

## Article 2: Administrative Code

### Division 30: Contract Definitions and Procedures

*(“Contract Definitions, Competitive Bidding Procedures, and Contract Alterations” added 6-29-1998 by O-18532 N.S.)*

*(Retitled to “Contract Definitions and Procedures” on 4-23-2012 by O-20148 N.S.)*

#### §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.

*(Retitled to “Purpose and Scope of Division” and amended 9-3-2002 by O-19095 N.S.)*

*(Amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

#### §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) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.

*(Amended 9-3-2002 by O-19095 N.S.)*

#### §22.3003 Definitions

For purposes of this Division and Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, 36, 38 and 48, the following defined terms appear in italics:

*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.

*Caltrans Cooperative Agreement* means a written agreement between the City and the State of California acting through its Department of Transportation for the City to assist the State with the acquisition, design, construction, improvement, or maintenance of any State rights-of-way.

*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 for architectural, engineering, or other expert or professional services procured to render advice or an opinion that influences or impacts a *municipal decision*. Except for contracts with an *agency* or a non-profit pursuant to Section 22.3210, if the scope of work for a *contract for goods* or a *contract for services* includes components that meet the definition of a *consultant contract*, the requirements for *consultant contracts* shall control.

*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) a contract resulting from the joint and cooperative purchase of goods or services by the City and one or more *agencies*, or (b) a contract between a contractor and one or more *agencies*, or agencies thereof, that allows other *agencies* to use the terms, conditions, and pricing of the original *contract for goods* or *contract for services*.

*Design-build* means a *public works contract* procurement method in which both the design and construction of a project are procured from a single entity.

*Design-build entity* means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a *public works* project.

*Design-build entity member* includes any person who provides licensed contracting, architectural, or engineering services.

*Energy conservation contract* means a *design-build public works contract*, a *contract for goods*, or a *contract for services* procured in compliance with California Government Code sections 4217.10 through 4217.18, as may be amended, for alternate energy equipment, cogeneration equipment, conservation measures, or conservation services. *Energy saving performance contracts* may also mean a facility ground lease or facility financing contract, as those terms are defined in California Government Code section 4217.11.

*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 \$1,000,000.

*Minor public works contract* means a public works contract of \$1,000,000 or less.

*Municipal decision* has the same meaning as in Section 27.3503.

*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.

*Reverse Auction* means a competitive process in which *bidders* submit one or more bids for the prices at which they are willing to sell their goods, and at the end of the auction the *bidder* offering the lowest price wins. The types of goods procured through *Reverse Auction* do not include licensed intellectual property and intangible personal property, such as software.

*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.

*Task order modification* means a change to an existing *task order* that is necessary to perform the authorized work.

*Underground Utility District* has the same meaning as in San Diego Municipal Code section 61.0504(d).

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

(Amended 9-3-2002 by O-19094 N.S. and O-19095 N.S.)

(Amended 1-24-2005 by O-19353 N.S.)

(Amended 2-4-2010 by O-19922 N.S.; effective 7-1-2010.)

(Amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)

(Amended 12-17-2014 by O-20442 N.S.; effective 1-16-2015.)

(Amended 6-4-2020 by O-21192 N.S.; effective 7-4-2020.)

(Amended 3-11-2021 by O-21298 N.S.; effective 4-10-2021.)

(Amended 8-10-2022 by O-21516 N.S.; effective 9-9-2022.)

(Amended 10-12-2022 by O-21537 N.S.; effective 11-11-2022.)

## § 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 Government Efficiency 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 Government Efficiency Committee shall make a determination upholding or rejecting the City's determination. A decision by the Budget and Government Efficiency 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.

*(“Contractor Standards” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)  
(Amended 10-29-2013 by O-20316 N.S.; effective 11-28-2013.)*

## § 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.

*(Renumbered from former Section 22.3007, retitled to “Insurance and Bonds” and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

**§ 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.

*(Retitled to “Bid Initiation; When Advertising in Official Newspaper Required for Public Works Contract” and amended 9–3–2002 by O–19095 N.S.)*

*(Amended 1-24-2005 by O-19353 N.S.)*

*(Renumbered from former Section 22.3008 and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section 22.3006 repealed.)*

**§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.

*(Amended 9-3-2002 by O-19095 N.S.)*

*("Use of Brand Name in Specifications" added 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section renumbered to Section 22.3005.)*

**§ 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.

*(Retitled to “Issuance of Specifications for Contracts Requiring Bidding” and amended 9-3-2002 by O-19095 N.S.)*

*(Renumbered from former Section 22.3009, retitled to “Invitations to Bid, Requests for Qualifications and Proposals” and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

#### **§ 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.

*(Amended 9-3-2002 by O-19095 N.S.)*

*(“Timely and Responsive Submission of Bids and Proposals” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section renumbered to Section 22.3008.)*

#### **§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.

*(“Addenda to Specifications” added 6-29-1998 by O-18532 N.S.)*

*(Amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

#### **§ 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 that 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.

*(“Request for Proposals” added 6-29-1998 by O-18532 N.S.)  
(Renumbered from former Section 22.3017 and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section 22.3011 repealed.)  
(Amended 6-4-2020 by O-21192 N.S.; effective 7-4-2020.)*

## § 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.
- (b) Notwithstanding section 22.3011, if all the bids the City receives in response to an invitation to bid are submitted by electronic transmission pursuant to section 22.3020, the City may open the bids electronically without a public bid opening provided that:
  - (1) The bid results are available on the internet at, or immediately after, the date and time noticed for the bid opening. If the results are not immediately available on the internet, the City shall provide the bid results upon request of a *bidder* or the public as soon as reasonably possible.
  - (2) The bid results shall include the names of all *bidders* and their respective total bid amounts.
  - (3) The location on the internet where bid results are posted shall be accessible to the public free of charge without a requirement of a subscription, registration, or membership.

*(Renumbered from former Section 22.3018 and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

*(Amended 12-1-2016 by O-20747 N.S.; effective 12-31-2016.)*

### **§ 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.

*(Renumbered from former Section 22.3019, retitled to "Withdrawal or Modification of Bid or Proposal After Bid Opening" and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

**§ 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.

*(Renumbered from former Section 22.3027 and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

**§ 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.

*(“Rejection of Bids and Proposals” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

**§ 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.

*(“Timely and Responsive Submission of Bids and Proposals” added 6–29–1998 by O–18532 N.S.)*

*(“Certification of Sole Source Contract” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section 22.3016 repealed.)*

**§ 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.

(*"Bid Opening" added 6-29-1998 by O-18532 N.S.*)

(*Renumbered from former Section 22.3029 and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.*)

**§ 22.3018 Alterations in Contracts**

- (a) For public works projects previously approved and appropriated through the Annual Capital Improvements Program budget or identified in a City Council resolution establishing an *Underground Utility District*, 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 total contract amount by more than:
    - (A) \$1,000,000 for *major public works contracts* that were awarded in an amount equal to or greater than \$10,000,000; or
    - (B) \$500,000 for all other *major public works contracts*;
  - (2) The cost of the alterations does not cause the project to exceed the total amount authorized for the project in the Annual Capital Improvements Program budget;
  - (3) The alterations are necessary to complete the contract; and
  - (4) The alterations to the contract are made by written agreement.
- (b) When a public works project has been approved and appropriated through the Annual Capital Improvements Program budget, the City Manager is authorized to make alterations to *consultant contracts* for those public works projects without City Council approval provided that:
  - (1) The cost of each alteration does not increase the *consultant contract* amount by more than either \$200,000 or 10 percent of the original contract value, whichever is greater;
  - (2) The cost of the alterations does not cause the project to exceed the total amount allocated for the project in the Annual Capital Improvements Program budget adopted by City Council;
  - (3) The alterations are necessary to complete the *consultant contract*; and
  - (4) The alterations to the *consultant contract* are made by written agreement.
- (c) 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;
- (2) The cost of the alterations does not cause the project to exceed the total amount authorized for the project;
- (3) The alterations are necessary to complete the contract;
- (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.

*("Bid Opening Exceptions" added 6-29-1998 by O-18532 N.S.)*

*(Renumbered from former Section 22.3036, retitled to "Alterations in Contracts" and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

*(Amended 6-4-2020 by O-21192 N.S.; effective 7-4-2020.)*

*(Amended 10-12-2022 by O-21537 N.S.; effective 11-11-2022.)*

#### **§22.3019 Compliance with State Prevailing Wage Laws**

- (a) Notwithstanding the definition of *public works contract* in section 22.3003, this section applies to "public works" as defined in California Labor Code sections 1720 - 1743, as may be amended and including the exceptions set forth therein, and to *maintenance* contracts, for work performed on municipal water and wastewater facilities, transportation and storm water facilities, buildings, parks, and all other City facilities.
- (b) For purposes of this section, the "City" includes all boards, agencies, or districts created pursuant to ordinance or resolution of the City Council.
- (c) For contracts and *task orders* awarded, entered into, or extended on or after January 1, 2014, the City shall require compliance with California Labor Code sections 1770 - 1781, as may be amended, for construction work over \$25,000 and for alteration, demolition, repair or *maintenance* work over \$15,000.
- (d) This section shall not apply to contracts that reimburse developers, contractors, or public agencies for work that started before January 1, 2014.

- (e) The City Manager shall provide a written report to the City Council by October 1 annually, evaluating the implementation of this section, recommendations for improvement, the successes and challenges of administering and monitoring contractor compliance, and the fiscal impact of this section.

*(“Compliance with State Prevailing Wage Laws” added 9-26-2013 by O-20299 N.S.; effective 10-26-2013.)*

## **§22.3020 Electronic Transactions**

- (a) The City may use electronic transmission, including electronic signatures, to send and receive bids, proposals, contracts, and other documents related to the award and administration of contracts, pursuant to regulations to be adopted by the City Manager. Such regulations shall include, but not be limited to:
  - (1) A method to verify all bids, proposals, and signatures are authentic.
  - (2) A method to ensure accurate retrieval or conversion of electronic forms of such information into a medium that permits inspection and copying.
- (b) When the City Charter or Municipal Code requires submission of sealed bids or proposals, the regulations to be adopted by the City Manager shall include, but not be limited to:
  - (1) Safeguards to ensure that no bid or proposal may be opened before the deadline established for opening.
  - (2) An electronic receipt for each *bidder* and proposer provided either by immediate electronic transmission or by access to an electronic file on the internet that confirms receipt and can be viewed and printed by the *bidder* or proposer.

*(“Electronic Transactions” added 12-17-2014 by O-20444 N.S.; effective 1-16-2015.)*

*(Amended 12-1-2016 by O-20747 N.S.; effective 12-31-2016.)*