

ORDINANCE NO. \_\_\_\_\_(N.S.)

AN ORDINANCE AMENDING ARTICLE XXIII OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO COUNTY CONTRACTING

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Section 400 of the San Diego County Code is amended as follows:

SEC. 400. RECOGNITION OF DEPARTMENT.

There is in the County a Department of Purchasing and Contracting (~~"Department"~~) under the supervision of the Chief Administrative Officer.

Section 2. Section 400.1 of the San Diego County Code is amended as follows:

SEC. 400.1. RECOGNITION OF DIRECTOR OF PURCHASING AND CONTRACTING.

There is in the County and in the Department of Purchasing and Contracting, the position of Director of Purchasing and Contracting, hereafter in this Article referred to as the Director, or the Purchasing Agent. The Director shall ex officio be the Purchasing Agent of the County. The position shall be in the Unclassified Service of the County and shall be filled by appointment by the Chief Administrative Officer in accordance with the County Charter, Rules of the Civil Service Commission and County ordinance.

The Director of Purchasing and Contracting may ~~assign~~ delegate to other appropriate Purchasing and Contracting staff ~~as he or she may designate~~, the performance of duties and responsibilities related to the functions of the Purchasing Agent.

Section 3. Section 401 of the San Diego County Code is amended as follows:

SEC. 401. PROCUREMENT.

(a) Except in the case of emergency as provided in Section 402, below, or as otherwise provided by State or federal law, County ordinance, or Board Policy, the Director of Purchasing and Contracting shall have exclusive authority to take the actions described in this section on behalf of the County.

(b) The Director of Purchasing and Contracting has authority to enter into contracts to purchase, rent, license, or lease all personal property for the County, including any insurance, supplies, materials, furnishings, equipment, computer hardware and software systems, and licenses to use intellectual property, ~~"goods"~~ and engage independent contractors to perform

services for the County, with or without the furnishing of material ("Services Contracts"). The Director of Purchasing and Contracting may enter into the following Service Contracts without obtaining the approval of the Board of Supervisors (Board), except as set forth in Board Policy and as otherwise provided for in this Code of Administrative Ordinances:

(1) ~~Service Contracts for goods or services~~ where the annual aggregate cost does not exceed the amount set forth in Government Code section 25502.5, or successor statute \$100,000; and

(2) ~~Service Contracts for goods or services~~ where the annual value does not exceed the limits set forth in Board policy where awarded pursuant to a "competitive negotiated procurement" or "qualifications based selection" procedure, as defined in Board Policy.~~\$1,000,000 per year and where:~~

~~a. The Board of Supervisors has exempted the category of goods or services (including "professional services," as defined in Board Policy and as otherwise provided for in this Code of Administrative Ordinances) provided under the subject contract from competitive procurement requirements pursuant to Board Policy exempting specific classes of procurement from such requirements; or~~

~~b. The contract is awarded pursuant to a "competitive negotiated procurement" procedure, as defined in Board Policy.~~

(3) ~~All~~ Service Contracts for goods or services, with no maximum limitation on contract value, where ~~the Director awards the contract:~~

~~(a.) By~~ The Service Contract is awarded pursuant to a "formal bidding" or "reverse auction" procedure, as defined in Board Policy, or

~~(b.) The Service Contract is awarded based~~ Based upon contracts competitively awarded by other government agencies or cooperative of agencies; or ~~and where the Director determines that the pricing is fair and reasonable.~~

~~c. The Board has excepted or exempted the category of goods or services provided under the Service Contract from competitive procurement requirements pursuant to Board Policy; or~~

~~d. The Board has specifically authorized the Director of Purchasing and Contracting, subject to any conditions specified by the Board.~~

~~(c) (4)~~ The Director of Purchasing and Contracting may amend any contract without obtaining approval of the Board provided that the contract price value remains within the authorities stated in this Section 401 or, for contracts awarded pursuant to subdivision (b)(2) of this Section 401, the amendment does not increase the annual contract price value to more than twenty-five percent (25%) above such stated authority ~~\$1,250,000.~~

~~(1)(e)~~ The Director of Purchasing and Contracting has authority to negotiate and ~~enter into or~~ amend a contract or contracts where the Board has specifically authorized the Director to do so, in accordance with any conditions specified by the Board.

(d) The Director of Purchasing and Contracting is authorized to enter into Service Contracts for public works (public works contracts (as described in section 20121 of the Public Contract Code) without obtaining the approval of the Board as follows:

(1) The estimated cost of the work is less than the amounts prescribed by the Public Contract Code.

(2) The work is performed by an entity that State or federal law has excepted from the bidding requirements of the Public Contract Code or applicable federal law.

(e) The Director of Purchasing and Contracting is authorized to enter into Service Contracts for highways (as described in section 20390 et seq. of the Public Contract Code) or a bridge or a subway (pursuant to Article 26 of the Public Contract Code) or for a project under the Improvement Act of 1911 (pursuant to Article 27 of the Public Contract Code) or under the County Sanitation District Act (pursuant to Article 50 of the Public Contract Code) or for construction by the San Diego County Flood Control District (pursuant to Article 120 of the Public Contract Code). The Director of Purchasing and Contracting may enter into these contracts, without obtaining approval of the Board of Supervisors, if:

(1) The Director, Department of Public Works, estimates the cost at less than the amount prescribed by the Public Contract below which threshold the requirements of the Public Contract Code for contracting are inapplicable.

(2) The work is performed by an entity that the State or federal law has excepted from the bidding requirements of the Public Contract Code or applicable federal law.

(f) The Department of Purchasing and Contracting is authorized to procure the professional services defined in Government Code section 4525 or successor statutes ("Professional Services") through a qualifications-based selection. When procurement Professional Services, the Director of Purchasing and Contracting shall comply with all mandatory provisions of Government Code sections 4525 through 4529.5 and procedures set forth in Board Policy.

(g) Where the Board of Supervisors authorizes a contract with a specified term, such term shall not limit the performance of obligations that survive the contract's expiration or termination, including disentanglement services.

Section 4. Section 402 of the San Diego County Code is amended as follows:

#### SEC. 402. EMERGENCY PURCHASES.

(a) An "emergency" means conditions that require immediate action to contain or control an immediate danger or threat of danger to the ~~public~~ health, safety, or welfare; of the public or to persons in the care or custody of the County, as determined by department heads or elected officials in accordance with County ordinances, Board Policy, and State or federal law or regulation.

(b) The Director ~~of the Department~~ of Purchasing and Contracting ~~may, as the County's~~

~~Purchasing Agent, in cases of emergency, may issue contracts to or extend or modify existing (emergency or non-emergency) contracts in any amount. The Director shall report such actions to the Board of Supervisors for ratification when required by County Ordinance or Board policy, or by State or federal law or regulation.~~

(c) ~~Department heads or elected officials may, in cases of emergency, take necessary emergency procurement actions where authorized by County ordinance, Board policy, or State or federal law or regulations, or where purchasing through the Director of Purchasing and Contracting is infeasible under the circumstances of the emergency, as determined by department heads or elected officials, and in accordance with County ordinances or Board Policy, and State or federal law or regulation, such officials may make emergency purchases. For public works emergencies, the appropriate department head may take all actions authorized under the applicable provisions of the Public Contract Code. All officials taking making emergency purchases procurement actions shall promptly report such actions to the Director at the first available opportunity and submit sufficient and proper documentation to the Director of Purchasing and Contracting for subsequent approval by the Director or ratification by the Board of Supervisors, as appropriate.~~

(d) The Director of Purchasing and Contracting is authorized to ratify emergency procurement actions taken by other department heads or elected officials that are within the Director of Purchasing and Contracting's authorities set forth in County ordinance, Board Policy, or State or federal law. Emergency procurements that exceed the Director of Purchasing and Contracting's authorities set forth in County ordinance, Board Policy, or State or federal law or regulation shall be ratified by the appropriate authority, including reporting to or approval by the Board of Supervisors when required.

Section 5. Section 403 of the San Diego County Code is amended as follows:

#### SEC. 403. EFFECT OF AUTHORIZATION BY BOARD OF SUPERVISORS TO CONTRACT FOR PUBLIC WORKS AND RELATED PROJECTS.

(a) Any action by the Board of Supervisors to authorize contracting for a public works project (pursuant to Article 3.5 in Part 3 of the Public Contract Code) or a highway (pursuant to Article 25 of the Public Contract Code) or a bridge or a subway (pursuant to Article 26 of the Public Contract Code) or for a project under the Improvement Act of 1911 (pursuant to Article 27 of the Public Contract Code) or under the County Sanitation District Act (pursuant to Article 50 of the Public Contract Code) or for construction by the San Diego County Flood Control District (pursuant to Article 120 of the Public Contract Code) shall be deemed to include approval of contract documents; adoption of plans and specifications; authority to advertise for bids, or ratification of advertising; authority to award to the lowest responsible bidder; and any other actions the Director of Purchasing and Contracting needs to award the contract and to take necessary administrative actions, up to and including, terminating the contract.

(b) Any action referred to in Subsection (a) shall be deemed to authorize the Director of Purchasing and Contracting to (1) modify the plans and specifications, if doing so will not increase the cost or cause a significant change in the project; (2) waive, in consultation with the

County Counsel, minor irregularities in a bid, if doing so will not confer a competitive advantage on the bidder; (3) cancel solicitations when in the best interest of the County or district; (4) reject all bids, if the Director of Purchasing and Contracting determines that the bids are unreasonable or if the Director of Purchasing and Contracting determines for any other reason that doing so is clearly in the best interests of the County or district; (5) re-advertise and award, if the Director of Purchasing and Contracting has rejected all bids; and (6) issue termination notices and terminate contracts.

Section 6. Section 404 of the San Diego County Code is amended as follows:

SEC. 404. ORDERS BY BOARD OF SUPERVISORS UNDER UNIT PRICE CONTRACTS. Approval by the Board of Supervisors of departmental budgets, or of appropriation transfers or of appropriations of unanticipated or over-realized revenues, which include repair or remodeling costs shall be deemed an order of the Board for purposes of Public Contract Code section 20128.5 and shall authorize the Director of Purchasing and Contracting to direct that the work be done according to unit prices in any contract awarded under that provision. The Director of Purchasing and Contracting may issue work-orders or a work-order under the unit price contract to the full value of that contract.

Section 7. Section 404.1 of the San Diego County Code is amended as follows:

SEC. 404.1. OTHER PUBLIC CONSTRUCTION.

The provisions of Articles 25, 26 and 27, Chapters 1 and 2, Part 3, Division 2 of the Public Contract Code, as are applicable to the County of San Diego, shall apply to contracts awarded by the Director of Purchasing and Contracting for subject construction work.

Section 8. Section 405 of the San Diego County Code is amended as follows:

SEC. 405. SMALL-LOCAL BUSINESS PREFERENCE PROGRAM.

(a) The Department of Purchasing and Contracting shall give preference to any Local Business that is also a Small Business ("Small-Local Business") ~~Disabled Veteran Owned Business, Veteran Owned or Small Business~~ in the evaluation of a bid or proposal as required by this Section 405. The terms Local Business, Small Business, and Small-Local Business shall have the meanings set forth in Board Policy. ~~For purposes of this Section 405, a vendor qualifying under this Subdivision (a) shall be referred as a "Preferred Vendor."~~

(b) ~~Definitions.~~In any procurement where this Section 405 requires that a preference be applied, fifteen percent (15%) shall be subtracted from any Small-Local Business's bid or proposed price being evaluated for award, in accordance with procedures set forth in Board Policy. The amount subtracted shall not exceed one-hundred-fifty thousand dollars (\$150,000.00).

(c) This Section 405 shall not apply to procurements where prohibited by funding source

requirements or state or federal law or regulation, or where the County leads or participates in a cooperative procurement with another public entity or entities. The Director of Purchasing and Contracting shall have full authority and discretion to implement this Section 405 to the maximum extent practicable where relevant authority or the specific circumstances of the procurement limits the implementation of some, but not all, of its provisions.

(d) This section shall apply to procurements and resulting contracts issued on or after September 25, 2025.

~~—(1) "Local Business" shall mean a partnership, corporation, joint venture, or any other association formed to conduct business, or an individual, that:~~

~~—(i) Maintains its international or domestic headquarters within the geographic boundaries of San Diego County; or~~

~~—(ii) At the time the County issues the solicitation, provides or sells from a location within the geographic boundaries of San Diego County the same or similar goods or services to be purchased by the County. For purposes of this definition, the same or similar goods or services may be only a part of the goods or services being purchased.~~

~~—For purposes of the definition of "Local Business," a partnership, joint venture or any other entity seeking to qualify as a Local Business must demonstrate that at least one of its members qualifies as a Local Business and i) will perform a commercially useful function under the contract to be awarded, ii) is an equity member of the entity, and iii) is not a subcontractor.~~

~~—(2) "Veteran Owned Business" shall have the meaning set forth in Board Policy.~~

~~—(3) "Disabled Veteran Business" shall have the meaning set forth in Board Policy.~~

~~—(4) "Small Business" shall have the meaning set forth in Board Policy.~~

~~—(c) In any procurement where a preference is required to be applied by Subdivision (a) of this Section 405, five percent (5%) shall be subtracted from any Preferred Vendor's bid or proposed price being evaluated for award. The amount subtracted shall not exceed fifty thousand dollars (\$50,000.00). For formal bids, if the price adjustment results in the Preferred Vendor's bid being equal to or lower than the lowest bid submitted by a non-Preferred Vendor, contract award shall be made to the Preferred Vendor, and shall be made at the unadjusted bid price. For competitive negotiated procurements, contract award shall be made to the proposer providing the best value to the County after consideration of the price preference.~~

~~—(d) This Section 405 shall not apply to procurements where precluded by funding source requirements or State or federal law or regulation, or where the County is leading or participating in a cooperative procurement with another public entity or entities.~~

~~—(e) This section shall apply to procurements and resulting contracts issued on or after January~~

~~1, 2020.~~

Section 9. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY

Claudia G. Silva, County Counsel

BY: SHIRI HOFFMAN, Chief Deputy County Counsel