

## **Article 2: Administrative Code**

### **Division 32: Contracts for Goods, Services, and Consultants**

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

*(Retitled to “Contracts for Services, Goods, and Consultants” on 4-23-2012 by O-20148 N.S.)*

*(Retitled to “Contracts for Goods, Services, and Consultants” on 1-18-2018 by O-20893 N.S.; effective 2-17-2018.)*

#### **§22.3201 Purpose and Intent; Authorization**

- (a) This Division establishes requirements for award of *contracts for goods, contracts for services, and consultant contracts*.
- (b) This Division authorizes the Purchasing Agent to enter into contracts on behalf of City departments and establishes thresholds below which the Purchasing Agent may award contracts without City Council approval. The City Manager may exercise the authority granted to the Purchasing Agent by this Division. The Purchasing Agent and City Manager may designate City employees to act on their behalf in the award of contracts.

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

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

*(Retitled to “Purpose and Intent; Authorization” and amended 1-18-2018 by O-20893 N.S.; effective 2-17-2018.)*

#### **§22.3202 Competitive Process for Consultant Contracts**

Except as otherwise provided in section 22.3208:

- (a) For *consultant contracts* estimated to be \$25,000 or more, notice of requests for qualifications and proposals shall be published in a newspaper or posted on the City’s website, or a website of a firm hired by the City to post such notices.
- (b) The selection of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

- (1) The Purchasing Agent shall negotiate the cost of the *consultant contract* with the most qualified firm, for a price determined to be fair and reasonable to the City.
  - (2) If the Purchasing Agent is unable to reach agreement with the most qualified firm on the cost of the *consultant contract*, the Purchasing Agent shall reject the proposal of the most qualified firm and may begin negotiations with the next most qualified firm.
  - (3) This negotiation process may continue until an agreement is reached with a qualified firm, or until all proposal are rejected pursuant to this section or section 22.3015.
- (c) The selection of all other consultants shall be on the basis of the proposal offering the best value to the City, considering price, qualifications, experience, and other factors determined by the Purchasing Agent.
  - (d) The Purchasing Agent may establish a short-list of qualified firms through requests for qualifications or proposals to compete for consultant services on a rotating, as-needed basis.
  - (e) This section does not apply to *consultant contracts* that are entered into pursuant to a developer reimbursement agreement as defined in Chapter 14, Article 2, Division 6 of this Code.
  - (f) A consultant shall not be retained through a *cooperative procurement contract*.
  - (g) In the selection of consultants, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

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

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

(Retitled to “Competitive Process for Consultant Contracts” and amended 1-18-2018 by O-20893 N.S.; effective 2-17-2018.)

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

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

**§ 22.3203 Competitive Process for Contracts for Goods and Services**

Except as otherwise provided in section 22.3208, *contracts for goods and contracts for services* shall be awarded through a competitive process based on the estimated amount of City funds to be paid to the winning *bidder* under the contract.

- (a) For contracts greater than \$25,000 but equal to or less than \$50,000, the Purchasing Agent may award the contract but shall seek competitive prices either orally or in writing.
- (b) For contracts greater than \$50,000 but equal to or less than \$150,000, the Purchasing Agent may award the contract but shall solicit written price quotations from at least five potential sources.
- (c) Contracts greater than \$150,000 may be awarded only after the Purchasing Agent advertises for sealed bids or proposals for a minimum of one day in the City official newspaper at least ten days before bids or proposals are due.
- (d) For contracts greater than \$25,000, the Purchasing Agent shall follow the requirements of Chapter 2, Article 2, Division 36 of this Code to maximize the participation of small and local businesses.

(“*Use of Brand Name in Specifications; Offers of “Or Equals;” Testing*” added 6-29-1998 by O-18532 N.S.)

(“*Competitive Process for Contracts for Goods and Services*” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012. Former Section 22.3203 repealed.)

(Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)

(Amended 12-17-2014 by O-20443 N.S.; effective 1-16-2015.)

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

**§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 \$150,000 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.)

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

(Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)

**§22.3205 Civil Service Commission Review**

All *contracts for services* shall be reviewed by the Civil Service Commission.

(“*Civil Service Commission Review*” added 6-29-1998 by O-18532 N.S.)

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

(Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)

**§ 22.3206 Award of Contracts for Goods and Services**

- (a) Except as provided in section 22.3206(b), the Purchasing Agent shall award *contracts for goods* and *contracts for services* to the *bidder* offering the best value to the City, considering price and other factors. The City may consider the following factors in evaluating which bid or proposal offers the best value to 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.
- (b) The Purchasing Agent may award *contracts for goods* and *contracts for services* to the lowest *responsible* and reliable *bidder* if the Purchasing Agent determines that the quality of the goods or services in responsive bids will be substantially equal and that the primary difference between bids will be the price.
- (c) The Purchasing Agent may award a *contract for goods* through a reverse auction.
- (d) The Purchasing Agent may award a *contract for goods* or a *contract for services* that provides for an expenditure of an amount greater than \$3,000,000 provided that:

- (1) The procurement for goods, services, or both, is identified and appropriated through the Annual Appropriation Ordinance, or the annual appropriation changed as authorized by Charter section 73; and
  - (2) The Purchasing Agent advertised for sealed bids or proposals for a minimum of one day in the City official newspaper at least ten days before bids or proposals are due and the *contract for goods* or *contract for services* is awarded through a competitive process, unless the contract is not required to be competitively awarded as provided in section 22.3208.
  - (3) The City Council may, by resolution, require that certain procurements identified and appropriated through the Annual Appropriation Ordinance, or the annual appropriation changed as authorized by Charter section 73, be returned to City Council for approval prior to contract award.
- (e) Unless otherwise provided in this Division, *contracts for goods* and *contracts for services* that exceed \$3,000,000 as awarded, amended, or extended, must be approved by the City Council.
- (“*Award of Contracts for Goods and Services*” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)  
(Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)  
(Amended 12-17-2014 by O-20443 N.S.; effective 1-16-2015.)  
(Amended 6-4-2020 by O-21192 N.S.; effective 7-4-2020.)

## **§22.3207 Award of Consultant Contracts**

- (a) The Purchasing Agent may award a *consultant contract* without City Council approval if:
  - (1) The *consultant contract* does not exceed \$1,000,000; and
  - (2) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed \$1,000,000 in any given fiscal year.
- (b) Notwithstanding section 22.3207(a), the Purchasing Agent may award a *consultant contract* for a public works project without City Council approval provided that:

- (1) The public works project was previously identified and appropriated through the Annual Capital Improvements Program budget adopted by City Council or identified in a City Council resolution establishing an *Underground Utility District*;
  - (2) The *consultant contract* does not exceed \$3,000,000; and
  - (3) The total cumulative amount of contract awards to the consultant, including the current award, does not exceed \$5,000,000 in any given fiscal year.
- (c) All other *consultant contracts* must be approved by the City Council.
  - (d) Notwithstanding section 22.3207(b), when the Annual Capital Improvements Program budget is approved, the City Council may, in that resolution, require certain *consultant contracts* for public works projects in the budget to be returned to City Council for approval prior to award.
  - (e) Notwithstanding section 22.3207(b), when a resolution establishing an *Underground Utility District* is adopted, the City Council may, in that resolution, require certain *consultant contracts* for public works projects in that *Underground Utility District* be returned to City Council for approval prior to award.
- (“*Award of Consultant Contracts*” added 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)  
(Amended 12-9-2013 by O-20325 N.S.; effective 1-8-2014.)  
(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.)

## **§22.3208 Contracts Not Required to be Competitively Awarded**

The Purchasing Agent may award the following contracts without advertisement or a competitive process:

- (a) A contract that provides for an expenditure of \$25,000 or less;
- (b) A contract necessary to safeguard life, health, or property due to extraordinary fire, flood, storm, epidemic, or other disaster, provided that:
  - (1) The Purchasing Agent immediately reports the emergency award and its justifications to the City Council in writing; and

- (2) The City Council ratifies the award by resolution and by a two-thirds vote.
  - (c) A *cooperative procurement contract* provided that the Purchasing Agent first certifies in writing that the *cooperative procurement contract*:
    - (1) Is in the best interests of the City; and
    - (2) Is to the City's economic advantage; and
    - (3) Was competitively awarded using a process that complies with the policies, rules, and regulations developed and implemented by the City Manager.
  - (d) A *sole source contract* certified by the Purchasing Agent pursuant to section 22.3016, provided that if the justification of the *sole source contract* is the emergency nature of the project, the Purchasing Agent notifies the City Council and obtains the City Council's approval pursuant to section 22.3208(b).
  - (e) Purchase orders for an expenditure greater than \$25,000 for commercially available materials and supplies provided that they are:
    - (1) Required by City forces for immediate completion of work in progress; and
    - (2) Less than \$150,000.
  - (f) *Contracts for inmate services* which comply with section 22.3209.
  - (g) *Contracts for services with agencies* or non-profit organizations which comply with section 22.3210.
  - (h) An *energy conservation contract* in the best interest of the City awarded in compliance with California Government Code sections 4217.10 through 4217.18.
- (Renumbered from former Section 22.3212, retitled to "Contracts Not Required to be Competitively Awarded" and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*
- (Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)*
- (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.)*

**§22.3209 Contracts for Inmate Services**

The Purchasing Agent may award a *contract for inmate services* without City Council approval provided that:

- (a) The Purchasing Agent 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 Purchasing Agent 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.

*(Renumbered from former Section 22.3221, retitled to "Contracts For Inmate Services" and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

*(Retitled from "Contracts For Inmate Services" to "Contracts for Inmate Services" on 6-4-2020 by O-21192 N.S.; effective 7-4-2020.)*

**§22.3210 Contracts for Services with Agencies and Non-Profit Organizations**

The Purchasing Agent may award *contracts for services* to any *agency* or to any non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code without City Council approval, provided that:

- (a) The Purchasing Agent has certified in writing that the contract furthers a specific public policy; and
- (b) The Purchasing Agent has certified in writing that the contract is in the public interest; and
- (c) The contract does not exceed \$1,000,000 per fiscal year; and
- (d) The Purchasing Agent 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.

*(Renumbered from former Section 22.3222, retitled to "Contracts for Services with Agencies and Non-Profit Organization" and amended 4-23-2012 by O-20148 N.S.; effective 5-23-2012.)*

*(Amended 5-15-2014 by O-20364 N.S.; effective 6-14-2014.)*

## **§ 22.3211 Caltrans Cooperative Agreements**

The City Manager may enter into a *Caltrans Cooperative Agreement* without City Council approval provided that:

- (a) The City's contribution does not exceed \$30,000,000 for construction costs or \$5,000,000 for design and other construction support services for a particular project; and
- (b) The project was identified and appropriated through the Annual Capital Improvements Program budget adopted by City Council.

*(“Caltrans Cooperative Agreements” added 10-12-2022 by O-21537 N.S.; effective 11-11-2022.)*