

City of San Diego
RULES FOR AWARDING CONTRACTS OVER \$50,000

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RULES FOR AWARDING CONTRACTS OVER \$50,000

The purpose of these Rules for Awarding Contracts over \$50,000 [Rules] is to specify and provide standards and procedures to determine *bidders* and contractors have the capability to fully perform contract requirements and the business integrity to justify the award of public tax dollars, as required by San Diego Municipal Code §22.3224 [Ordinance].

A. DEFINITIONS

For purposes of these Rules, the terms and definitions set forth in SDMC §22.3003 are incorporated herein by reference.

“Contractor Standards Pledge of Compliance,” as used in these Rules, means the set of questions developed by the Purchasing Agent to assist the City in determining whether *bidders* and contractors meet the requirements of the Ordinance. The *Contractor Standards Pledge of Compliance* solicits information regarding the following: ownership and name changes, financial resources and responsibility, performance of other contracts, record of compliance with relevant laws and regulations, and satisfactory record of business integrity.

The *Contractor Standards Pledge of Compliance* includes an acknowledgement that the *bidder* or contractor agrees, under penalty of perjury, to meet the following requirements:

- (a) 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.
- (b) Notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the *bidder* or contractor that may result in a finding that the *bidder* or contractor is or was not in compliance with laws stated in paragraph (a).
- (c) Notify the Purchasing Agent within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the *bidder* or contractor of laws stated in paragraph (a).
- (d) Provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- (e) Notify the Purchasing Agent within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (f) Cooperate fully with the Purchasing Agent and the City during any investigation and respond to a request for information within ten (10) business days from the request date.

“Invitations for Bids,” as used in these Rules, include Requests for Bids (RFBs), Requests for Proposals (RFPs), and Requests for Quotations (RFQs).

B. INVITATIONS FOR BIDS

- 1. Issuance of Invitation for Bids:** The City shall include the following in all *Invitations for Bids* unless the proposed contract is exempt from the Ordinance:
 - a. Language informing potential *bidders* of the Ordinance; and
 - b. The *Contractor Standards Pledge of Compliance* for *bidders* to submit with their bid.
- 2. Bid Submissions:**
 - a. All bids for proposed contracts subject to the Ordinance are required to include a completed and signed *Contractor Standards Pledge of Compliance*. Failure to submit a *Contractor Standards Pledge of Compliance* shall make the *bidder* non-responsive and disqualified from the bidding process.
 - b. Upon receipt by the City, a submitted *Contractor Standards Pledge of Compliance* becomes a public record and subject to public review, except to the extent information contained therein is exempt from disclosure pursuant to applicable law.
 - c. The *Contractor Standards Pledges of Compliance* of all *bidders* will be retained by the City as part of the contract file.
- 3. Non-competitive Procurement.** If the City uses a non-competitive process to procure a proposed contract, the prospective contractor and each subcontractor whose subcontract is greater than \$50,000 in value is required to submit a completed *Contractor Standards Pledge of Compliance* to the City for determination of the contractor’s and subcontractors’ responsibility prior to execution of the contract.

C. AWARD AND EXECUTION OF CONTRACTS

- 1. Responsiveness.** As part of the determination of a *bidder’s* responsiveness, the City will review bid submissions to determine whether a completed *Contractor Standards Pledge of Compliance*, signed under penalty of perjury, has been included with the bid. If a completed *Contractor Standards Pledge of Compliance* has not been included, the *bidder* shall be deemed to be non-responsive and disqualified from the bidding process.
- 2. Public Review.** The Purchasing Agent shall receive and make available for public review for at least ten calendar days prior to award the completed *Contractor Standards Pledges of Compliance* from all responsive *bidders* including:
 - a. The three lowest responsive *bidders* and their lists of proposed subcontractors, if any,

- if a contract is to be awarded pursuant to a competitive Request for Bid process;
- b. Short-listed *bidders* and their lists of proposed subcontractors, if any, if a contract is to be awarded pursuant to a Request for Proposal or Request for Qualifications process and award is not based on the lowest submitted bid price; and
 - c. The prospective contractor, if no short-listing procedure is used.
- 3. Determination of Responsibility.** The Purchasing Agent shall determine whether a *bidder* or contractor is *responsible*. In determining whether the *bidder* or contractor has the necessary quality, fitness and capacity to perform the work set forth in the proposed contract, the Purchasing Agent shall consider the following:
- a. Responses to the *Contractor Standards Pledge of Compliance*;
 - b. Results of any investigation by the City of the *bidder's* or contractor's *responsibility*; and
 - c. Information from any compliance or regulatory governmental agency.
- 4. Requirements Prior to Contract Award or Execution.** The City may not award or execute a contract with a *bidder* or contractor if:
- a. The *bidder's* or contractor's *Contractor Standards Pledge of Compliance* has not been available for public review for at least ten calendar days;
 - b. The City is investigating the *bidder's* or contractor's responsibility;
 - c. The *bidder* or contractor has been found to be *non-responsible*;
 - d. The *bidder* or contractor appears on any City list of debarred *bidders* or contractors; and
 - e. The *bidder* or contractor has not met all other applicable City requirements.
- 5. Subcontractor Responsibility:**
- a. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a *Contractor Standards Pledge of Compliance* attesting under penalty of perjury to compliance with the Ordinance. Contractors shall ensure that all their subcontractors meet the criteria for *responsibility* set forth in the Ordinance and these Rules.
 - b. Contractors shall not use in any capacity any subcontractor determined to be *non-responsible* by the City.

c. Subject to written approval by the City, contractors may substitute a non-*responsible* subcontractor with another subcontractor with no changes in bid amounts.

6. **Execution of Contracts.** Unless otherwise exempt from the Ordinance, all contracts shall contain language obligating the contractor to comply with the Ordinance.

D. CONTRACT AMENDMENTS

1. **Ordinance Language.** Unless otherwise exempt from the Ordinance, all contract amendments shall contain language obligating the contractor to comply with the Ordinance.

2. **Pledge of Compliance Required.** A contractor subject to the Ordinance because of an amendment shall submit a completed and signed *Contractor Standards Pledge of Compliance* to the City before the contract amendment can be executed.

3. **Contract Executed Prior to Effective Date of Ordinance.** For contracts that were executed prior to the effective date of the Ordinance, the contractor must comply with the Ordinance and these Rules before any contract amendment can be executed.

4. **Increase to Initial Contract.** If a contract amendment results in the contract or subcontract exceeding \$50,000 in value, the contractor and subcontractor must comply with the Ordinance and these Rules before the contract amendment can be executed.

E. INVESTIGATION NOTIFICATION AND *PLEDGE OF COMPLIANCE* UPDATE REQUIREMENTS

1. **Notification of Investigations.** Contractors shall notify the Purchasing Agent within fifteen (15) calendar days after:

a. Receipt of 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 any applicable local, State, or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

b. Receipt of notice there has been a finding by a government agency or court of competent jurisdiction of a violation by the contractor of applicable local, State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

c. Becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of applicable local, State or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.

2. Update of *Contractor Standards Pledge of Compliance* Information:

- a. The contractor shall update its responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- b. If the Purchasing Agent becomes aware of new information concerning a contractor and determines the contractor should have provided the new information to the City, but failed to do so, the Purchasing Agent shall issue a written notice to the contractor requiring the contractor to submit the new information within ten (10) calendar days.
- c. The contractor's failure to provide information or updated information when required by the City, the Ordinance or these Rules may be considered a material breach of the contract, and the City may exercise its legal rights, including termination of the contract.

3. Contractors Responsible for Subcontractor Information. Contractors shall ensure that subcontractors abide by these notification and updating requirements. Contractors shall:

- a. Notify the Purchasing Agent within fifteen (15) calendar days after receiving notification that a government agency has begun an investigation of the subcontractor that may result in a finding that the subcontractor is not or was not in compliance with any applicable local, State, or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- b. Notify the Purchasing Agent within fifteen (15) calendar days of receiving notice that there has been a finding by a government agency or court of competent jurisdiction of a violation by the subcontractor of applicable local, State, or Federal law, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- c. For every subcontractor whose subcontract is greater than \$50,000 in value, update the subcontractor's responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days of any event, occurrence, or circumstance that changes those responses.
- d. Submit requested information to the Purchasing Agent within ten (10) calendar days of receipt of written notice that the Purchasing Agent has become aware of new information concerning a subcontractor and has determined the subcontractor should have provided the new information, but failed to do so.

F. INVESTIGATION OF NON-RESPONSIBILITY

- 1. Complaints of non-responsibility.** Complaints that a *bidder* or contractor is non-responsible must be submitted to the Purchasing Agent in writing. However, the

Purchasing Agent may investigate a *bidder* or contractor's *responsibility* whether or not a complaint has been submitted in writing.

2. Investigation Process:

- a. Upon initiation of an investigation, the Purchasing Agent shall provide written notice of the investigation to the *bidder* or contractor, the complainant, and the Requesting Department. The notice to the Requesting Department will also indicate that no contract shall be awarded to the *bidder* or contractor until the conclusion of the investigation.
- b. As part of its investigation, the Purchasing Agent shall gather necessary facts and documentation as well as conduct interviews of the complainant, if necessary. The Purchasing Agent may also require the *bidder* or contractor to respond to the complaint. Where a subcontractor is the subject of the investigation, the contractor shall assist the City to obtain the required response. To the extent practicable, the City shall maintain the confidentiality of all individuals participating in the investigation.
- c. At the conclusion of the investigation, the Purchasing Agent shall prepare a written report of its findings and provide written notice of those findings to the *bidder* or contractor, the complainant, and the Requesting Department.
- d. Neither an employer nor an employer's representative shall take any action against an individual in retaliation for providing information towards or cooperating in an investigation of a *bidder's* or contractor's *non-responsibility*. If an employee is terminated, demoted, or otherwise penalized by an employer or employer's representative within sixty (60) days of providing information towards or cooperating in an investigation of a *bidder's* or contractor's *non-responsibility*, a rebuttable presumption shall arise that the action was taken in retaliation for the employee's participation and shall be considered a violation of these Rules.

G. DETERMINATION OF NON-RESPONSIBILITY

- 1. Written Notice of Violation.** If the City determines the *bidder* or contractor has violated any provision of the Ordinance, the Purchasing Agent shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice.
- 2. Ten Days to Correct Violation.** If the contractor has not corrected the violation or taken reasonable steps to correct the violation within ten calendar days, then the City may do one or both of the following:
 - a. Declare a material breach of the contract and exercise its contractual remedies which include but are not limited to termination of the contract; or
 - b. Declare the contractor to be non-responsible in accordance with procedures set forth

in the Ordinance and these Rules.

3. **Contractor's Opportunity to Be Heard.** Before declaring a bidder or contractor non-responsible, the City shall:
 - a. Notify the contractor of the proposed determination of non-responsibility with a summary of the information upon which this determination is based.
 - b. 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 to rebut adverse information and present evidence of their necessary quality fitness, and capacity to perform the work.
4. **Review by Budget and Finance Committee.** The Budget and Finance Committee shall uphold or reject the City's determination and shall forward this decision to the City Council for review and approval or rejection.
5. **Final Determination by City Council.** A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

H. NON-RESPONSIBILITY SANCTIONS

1. **Bidder:** A *bidder* whom the City finds *non-responsible* shall be disqualified from participating in the proposed bid. Such *bidder* shall not perform any work in the proposed contract, whether as a prime contractor, a subcontractor, a partner in a partnership, a participant in a joint venture, a member of a consortium, or in any other capacity.
2. **Contractor:** A contractor whom the City finds *non-responsible* may be declared to be in material breach of contract, and the City may exercise its contractual and legal rights, including termination of the contract.
3. **Listing:** The Purchasing Agent shall maintain a list of firms who have been determined to be *non-responsible* by the City.
 - a. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by satisfying the Purchasing Agent that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the Ordinance
 - b. Unless otherwise removed from the list by the Purchasing Agent, names shall remain on the list for five years from the date of declaration of non-responsibility.

I. EXEMPT CONTRACTS

1. **Categorical Exemptions:** The following types of contracts are categorically exempt from the Ordinance and these Rules:

- a. Contracts with a governmental entity, including the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such status.
- b. Contracts for the investment of trust moneys or agreements relating to the management of trust assets.
- c. Banking contracts entered into by the City Treasurer pursuant to California Government Code §53630 et seq.

2. Discretionary Exemptions: The Purchasing Agent may exempt contracts from the Ordinance and these Rules upon a finding that those contracts meet any of the following conditions:

- a. Contracts awarded on the basis of exigent circumstances when the Purchasing Agent finds the City would suffer financial loss or operations would be adversely impacted.
- b. Contracts that are proprietary or available from only one source.
- c. Contracts for repairs, alterations, or work improvements entered into based on urgent necessity for the preservation of life, health, or property.
- d. Contracts entered into during time of war or emergency.
- e. Contracts for equipment repairs or parts obtained from the exclusive manufacturer.
- f. Cooperative agreements with other governmental agencies.

J. EFFECTIVE DATE

These Rules shall initially take effect ninety (90) days after the date of adoption by the City Council of the Ordinance, May 24, 2005. Revisions to these Rules are applicable on the effective date of modifications to the Ordinance, December 24, 2008.

K. CONSISTENCY WITH FEDERAL AND STATE LAW

The Ordinance and these Rules do not apply in instances where application would be prohibited by local, Federal, or State law or where application would violate or be inconsistent with the terms and conditions of a grant or contract with a local, Federal, or State agency.

L. SEVERABILITY

If any provision of the Ordinance or these Rules is found to be legally invalid by any court of competent jurisdiction, the remaining provisions remain in full force and effect.