

COMPLETE TEXT OF MEASURE S

That the citizens of the City of San José do hereby enact the following amendments to the City Charter:

1. That Section 1217 of the City Charter be amended to read as follows:

SECTION 1217. Public Works Procurement Bid Requirements.

- (a) DEFINITIONS. For the purposes of this Section, the following words have the following meanings. ~~Contracts are to be let to the lowest responsible bidder as set forth below:~~
- (a) ~~PUBLIC WORKS PROJECTS.~~ When the expenditure required for a specific “public works project” (hereinafter defined), excluding the cost of any materials, supplies or equipment which City may have acquired or may separately acquire therefor, will exceed the greater of One Hundred Thousand Dollars (\$100,000) or the amount which a general law city of the State of California may legally expend for a “public project” (as defined by State law) without a contract let to a lowest responsible bidder after notice, it shall be let to the lowest responsible bidder after notice.
- (1) For purposes of this Section, “Public Works Project” shall mean a project for the construction, erection, improvement or demolition of any public building, street, bridge, drain, ditch, canal, dam, tunnel, sewer, water system, fire alarm system, electrical traffic control system, street lighting system, parking lot, park or playground. “Public Works Project” shall not mean or include the following: (i) maintenance of any Public Works Project, or (ii) any repairs, construction, erection, improvement or demolition incidental to such maintenance, or (iii) the planting, care or maintenance of trees, shrubbery or flowers.
- (2) “Major Public Works Contract” means a City contract for a Public Works Project that, at the time of award, requires the expenditure of City funds of more than \$600,000, excluding the cost of any materials, supplies or equipment the City may have acquired or may separately acquire.
- (3) “Minor Public Works Contract” means a City contract for a Public Works Project that, at the time of award, requires the expenditure of City funds in an amount less than the threshold amount to be a Major Public Works Contract.

- (4) “Design-Build Contract” means a City contract in which both the design and construction of the Public Works Project are procured from a single entity.
- (b) ADJUSTMENT FOR INFLATION. Every July 1st the \$600,000 threshold used to define a Major Public Works Contract will be adjusted for inflation in the construction industry as set forth more specifically by ordinance of the City Council.
- (c) PROCUREMENT – MAJOR PUBLIC WORKS CONTRACTS. The primary means of procuring a Major Public Works Contract will be formal public bidding in which, following public notice, the City will award the contract to the lowest responsive bidder that is responsible. Formal public bidding will occur consistent with the requirements in Subsections (e) through (h) of this Section, and as otherwise set forth by ordinance of the City Council.
- (1) As a procurement alternative for Major Public Works Contracts, the City can select a contractor using objective criteria to determine the best combination of price and qualifications. This procurement process will be set forth by ordinance of the City Council consistent with the following requirements.
- (i) The City will follow the formal bidding requirements in Subsections (e) through (h) except as otherwise provided in Subsections (c)(1)(ii) through (c)(1)(v).
- (ii) The City will designate a panel to evaluate the qualifications of the bidders and to assign to each bidder a qualification score. The panel will base the qualification score on an evaluation of objective criteria that may include, but is not limited to, a bidder’s safety record, past performance, labor compliance, demonstrated management competence, financial condition and relevant experience.
- (iii) The qualification score may be determined as part of a prequalification or as part of the bid solicitation. In either case, the relevant documents will set forth the criteria, methodology and rating system the panel will use to evaluate bidders.
- (iv) Bid prices will remain sealed until after the evaluation panel has assigned a qualification score to each bidder.
- (v) Based on a formula that uses the assigned qualification score and bid price, the City will award the contract to the lowest responsive bidder that is responsible.

(2) As a procurement alternative for Major Public Works Contracts over \$1,000,000, the City may negotiate and award a Design-Build Contract without formal public bidding if the City Council finds that such a contract would save money or result in faster project completion. The process for competitively selecting a design-build contractor, and for negotiating and awarding a Design-Build Contract, will be set forth by ordinance of the City Council.

(d) PROCUREMENT – MINOR PUBLIC WORKS CONTRACTS. The City will procure Minor Public Works Contracts in the manner set forth by ordinance of the City Council.

(e) NOTICE REQUIREMENT AND PROCEDURE.

(1) The notice inviting bids shall set a date for the opening of bids, and shall be published at least once, at least ten (10) days before the date set for opening of bids, in a newspaper of general circulation in the City or electronically so that the notice is publicly available to the general community of potential bidders.

(2) All bids, including such bidder's security as may be required, shall be presented under sealed cover.

(3) If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of the security required, if any, may be declared forfeited to the City and may be collected and paid into its General Fund, and all bonds so forfeited may be prosecuted and the amount thereof collected and paid into such fund.

(4) All bids shall be publicly opened, and the aggregate bid of each bidder declared at a time and place specified in the notice inviting bids.

(5) The Council shall have the right to waive any informalities or minor irregularities in bids or bidding.

(fe) APPRENTICESHIP PROGRAM. Nothing herein shall preclude the City from including in any contract provisions that require contractor participation in an apprenticeship program for at-risk youth.

(gd) OTHER PROGRAMS. Nothing herein precludes the City from implementing otherwise lawful programs supporting the use of small, local or economically disadvantaged businesses.

(h) SELECTION OF LOWEST RESPONSIBLE BIDDER. If no bids are received, the Council may readvertise, or have the “Public Works Project” for which no bids are received done, without further complying with this Section.

- (1) If two or more bids are the same and the lowest, the Council may accept the one it chooses.
- (2) In its discretion, the Council may reject any or all bids presented. If it rejects all bids, the Council may, in its discretion, readvertise.
- (3) If, after rejecting all bids for any “Public Works Project” and after readvertising for bids, the Council finds and declares that the bids were excessive, it may have such “Public Works Project” done by City employees without further complying with this Section.

(ie) SECTION NOT APPLICABLE. The provisions of Subsection (c) of this Section shall not apply to any of the following Public Works Projects.

- (1) Any Public Works Project done for the City by any public or governmental body or agency.
- (2) Any Public Works Project done by any public utility which is either publicly owned or is regulated by the Public Utilities Commission of the State of California where such work involves any property of such public utility or is otherwise of direct concern to both the City and such public utility.
- (3) Any Public Works Project done by a subdivider, developer or owner of real property in connection with the subdivision or development by him or her of any real property, notwithstanding the fact that such may be subject to entire or partial reimbursement from the City.
- (4) Any Public Works Project involving highly technical or professional skill where the peculiar technical or professional skill or ability of the person selected to do such work is an important factor in his or her selection.
- (5) Expenditures deemed by the Council to be of urgent necessity for the preservation of life, health or property, provided the same are authorized by resolution of the Council adopted by the affirmative vote of at least eight (8) members of the Council and containing a declaration of the facts constituting the urgency.
- (6) Situations where solicitation of bids would for any reason be an idle act.

~~(7) Any public works project where the contract will cost more than \$5,000,000 and the City Council finds that the “design-build” procurement process would save money or result in faster project completion. In such situations, the City may negotiate and award a “design-build” contract without having to award the contract to the lowest responsible bidder. For purposes of this provision, “design-build” means a procurement process in which both the design and construction of the project are procured from a single entity.~~

(j) PURCHASE OF SUPPLIES MATERIALS AND EQUIPMENT. The procedures for the purchase of supplies materials and equipment shall be as prescribed by ordinance.

NOTE: Additions to the text are underlined and deletions are shown in ~~strikethrough~~.