

ORDINANCE NO. 6150

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING SECTIONS 4.52.050, 4.52.165, AND 4.52.200 OF THE SANTA BARBARA MUNICIPAL CODE RELATING TO CONTRACTING FOR PUBLIC WORKS PROJECTS PURSUANT TO APPROVAL BY THE VOTERS OF THE PROPOSED AMENDMENT TO CITY CHARTER SECTION 519

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 4.52.050 of Chapter 4.52 of Title 4 of the Santa Barbara Municipal is amended to read as follows:

4.52.050 Contracting Authority.

A. The City Council is the awarding authority for all contracts governed by this chapter except as otherwise provided in this chapter. Contracts awarded by the City Council shall be executed as provided in Section 518 of the City Charter unless otherwise directed by the City Council.

B. The City Administrator is authorized to award and execute any agreement subject to this chapter in an amount established by City Council resolution.

C. The City Administrator may delegate such authority to a subordinate employee of the City.

D. The Purchasing Agent may award to the lowest responsible bidder and execute contracts made in accordance with Sections 4.52.060 and 4.52.070 when the contract is within the budget approved by the City Council.

E. The Public Works Director is authorized to award and execute contracts made in accordance with Section 4.52.165 except where the power to award and execute contracts is reserved by that section to the City Council.

F. The City shall not be bound by or liable under any contract or purchase order subject to this chapter unless the contract is made and executed as provided in this chapter.

G. Contracts of the City shall be made only by a duly authorized officer or employee of the City. Contracts for purchase of goods or materials having a value over \$2,500.00 shall be in writing. Contracts for services having a contract value of greater than \$10,000.00 shall be in writing. A purchase order duly authorized and issued by the

Purchasing Agent may be used to satisfy the requirements of this section provided that the purchase order contains all the requirements of a contract under California law. The form of all contracts and purchase orders shall be approved by the City Administrator and City Attorney. When permitted by state or federal statute and authorized by procedures developed and adopted by the City pursuant to Section 4.52.030 (B)(3), electronic communication technology may be used whenever a written document is required by this chapter; provided, however, that the communication is capable of being translated into a record of the City capable of being retained, accessed and reproduced in accordance with the City's policies governing records of the City.

H. The Library Director is authorized to purchase library books and library periodicals under procedures established by the Director subject to the appropriations of the approved budget for the Library.

I. The City Administrator is delegated the authority of the City Council to reject all bids for any contract. The Public Works Director may reject bids for any contract subject to bidding under Section 4.52.165.

SECTION 2. Section 4.52.165 of Chapter 4.52 of Title 4 of the Santa Barbara Municipal is amended to read as follows:

4.52.165 Public Works Contracts – Procurement.

A. City Projects may be performed by City forces or under contract as provided in this Section. The Public Works Director is responsible for the implementation and administration of work performed or contracted for under this Section. As used in this Section the term "City Projects" includes all public works affecting City buildings, facilities, or real property of whatever nature including construction of new buildings or facilities and maintenance and repair of existing buildings or facilities. Maintenance and repair projects of any value may be performed by City employees consistent with the budget approved by the City Council.

B. City Projects up to an estimated construction value of \$100,000 may be let to contract through direct negotiation with qualified contractors on a list established and maintained by the Public Works Director or by bidding under the procedures of Section 4.52.060.

C. City Projects having an estimated construction value of \$100,000 up to \$500,000 may be let to contract under the procedures of Section 4.52.070, except that:

1. In lieu of a general notice inviting bids, when the Public Works Director has established a list of qualified contractors identified according to categories of work, all contractors on the list of qualified contractors established and maintained by the Public Works Director for the category of work being bid shall be delivered notice as provided in Section 4.52.070 unless the service qualifies for a best interest or sole source waiver.

2. The notice inviting bids under paragraph 1 of this Subsection may describe the project in general terms and provide instructions on how to obtain more detailed information about the project.

3. Notices under either paragraph 1 or 2 of this Subdivision must state the time and date for submission of bids and other bidding information required by Section 4.52.070.

D. City Projects having an estimated construction value over \$500,000 may be let to contract under any of the following procedures:

1. Contract let under Section 4.52.070.

2. Contract let under the design-build procurement procedures established for the project under Subsection E of this Section whenever the City Council, upon recommendation by the Public Works Director, determines it to be in the best interest of the City.

3. Contract let under the best value or competitive negotiation procurement procedures established for the project under Subsection F of this Section whenever the City Council, upon recommendation by the Public Works Director, determines it to be in the best interest of the City.

4. Contract let under the construction manager at risk procedures established for the project under Subsection G of this Section whenever the City Council, upon recommendation of the Public Works Director, determines it to be in the best interest of the City.

E. The City may enter into design-build contracts, including design-build operate and progressive design-build contracts, as follows:

1. Before procuring a design-build contract, the Public Works Director shall prepare a request for proposals setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the works, improvements, facilities, buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be approved by the City Council before solicitation of proposals.

2. The Public Works Director may establish prequalification requirements consistent with the provisions of Section 4.52.210 of this Chapter.

3. Upon recommendation of the Public Works Director, the City Council will select one of the following methods as the process to be used for the selection of the successful design-build entity:

a. A design-build competition based on performance, specifications, and criteria stated in the request for proposals. Criteria used in this form of evaluation of proposals may include, but not be limited to, items such as proposed design approach, initial and life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any design-build entity. The award of a design-build contract shall be made to the design-build entity whose proposal is judged as providing best value meeting the interests of the City and the objectives of the project.

b. A competition based on program requirements, performance specifications, and a preliminary design or combination thereof stated in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals. The Public Works Director shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any design-build entity. The award shall be made to the design-build entity on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the City and meeting the objectives of the project.

c. A design-build program competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications stated in the request for proposals. Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any design-build entity. Award shall be made on the basis of the lowest responsible and reliable bid.

4. When a progressive design-build contract is selected as the procurement method for a project the following provisions apply:

a. After selecting a design-build entity based upon qualifications, the City may enter into a contract and direct the design-build entity to begin design and preconstruction activities sufficient to establish a guaranteed maximum price for the project.

b. Upon agreement of the guaranteed maximum price for the project, the City, at its sole and absolute discretion, may amend the contract with the design-build entity to contract for the remaining design, preconstruction, and construction activities sufficient to complete and close out the project, consistent with the guaranteed maximum price. If there are unforeseen site conditions, the City may amend the contract

with the design-build entity accordingly and consistent with the guaranteed maximum price, to enable the design-build entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project.

c. If the cost for completing all remaining design, preconstruction, and construction activities sufficient to complete and close out the project exceed the guaranteed maximum price, the costs exceeding the guaranteed maximum price shall be the responsibility of the design-build entity. If the costs for these activities are less than the guaranteed maximum price, the design-build entity shall not be entitled to the difference between the cost and the guaranteed maximum price unless there is a prior written agreement concerning the sharing of these funds. Costs include the design-build entity's direct costs, general conditions, overhead, and fee.

d. If the City and the design-build entity do not reach agreement on a guaranteed maximum price, or the City otherwise elects not to amend the design-build entity's contract to complete the remaining work, the City may solicit proposals to complete the project from qualified firms and award a contract on a best value basis.

e. The design professionals responsible for performing design services on behalf of a design-build entity that has been replaced pursuant to paragraph d. of this Subsection E. 5. shall have sole liability for their design errors and omissions, if the City elects to use their complete and stamped designs with subsequent design build entities or licensed contractors.

5. The City recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all subcontractors at the time of the award. It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Subsection E in a manner that retains protection for subcontractors while enabling design-build projects to be administered in an efficient fashion. All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on design-build projects:

a. Each design-build proposal must specify the construction trades or types of subcontractors that may be named as members of the design-build entity at the time of award. All trades necessary to accomplish the purposes of the project must be specified. All subcontractors that are listed at the time of award of the design-build contract shall be afforded the protection of all applicable laws.

b. All subcontracts that were not listed by the design-build entity at the time of award shall be awarded by the design-build entity in accordance with a bidding process established in the design-build contract including requirements for the listing of subcontractors in the manner required by California statute for bidding of public works contracts.

6. All design-build contracts under this Subdivision E shall be awarded by the City Council.

F. Contracts let under the best value or competitive negotiation procurement must comply with the following procedures:

1. The Public Works Director will solicit formal proposals. Notice of request for proposals must be posted for not less than 30 days on the City's website and may be given in any other manner determined by the Public Works Director to be appropriate for the project. The request for proposals must: specify the date, time, and place for submission of proposals; contain a description of the project and the location where plans and specifications for the project may be obtained; contain a description of the information to be submitted by each proposer; contain the factors for evaluation of each proposal including the relative weight to be given to each factor.

2. In addition to price, the factors for selection of a successful proposer may include the following:

- a. Demonstrated experience performing the same or similar work;
- b. Experience of core personnel to be assigned to the project;
- c. Financial condition and stability;
- d. Successful performance of the same or similar work;
- e. Prior record of performance on projects for the City;
- f. History of compliance with local, state, and federal laws, regulations, and policies governing public works contracts;
- g. Proposed quality control and quality assurance plan for the project;
- h. Proposed mobilization, construction, and demobilization plan for the project;
- i. Proposed public and traffic safety control plan for the project;
- j. Other factors the Public Works Director deems relevant to obtaining the best value for the City.

3. All contracts under this Subdivision F shall be awarded by the City Council.

G. A construction manager at risk contract means a successive combination of written contracts relating to a single project between the City and a construction manager at risk entity where the latter agrees to perform preconstruction services and construction services for the City at or under a guaranteed maximum price. A construction manager at risk entity must hold a California General Engineering Contractor's License Class A; California General Building Contractor License Class B; or a General Specialty Contractor License Class C as appropriate for the project. The City may enter into construction manager at risk contracts as follows:

1. Before procuring a construction manager at risk contract, the Public Works Director will shall prepare a request for proposals that references an engineering design for the work prepared by City engineers or by design professionals under contract to the City. The engineering design need not be complete but must be sufficiently developed as to the project size, location, and anticipated construction cost and schedule so as to permit meaningful proposals to be submitted and evaluated. The request for proposal must indicate the scope of preconstruction services and construction services sought and identify the factors that will be used for selection of the construction manager at risk entity. Selection of a successful construction manager at risk entity must be based upon the selection factors stated in the request for proposals.

2. The Public Works Director may establish prequalification requirements consistent with the provisions of Section 4.52.210 of this Chapter.

3. Construction manager at risk contracts will be entered into with the same entity for preconstruction services and constructions services. The letting of a preconstruction services contract will not bind the City to enter into a construction services contract but does provide a priority basis for negotiation of a construction services contract with the same construction manager at risk entity through the negotiation of a guaranteed maximum price. If the City and the preconstruction services contractor cannot reach agreement on a construction services contract, as determined by the City Council, the City may award a construction services contract to a different entity.

4. Preconstruction services agreements and construction services agreements must have a guaranteed maximum price. Certain business terms for the construction services agreement may be conditionally agreed upon in the preconstruction services agreement but are limited to the costs of contract general conditions, hourly labor rates, overhead, and the construction manager at risk entity's proposed fee. Cost of labor, equipment, and materials to be provided by subcontractors or self-performed by the construction manager at risk entity will not be included in the preconstruction services agreement but will be reserved for proposal, negotiation, and agreement on a guaranteed maximum price in the construction services agreement.

5. All subcontracts under a construction manager at risk contract will be procured according to a competitive procurement process as stated in the contract. The provisions of Public Contract Code Sections 4100 through 4144, as amended, apply to construction services under a construction manager at risk contract. In preparing its proposal for a construction services contract the construction manager at risk entity will provide a list of subcontractors in accordance with Public Contract Code Sections 4100 through 4144.

6. All contracts under this Subdivision G will be awarded by the City Council.

H. The Public Works Director is authorized and directed to establish and update on a regular basis, but not less than every two years, a list or lists of qualified

contractors for use under Subsections B and C of this section. The Public Works Director is authorized and directed to establish minimum qualifications for contractors according to categories of work and a process for contractors to be included on the list by submission of a response to a publicly noticed request for submission of qualifications. Notice of the request for submission of qualifications will be given in the manner for solicitation of bid and to any contractor that has submitted a written request for notices within one year of the solicitation for proposals.

I. The Public Works Director may establish administrative procedures for the implementation of this Section.

J. The Public Works Director may promulgate procedures and requirements for notice, submission, and protest of bids and proposals under this Section, including use of electronic bidding. Notice of bids may be given in any manner, determined by the Public Works Director to be appropriate under the circumstances, in addition to notice by publication as required by Section 4.52.060 or 4.52.070 as applicable.

SECTION 3. To preserve the operation of Section 4.52.200 as it existed before approval of an amendment to Section 519 of the City Charter as it existed on March 5, 2024, Section 4.52.200 of Chapter 4.52 of Title 4 of the Santa Barbara Municipal Code is amended to read as follows:

4.52.200 Project Labor Agreements.

A. A contract for construction of public works or improvements, except maintenance and repair, in an amount of \$5,000,000.00 or greater, as estimated by the City Engineer, shall include a requirement for a project labor agreement. The requirement shall be included in the procurement documents and contract.

B. The City Council may approve a project labor agreement by resolution.

ORDINANCE NO. 6150

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on April 9, 2024, and adopted by the Council of the City of Santa Barbara at a meeting held on April 16, 2024, by the following roll call vote:

AYES: Councilmembers Eric Friedman, Alejandra Gutierrez, Oscar Gutierrez, Mike Jordan, Kristen W. Sneddon, Mayor Randy Rowse

NOES: None

ABSENT: Councilmember Meagan Harmon

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on April 16, 2024.



Sarah P. Gorman, MMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on April 16, 2024.

Randy Rowse
Mayor