

## Chapter 6.1 PUBLIC WORKS BID REQUIREMENTS

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### § 2-6.1.01 Purpose and definitions.

This chapter is enacted for the purpose of implementing public works projects as provided in Section ~~19~~, Article ~~19~~, of the City Charter 19, Article XIX, of the City Charter and ensuring compliance with the bid thresholds and procedures outlined therein. This chapter aims to regulate the bidding process, including informal and formal bidding, for the construction, reconstruction, erection, alteration, renovation, improvement, demolition, maintenance or repair work involving any facility owned, leased, or operated by the City.

- (a) **Public Works Project:** The terms "public works project" and "public project" are interchangeable and shall mean projects involving construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work involving any facility owned, leased, or operated by the City.
- (b) **Facility:** The term "facility" means any plant, building, structure, real property, street, or highway owned, leased, or operated by the City.
- (c) **Publicly Available:** The term "publicly available" means available upon request by a member of the public or by prompt posting to the City website.
- (d) **Purchasing Agent:** For the purposes of this chapter, the term "Purchasing Agent" shall mean either the City Engineer or the Public Works Director. An authorized designee may act as the Purchasing Agent, provided that such designation is made in writing by the Public Works Director and is subsequently approved in writing by the City Manager.
- (e) **Force Account:** "Force account" shall refer to the dollar value of labor, materials, and equipment calculated at the rate the City charges itself, as opposed to the value determined by prevailing wage rates. The calculation of labor costs shall be based upon the actual cost incurred by the City for such labor.
- (f) **Lowest Responsible Bidder:** The "lowest responsible bidder", as used in this chapter, shall mean the lowest responsible bidder who submits a responsive bid. When determining whether a bidder is responsible, the awarding agent may consider such factors as the bidder's ability, capacity, and skill to perform the contract, whether the bidder can perform the contract on time, the bidder's character, integrity, reputation, judgment, experience, efficiency, financial capability, whether the bidder has been barred from government

contracts for prior misconduct, whether the bidder has the equipment and skills needed to perform the work, or has a subcontractor who does, and other similar factors.

(g) **Most Responsive Bidder:** The “most responsive bidder”, as used in this chapter, shall mean the quote provider who best responds to the City’s specific requirements of price, quality, service, fitness, or capacity. Price shall not be the sole determining factor; additional considerations shall be considered, including, but not limited to, the quote provider’s ability to fulfill the contract, the availability of necessary parts or services, prior experience, source continuity of specific materials, and any other factors pertinent to the City’s needs for the acquisition of supplies, equipment, and services.

(h) **Maintenance:** For the purposes of this chapter, certain public projects are considered to be maintenance projects. Maintenance projects are defined as activities necessary for the preservation, upkeep, or continued operation of City facilities and infrastructure. Maintenance work shall include, but is not limited to:

1. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
2. Painting, recoating, and resurfacing of an existing facility.
3. Replacement of existing building systems including, but not limited to, architectural finishes, structural systems, mechanical systems, plumbing systems, electrical systems, weatherproofing, glazing to prevent loss of use. Replacement, for purposes of this chapter, includes in-kind replacement and modernization of these systems in response to advances in technology and materials that benefit the City, or due to the inability to perform strictly in-kind replacement.
4. Resurfacing of streets and highways at less than one inch.
5. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
6. Work performed to keep, operate, and maintain publicly owned water, power, waste collection, or stormwater systems.
7. Projects listed in the Capital Improvement Program identified and designated by the City Council as maintenance projects.
8. Projects declared by the City Council by resolution to be a maintenance project.

(i) **Repair:** For the purposes of this chapter, certain public projects are considered to be repair projects. Repair projects are defined as activities required to restore City facilities or infrastructure to their original, intended condition after damage, wear, or other degradation. Repair work shall include, but is not limited to:

1. Projects required to restore to intended use any component of the City’s infrastructure that is rendered unsafe, unusable, or unserviceable, or in danger of becoming the same, due to failure of equipment, materials, or workmanship resulting from unforeseen events such as traffic collisions, fire, flood, extreme tides, significant weather, earthquake, acts of war or civil unrest, vandalism or other criminal activity, product failure, or similar unexpected circumstances.
2. Projects required to restore to intended use any component of the City’s infrastructure that is rendered unsafe, unusable, or unserviceable, or in danger of becoming the same, due to deferral of maintenance activities.
3. Projects listed in the Capital Improvement Program identified and designated by the City Council as repair projects.
4. Projects declared by the City Council by resolution to be a repair project.

(j) **Electronic Procurement System:** The term “electronic procurement system” shall mean the City’s online platform used for the procurement processes, including but not limited to, the issuance of solicitations, receipts of bids, proposals, and quotes.

(k) **Consistency with the Charter:** Pursuant to Sections 19 and 19.1(a), Article XIX, of the City Charter, “maintenance” and “repair” projects shall be exempt from the bid limitations set forth in Section 2-6.1.02 and shall instead be governed by the provisions of Section 2-6.1.09. The provisions and definitions of “maintenance” and “repair” in this chapter are intended to be consistent with the City Charter. In the event of any inconsistency, the provisions of the Charter shall prevail, and this chapter shall be interpreted and applied accordingly.

#### **§ 2-6.1.02 Bid limitations.**

For public projects not considered to be maintenance or repair projects, the following bid limitations shall be in effect:

~~(a)-~~

(a) Public projects of ~~Fifteen~~Sixty Thousand ~~and no/100ths (\$15(\$60,000.00)~~ Dollars or less may be performed by City employees by force account, by negotiated contract, or by purchase order.

~~(b)-~~

(b) Public projects over ~~Fifteen~~Sixty Thousand ~~and no/100ths (\$15(\$60,000.00)~~ Dollars to ~~FiftyTwo-hundred~~ Thousand ~~and no/100ths (\$50(\$200,000.00)~~ Dollars may be let to contract by informal bidding procedures pursuant to Section 2-6.1.03.

~~(c)-~~

(c) Public projects over ~~FiftyTwo-hundred~~ Thousand ~~and no/100ths (\$50(\$200,000.00)~~ Dollars shall be let to contract by formal bidding procedures pursuant to Section 2-6.1.07 and the City’s Charter.

~~(d)-~~

~~For purposes of this chapter, the terms “public works project” and “public project” shall mean: construction, reconstruction, erection, alteration, renovation, improvement, or demolition, involving any facility owned, leased, or operated by the City.~~

~~(e)-~~

~~For purposes of this section, the term “facility” means any plant, building, structure, real property or street or highway (other than the resurfacing of streets and highways at less than one inch), owned, leased, or operated by the City.~~

(d) Nothing in this chapter shall prohibit the City’s use of an electronic procurement system to implement the requirements contained herein. Requirements for written notices, solicitation, advertisement and publishing of results may be satisfied by use of electronic means, including email distribution and posting on the City’s website in lieu of hard copy written notification.

(e) The bid limitations set forth in this section may be amended by the City Council with a four-fifths (4/5ths) vote, by no more than twenty-five percent (25%), provided that no amendment

occurs less than every five (5) years from the previous amendment, in accordance with the provisions of the City Charter.

### **§ 2-6.1.03 Informal bidding.**

~~Public works projects of an estimated value in an amount over Fifteen Thousand and no/100ths (\$15,000.00) Dollars to Fifty Thousand and no/100ths (\$50,000.00) Dollars~~eligible for informal bidding procedures may be awarded by the City Manager ~~or authorized designee~~ as follows:

~~(a)-~~

- (a) **Notices inviting bids: Contractors. Inviting Informal Bids:** The Purchasing ~~Officer~~Agent shall ~~solicit bids by written requests~~distribute a notice inviting informal bids to contractors licensed and experienced for the type of ~~public work to be performed whose names appear on the list maintained by the City Engineer pursuant to Section 2-6.1.06.~~ All mailings of ~~notices to such qualified contractors work to be performed.~~ The Purchasing Agent may solicit bids from contractors not registered in the City's electronic procurement system. Additional contractors or construction trade journals may be noticed at the discretion of the Purchasing Agent. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids. Distribution of notices shall be completed not less than ten (10) calendar days before the bids are due to be opened and awarded.

~~(b)-~~

~~Notices inviting bids: Form. Sealed written bids to be opened at the time specified shall be submitted to the Purchasing Officer who shall keep a record of all informal bids for a period of one year after the submission of the bids or the awarding of the contract. Such records, while so kept, shall be opened to public inspection.~~

~~(c)-~~

- (b) **Bid Form and Opening Procedure:** Bids shall be submitted as directed in the notice inviting informal bids and kept sealed until the time identified in the notice for bid opening. Bids shall be made publicly available upon opening.

- (c) **Bid Award of bids:** The award of bids shall be made to the lowest responsible bidder. ~~All bids shall be publicly opened and declared at the time and at the place fixed in the notice inviting bids. The Mayor~~

- ~~(b)~~(d) **Contract Authorization:** The City Manager is hereby authorized to execute the construction contract without City Council approval provided that: (1) the bid ~~does not exceed the budgeted amount for the project;~~ (2) the face of the contract states that the contract amount does not exceed the ~~budgeted amount for the project;~~ and (3) maximum threshold specified in Section 2-6.1.02(b), and (2) the contractor has posted and the City has accepted the required bonds and insurance as established by resolution of the Council for all informal bids. Such resolution may permit the City Engineer or Purchasing Agent to waive any required bonds in any public project not exceeding Fifty Thousand and no/100ths (\$50,000.00) Dollars. In the event the lowest responsible bid exceeds the budgeted amount for the project, the City Manager shall obtain authority of the Council to award the bid, together with the additional budget allocation. In the event that all responsive bids received from responsible bidders are in excess of the informal bid limit, the City Council may, by adoption of a resolution by 4/5ths

vote, award the contract at ten percent or less above the informal bid limit, to the lowest responsible bidder if it determines that the initial cost estimate was reasonable.

~~(d)~~

~~The Mayor and City Council shall be advised of the names of the bidders, the amounts bid, amount of the lowest responsible informal bid and to whom the contract has been awarded.~~

(e) Public Availability of Awards: All awards made under this informal bidding procedure shall be made publicly available.

#### **§ 2-6.1.04 Rejection of informal bids or no bids.**

The City reserves the right to reject any and all informal bids ~~presented~~. If, after the first invitation for informal bids, all bids are rejected, the ~~Purchasing Officer~~City Manager shall have the option, after reevaluating the project cost estimates, to do one of the following:

~~(a)~~

(a) Abandon the project~~or readvertise;~~

~~(a)~~(b) Resolicit for bids in the manner described in this chapter;

~~(b)~~

~~(b)~~(c) Declare that the project can be performed more economically by City employees, and the City may then have the project constructed by force account; or

~~(c)~~

~~(c)~~(d) If no bids are received, the project may be performed by City employees by force account, negotiated contract, or by purchase order.

#### **§ 2-6.1.05 Approval of plan or design for informally bid projects.**

The City Engineer shall have discretionary authority to approve the ~~plan~~plans, specifications, or design ~~offer~~ the construction of, or improvement to, any property for which bids for such construction or improvement have been let under the informal bidding procedures set forth in Section- 2-6.1.03. Approval of the plans and specifications shall be provided prior to project award.

#### **§ 2-6.1.06 Maintenance of contractors' lists.**

(a) Registration for Formal Bidding: During November of each year, the~~The~~ City Engineer shall ~~mail asend an annual~~ written notice to all construction trade journals designated by the CUCCAC, inviting all licensed contractors to register their firms in the City's electronic procurement system as defined in this chapter. Contractors shall complete the registration process in the electronic procurement system in order to receive notifications of bid opportunities. . To complete registration, contractors must submit the names of their firms to the City Engineer for inclusion on the list of qualified bidders for information as described in the following calendar year according registration instructions, which shall include, but not be limited to category. The notice shall require that the contractor provide the contractor's business name and address to which a notice to contractors or proposal should be mailed, a

~~telephone number at which the contractor may be reached, addresses, contact information, the type or category of work in which the contractor is interested and currently licensed to do, together with perform, and the contractor's valid license number(s). A contractor will be added to the system upon completion of the registration process.~~

- ~~(b) **Exemption for Informal Bidding:** The requirements set forth in this section shall not apply to informal bidding procedures under Section 2-6.1.03. For informal bidding, the class of Purchasing Agent retains the contractor's license or licenses held and the contractor's license number or numbers. The City Engineer shall create a new contractors' list starting January 1st of each year which shall include at a minimum all discretion to solicit bids from contractors who submitted one or more valid bids to without requiring prior registration in the electronic procurement system.~~

#### **§ 2-6.1.07 Formal bidding.**

~~Public projects, not otherwise exempt from competitive bidding, and exceeding the City during the preceding calendar year and all contractors who have properly provided the City Engineer with the information required to be added to the list. A contractor may be added to the list at any time by providing the required information limit for informal bidding shall be let to the best value-design build entity responding to a request for proposals as described in 2-6.1.11 or per the formal bidding procedures described in this section.~~

~~Formal bidding of an estimated value in an amount over Fifty Thousand and no/100ths (\$50,000.00) Dollars shall be made as follows:~~

~~(a)-~~

- (a) **Authorization to call**~~Call~~ **for bids.**~~Bids:~~ The City Council shall approve all plans, specifications, and working details for all public projects subject to formal bidding procedures described in this section.

~~(b)-~~

- (b) **Notices** ~~inviting bids.~~ **The Inviting Bids:** Upon authorization by the City Engineer~~Council~~, the Purchasing Agent shall solicit bids by written requests publishing a notice inviting bids to prospective contractors. The notice inviting formal bids shall state the time and place~~manner~~ for receiving and opening sealed bids and distinctly describe the project. ~~The notice~~Pursuant to Section 19.1(a) of Article XIX of the City Charter, the notice inviting bids shall be published at least ten (10) calendar days before the date of opening in the official newspaper of the City. The notice inviting bids shall also be mailed~~provided~~ to all~~the~~ construction trade journals specified by the CUGCAG. The notice shall be mailedPublic Contract Code Section 22036 at least 30~~fifteen (15)~~ calendar days before the date of bid opening ~~the bids~~date.

~~(c)-~~

~~Written bids.~~

- (c) **Bidder Security:** All bids shall be accompanied by ~~either a certified or cashier's check or a~~ bid security prior to the bid due date. The bid security must be a bidder's~~bidder's~~ bond, executed by a corporate surety authorized to engage in such business in the State, ~~made payable to with~~ the City, designated as the obligee/beneficiary, and enforceable in favor of the City upon bidder's default. The bid security shall be submitted along with the bid and other required documents as described in the notice inviting bids or the specifications. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein, or, if no amount is so specified, then in an amount not less than ten (10%) percent of the aggregate amount of the bid.



If the successful bidder neglects or refuses to enter into the contract within the time specified in the notice inviting bids or specifications referred to therein, the amount of the ~~bidder's~~bidder's security may be declared forfeited to the City and may be collected and paid into its General Fund, and all bonds so forfeited shall be prosecuted ~~in, and~~ the amount thereof collected and paid into such fund. The bid shall also be accompanied by a certificate of insurance, together with any and all bonds required by resolution of the ~~Council~~City Council. Bidders deemed to have not tendered the lowest responsible bid shall be entitled to the return of their bid security.

~~(d)~~

(d) Bid Opening Procedure: Bids shall be submitted through the City's electronic procurement system unless the Purchasing Agent determines otherwise. All bids shall be made public in the manner fixed in the notice inviting bids. Bids shall be made publicly available upon opening.

~~(e)~~(e) Award of bids. **Bids:** All bids shall be sealed and ~~be~~ filed with the City Clerk ~~no later than~~ in the opening time ~~manner~~ specified in the notice inviting bids, ~~whether through the electronic procurement system or by other methods expressly permitted therein.~~ Bids shall remain confidential and shall not be opened until the time and place designated for public opening as specified in the notice inviting bids. The City Clerk ~~shall receive and be the custodian of such bids and keep the bids confidential until they are opened or designee shall publicly open and declared.~~ All bids shall be publicly opened and declared ~~declare the bids~~ at the time and at the place fixed in the notice inviting bids. The bids shall be tabulated and analyzed by the ~~City Engineer~~Purchasing Agent, who shall submit ~~them~~ a summary of bids received, together with recommendations thereon, to the City Manager. The City Manager shall review the ~~bids~~bid summary and submit them to the City Council with appropriate recommendations ~~at the next regular~~promptly at a subsequent City Council meeting. The City Council shall have the right to waive any informality or minor irregularity in a bid. ~~The~~ If awarded, the City Council shall award the ~~bid~~contract to the lowest responsible bidder.

#### **§ 2-6.1.08 Rejection of formal bids or no bids.**

In its discretion, the City Council may reject any and all bids or proposals presented and readvertise ~~for bids~~the project. The City Council, after rejecting bids or proposals, or if no bids or proposals are received, may declare and determine that the work may be performed better or more economically by City employees by force account, by negotiated contract, or by purchase order, and the work may be performed ~~by force account~~ in the manner ~~stated~~so determined without further observance of formal bid or proposal procedures.

#### **§ 2-6.1.09. Tie bids.**

~~If two or bids received are for the same total amount, unit price, quality, and service being equal, and if the public interest will not permit the delay of readvertising for bids, the Council may accept the bid it chooses or accept the lowest bid made by negotiation with the bidders at the time of the bid opening.~~

#### **§ 2-6.1.09 Maintenance or repair projects.**

Public projects determined to constitute maintenance or repair, as defined in this chapter, may be performed by City employees, by purchase order, by negotiated contract, by job order contract, by competitive bidding, by cooperative purchasing agreement, or by utilizing existing agency contract pricing ("piggybacking"), subject to the following:

- (a) **Purchase Order and Negotiated Contracts:** For projects let by purchase order or by negotiated contract and exceeding the bid limitation established in Section 2-6.1.02 (a), the Purchasing Agent shall request written quotes from at least three contractors who are duly licensed and experienced for the type of work to be performed. The request shall describe the project in specific terms, as known at the time of the request, and shall include any requirements for bonds and insurance. Quotes shall be evaluated for responsiveness to the request, and the recommendation, if any, shall be made in favor of the most responsive bidder. Nothing herein shall preclude the Purchasing Agent from engaging in negotiations with multiple quote providers to determine the most responsive bidder.
- (b) **Job Order Contracts:** Job Order Contracts shall be let to the most responsive bidder responding to a request for proposals issued by the City or another agency. Such contracts shall be limited to a term not exceeding twenty four (24) months, with the option to extend or renew the contract for up to two (2) additional twenty four-month periods. All Work Orders issued under a Job Order Contract shall be subject to the approval of the Purchasing Agent.
- (c) **Competitive Bids:** Projects may be awarded and contracts let by in accordance with the informal and formal bidding procedures set forth in this chapter, subject to the limits and conditions prescribed therein.
- (d) **Cooperative Purchasing Agreements and Use of Agency Contract Pricing:** Projects may be let by contract based on pricing established through cooperative purchasing agreements or successful competitive bidding conducted by another agency for equivalent services.
- (e) **Contract Authorization:** The City Manager is hereby authorized to execute maintenance or repair contracts without obtaining City Council approval, provided that the contract amount does not exceed the formal bid threshold specified in Section 2-6.1.02(c), and that the contractor has posted, and the City has duly accepted any required bonds and insurance. Maintenance or repair contracts that exceed the threshold specified in Section 2-6.1.02(c) shall be executed by the Mayor, only following approval by the City Council.

#### **§ 2-6.1.10 Performance bonds.**

For projects bid under formal bidding procedures, ~~The the City~~ Council shall have the authority to require a performance bond or labor and material bond in such amount as the City Council shall deem necessary to protect the best interests of the City before entering into a contract. If the City Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

For all other projects, the Purchasing Agent shall have the authority to require a performance bond or labor and material bond in such amount as the City Manager shall deem necessary to protect the best interests of the City before entering into a contract. If a performance bond is required, the form and amount of the bond shall be described in the solicitation.

#### **§ 2-6.1.11 Design build projects.**



Public works projects, not otherwise exempt from competitive bidding, may be let to the best value design build entity, including progressive design build entities, responding to a request for proposals as described in this section.

- (a) Authorization to Call for Proposals:** The City Council shall approve requests for proposals for all public projects subject to design-build procedures as described in this section when the anticipated expenditure exceeds the threshold established for formally bid projects under Section 2-6.1.02(c). The City reserves the right to reject all proposals for any reason.
- (b) Requests for Proposals:** The Purchasing Agent shall solicit proposals from prospective design-build entities in writing or by electronic transmission. The requests for proposals shall state the time and manner for receiving the proposals, the project scope and objectives, and the requirements on which the proposals shall be evaluated to determine the best value proposal. The design-build request for proposals shall be published on the City's website at least ten (10) calendar days before the date on which proposals are due. Nothing in this section shall prevent the Purchasing Agent from pre-qualifying design-build contractors using a pre-qualification system in accordance with California Public Contract Code Section 20101.
- (c) Award of Design Build Contract:** All proposals shall be submitted to the Purchasing Agent in the manner described and no later than the submittal deadline specified in the request for proposals. The Purchasing Agent shall receive and be the custodian of such proposals and keep the proposals confidential until they are opened for evaluation at a time after the submittal deadline. The Purchasing Agent shall propose, and the City Manager or authorized designee shall approve, the evaluation team and process prior to proposals being opened. Once proposals are evaluated and the best value design-build entity is determined, the Purchasing Agent shall submit a recommendation for contract award with the best value design-build entity to the City Manager. The City Manager or authorized designee shall review the recommendation and contract terms and then may submit the recommendation of contract award to the City Council or may recommend to the City Council that all proposals be rejected. If a contract is awarded, it shall be to the best value design-build entity. All proposals shall continue to be considered confidential until a contract for the project is awarded, after which they shall be made publicly available.