

Article 2: Administrative Code

Division 32: Contracts for Personal Services, Goods, and Consultants

(“Contracts for Personal Services, Goods, and Consultants” added 6–29–1998 by O–18532 N.S.)

§22.3201 Purpose and Intent

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

(“Purpose and Intent” added 6–29–1998 by O–18532 N.S.)

§22.3202 Authority to Enter Contracts; Competitive Bid Process Required

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

(“Authority to Enter Contracts; Competitive Bid Process Required” added 6–29–1998 by O–18532 N.S.)

§22.3203 Use of Brand Name in Specifications; Offers of “Or Equals”; Testing

- (a) Any reference to a specific Brand Name in specifications is illustrative only. A reference to a Brand Name describes a component best meeting the specific operational, design, performance, maintenance, quality, and reliability requirements of the City.
- (b) A bidder may offer an equivalent (“or equal”) in response to a Brand Name reference. When an “or equal” is offered, the City may test and evaluate the product prior to award of the contract.
- (c) At bidder’s expense, bidder bears sole responsibility for providing any information, test data or document required by the City to fully evaluate the acceptability of the “or equal.” At bidder’s expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

- (d) The City reserves the sole right to reject a bid containing any “or equal” offered.
- (e) Exceptions to Section 22.3203(a)–(d) are permissible for procurement for replacement parts, or for testing and evaluation purposes or where compatibility with existing City equipment is mandated.
(“Use of Brand Name in Specifications; Offers of “Or Equals”; Testing” added 6–29–1998 by O–18532 N.S.)

§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.
(“Subdividing Purchase Prohibited” added 6–29–1998 by O–18532 N.S.)

§22.3205 Civil Service Commission Review

All *contracts* for Services shall be reviewed by the Civil Service Commission in accordance with Section 23.1801.
(“Civil Service Commission Review” added 6–29–1998 by O–18532 N.S.)

§22.3211 Contracts Required to be Competitively Awarded

- (a) When a *contract* provides for an expenditure greater than \$5,000, but equal to or less than \$10,000, the Purchasing Agent may award the *contract* but shall seek competitive prices either orally or in writing.
- (b) When a *contract* provides for an expenditure greater than \$10,000 but equal to or less than \$50,000, the Purchasing Agent may award the *contract* but shall solicit written price quotations from at least five potential sources.
- (c) When a *contract* provides for an expenditure greater than \$50,000 but equal to or less than \$1,000,000, the Purchasing Agent may award the *contract* only after advertising 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 advertise 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) Maintenance *contracts* are required to be competitively bid pursuant to Section 22.3211. Maintenance *contracts*, however, may be awarded to other than the lowest bidder pursuant to Sections 65.0213(b) and 65.0214(c).
- (Amended 9-3-2002 by O-19095 N.S.)

§22.3212 Contracts Not Required to be Competitively Bid

The *contracts* listed in section 22.3212(a)-(g) are not required to be competitively bid:

- (a) A *contract* that provides for an expenditure of less than \$5,000;
- (b) A *cooperative procurement contract* in an amount less than \$10,000;
- (c) A *contract* to remedy an *emergency* that affects public health or safety, provided that:
 - (1) The Purchasing Agent immediately reports the *emergency award* and its justifications to the City Council; and
 - (2) The Council by resolution acknowledges and ratifies the procurement;
- (d) A *cooperative procurement contract* administered by an *agency* provided that:
 - (1) The City Manager 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 *contract* that is available from a *Sole Source* only, if, in advance of the *contract*, the City Manager certifies in writing in accordance with Section 22.3037 the *Sole Source* status of the provider;

- (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;
 - (2) not normally kept in City stores; and
 - (3) less than \$50,000.
- (g) *Contracts* for Inmate Services which comply with Section 22.3221.
- (h) *Contracts* for Services with Agencies or Non-Profit Organizations which comply with Section 22.3222.

(“Contracts Not Required to be Competitively Bid” added 6–29–1998 by O–18532 N.S.)

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

§22.3213 Factors to Determine Whether Bid Meets Specifications

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

(“Factors to Determine Whether Bid Meets Specifications” added 6–29–1998 by O–18532 N.S.)

§22.3221 Manager’s Authority to Enter Contracts For Inmate Services

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

- (a) The City Manager has certified in writing that the *contract* is in the public interest; and
- (b) The *contract* does not exceed \$500,000 per year; and

- (c) The City Manager has considered all of the following:
 - (1) whether the Agency agrees to direct supervision of the workers; and
 - (2) whether the Agency agrees to provide workers' compensation insurance for the workers; and
 - (3) whether the Agency agrees to indemnify, protect, defend, and hold the City harmless against any and all claims alleged to be caused or caused by any act or omission of the worker or Agency employee.

(“Manager’s Authority to Enter Contracts For Inmate Services” added 6–29–1998 by O–18532 N.S.)

§22.3222 City Manager’s Authority to Enter Contracts for Services with Agencies or Non–Profit Organizations

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

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

(“Manager’s Authority to Enter Contracts for Services with Agencies or Non–Profit Organizations” added 6–29–1998 by O–18532 N.S.)

§22.3223 Consultant Contracts

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

- (a) the *contract* and any subsequent amendments do not exceed \$250,000 in any given fiscal year; and
- (b) the total amount of *contract* awards to the *Consultant*, including the current *award*, in any given fiscal year does not exceed \$250,000.

(“*Consultant Contracts*” added 6–29–1998 by O–18532 N.S.)
(Amended 1/24/2005 by O-19353 N.S.)

§22.3224 Contractor Standards

- (a) Prior to awarding a *contract* greater than \$50,000, 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 tax dollars. Among the factors to be considered are: (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) As part of its bid, proposal, or other application for a *contract*, a *bidder* will be required to submit a response, under penalty of perjury, that will seek to determine if the *bidder* meets the standards set forth in paragraph (a) of this Section.
- (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 Purchasing Agent within fifteen calendar days upon receiving 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 said 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 an awarding authority.

- (d) Upon *award*, amendment, renewal, or extension of a *contract*, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section.
- (e) Violations of this Article 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 Article, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. 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 or both of the following:
 - (1) Declare a material breach of the *contract* and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the *contract*; or
 - (2) Declare the contractor to be non-responsible in accordance with the procedures set forth in subsection (f) of this section.
- (f) Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the City's Budget and Finance Committee. At such hearing, the contractor will be allowed to rebut adverse information 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 Manager's declaration, and shall forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

- (g) The Purchasing Agent 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 subsection (a) of this section, 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.
- (h) This section applies to all *contracts*, *Consultant agreements*, *Maintenance Contracts* and *Public Works Contracts*

(Added 5-24-2005 by O-19383 N.S.)

(Amended 11-24-08 by O-19808 N.S; effective 12-24-2008.)