

ORDINANCE NUMBER O- **21298** (NEW SERIES)

DATE OF FINAL PASSAGE **MAR 11 2021**

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 30 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.3003; AND AMENDING CHAPTER 2, ARTICLE 2, DIVISION 32 BY AMENDING SECTION 22.3208 AND AMENDING CHAPTER 2, ARTICLE 2, DIVISION 33 BY AMENDING SECTION 22.3301, REPEALING SECTION 22.3302, AND AMENDING SECTIONS 22.3303, 22.3304 AND 22.3308, RELATING TO THE SELECTION METHOD FOR ENERGY SAVINGS PERFORMANCE CONTRACTS.

WHEREAS, as part of its Climate Action Plan, the City of San Diego (City) set targets for greenhouse gas emissions reductions at municipal facilities by 2035 from a baseline established in 2010; and

WHEREAS, the City desires to achieve significant energy and greenhouse gas emissions reductions at approximately forty municipal facilities through the procurement of energy savings performance contracts; and

WHEREAS, California Government Code sections 4217.10 through 4217.18 provide for the procurement of contractors to design and install energy conservation measures at public buildings and land owned by public agencies; and

WHEREAS, the Government Code allows the City to select contractors for these services based on a determination that the contracts, or facility ground leases, are on terms that the Council of the City of San Diego (Council) determines to be in the best interests of the City, made at a regularly scheduled and noticed public hearing where the Council makes certain determinations based on the anticipated costs and anticipated savings; and

WHEREAS, Chapter 2, Article 2, Division 33 of the San Diego Municipal Code (Municipal Code) establishes a process for contracting for design-build public works projects

and Chapter 2, Article 2, Division 32 of the Municipal Code establishes a process from contracting for goods and services; and

WHEREAS, the Council desires to amend the Municipal Code to allow the City to incorporate the procurement process established in Government Code sections 4217.10 through 4217.18 to facilitate energy conservation contracts and clean energy retrofits at City property; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 30 of the San Diego Municipal Code is amended by amending section 22.3003, to read as follows:

§22.3003 Definitions

For purposes of this Division and Chapter 2, Article 2, Divisions 30, 31, 32, 33, 34, 35, 36, 38 and 48, the following defined terms appear in italics:

Agency through Cooperative procurement contract [No change in text.]

Design-build means a *public works contract* procurement method in which both the design and construction of a project are procured from a single entity.

Design-build entity means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a *public works* project.

Design-build entity member includes any person who provides licensed contracting, architectural, or engineering services.

Energy savings performance contract means a *public works contract* procured from a *design-build entity* in compliance with California Government Code sections 4217.10 through 4217.18, as may be amended, for alternate energy equipment, cogeneration equipment, conservation measures, or conservation

services. *Energy saving performance contracts* may also include a facility ground lease or facility financing contract, as those terms are defined in California Government Code section 4217.11.

Job order contract through *Valued at* [No change in text.]

Section 2. That Chapter 2, Article 2, Division 32 of the San Diego Municipal Code is amended by amending section 22.3208, to read as follows:

§22.3208 Contracts Not Required to be Competitively Awarded

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

(a) through (g) [No change in text.]

(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.

Section 3. That Chapter 2, Article 2, Division 33 of the San Diego Municipal Code is amended by amending section 22.3301, repealing section 22.3302, and amending sections 22.3303, 22.3304, and 22.3308, to read as follows:

§22.3301 Purpose and Intent

The purpose of this Division is to provide guidelines for the award, use, and evaluation of *design-build* contracts.

§22.3303 Design-Build Procurement

- (a) For purposes of this Division only, prior to procuring a *design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the 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 prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build* contract from being awarded without competition pursuant to Section 22.3108 or precludes an *energy savings performance contract* from being awarded without competition as authorized in California Government Code sections 4217.10 through 4217.18 and Section 22.3308.
- (b) [No change in text.]

§22.3304 Competitive Prequalification and Selection Process

The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which *design-build entities* are the most qualified and eligible for *energy savings performance contracts* or to respond to a request for *design-build* proposals or invitations to bid.

§22.3308 Selection Method

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

(a) through (b) [No change in text.]

(c) *An energy savings performance contract* in the best interest of the City awarded in compliance with California Government Code sections 4217.10 through 4217.18.

(d) *An emergency or sole source contract* award of a *design-build* contract without competition pursuant to Section 22.3108.

Section 3. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

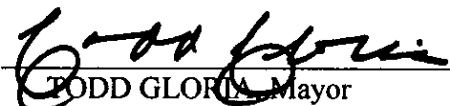
FMO:HMF:soc:sc
02/02/2021
Or.Dept: Sustainability Department
Doc. No.: 2502836_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 03/09/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Connie Patterson
Deputy City Clerk

Approved: 3/11/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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§22.3003 Definitions

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Agency through Cooperative procurement contract [No change in text.]

Design-build means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

Design-build entity means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a public works project.

Design-build entity member includes any person who provides licensed contracting, architectural, or engineering services.

Energy conservation contract means a design-build public works contract, a contract for goods, or a contract for services procured in compliance with California Government Code sections 4217.10 through 4217.18, as may be

amended, for alternate energy equipment, cogeneration equipment, conservation measures, or conservation services. *Energy saving performance contracts* may also mean a facility ground lease or facility financing contract, as those terms are defined in California Government Code section 4217.11.

Job order contract through *Valued at* [No change in text.]

§22.3301 Purpose and Intent

The purpose of this Division is to provide ~~definitions and~~ guidelines for the award, use, and evaluation of ~~design-build~~ *design-build* contracts.

~~§22.3302~~ Definitions

~~All defined terms in this Division appear in italics. For the purposes of this Division, the following definitions apply:~~

~~*Design-build* means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.~~

~~*Design-build entity* means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a *public works* project.~~

~~*Design-build entity member* includes any person who provides licensed contracting, architectural, or engineering services.~~

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

(a) through (g) [No change in text.]

- (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.

§22.3303 Design-Build Procurement

- (a) For purposes of this Division only, prior to procuring a *design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the 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 prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build contract* from being awarded without competition pursuant to Section 22.3108 or precludes an energy conservation contract from being awarded without competition as authorized in California Government Code sections 4217.10 through 4217.18 and Section 22.3308.
- (b) [No change in text.]

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The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which *design-build entities* are the most qualified and eligible for energy conservation contracts or to respond to a request for *design-build* proposals or invitations to bid.

§22.3308 Selection Method

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

(a) through (b) [No change in text.]

(c) ~~An emergency or sole source award of a design-build contract without competition pursuant to Section 22.3108.~~ An energy conservation contract in the best interest of the City awarded in compliance with California Government Code sections 4217.10 through 4217.18.

(d) An emergency or *sole source contract* award of a *design-build* contract without competition pursuant to Section 22.3108.

FMO:HMF:soc:sc

02/02/2021

Or.Dept: Sustainability Department

Doc. No.: 2502839_2

Passed by the Council of The City of San Diego on MAR 09 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage MAR 11 2021.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 23 2021

, and on MAR 11 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21298