

CITY OF SAN DIEGO

CONTRACTOR STANDARDS ORDINANCE RULES

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LIVING WAGE PROGRAM

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CONTRACTOR STANDARDS ORDINANCE RULES

The purpose of these Contractor Standards Ordinance 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 §22.3004 [Contractor Standards 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 City to assist in determining whether *bidders* and contractors meet 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 City 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 City 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 City 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 City 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 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*:

- 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 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 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. Determination of Responsibility. The City 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 City 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.

3. Subcontractor Responsibility:

a. Contractors shall ensure that their subcontractors 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.

4. Execution of Contracts. 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, renewal or extension can be executed per San Diego Municipal Code section 22.3004(d).

E. INVESTIGATION NOTIFICATION AND PLEDGE OF COMPLIANCE UPDATE REQUIREMENTS

1. Notification of Investigations. Contractors shall notify the City 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 City 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 City 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 City 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 City 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, 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 City within ten (10) calendar days of receipt of written notice that the City 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 City in writing. However, the City 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 City shall provide written notice of the investigation to the *bidder* or contractor, the complainant, and the Requesting Department.
 - b. As part of its investigation, the City shall gather necessary facts and documentation as well as conduct interviews of the complainant, if necessary. The City 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 City 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 City 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, all, or any combination of the following:
 - a. Declare a material breach of the contract and exercise the contractual remedies which include but are not limited to termination of the contract.
 - b. Declare the contractor to be non-responsible in accordance with procedures set forth in the Ordinance and these Rules.

c. Debar the contractor pursuant to Chapter 2, Article 2, Division 8 of the Municipal Code.

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 sent by first class, certified or express mail. The effective date of the notice is the date the notice is deposited in the mail.

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. The request must be in writing and received by the City no later than 5:00 PM on the tenth calendar day after the effective date of the City's notice; if the tenth calendar day falls on a weekend or City holiday, the deadline is extended to 5:00 PM on the next business day.

4. Hearing by Budget and Finance Committee. The Budget and Finance Committee shall hold a hearing and allow the contractor to contest the City's determination of non-responsibility and present evidence to show the contractor has the necessary quality, fitness and capacity to perform the work.

5. Final Determination. The Budget and Finance Committee shall make a determination upholding or rejecting the City's determination. This decision shall be final and exhaust the contractor's administrative remedies.

6. Mandatory procedure and time limits. The procedure and time limits set forth in the Ordinance 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. 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 City 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 City, names shall remain on the list for five years from the date of declaration of non-responsibility.

I. APPLICATION

This Ordinance applies to public works contracts, contracts for goods, contracts for services, and consultant contracts.

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, April 23, 2012.

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.