

1 **Ordinance #09-04**

2 **AN ORDINANCE OF THE ALBANY CITY COUNCIL ADOPTING CHAPTER 13**
3 **PUBLIC WORKS PROJECTS, CONTRACTS AND PROCEDURES.**

4
5 **WHEREAS**, Section 4.03 of the Albany City Charter authorizes the adoption of
6 ordinances to establish administration of public works contracts;

7 **WHEREAS**, City staff recommends that a comprehensive ordinance be adopted by the
8 City Council to establish procedures and regulations for the implementation of public works
9 projects.
10

11 **NOW, THEREFORE, THE ALBANY CITY COUNCIL HEREBY ORDAINS AS**
12 **FOLLOWS:**

13 **Section 1: Chapter 13, entitled Public Works Projects, Contracts, and Procedures is**
14 **hereby enacted and shall read as follows:**

15 **Sections:**

- 16 **13-1 Findings and purpose.**
- 17 **13-2 Need for Budgetary Flexibility**
- 18 **13-3 Relationship to State Law**
- 19 **13-4 Definitions**
- 20 **13-5 Thresholds for Contract Procurement**
- 21 **13-6 Bid Initiation; When Advertised in Official Newspaper**
Required for Public Works Contract
- 22 **13-7 Insurance and Bonds May be Required**
- 23 **13-8 Issuance of Specifications for Contracts Requiring Bidding**
- 24 **13-9 Invitations to Bid**
- 25 **13-10 Addenda to Specifications**
- 26 **13-11 Request for Proposals**
- 27 **13-12 Timely and Responsive Submission of Bids and Proposals**
- 28 **13-13 Bid Opening**
- 13-14 Bid Opening Exceptions**
- 13-15 Withdrawal or Modification of Bid After Bid Opening**
- 13-16 Award of Contracts and Public Works Contracts**
- 13-17 Waiver of Defects and Technicalities**
- 13-18 Protests of Contract Award**
- 13-19 Alterations in Contracts and Public Works Contracts**
- 13-20 City Administrator's Certification of Sole Source Contract**

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3 **13-1 Findings and purpose.**

4 The City Council finds and declares that it is the intent of the City Council in enacting
5 Chapter 13 to achieve the following objectives when awarding contracts for which competitive
6 bidding is required by this Chapter:

7 A. To guard against actual (rather than the appearance of) favoritism, improvidence,
8 extravagance, fraud, and corruption.

9 B. To prevent the waste of public funds.

10 C. To obtain the best economic result for the public, securing the best public work of
11 improvement, equipment, materials and supplies at the lowest price practicable.

12 D. To stimulate advantageous market place competition.

13 E. To administer competitive bidding so as to accomplish these objectives fairly and
14 reasonably with sole reference to the public interest, because competitive bidding is for the
15 benefit of property holders and taxpayers of the city, and not for the benefit or enrichment of the
16 bidders.

17 F. To administer competitive bidding so the process does not impede the usual and
18 regular progress of the public business, or deprive the public, even temporarily, of those things
19 necessary and indispensable to protect the public interest.

20 **13-2 Need for Budgetary Flexibility**

21 The Council finds and declares that because of the dollar amount of the lowest bids are
22 not known until the bids are received and opened on the bid opening day, and because the
23 amount of money available is limited, the City needs the budgetary flexibility afforded by:

24 A. Allowing it to list items on which bidders must provide bid prices, but which may
25 or may not be added to or deleted from the contract, depending upon the availability of funds;
26 and

27 B. Allowing it to utilize alternative bid forms in the same bid specifications on which
28 bidders provide bid prices, but any such form may or may not be selected upon which to award
the contract, depending upon the availability of funds.

 C. Providing a comprehensive, clear procedure for formal and informal bidding or
fulfillment of public works contracts; and to provide clarity and consistency in the City's
alteration of contracts.

13-3 Relationship to State Law

1 The provisions of California Public Contract Code shall not be applicable to the City, in
2 whole or in part, except as expressly provided by ordinance or incorporated in City's bid
3 specifications and contract documents. The City, in its discretion, may follow portions of the
4 California Contract Code, but absent a judicial finding that a particular aspect of local public
5 contracting is a matter of statewide concern, the City is not required to do so.

6 **13-4 Definitions**

7 As used in this Chapter the following terms are defined as follows:

8 *Agency* includes the State of California, counties, districts, public authorities, joint power
9 agencies, public non-profit corporations, and any other public or quasi-public entity that the City
10 Council may designate by resolution.

11 *Announcement* means the declaration of the intent to award a contract or a public works
12 contract, by any means of transmission; including U.S. mailing, automated phone message or
13 Internet posting. The effective date of an announcement by mail is the date that the
14 announcement is deposited in the U.S. mail.

15 *Award* means the acceptance of a bid or proposal by the City's authorized representative.

16 *Award date* or *date of award* means the date that the City Administrator or his designee
17 signs the documents constituting a public works contract, contract, or consultant agreement, and
18 all conditions precedent to award have been satisfied.

19 *Bidder* means a person who submitted a bid, proposal or other document seeking award
20 of a contract, public works contract or consultant agreement.

21 *Brand Name* refers to a specific product in specifications for goods, services, or public
22 works.

23 *City's Public Contracts Code* includes the City's Charter, Municipal Code, Council
24 policies, administrative regulations, past practices, current practices, or any portion of those
25 laws, policies, regulations, or practices, pertaining to contracts or agreements between the City
26 and other party.

27 *Consultant* includes providers of expert or professional services and excludes providers
28 of services.

Contract includes a contract for goods, a contract for services, or a cooperative
procurement contract unless otherwise stated.

Contract for Goods means an agreement between the City and another party in which the
City is the purchaser of articles, commodities, materials, supplies, equipment, or insurance.

Contract for Inmate Services means an agreement between the City and an Agency for
the use of inmates confined in state prisons, or probationers, or parolees to perform services.

1 *Contract for Services* means an agreement between the City and another party in which
2 the City is the purchaser of services, excluding consultant services. It includes maintenance
3 contracts.

4 *Cooperative Procurement Contract* means a contract entered into by the Purchasing
5 Agent and another agency to obtain goods or services or an agency contract utilizing a bidding
6 process that complies with City requirements.

7 *Emergency* means an event of great public calamity, such as extraordinary fire, flood,
8 storm, epidemic or other disaster.

9 *Evaluation Team* means the City team (consisting of one or more members) assembled to
10 review and evaluate bids and proposals.

11 *General Requirements Contract* means a public works contract which contains a unit
12 price book of detailed specifications and unit prices for typical tasks. Specific construction
13 projects are not contemplated or authorized at the time of award. Work is authorized as required
14 by a separate task order.

15 *Goods* means any articles, commodities, materials, supplies, equipment, or insurance.

16 *Lowest Responsible and Reliable Bidder* is any bidder who is a qualified bidder that is
17 both responsible and reliable, as determined in the sole discretion of the City.

18 *Maintenance Contracts* means an agreement between the City or a non-profit corporation
19 and another party for maintenance of a district.

20 *Major public works contract* means a public works contract valued at more than
21 \$100,000.

22 *Minor public works contract* means a public works contract valued at \$100,000 or less.

23 *Person* means any natural person, firm, joint venture, joint stock company, partnership,
24 association, club, company, corporation, business trust, organization, or the manager, lessee,
25 agent, servant, officer or employee of any of them or any other entity which is recognized by law
26 as the subject of rights or duties.

27 *Protest Body* means a panel appointed by the City Administrator as needed to review
28 evidence presented by all interested parties to determine whether the evaluation team's contract
29 selection is in accordance with all applicable laws and guidelines.

30 *Public Meeting* means an assemblage of interested persons gathered in response to a
31 notice specifying the time and place where bids will be opened.

32 *Public Works* means the construction, reconstruction, or repair of public buildings,
33 streets, utilities and other public works.

1 *Public Works Contract* means a contract for the construction, reconstruction or repair of
2 public buildings, streets, utilities and other public works.

3 *Responsible* means a bidder's quality, fitness, and capacity to perform the particular
4 requirements of the proposed work.

5 *Responsiveness* means a bidder's compliance with the bidding instructions.

6 *Services* means all work provided by persons other than consultants. It includes
7 maintenance contracts. It excludes public works and goods.

8 *Sole Source* means the recipient of the award of a public works contract, consultant
9 agreement, or contract without competitive selection or bidding.

10 *Sole Source Contract* means a public works contract, consultant agreement, or contract
11 awarded without competitive selection or bidding.

12 *Task Order* means an authorization for construction, reconstruction, repair and
13 maintenance work under a general requirements contract.

14 *Valued at* means the amount authorized to be expended for performance of a public
15 works contract at the same time of bid opening.

16 **13.5 Thresholds for Contract Procurement**

17 A. When a contract provides for an expenditure of less than \$30,000.00, the
18 Community Development Director, or designee, with the approval of the Finance Director, may
19 award the contract, but shall seek competitive prices either orally or in writing.

20 B. When a contract provides for an expenditure greater than \$30,000.00, but equal to
21 or less than \$100,000.00, the Community Development Director, or designee, with the approval
22 of the Finance Director, may award the contract, but shall solicit written price quotations from at
23 least three potential sources.

24 C. When a contract provides for an expenditure greater than \$100,000.00, the
25 Purchasing Agent may award the contract only after a formal bid process as set forth in this
26 Chapter.

27 **13-6 Bid Initiation; When Advertising in Official Newspaper**
28 **Required for Public Works Contract.**

29 A. Major public works contracts that provide for an expenditure of more than
30 \$100,000 shall be advertised a minimum of two times, in accordance with the City Charter;
31 provided, however, that no advertising shall be required for a sole source contract certified by the
32 City Administrator in accordance with section 13-20.

1 B. The City Administrator, or designee, may award minor public works contracts
2 without advertising, in accordance with regulations adopted by the City Administrator consistent
3 with this Chapter. The Administrator’s regulations shall ensure that the City seeks competitive
4 prices either orally or in writing and shall ensure that the City Administrator has taken those
5 prices under consideration before a minor public works contract is awarded.

6 **13-7 Insurance and Bonds May Be Required**

7 The City is authorized to require vendors and contractors to provide insurance and surety
8 bonds for contracts and public works contracts. Where required, the bidder shall submit
9 insurance or surety bonds, or both, acceptable to the City prior to award.

10 **13-8 Issuance of Specifications for Contracts Requiring Bidding**

11 For contracts requiring bidding under Chapter 13 of this Municipal Code:

12 A. When making a procurement, the City will issue a description (“specifications”) for the Goods, Services, Public Works, or Cooperative Procurement Contract to be procured.

13 B. Bidders are responsible for carefully examining the specifications and all
14 provisions relating to the items to be furnished or the work to be done. Failure to respond as
15 requested may result in rejection of a bid.

16 C. The Community Development Director, or designee, shall issue invitations to bid
17 or requests for proposals for materials, supplies, equipment, services, insurance and other public
18 contracts required for the City.

19 **13-9 Invitations to Bid**

20 For contracts required to be bid under Chapter 13 of this Municipal Code, an invitation to
21 bid shall be issued. The invitation to bid shall include specifications that describe the material,
22 supplies, equipment, services or insurance with sufficient particularity to allow for competitive
23 bidding and evaluation. The specifications shall also describe the functions and performance that
24 are required and any applicable operational limitations or parameters.

25 **13-10 Addenda to Specifications**

26 A. The City may issue addenda to the specifications where necessary. All addenda
27 shall be considered to be incorporated into the specifications.

28 B. Prior to bid submission, each bidder is responsible for determining whether
29 addenda were issued prior to bid submission. Failure to respond to addenda may result in
30 rejection of a bid.

31 **13-11 Request for Proposals**

32 When a requesting department seeks a systems acquisition comprising the design and
33 installation of state of the art technological components, the Purchasing Agent may issue a

1 request for proposals which shall sufficiently detail the requested procurement by function,
2 together with any applicable description, operational requirements and all structural and
3 operating environment considerations. The Purchasing Agent may additionally reserve the right
4 to thereafter issue an invitation to bid based on a refinement of concept from any proposal
5 submitted.

6 **13-12 Timely and Responsive Submission of Bids and Proposals**

7 To be eligible for consideration, bidders are required to submit responsive bids and
8 proposals to the City on or before the bid closing date set by the City. The City may consider a
9 bid or proposal that was submitted before the bid closing date via a delivery medium such as the
10 U.S. mail, even though the bid or proposal arrives after the bid closing date, provided the City
11 finds that acceptance of the bid or proposal is in the best interests of the City and there is no
12 possibility of collusion or fraud in the procurement process.

13 **13-13 Bid Opening**

14 A. If advertising for submission of bids is required, the bid opening will occur at a
15 time and place as noticed by the City Clerk, or designee. The City Clerk, or designee, shall open
16 the bids.

17 B. Substantial compliance with all of the following provisions renders the bid
18 opening valid for all purposes:

19 1. All bids will be opened at, or immediately after, the time noticed for the
20 bid opening, to which the public is invited.

21 2. Bidders or interested persons will be permitted to attend the bid opening.

22 3. Where no member of the public is in attendance, at least one City officer
23 or employee, in addition to the City employee opening the bids, will be present.

24 4. Bids will be sealed and thereafter opened in the presence of those
25 attending.

26 5. The name of the Public Works, Goods, Services, or Cooperative
27 Procurement will be audibly announced to those present followed by the name of the bidder, the
28 name of the surety, the amount of the bond, and the total amounts or unit amounts bid.

C. Any person present shall have the right to ask the announcements be repeated or
to ask that omitted data be supplied. Such requests will be honored to the extent they do not
unreasonably delay or interfere with the bid opening procedure, as determined in the sole
discretion of the City employee opening bids.

13-14 Bid Opening Exceptions

1 A. Where a Public Meeting is held but no members of the public attend, the bid
2 opening may proceed in accordance with Section 3-13(B)(b)(3).

3 B. In the event of public calamity or some unforeseen event (including an unusually
4 large number of people in attendance) that renders it impossible or highly impracticable to open
5 the bids at the time and place specified, the special procedures in this Section shall govern. Use
6 of the special procedures shall not invalidate the bid opening:

7 1. A sign will be continuously posted at the door of the originally specified
8 room, giving notice of an alternate location of the bid opening, from the time of the public
9 calamity or unforeseen event until completion of the alternate bid opening. An officer or
10 employee of the City will remain by the sign to answer inquiries. Not less than one-quarter hour
11 nor more than one hour after the originally specified time for the opening of bids, the bids may
12 be opened in the alternate room.

13 2. If it is impossible or impracticable to use the procedure under this Section,
14 the bids will either be returned to the bidders or be held unopened for a period of forty eight
15 hours. After forty-eight but not later than seventy-two hours after the originally specified time
16 and place of the bid opening, bids may be opened at any hour, provided that every reasonable
17 means has been taken to notify the respective bidders of the alternate time and place of the reset
18 Public Meeting.

19 **13-15 Withdrawal or Modification of Bid After Bid Opening**

20 Any bidder who seeks or withdraw to modify a bid because of the bidder's inadvertent
21 computational error shall notify the City Department where bids were submitted no later than
22 three working days following the bid closing. The bidder shall provide worksheets and such
23 other information as may be required by the City to substantiate the claim of inadvertent error.
24 Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is
25 upon the bidder to prove the inadvertent error.

26 **13-16 Award of Contracts and Public Works Contracts**

27 A. Except as provided in this section, for contracts and public works contracts that
28 are required to be advertised, the City may make the award not less than ten calendar days after
advertising in accordance with the following:

1. Except for Sole Source Contracts authorized under Section 13-20, public
works contracts for greater than \$100,000.00 shall be awarded to the lowest qualified bidder who
is both responsible and reliable, as defined in this Chapter, that meets the specifications. In the
event that the lowest bidder number 2 or more, the award by the City Council or City official
shall be within its sole discretion so long as consistent with the purposes of this Chapter.

2. Contracts, excluding major public works contracts and consultant
agreements, shall be awarded on the basis of an acceptable bid that best meets City requirements
after soliciting competitive prices or written price quotations.

1 3. Cooperative procurement contracts under a request for proposal or bid will
2 be awarded on the basis of the proposal best meeting City requirements.

3 B. The City is authorized to award contracts and public works contracts to the next
4 bidder that meets all requirements when the apparent successful bidder under this section does
5 not meet deadlines for submitting the required bond and insurance documents.

6 **13-17 Waiver of Defects and Technicalities**

7 The City may waive defects and technicalities when to do so is in the best interests of the
8 City.

9 **13-18 Protests of Contract Award**

10 A. A non-selected bidder may protest award of a contract, public works contract, or
11 consultant agreement to the selected bidder by submitting a written "Notice of Intent to Protest,"
12 which shall be received by the City Department administering the contract award, no later than
13 ten calendar days after the City's announcement of the selected bidder or no later than ten
14 calendar days from the date that the City issues notice of designation of a bidder as non-
15 responsible. If the tenth calendar day falls on a weekend or City holiday, the protesting bidder
16 may submit the Notice of Intent to Protest on the first work day following such weekend or
17 holiday. The City shall disclose the method of announcement to all bidders in the bid documents.
18 Failure to submit a timely Notice of Intent to Protest shall bar consideration of a protest.

19 B. The Notice of Intent to Protest shall state all grounds claimed for the protest and
20 include supporting documentation. Failure to clearly state the grounds for the protest and provide
21 supporting documentation shall be deemed a waiver of all protest rights.

22 C. The City Department administering the contract award shall review the Notice of
23 Intent to Protest to determine whether it complies with section 13-18(B) and whether a Protest
24 Hearing is required under section 13-18(D).

25 D. A protesting bidder may present evidence at a Protest Hearing only when the
26 alleged grounds for the protest are as follows: (1) The City failed to follow procedures or
27 requirements specified in the Request for Bids or Request for Proposals or equivalent, including
28 any amendments; (2) City employees or evaluation team members engaged in misconduct or
29 impropriety; (3) the City's designation of the protesting bidder as non-responsible was incorrect.
30 A protesting bidder shall not be entitled to a hearing to protest its own or another bidder's
31 responsiveness; however, the City Administrator may exercise discretion and allow a bidder
32 designated as non-responsive by the City Department to file a Formal Protest, pursuant to the
33 Formal Procedures set forth under this section, if the City Administrator determines that a
34 hearing is necessary to resolve a relevant factual issue that cannot be determined from the face of
35 a bid document or proposal.

36 E. After review of a bidder's Notice of Intent to File a Protest, the City Department
37 will provide written notice to the bidder of its determination, detailing the factual basis for the
38

1 City's determination. Service of the City Department's determination shall be made in
2 accordance with one of the methods listed in Municipal Code section 2-35.

3 F. If the bidder desires to continue its protest notwithstanding the City Department's
4 determination, the bidder must submit a written Formal Protest, which shall be received by the
5 City Department administering the contract award within ten calendar days of service of the City
6 Department's determination. If the tenth calendar day falls on a weekend or City holiday, the
7 protesting bidder may submit the Formal Protest on the first work day following such weekend
8 or holiday. Failure to file a timely written Formal Protest shall bar consideration of the Formal
9 Protest.

10 G. The written Formal Protest shall include a detailed factual response to the City
11 Department's determination, including all supporting documentation. The bidder shall also
12 include a bid protest bond in any of the following forms: a surety bond from a California
13 licensed surety, an irrevocable standby letter of credit, certified check, cashier's check or money
14 order, made payable to the City of Albany. The bid protest bond shall be in the following
15 amounts:

Contract Value (\$)	Bond Amount
Less than 250,000	\$5,000
250,000 – 1,000,000	\$10,000
Greater than 1,000,000	\$25,000

16 H. The City Administrator shall appoint a Protest Body and determine whether the
17 grounds stated in the written Formal Protest meet the requirements for a Protest Hearing, as set
18 forth in this section 13-18. The Protest Body shall conduct the Protest Hearing in accordance
19 with the Policy approved by City Council. The bidder's failure to comply with Formal Protest
20 procedures set forth in the Policy approved by City Council shall bar further consideration of the
21 bidder's Formal Protest.

22 I. If the Protest Body's decision upholds the determination of the City Department
23 regarding the award, the Protest Body, at its discretion, may assess the City's costs of the Protest
24 Hearing. The bidder shall then pay the assessed costs within thirty calendar days of service of the
25 decision; otherwise the City may deduct the assessed costs from the bid protest bond provided by
26 the bidder.

27 J. The decision of the Protest Body shall be issued in accordance with the Policy
28 approved by City Council and shall become final on the date of service of the decision, in
29 accordance with one of the methods listed in Municipal Code section 2-35.

30 K. The bidder's filing of a Notice of Intent to File a Protest or written Formal Protest
31 shall not preclude the City Administrator from rejecting all bids and rebidding a contract.

32 **13-19 Alterations in Contracts, and Public Works Contracts**

1 A. Whenever it becomes necessary to make alterations in contracts, and public works
2 contracts, the City Administrator shall make alterations only when authorized by the Council,
3 unless such alterations meet all of the following criteria:

4 1. The cost of each alteration does not increase the contract or public works
5 contract amount by more than \$50,000; and

6 2. The cost of alteration does not exceed the total amount authorized for the
7 project by ordinance or resolution; and

8 3. The City Administrator, or designee, certifies that the alterations are
9 necessary to fulfill the purpose of the contract; and

10 4. The alterations are made by agreement in writing between the contractor
11 and the City Administrator, or designee.

12 **13-20 City Administrator's Certification of Sole Source Contract**

13 A. The City Administrator may certify that a sole source contract is justified because
14 strict compliance with competitive selection or bidding requirements would be unavailing, or
15 would not produce an advantage, or would be undesirable, impractical, or impossible.

16 B. The City Administrator may delegate the sole source certification authority
17 provided by section 13-18(A) to the Assistant City Administrator or any Department Head.

18 **Section 2: Publication**

19 This ordinance shall be published in a newspaper of general circulation in the City of
20 Albany, which said newspaper is designated for that purpose, or it shall be posted in three
21 locations.

22 **Section 3: Severability**

23 If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason
24 held to be invalid, such decision shall not affect the validity of the remaining portions of the
25 ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the
26 fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.
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Section 4: Effective Date

This ordinance shall become effective 30 days on or after its final passage and adoption.

Date:

Mayor Marge Atkinson