

ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING ARTICLES VII AND VII.II OF CHAPTER 2 OF THE SANTA ANA MUNICIPAL CODE REGARDING CITY MANAGER'S CONTRACTING AUTHORITY AND CITY PURCHASING RULES AND REGULATIONS, AND ARTICLE VIII OF CHAPTER 33 OF THE SANTA ANA MUNICIPAL CODE REGARDING PUBLIC WORKS CONSTRUCTION RULES AND REGULATIONS

WHEREAS, Sections 421 and 422 of the Santa Ana City Charter provide that the City Council may by ordinance authorize the City Manager to bind the City on non-public works contracts and public works contracts for such amounts as may be established from time to time.

WHEREAS, Sections 421 and 422 also provide that the City Council may by ordinance establish rules and procedures for competitive bidding for non-public works contracts and public works contracts.

WHEREAS, on March 19, 2019, the City Council adopted Ordinance No. NS-2963, by which the City Manager's contracting authority was increased to \$50,000 for non-public works contracts and to \$250,000 for public works contracts.

WHEREAS, the City Council is regularly presented with a voluminous amount of contracts and agreements for approval annually. The process to obtain City Council approval can be lengthy and requires a substantial amount of City staff time. This process can also adversely impact the City's ability to provide efficient and timely delivery of services to its constituents and businesses.

WHEREAS, since the beginning of the current Fiscal Year, the City of Santa Ana, has prepared and solicited over 105 Invitations for Bids (IFB) and Requests for Proposals (RFP); of which, approximately seventy six percent (76%) were related to a Public Works Agency project. The Public Works Agency, together with the Finance and Management Services Agency, finds that revisions to both the City Manager's contract authority and purchasing requirements regarding its informal and formal bidding process are necessary to modernize the City's procurement process, increase the pool of companies who bid on City projects, increase efficiency, expedite project delivery, and closely align the City's purchasing requirements with newly enacted federal and state guidelines, while also maintaining local vendor preferences.

WHEREAS, further increasing the City Manager's contracting authority for both non-public works and public works contracts and other housekeeping changes to the City's procurement rules and procedures are also desirable because they will free staff time to devote to other necessary public services and facilitate participation of small local vendors for the City's business, as the formal process can be time-consuming and costly.

WHEREAS, further increasing the City Manager's contracting authority for both non-public works and public works contracts and change orders to such contracts will also further streamline the process to execute Public Works Agency contracts and agreements for the construction, rehabilitation, maintenance, testing and inspection of public infrastructure, thereby improving the delivery of services necessary for the continued enhancement and preservation of such public infrastructure.

WHEREAS, due to the increasing cost of goods and services as a result of normal, as well as historic inflation, informal and formal bidding have become more frequent. Increasing the informal and formal bidding threshold requirement will allow flexibility for City staff to perform as-needed procurement at local businesses, complete more efficient project deliveries, and increase overall efficiency with existing resources.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA ANA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The recitals above are each incorporated and adopted as findings by the City Council.

Section 2. Section 2-748 of Article VII (City Manager's Contracting Authority) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-748. – City manager's contracting authority.

(a) *Non-public works contracts.*

- (1) The city manager is authorized to bind the city to any one (1) or more written non-public works contract, per vendor, in an amount or amounts not exceeding the sum of fifty thousand dollars (\$50,000.00). For purposes of this section, a non-public works contract shall mean any contract not deemed to be a public works contract under subsection (b)(1).
- (2) The city manager is hereby authorized to bind the city on amendments to any one (1) non-public works contract when such amendment for any one (1) non-public works contract, together with any previously approved amendments for said contract, do not cumulatively amount to an increase of the city's expenditure obligation under said contract of more than twenty (20) percent of the original contract amount.

(b) *Public works contracts.*

- (1) The city manager is authorized to bind the city to any one (1) or more written public works contract, per vendor, in an amount or amounts not exceeding the sum of five hundred thousand dollars (\$500,000). For purposes of this section, a public works contract shall be deemed to mean a project for the erection, improvement, and/or maintenance, inspection, testing and repair of public buildings, streets, drains, sewers, or parks.

- (2) The city manager is authorized to bind the city to any one (1) written contract for emergency public works construction in an amount not exceeding the sum of five hundred thousand dollars (\$500,000).
 - (3) The city manager is hereby authorized to bind the city on change orders to any one (1) public works contract, when such change order for any one (1) public works contract, together with any previously approved change orders for said contract, do not cumulatively amount to an increase of the city's expenditure obligation under said contract of more than twenty (20) percent of the original contract amount.
- (c) *Website access and search features.*
- (1) All agreements approved by the City Manager shall be posted to the City's website on a quarterly basis.
 - (2) The City's website shall provide search capabilities allowing users to search any and all agreements approved by the City Manager based on words, phrases, and dollar amounts.

Sec. 2-749. Reserved.

Section 3. Section 2-803.1 of Article VII.II (Purchasing Rules and Regulations) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-803.1. Local preference in contracts for materials, supplies, labor and equipment.

Except for those contracts for which the Charter of the City of Santa Ana prohibits the provision of a local preference, and/or those contracts funded through programs or partners which prohibit the use of a local preference, the city council authorizes the purchasing manager to extend a preference to local business and Orange County business as set forth herein.

- (a) In the procurement of material, supplies, labor and equipment involving expenditures between fifteen thousand dollars (\$15,000) and one hundred thousand dollars (\$100,000.00), the purchasing manager shall extend a preference to each local business and each Orange County business, which preference shall be applied to the bid which provides maximum quality at minimum price. Said preference shall be set by resolution of the city council.
- (b) If the bidder submitting the maximum quality at minimum cost bid is not a local business or an Orange County business, and if a local business or an Orange County business has submitted a responsive and responsible bid, and with the benefit of the applicable preference, the bid submitted by local business or Orange County business is equal to or less than the original maximum quality at minimum cost bid, the contract shall be awarded to the local business or the

Orange County business at its submitted bid price. If two (2) or more low bids received are equal after the application of the preference, the contract shall be awarded in the following order:

- (1) To a local business.
- (2) To an Orange County business.
- (3) To the bidder submitting the maximum quality at minimum cost bid.

The city shall reserve the right to reject any or all bids.

- (c) In order for the preference to apply, a bidder must certify under penalty of perjury, that the bidder qualifies as a local business or Orange County business. The preference is waived if the certification does not appear on the bid.

Section 4. Section 2-805 of Article VII.II (Purchasing Rules and Regulations) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-805. Procurement of materials, supplies, labor, and equipment between five hundred dollars (\$500.00) and fifty thousand dollars (\$50,000).

- (a) For agreements exceeding five hundred dollars (\$500.00) but not exceeding fifteen thousand dollars (\$15,000), the city manager may bind the city on contracts for materials, supplies, labor, and equipment in amounts not exceeding fifteen thousand dollars (\$15,000) in any one contract, with any one vendor or service provider. These contracts can be entered into administratively without the need for informal or formal bidding.
- (b) Unless exempt from bidding pursuant section 2-807, all contracts involving an expenditure between fifteen thousand dollars (\$15,000) and fifty thousand dollars (\$50,000) for materials, supplies, labor, and equipment shall be let on the basis of obtaining maximum quality at minimum cost in accordance with procedures established by the purchasing manager. Those procedures shall provide for at a minimum the following:
 - (1) There shall be a written or verbal invitation for bid which shall include the following information: A general description of the things to be purchased or project, the time and place for bid opening when applicable, bid instructions, and the terms and conditions of the bid and any resulting contract. The purchasing manager shall make a good faith effort to notify all businesses engaged in providing such materials, supplies, labor, and equipment located within the boundaries of the city of the opportunity to bid.

- (2) Where required by state or federal law or regulations, or upon request by a bidder, the bids shall be opened, if sealed, and declared in public at the time and place stated on the "Invitation for Bid."

Section 5. Section 2-806 of Article VII.II (Purchasing Rules and Regulations) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-806. Procurement of materials, supplies, labor, and equipment in excess of fifty thousand dollars (\$50,000).

Unless exempt from bidding pursuant to section 2-807, all contracts involving an expenditure in excess of fifty thousand dollars (\$50,000) for materials, supplies, labor, and equipment shall be let on the basis of obtaining maximum quality at minimum cost, in accordance with procedures established by the purchasing manager. Those procedures shall provide for at least the following:

- (a) Public notices inviting bids shall include a general description of the things to be purchased and the date, time, and place for bid opening. Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations established by the purchasing manager. Public notice shall occur as follows:
 - (1) For all public works contracts, public notice shall occur by way of publication in a newspaper of general circulation and such publication shall be for at least two (2) days, the first of which shall be at least ten (10) days before the date set for opening bids.
 - (2) For non-public works contracts, public notice shall occur by way of electronic bidding system for the purpose of receiving sealed electronic bids or proposed contracts.
- (b) Invitation of bids shall be mailed or transmitted by other means established by the administrative code but not recited over the telephone or in person. Any interested bidder may obtain an invitation for bid.
- (c) All bids shall be submitted sealed in accordance with the instructions contained in the "Invitation for Bid" form.
- (d) The bids shall be opened in public, at the time and place stated on the "Invitation for Bid." All bids shall be publicly declared.

Section 6. Section 2-807 of Article VII.II (Purchasing Rules and Regulations) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-807. Non-bid purchases.

The following contracts may be exempted from competitive bidding through an open market purchase by the purchasing manager, and confirmed by the city council in the case of contracts for over fifty thousand dollars (\$50,000), but shall nevertheless be

entered into only after compliance with the rules established by the purchasing manager, which shall include the review of such alternative sources of supply or performance as may be available in competition with one another and selection therefrom on the basis of obtaining maximum quality at minimum costs:

- (a) Purchases of materials, supplies, labor, and equipment whenever it shall appear that there is only one (1) reasonably available source or where solicitation of bids would for any reason be an idle act.
- (b) Purchases of materials, supplies, labor, and equipment necessary for the preservation of life, health or property, following the declaration of a state of emergency or disaster in the city. A full written account of emergency procurements made during the declared emergency or disaster shall be submitted to the city council within thirty (30) days after their procurement.
- (c) Situations where no bids are received or all bids are rejected and the city council determines, upon the affirmative vote of at least two-thirds ($\frac{2}{3}$) of its members, that the materials, supplies, labor or equipment can be obtained at a lower cost.
- (d) Purchases from vendors whose names are on current established lists and have been awarded the same type of purchase contract by a federal agency (including the general services administration), a state agency, county, city or other public agency after a competitive bidding process determined by the purchasing manager to be substantially equivalent to that prescribed by this article.
- (e) Contracts for services.

Section 7. Section 33-203 of Article VIII (Public Works Construction Rules and Regulations) of Chapter 33 (Streets, Sidewalks and Public Works) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 33-203. Procurement of public works construction.

The following procedure shall apply to every contract for which final plans and specifications are available in conformance with procurement rules defined in Article VII and Article VII.II of Chapter 2 of the Santa Ana Municipal Code:

- (a) *Notice inviting bids.* Notice inviting bids shall include a general description of the public works construction, the place to obtain the plans and specifications, and the date, time, and place for opening bids. The notice shall be published in a newspaper of general circulation in the city for at least two (2) days, the first of which shall be at least ten (10) days before the date set for opening bids. The city shall make a good faith effort to send a notice inviting bids to all businesses engaged in providing labor and materials for such construction located within the boundaries of the city.
- (b) *The bid.* Included with the plans and specifications for a work of public works construction shall be the following documents: Instructions to bidder, proposal, bond samples and the contract. The bidder shall execute the proposal and contract, and submit them sealed with at least a ten (10) per cent bid bond, cashier's check or certified check.

- (c) *Award of contract.* Upon opening the bids at the date, time and place stated in the notice, the aggregate bid of each bidder shall be publicly declared. Following the determination of the lowest and best bidder, the proposal and agreement from this bidder shall be sent to the city attorney for approval as to form. The documents shall then be presented to the city council for approval and authorization for execution. If two (2) or more bids received are the same and the lowest, the council may accept the one it chooses.
- (d) *Notification of award.* A notification letter, a request for bonds, when necessary, and a copy of the fully executed contract shall be delivered to the successful bidder.
- (e) *Performance bonds.* To secure faithful performance of the contract, the city manager is authorized to require security in the form of cash, cashier's check, certified check or corporate faithful performance bonds, in the following percentages of the aggregate amount bid: One hundred (100) per cent bond for faithful performance, and fifty (50) per cent contractor's payment bond.
- (f) *Rejection of bids.* The right to reject all bids is expressly reserved to the city council. After rejecting such bids, or if no bids are received, the city council may determine and declare that, in its opinion based on estimates submitted by the city manager, the public works construction may be performed better or more economically by the city with its own employees, and after the adoption of a motion to this effect by the affirmative votes of at least two-thirds ($\frac{2}{3}$) of the members of the city council, the council may proceed to have said work done in the manner stated without further observance of the provision of this article.

Section 8. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA). Pursuant to CEQA and the CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to sections 15061(b)(3) and 15061(b)(5) of the CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment. As a result, Environmental Review No. 2023-27 will be filed upon adoption of this ordinance.

Section 9. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 10. This Ordinance shall become effective thirty (30) days after its adoption.

Section 11. The Clerk of Council shall certify the adoption of this Ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2023.

Valerie Amezcua
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho
City Attorney

By: _____
Jonathan T. Martinez
Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Jennifer L. Hall, City Clerk, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

City Clerk
City of Santa Ana