requirements and procedures for the award of *public works contracts*.

§22.3102 City Manager's Authority to Award Public Works Contracts

(a) Except as otherwise provided in this Article, the City Manager may award a *major public works contract* that provides for an expenditure of an amount equal to or less than \$30,000,000 without City Council approval, provided that:

- (1) The public works project was previously identified and appropriated through the Annual Capital Improvements Program budget; and
- (2) The *major public works contract* has been advertised as described in Section 22.3106 or has been certified by the City Manager as a *sole source contract* in accordance with section 22.3016; and
- (3) The *major public works contract* is in writing.

(b) Except as otherwise provided in this Article, the award of all other *major public works contracts* must be approved by the City Council.

(c) Notwithstanding Section 22.3102(a), when the Annual Capital Improvements Program budget is approved the City Council may, by

resolution, require certain *major public works contracts* for projects in the budget be returned to City Council for approval prior to award.

- (d) The City Manager may award *minor public works contracts* without City Council approval pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

22.3103 City Manager's Authority to Award Job Order Contracts

- (a) *Job order contracts* for public works may be awarded by the City Manager under the provisions of Section 94.1 of the City Charter, provided that:
 - (1) The specifications were advertised in accordance with Section 22.3106.
 - (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 period for award of *task orders* under *job order contracts* shall not exceed two years. *Job order contracts* may have a duration of longer than two years only as necessary to complete outstanding *task orders* that were awarded within the two year period.
 - (4) The *job order contract* does not contain any provision which would guarantee the contractor cumulative *task orders* in excess of \$50,000.
- (b) A *job order contract* may not exceed \$10,000,000 without City Council approval.

§22.3104 City Manager's Authority to Award Task Orders Under Job Order Contracts

- (a) An individual *task order* may not exceed the sum of \$1,000,000 without City Council approval, except in the case of a bona fide emergency affecting health, safety, or property.
- (b) 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 \$1,000,000 into separate *task orders* for purposes of avoiding this limitation.

§22.3105 Use of City Forces

- (a) City forces shall not be used on a public works project if the cost of using City forces exceeds \$100,000 unless the City Council has approved use of City forces on the project. When City 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 of the use of City forces on a public works project when the cost of using City forces does not exceed \$100,000.

§ 22.3106 Advertising of Public Works Contracts

- (a) *Major public works contracts* shall be advertised for a minimum of one day in the City official newspaper at least ten days before the deadline to submit bids or proposals.

- (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 Chapter 2, Article 2, Division 36 of the Municipal Code.

§ 22.3107 Award of Public Works Contracts

- (a) *Major public works contracts* of \$1,000,000 or more shall be awarded through a competitive process according the project delivery method:
 - (1) Design-build contracts shall be awarded pursuant to Chapter 2, Article 2, Division 33 or 34 of the Municipal Code.
 - (2) *Job order contracts* shall be awarded to the *responsible* and *reliable bidder* with the lowest total unit cost.
 - (3) Construction manager at risk contracts shall be awarded pursuant to Chapter 2, Article 2, Division 38 of the Municipal Code.
 - (4) All other *major public works contracts* of \$1,000,000 or more shall be awarded to the lowest *responsible* and *reliable bidder*.
- (b) *Major public works contracts* of more than \$500,000 and less than \$1,000,000 shall be awarded through a competitive process pursuant to Section 22.3107(a), except that the City Manager may include a bid discount pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.
- (c) *Minor public works contracts* shall be awarded through a competitive process pursuant to Chapter 2, Article 2, Division 36 of the Municipal Code.

§22.3108 Exceptions to Advertisement and Competitive Award of Public Works Contracts

- (a) Unless otherwise authorized by Section 22.3614, *public works contracts* may be awarded by the City Manager without advertisement and competition when the

public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property due to extraordinary fire, flood, storm, epidemic or other disaster, provided that:

- (1) The City Manager immediately reports the emergency award and its justifications to the City Council in writing; and
 - (2) The City Council ratifies the award by resolution and by a two-thirds vote.
- (b) *Public works contracts* may be awarded by the City Manager without advertisement and competition if the City Manager certifies a *sole source contract* is necessary pursuant to Section 22.3016. If the justification of the *sole source contract* is the emergency nature of the project, the City Manager shall notify the City Council and obtain the City Council's approval pursuant to Section 22.3108(a).

§22.3109 Public Information on Public Works Projects

- (a) The City Manager shall post a list of all City public works projects over \$250,000 on the City's website. The list shall include, at a minimum:
 - (1) The name and location of each project;
 - (2) The type of facility involved;
 - (3) The estimated cost of the project;
 - (4) The estimated start and completion dates; and
 - (5) The level of participation by Small Local Business Enterprises, as defined in Section 22.3603.
- (b) The City Manager shall post this list on the City's website by July 1, 2012, or the effective date of this Section, whichever occurs later, and shall ensure the list remains current.

- (c) The City Manager may post additional information not required by this Section or Council Policy.

Section 3. That Chapter 2, Article 2, Division 32, of the San Diego Municipal Code is amended by amending Sections 22.3201 and 22.3202; by repealing Section 22.3203; by adding new Section 22.3203; by amending Sections 22.3204 and 22.3205; by adding new Sections 22.3206 and 22.3207; by repealing Section 22.3211; by amending and renumbering Section 22.3212 to 22.3208; by repealing Section 22.3213; by amending and renumbering Section 22.3221 to 22.3209; by amending and renumbering Section 22.3222 to 22.3210; and by repealing Sections 22.3223 and 22.3224 to read as follows:

Division 32: Contracts for Services, Goods, and Consultants

22.3201 Purpose and Intent

This Division establishes requirements for award of contracts other than *public works contracts*.

§22.3202 Authority to Enter Contracts; Competitive Bid Process Required

The Purchasing Agent is authorized to enter into contracts on behalf of City departments. All contracts shall be awarded through a competitive process unless otherwise provided in this Division. The City Manager may exercise the authority granted to the Purchasing Agent by this Division.

§22.3203 Competitive Process for Contracts for Goods and Services

Except as otherwise provided in Section 22.3208, *contracts for goods and contracts for services* shall be awarded through a competitive process based on the estimated amount of City funds to be paid to the winning *bidder* under the contract.

- (a) A competitive process is not required for contracts of \$5,000 or less.
- (b) For contracts 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.
- (c) For contracts 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.
- (d) For contracts greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the contract only after advertising for sealed bids or proposals for a minimum of one day in the City official newspaper at least ten days before bids or proposals are due.
- (e) For contracts greater than \$1,000,000, the Purchasing Agent shall advertise for sealed bids or proposals for a minimum of one day in the City official newspaper at least ten days before bids or proposals are due.

§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.

§22.3205 Civil Service Commission Review

All *contracts for services* shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.

§22.3206 Award of Contracts for Goods and Services

- (a) Except as provided in Section 22.3206(b), the Purchasing Agent shall award *contracts for goods* and *contracts for services* to the *bidder* offering the best value to the City, considering price and other factors. The City may consider the following factors in evaluating which bid or proposal offers the best value to 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.
- (b) The Purchasing Agent may award *contracts for goods* and *contracts for services* to the lowest *responsible* and reliable *bidder* if the Purchasing Agent determines that the quality of the goods or services in responsive bids will be substantially equal and that the primary difference between bids will be the price.
- (c) Unless otherwise provided in this Division, *contracts for goods* and *contracts for services* that exceed \$1,000,000 as awarded, amended or extended, must be approved by the City Council.

§22.3207 Award of Consultant Contracts

- (a) The Purchasing Agent may award a *consultant contract* without City Council approval if:
 - (1) The *consultant contract* does not exceed \$250,000; and

- (2) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed \$250,000 in any given fiscal year.
- (b) Notwithstanding Section 22.3207(a), the Purchasing Agent may award a *consultant contract* to provide architectural or engineering services for a public works project without City Council approval provided that:
- (1) The public works project was previously identified and appropriated through the Annual Capital Improvements Program budget; and
 - (2) The Annual Capital Improvements Program budget is the source of funding for the *consultant contract*; and
 - (3) The *consultant contract* does not exceed \$1,000,000; and
 - (4) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed \$1,000,000 in any given fiscal year.
- (c) All other *consultant contracts* must be approved by the City Council.
- (d) Notwithstanding Section 22.3207(b), when the Annual Capital Improvements Program budget is approved, the City Council may, by resolution, require certain *consultant contracts* to provide architectural and engineering services for projects in the budget be returned to City Council for approval prior to award.

§22.3208 Contracts Not Required to be Competitively Awarded

The following contracts may be awarded by the Purchasing Agent without advertisement or a competitive process:

- (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 necessary to safeguard life, health, or property due to extraordinary fire, flood, storm, epidemic, or other disaster, provided that:
 - (1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council in writing; and
 - (2) The City Council ratifies the award by resolution and by a two-thirds vote.
- (d) A *cooperative procurement contract* awarded by another *agency* provided that:
 - (1) The Purchasing Agent certifies in writing that the *cooperative procurement contract* is in the best interests of the City; and
 - (2) The cooperative procurement is to the City's economic advantage; and
 - (3) The *agency's* bidding process substantially complies with the City's competitive bidding requirements.
- (e) A *sole source contract* certified by the Purchasing Agent pursuant to Section 22.3016, provided that if the justification of the *sole source contract* is the emergency nature of the project, the Purchasing Agent notifies the City Council and obtains the City Council's approval pursuant to Section 22.3208(c).
- (f) 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; and
 - (2) Not normally kept in City stores; and
 - (3) Less than \$50,000.
- (g) *Contracts for inmate services* which comply with Section 22.3209.
- (h) *Contracts for services with agencies* or non-profit organizations which comply with Section 22.3210.

§22.3209 Contracts For Inmate Services

The Purchasing Agent may award a *contract for inmate services* without City Council approval provided that:

- (a) The Purchasing Agent 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 Purchasing Agent 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.

§22.3210 Contracts for Services with Agencies and Non-Profit Organizations

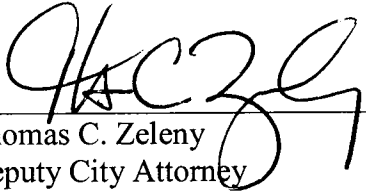
The Purchasing Agent may award *contracts for services* to any *agency* or to any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without City Council approval, provided that:

- (a) The Purchasing Agent has certified in writing that the contract furthers a specific public policy; and
- (b) The Purchasing Agent 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 Purchasing Agent 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.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

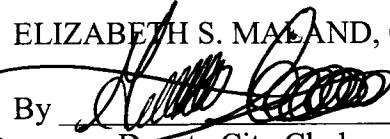
Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Thomas C. Zeleny
Deputy City Attorney

TCZ:mb
02/21/12
03/23/12 Rev.
Or.Dept:Mayor
Doc No:343157

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego,
at its meeting of APR 10 2012.

ELIZABETH S. MALAND, City Clerk
By 
Deputy City Clerk

Approved: 4.23.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor