

ORDINANCE 1318

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES AMENDING CHAPTER 3.30 TITLE 3 (REVENUE AND FINANCE) OF THE SAN DIMAS MUNICIPAL CODE REGARDING BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (SECTION 22000, ET SEQ. OF THE PUBLIC CONTRACT CODE)

WHEREAS, local agencies must competitively bid all public projects (as defined by Section 20161 of the California Public Contract Code) in excess of \$5,000 in accordance with the requirements applicable to cities set forth in the Public Contract Code, commencing with Section 20160; and

WHEREAS, in 1983, the California Legislature adopted Assembly Bill 1666, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the California Public Contract Code, known as the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) (the "Act"); and

WHEREAS, the Act provides for a uniform cost accounting standard for construction work performed or contracted by local agencies and establishes alternative procedures for bidding public projects; and

WHEREAS, the California Legislature recently amended the Act to increase the bidding thresholds for public projects, with the changes becoming effective on January 1, 2025, as outlined in Assembly Bill 2192; and

WHEREAS, the updated bidding thresholds will allow public projects costing up to \$75,000 to be completed by City employees, force account, negotiated contract, or purchase order, projects between \$75,001 and \$220,000 to be let to contract through informal bidding, and projects exceeding \$220,001 to require formal bidding procedures; and

WHEREAS, any city that wishes to avail itself of the alternative procedures for bidding and contracting for public projects must elect, by resolution, to become subject to the uniform construction cost accounting procedures set forth in the Act and must notify the State Controller of its election; and

WHEREAS, on September 10, 2019, the City of San Dimas adopted Resolution 2019-43, electing to become subject to the Act and notifying the State Controller of its election; and

WHEREAS, California Public Contract Code Section 22034 of the Act requires each public agency that elects to become subject to the uniform construction cost accounting procedures to enact an informal bidding ordinance that complies with the requirements set forth in said Section 22034; and

WHEREAS, the City Council of the City of San Dimas has determined that adopting these updated thresholds and procedures will enhance efficiencies in the City's procurement processes and align with state law effective January 1, 2025, to benefit the taxpayers, residents, and businesses of the City; and

WHEREAS, all other prerequisites to the adoption of this Ordinance have occurred and
NOW, THEREFORE, the CITY COUNCIL of the CITY OF SAN DIMAS, California, does ordain as follows:

SECTION 1. FINDINGS. The City Council finds that the above Recitals are true and correct, and are incorporated herein by reference.

SECTION 2. SAN DIMAS MUNICIPAL CODE AMENDMENT. Chapter 3.30, entitled "Bid Procedures for Public Projects", is hereby amended to read in its entirety as follows:

<u>3.30.010</u>	<u>Purpose</u>
<u>3.30.020</u>	<u>Definitions</u>
<u>3.30.030</u>	<u>Bidding Procedures for Defined Public Projects</u>
<u>3.30.040</u>	<u>Notice to contractors for informal bids</u>
<u>3.30.050</u>	<u>Informal bidding procedure</u>
<u>3.30.060</u>	<u>Formal Bidding Procedures</u>
<u>3.30.070</u>	<u>Awarding Rejecting formal bids</u>
<u>3.30.080</u>	<u>Exceptions to Competitive Bidding Requirements</u>
<u>3.30.900</u>	<u>Bid Protests</u>
<u>3.30.100</u>	<u>Plans and Specifications</u>
<u>3.30.110</u>	<u>Emergencies</u>
<u>3.30.120</u>	<u>Compliance with Federal Requirements</u>

Sections	Purpose
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3.30.020	Bidding Procedures for Defined Public Projects
3.30.030	List of contractors
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3.30.060	Awarding Rejecting formal bids
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3.30.010 - Purpose.

A. This Chapter is intended to provide for the City's purchasing procedures for public projects in a manner consistent with State law.

B. The City has elected to become subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) and the contracting procedures set forth therein. Accordingly, the City may procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding in accordance with the alternative procedures authorized by the Act and the applicable dollar amount limitations set forth in Section 22032 of the Act, as it may be amended from time to time.

C. Specifically, this Chapter is intended to comply with Public Contract Code section 22034, which requires that a public agency that has elected to become subject to the uniform construction accounting procedures enact an informal bidding ordinance to govern the selection of contractors.

D. This Chapter is also intended to ensure that contracts for public projects in the City meet the requirements of applicable state laws, including California Public Contract Code, Division 2, Part I, and Division 2, Part 3, Local Agency Public Construction Act. All procedures set forth in this Chapter shall be interpreted in a manner consistent with state law.

3.30.020 - Definitions

As used in this Chapter, the following words and terms shall be defined as follows unless the context indicates that a different meaning is intended:

Act means the Uniform Public Construction Cost Accounting Act (California Public Contract Code Section 22000 et seq.).

Bid means the response submitted by a bidder to an invitation for bids issued by the City for goods, services or public projects.

Commission means the California Uniform Public Construction Cost Accounting Commission established pursuant to Public Contract Code Section 22010.

Facility shall have the same meaning as set forth in Section 22002 of the Act and includes any plant, building, structure, ground facility, utility system (subject to the limitation found in Public Contract Code Section 22002), real property, streets and highways, or other public work improvement.

Informal Bid or Quotation means a competitive bid that is submitted by a bidder for procurement of goods or services for which formal bidding is not required.

Force Account means work performed on public projects using internal resources, including but not limited to labor, equipment, materials, supplies, and subcontracts of the

public agency.

Maintenance Work shall have the same meaning as set forth in Public Contract Code Section 22002. For the purpose of this Chapter, maintenance work is not considered a public project. Maintenance work includes:

(a) The routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purposes.

(b) Minor repainting.

(c) Resurfacing of streets and highways at less than one inch.

(d) Landscape maintenance including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

~~(d) —~~

Piggyback means use of another public agency's existing contracting and /or bidding procedures to procure the public project as outlined in the awarding bid document.

Public Project shall have the same meaning as set forth in Public Contract Code Section 22002 and includes the following:

(a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

(b) Painting or repainting of any publicly owned, leased, or operated facility.

"Public project" does not include maintenance work as defined above.

3.30.030 - Bidding Procedures for Defined Public Projects.

A. The City Manager may cause public projects of \$~~2200~~,000.00 or less to be performed or let to contract by informal procedures as set forth in this Chapter and the Act.

B. The following limits and procedures apply to contracting for public projects in the City:

- 1) Public projects of \$~~7560~~,000 or less (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section ~~22032(a)~~ of the Public Contract Code) may be performed by the employees of the City, by force account, by negotiated contract, or by purchase order;
- 2) public projects of greater than \$~~7560,0010~~ and up to but less than \$22000,000 (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22032(b) of the Public Contract Code) may be let to contract through informal procedures as set forth in this Chapter and the Act, and

- 3) public projects of more than \$2~~2000~~,001~~9~~ (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22032(c) of the Public Contract Code) shall, except as otherwise provided in this Chapter or in the Public Contract Code, be let to contract by the formal bidding procedure set forth in this Chapter and the Public Contract Code.

3.30.040 - Notice to contractors for informal bids.

Notice to contractors for informal bids will be in accordance with Public Contract Code Section 22034 and Article 2 (commencing with Section 22010) of the uniform construction accounting procedures.

3.30.050 - Informal bidding procedure.

The following procedures shall apply to informal bids for public projects:

- A. Notice inviting informal bids.
 - 1) In accordance with Public Contract Code § 22034, when a public project is permitted to be let to contract by informal bidding pursuant to this Chapter, a notice inviting informal bids shall be mailed and/or emailed to all contractors on the list created pursuant to Section 3.30.040 for the category of work being bid.
 - 2) Optional noticing. Notice may be also provided to any additional contractors, publications and/or construction trade journals identified by the City Manager or the City Manager's designee.
- B. Exception. If the product or service to be procured for a public project is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.
- C. Time of giving notice. All mailing of notices to contractors and construction trade journals pursuant to this Section shall be completed not less than ten calendar days before bids are due.
- D. Description of project. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
- E. Authority to award contracts. The City Manager is authorized to award a contract for a public project pursuant to the process set forth in this Section if the lowest bid received is fifty thousand dollars (\$50,000) or less. Contracts valued at more than fifty thousand dollars (\$50,000) shall require City Council approval.
- F. Bids exceeding \$2~~2000~~,000.00. If all bids received pursuant to the informal process are

in excess of Two Hundred ~~and Twenty~~ Thousand Dollars (\$~~2000~~,000) (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22034(d) of the Public Contract Code), the City Council may adopt a resolution by a four-fifths vote to award the contract to the lowest responsible bidder at Two Hundred and ~~Twelve~~ Thirty Five Thousand Dollars (\$~~23512,0500~~) (or the current amount as specified in Section 22034(d) of the Public Contract Code) or less, if it determines the City's cost estimate was reasonable.

Award of contract. Any contract awarded pursuant to this Chapter section shall be awarded to the lowest responsible bidder. If two or more bids received are for the same total amount or unit price, quality and service being equal, the approving entity may accept either bid.

- G. No Bids. If no bids are received, the project may be performed by City employees by force account, or negotiated contract without further complying with this Chapter.

3.30.060 - Formal Bidding Procedures.

For those projects requiring formal bidding under Section 3.30.030, the following procedures shall be used:

- A. Publication of Notice. In accordance with Public Contract Code Section § 22037, a notice shall be published, at least once, fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation printed and published in the jurisdiction of the City. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or email, and mailed to all construction trade journals specified by the Commission in accordance with Public Contract Code § 22036 specified as appropriate for the area. The notice shall be mailed at least fifteen (15) calendar days before the date of opening the bids. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. In addition to notice required by this section, the City may give such other notice as it deems proper.
- B. Bidder's Security/Failure to Sign Contract. When deemed necessary bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten (10%) percent of the amount bid. Bidder's security shall be either a cash deposit with the City, a cashier's or certified check payable to the City, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the City Council may award the contract to the next lowest responsive and responsible bidder. Should the lowest responsive and responsible bidder refuse or fail to execute the contract within ten (10) days after the date of the award of the contract, then the bidder shall be deemed to have forfeited the bid security amount to the City. The City may retain as damages an amount out of the bid security equal to the difference between the lowest bid and the second lowest bid and return the excess bid security amount, if any, to the lowest bidder. All bids must be signed by

an individual or individuals authorized to bind the bidder to bid terms.

Bid opening Procedure. Sealed bids shall be submitted to the City Clerk's Office and shall be identified as to bidder, project, and shall state "Bid" on the envelope. Bids shall be opened by the City Clerk's staff in public at the time and place stated in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received by the deadline. Bids that are received after the submittal deadline shall be marked as "Late" and shall not be opened at the bid opening and shall not be considered for award. Bids shall be open for public inspection in accordance to the California Public Records Act.

- C. Award of Contracts/Minor Irregularities. Contracts shall be awarded by the City Council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation, and provided the award amount is within the unencumbered appropriation for that item. The City Council may waive minor bid irregularities.
- D. Change Orders. A "Change Order" shall be used to modify the contract documents regarding contract price, schedule of payments, completion date, plans and specifications, and for unit price overruns and under runs, as specified in the Contract. Work description and justification must relate to the original project and must be work necessary to achieve original scope of project. After a determination that costs are merited by developments in a specific project, the Purchasing officer, City Manager is authorized to issue Contract Amendments or Change Orders up to the contract contingency approved by the City Council.
- E. Tie Bids. If two or more bids received are for the same total amount or unit price, the City Council may accept either bid.
- F. Performance/Labor/materials Bonds. A labor and materials bond, plus a performance bond shall be required, from an acceptable surety, in such amounts and in such a form as the City finds reasonably necessary to protect the public interest.
- G. No Bids. If no bids are received, the project may be performed by City employees by force account or negotiated contract, without further complying with this Chapter.

3.30.070 - Rejecting formal bids.

The following rules apply to rejecting formal bids for public projects:

- A. In accordance with Public Contract Code Section 22038, the City Council may, in its discretion, reject any bids presented, if the City, prior to rejecting all bids, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the City's intention to reject the bid and shall be mailed at least two business days prior to the City Council meeting at which the City intends to reject the bid. If after the first invitation of bids all bids are rejected and after reevaluating its cost estimates of the project, the City shall have the option of either of the following:

- 1) Abandoning the project or re-advertising for bids in the manner described by this Chapter.
 - 2) Have the public project done by force account without further complying with this Chapter, provided the City Council has passed a resolution by a four fifths vote declaring that the project can be performed more economically by City employees.
- B. Lowest bidder. If a contract is awarded, it shall be awarded to the lowest responsible bidder.
- C. No bids. If no bids are received through the formal or informal procedure, the project may be performed by the employees of the City, by force account, or negotiated contract without further complying with this Chapter.

3.30.080 – Exceptions to Competitive Bidding Requirements.

Notwithstanding any provision of this chapter to the contrary, the competitive bidding procedures and requirements of this chapter may be dispensed within any of the following instances:

- C.**(A) Cooperative or piggyback contracting. When the Purchasing Officer identifies a cooperative bidding procedure or a “piggyback” contract prepared by and processed through another local, state, or federal governmental agency or a cooperative purchasing entity set up by or utilized by such governments or public agencies, and where that other agency or entity has completed a competitive bidding procurement that complies with the Public Contract Code for that contract.**

3.30.0980 - Bid Protests.

Any interested party may file a protest regarding the procurement decisions authorized under this Chapter.

- A. Notice of Decision. After a decision regarding a public project procurement having a value over Sixty Thousand Dollars (\$60,000.00) has been made, the Department Head or designee shall notify all persons who submitted a response to a City solicitation of intended award. If a bidder is rejected because the bid is found non responsive or because the bidder is deemed not-responsible, the City will give written notice to said bidder of evidence reflecting such decision.
- B. Time to File Protest. All protests must be filed in writing and received by the Department Head within five (5) business days following the bid opening.
- C. Form of Protest. All protests shall be in writing, state the grounds for the protest, state

the facts relevant to the protest, and all evidentiary support to rebut adverse evidence that it or another bidder was either non-responsive or not responsible.

- D. City Manager Review. The City Manager or designee shall review the protest and issue a written decision on the protest. The City Manager or designee may base the decision on the written protest alone or may informally gather evidence from the person(s) filing the protest or any other person having relevant information. For procurements having a value of Two Hundred Thousand Dollars (\$200,000.00) or less, the City Manager's or designee's decision shall be final.
- E. Hearing on Protest. If a bid was rejected on the grounds that the bidder was not a responsible bidder, the protesting party must submit materials set forth in subdivision (c) above for consideration. An opportunity to be heard will be set within a reasonable time to provide a decision before final approval of the selected low bid. For procurements having a value of Two Hundred Thousand Dollars (\$200,000.00) or less, the City Manager's or designee's decision shall be final.
- F. Appeal of City Manager's Decision to City Council. For procurements having a value exceeding Two Hundred Thousand Dollars (\$200,000.00), an appeal of the City Manager's decision may be filed with the City Council. All such appeals must be in writing, and shall be filed with the City Clerk within five (5) business days from the date of the City Manager's decision.
- G. Failure to Timely Appeal. An interested party who fails to file a protest within the times set forth in this section waives any right to protest the issue further. No appeal to either the City Manager or City Council of any decision to award a bid under may occur once the contract has been awarded.

3.30.100090 - Plans and Specifications.

In accordance with Public Contract Code Section § 22039, the City Council or its designated representative shall adopt plans, specifications, and working details for all public projects exceeding the amount specified in subdivision (B)(3) of Section 3.30.030. In accordance with Public Contract Code Section § 22040, any person may examine the plans, specifications, or working details, or all of these, adopted by the city for any public project.

3.30.1000 - Emergencies.

- A. In accordance with Public Contract Code Section § 22035, in cases of emergency when repair or replacements are necessary, the City Council may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the City Manager, by contractor, or by a combination of the two.
- B. In case of an emergency, if notice for bids to let contracts will not be given, the City

shall comply with Chapter 2.5 of Part 3 of Division 2 of the Public Contract Code (commencing with Section 22050)."

3.30.1~~2040~~- Compliance with Federal Requirements

- A. In addition to the provisions of this Chapter, the procurement of all contracts for public projects that are funded in whole or in part with federal grant funds shall be subject to applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards promulgated by the United States Office of Management and Budget, 2 U.S. Code of Federal Regulations part 200.
- B. All violations of federal or criminal law involving fraud, bribery or gratuity violations potentially affecting the federal award must be disclosed in writing to the federal or pass-through entity in a timely manner prior to awarding the contract.
- A. The City must take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus firms are used when possible.
 - o Affirmative steps include:
 - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce and;
 - 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.
- B. Conflicts of Interest involving Federal funds. No City employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

SECTION 3. CLERICAL ERRORS. The City Council directs the City Clerk to correct any clerical errors found in this Ordinance including, but not limited to, typographical errors, irregular numbering and incorrect section references.

SECTION 4. SEVERABILITY. Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid, unenforceable, or unconstitutional.

SECTION 5. EFFECTIVE DATE. In accordance with California Government Code section 36937, this Ordinance shall take effect and be in force thirty (30) days from passage and adoption.

SECTION 6. PUBLICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this ordinance to be published and posted as required by law.

SECTION 7. EFFECTIVE DATE AND PUBLICATION. This Ordinance shall take effect 30 days after its final passage. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within 15 days after passage and adoption as may be required by law in a newspaper of general circulation in the City of San Dimas hereby designated for that purpose; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within 15 days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Dimas this 10th day of December, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Emmett G. Badar, Mayor

ATTEST:

APPROVED AS TO FORM:

Debra Black, City Clerk

Jeff Malawy, City Attorney

I, DEBRA BLACK, CITY CLERK of the City of San Dimas, do hereby certify that Ordinance 1318 was introduced at a regular meeting of the City Council of the City of San Dimas on the 26th day of November, 2024, and thereafter passed, approved and adopted at a regular meeting of said City Council held on the 10th day of December, 2024.

Debra Black, City Clerk