

CITY OF SAN DIEGO

(This Measure will appear on the ballot in the following form.)

MEASURE H

CHARTER AMENDMENTS REGARDING PURCHASING AND CONTRACTING PROCESSES FOR THE CITY OF SAN DIEGO. Shall the City Charter be amended to: require contracts for public works, goods, services, and consultants to be awarded through a competitive process in accordance with rules adopted by ordinance, remove the position of Purchasing Agent, eliminate the requirement to publish certain notices in printed newspapers, and update other provisions consistent with state law?

This measure requires approval by a simple majority (over 50%) of the voters voting on the measure.

Full text of this measure follows the argument.

OFFICIAL TITLE AND SUMMARY

BALLOT TITLE

Charter Amendments Regarding Purchasing and Contracting Processes for the City of San Diego

BALLOT SUMMARY

This measure would amend the San Diego Charter by repealing and consolidating into one section several provisions related to purchasing and contracting for the City of San Diego. The amendments would require contracts for public works, goods, services, and consultants to be awarded through a competitive process, in accordance with rules adopted by the City Council by ordinance.

If approved, the amendments also would remove from the Charter the position of Purchasing Agent and the designation of an official City newspaper to be used to meet publishing requirements. The amendments also would adopt and apply California's conflict of interest laws to City contracting.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend sections of the San Diego Charter related to advertising and awarding of contracts, and other requirements for the City of San Diego's contracting of public works, goods, services, and consultants.

City contracting rules are found in the Charter, the San Diego Municipal Code, and Council Policy. Many requirements in those documents are duplicative. If approved by voters, this measure would repeal and consolidate into one section several Charter provisions regarding purchasing and contracting, requiring that contracts for public works, goods, services, and consultants be competitively bid in compliance with rules adopted by the City Council by

CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

ordinance. Charter provisions requiring public works contracts to be awarded to the lowest responsible and reliable bidder would be repealed. Instead, the Municipal Code would be the primary document to provide specific requirements for City contracting.

The measure would continue the exceptions to competitive bidding currently found in the Charter, the Municipal Code, and state law. The Council would be required to adopt an ordinance regarding a competitive process to award consultant contracts, because the existing process is governed by Council Policy that is passed by resolution.

Both the Charter and state law prohibit City officials from having a conflict of interest in City contracting. The wording each law uses is different, however, which could lead to inconsistent results under the Charter and state law. If approved, this measure would amend the Charter to adopt California's conflict of interest laws for City contracting and allow the City to rely on interpretive opinions from state courts and administrative agencies in determining whether a conflict of interest exists.

The Charter defines the "City official newspaper" as a newspaper with daily circulation under contract to publish the City's advertising. The Charter and Municipal Code require certain contracts to be advertised in such a newspaper at least ten days before the deadline to submit bids. The Charter also requires notice to be published ten days before the Council's consideration of contracts over five years in duration. This measure would repeal the Charter requirement to designate and use such a newspaper. Advertising of City contracts would be governed by the Municipal Code, which currently includes the same requirements. California law, the Ralph M. Brown Act, requires the City to provide at least 72 hours' notice of Council consideration of all contracts, including those over five years in duration, but such notice would not have to be published in a newspaper.

If approved, the measure would not immediately have a significant effect on the City's purchasing and contracting processes, but would provide the Council with authority to make changes by ordinance, instead of through a public vote. Ordinances changing the City's contracting processes would be subject to referendum.

This measure was proposed by City staff involved with the procurement and contracting process, approved by the Council's Charter Review Committee, and placed on the ballot by the Council. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

FISCAL IMPACT STATEMENT

This measure would repeal and replace sections of the City Charter related to contracting and procurement. These changes are intended to reflect updated processes and remove duplication between the City Charter, the City's Municipal Code, and the State Government Code.

If this measure is adopted, the City will no longer be required to notice public hearings for contracts exceeding five years in the City's newspaper of record. Instead, the City will be required to notice these public hearings on the online City Bulletin. This change will reduce the noticing fees paid by the City; in fiscal year 2016, affected noticing fees were approximately \$54,000.

Additionally, if this measure is approved, certain contracting and procurement provisions will be removed from the Charter and remain in the City's Municipal Code. Should these Municipal Code provisions subsequently be amended by City Council ordinance and without a public vote, it is possible that future procurement costs could change.

ARGUMENT IN FAVOR OF MEASURE H

YES on Measure H: Improve the City of San Diego's Purchasing and Contracting Processes

Measure H will update the Charter regarding the City of San Diego's purchasing and contracting activities to provide **simple, easy to understand rules**.

This Charter amendment will save the City time and money by:

- Providing clear restrictions for elected officials and city staffers to avoid any conflict of interest in the purchasing and contracting process. This will prevent any city employee who works on or develops a contract from being able to financially benefit from that contract.
- Making the rules governing purchasing and contracting the same as state law in order to avoid confusion.
- Giving city departments greater flexibility in how they procure goods and services to meet the various needs of the city.

By approving these proposed changes to the Charter, city officials will be able to use a **best value approach to purchasing and contracting**.

These changes will allow the City to avoid the problems that have occurred in the past with some major public works projects that were not completed on time or on budget that were awarded to the lowest bidding contractors.

A "Yes" vote on Measure H will benefit taxpayers by allowing for the timely delivery of quality projects, products and services at a reasonable cost.

Measure H is supported by the Mayor, the City Council, the San Diego County Taxpayers Association, the Chamber of Commerce and the League of Women Voters.

KEVIN FAULCONER
Mayor
City of San Diego

SHERRI LIGHTNER
Council President
City of San Diego

JEANNE BROWN
President
League of Women Voters of
San Diego

HANEY HONG
President and CEO
San Diego County Taxpayers
Association

JERRY SANDERS
President and CEO
San Diego Regional Chamber of Commerce

ARGUMENT AGAINST MEASURE H

No argument against Measure H was filed in the office of the City Clerk.

FULL TEXT OF MEASURE H

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 35: PURCHASING AGENT

~~The Purchasing Agent shall make all purchases of supplies, materials, equipment, and insurance required by the various Departments or offices of the City, except as may be otherwise provided by the Council or this Charter. He shall prepare in consultation with the administrative officers of the City standard specifications for all supplies, materials, equipment, and insurance necessary for use by the various Departments or offices of the City.~~

~~In purchasing any supplies, materials, equipment and insurance required by the various Departments or offices of the City, if the cost of said supplies, materials, equipment and insurance exceeds a sum to be established by ordinance of the City Council, no such purchase shall be made without advertising for sealed proposals therefor. Notices calling for such sealed proposals shall be published for one day in the official newspaper of the City, and a contract let for such purpose only after the expiration of ten days following said advertising. If the cost of the said supplies, materials, equipment and insurance required by said City falls within a dollar range also established by ordinance of the City Council, the said purchase may be made by said Purchasing Agent without advertising for sealed proposals, but not until said Purchasing Agent has secured competitive prices from merchants or other persons interested in making the sale to said City and not until the Purchasing Agent has been authorized by the Council to make such purchase. Purchases of supplies, materials, equipment and insurance required by the various Departments or offices of the City which do not exceed in cost a sum established by ordinance of the City Council may be made by the Purchasing Agent directly upon the request of the department interested.~~

~~The Council shall by ordinance provide for the sale, exchange or other disposal by the Purchasing Agent of any surplus, used, obsolete or depreciated personal property belonging to the City.~~

~~The Council by resolution may order the purchase without advertising for bids of surplus commodities from the United States of America, or any agency thereof, or from any other public corporation, state or municipal, or any agency thereof. The Council may authorize the Purchasing Agent to participate in joint and cooperative purchasing with any other public corporation, state or municipal, or agencies thereof. The Council may also authorize said Purchasing Agent to sell to any other public corporation, state or municipal, any supplies, material and equipment which said City may have been able to purchase in quantity at a reduced price.~~

~~Supplies shall be furnished upon requisition either from the stores under the control of the Purchasing Agent or by purchase, and whenever so purchased shall be paid for by the Department or office furnished therewith. It shall be the duty of the Purchasing Agent to inspect or cause to be inspected all purchases, and reject any of those which are not up to the standard specifications provided therefor, and he shall not approve any bid or voucher for articles which are not in conformity with specifications, or which are at variance with any contract. The Purchasing Agent shall not furnish supplies to any Department or office unless there be to the credit thereof an available unencumbered balance sufficient to pay for such supplies.~~

~~Materials, supplies or equipment not needed by a Department or office, but necessary to another Department or office, may be transferred by the Purchasing Agent and a~~

FULL TEXT OF MEASURE H (CONTINUED)

~~proper record made of the transaction. He shall have charge of such storerooms and warehouses of the City as the Manager may provide or the Council by ordinance may authorize. The Council may, upon recommendation of the Manager, authorize the Purchasing Agent to purchase materials, supplies, or equipment in common use by the Departments and offices in large quantities and store the same until requisitioned by the Departments or offices for use. The Council shall provide a sufficient revolving fund in the annual appropriation ordinance of an adequate amount for the purpose of creating a store's account and stock for future supply of the Departments and offices when needed.~~

~~The Purchasing Agent shall keep a record of all sources of supply, of all quotations received, of all awards made, of all inspections, of all requisitions filed, and of all vendors furnishing commodities to the City. He shall perform such other duties as may be prescribed by general law or ordinance or by the Manager.~~

ARTICLE VII

FINANCE

SECTION 94: CONTRACTS

~~Contracts for In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, for the provision of goods or services, and the hiring of architects, engineers, and other consultants, shall be competitively bid pursuant to rules when the expenditure therefor shall exceed the sum established by ordinance of the City Council, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction, shall let the same to the lowest responsible and reliable bidder, not less than ten days after advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. If the cost of said public contract work is of a lesser amount than the figure established by ordinance of the City Council, the Manager may let said contract without advertising for bids, but not until the Purchasing Agent of the City shall have secured competitive prices from contractors interested, which shall be taken under consideration before said contract is let. The Council may, however, establish by ordinance an amount below which the Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without approval by Council. When such Council approval is required, the Manager's recommendation shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract. The City Council may establish by ordinance contract amounts below which competitive bidding is not required. Unless otherwise required by ordinance, competitive bidding is not required for work done by City forces, services provided by non-profit organizations, in an emergency, or where competitive bidding is not required by state law.~~

~~In case of a great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster the Council may, by resolution passed by a vote of two thirds of the members elected to the Council, determine and declare that the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed, without advertising for bids or receiving the same, to expend, or enter into a contract involving the expenditure of any sum required in such emergency, on hand in the City treasury and available for such purpose. All contracts before execution shall be approved as to form and legality by the City Attorney.~~

FULL TEXT OF MEASURE H (CONTINUED)

~~Each bidder shall furnish with his bid such security or deposit insuring the execution of the contract by him as shall be specified by the Council or as provided by general law. For contracts exceeding \$100,000.00, the Council shall require each contractor to insure the faithful performance of his contract by delivering to the City a surety bond in an amount specified by the Council, executed by a surety company authorized to do business in the State of California; provided, however, that in all contracts the Council shall require the retention of sufficient payments, under the contract to insure the protection of the City against labor or material liens.~~

~~The Council, on the recommendation of the Manager, or the Head of the Department not under the jurisdiction of the Manager, may reject any and all bids and readvertise for bids. The Council may provide that no contract shall be awarded to any person, firm or corporation if prison or alien labor is to be employed in performing such contract, or if the wage schedule for employees engaged in performing such contract is based on more than eight hours of labor per day. Any contract may be let for a gross price or on a unit basis and may provide for liquidated damages to the City for every day the contract is uncompleted beyond a specified date. It shall be competent in awarding any contract to compare bids on the basis of time completion, provided that when any award has been made in consideration, in whole or in part, of the relative time estimates of bidders for the completion of the work, the performance in accordance with such time limits shall be secured by a surety bond as hereinabove provided with adequate sureties and penalties, and provided further, that for any contract awarded solely or partially on a specified time for completion the Council shall not extend such time limits unless such extension be recommended by the Manager and the Head of the Department concerned.~~

~~Pursuant to state law, No officers of the City, whether elected or appointed, of The City of San Diego shall be or become directly or indirectly financially interested in, or in the performance of, any contract made by them in their official capacity, with or for The City of San Diego, or in the purchase or lease of any property, real or personal, belonging to or taken by said City or which shall be sold for taxes or assessments or by virtue of legal process or suit of said City. Any officer who person willfully violates violating this paragraph section of the Charter shall be guilty of a misdemeanor and shall immediately forfeit his or her office and be thereafter forever barred and disqualified from holding any elective or appointive office in the service of the City. No officer, whether elected or appointed, shall be construed to have an interest within the meaning of this section unless the contract, purchase, lease, or sale shall be with or for the benefit of the office, board, department, bureau or division with which said officer is directly connected in the performance of his duties and in which he or the office, board, department, bureau or division he represents exercises legislative, administrative or quasi-judicial authority in the letting of or performance under said contract, purchase, lease or sale.~~

All contracts entered into in violation of this Section shall be void and shall not be enforceable against said City; provided, however, that officers of this municipality may own stock in public utility service corporations and the City permitted to contract for public utility service when the rates for such service are fixed by law or by virtue of the Public Utilities Commission of the State of California; and provided further, that no officer shall be prohibited from purchasing the services of any utility whether publicly or privately owned, whether or not the rates are fixed by law or by the Public Utilities Commission of the State of California; and provided further, that in designating any bank as a depository for the funds of said City, any officer interested as a stockholder or otherwise in such bank shall not be deemed to have an interest in such City contract within the meaning of this section, and in each of the cases enumerated herein such contracts shall be valid and enforceable obligations against the municipality.

FULL TEXT OF MEASURE H (CONTINUED)

SECTION 94.1: JOB ORDER CONTRACTS

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding public works contracts on a unit cost basis for all necessary labor, materials, and equipment provided such contracts are secured on a competitive basis as otherwise required by this Charter. The City Council shall establish by ordinance guidelines for the award and use of such unit cost contracts, and may set an amount below which the City Manager may award such contracts.~~

SECTION 94.2: DESIGN-BUILD CONTRACTS

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding contracts for the combined design and construction of public works pursuant to a process of competitive negotiation, provided the process of competitive negotiation is conducted as may otherwise be required by this Charter or the Municipal Code. The City Council shall establish by ordinance guidelines for the award, use, and evaluation of such design build contracts, and may set an amount below which the City Manager may award such contracts.~~

SECTION 94.3: BOND REIMBURSEMENT PROGRAM

~~Nothing in this charter shall prohibit the City Council from creating a program by ordinance to reimburse contractors for all or a portion of the premium paid by a contractor for a surety bond required under Section 94 of this Charter. If it creates a bond reimbursement program, the Council shall by ordinance establish eligibility criteria for contractors, levels and thresholds of reimbursement, the process for seeking reimbursement, and other requirements for operation of, and participation in, the program.~~

SECTION 94.4: CONSTRUCTION MANAGER AT RISK CONTRACTS

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding contracts for the construction of public works using a combination of: (1) design review and management services; and (2) construction management services procured from a single person or entity for a guaranteed maximum price pursuant to a process of competitive negotiation, provided the process of competitive negotiation is conducted as may otherwise be required by this Charter or the Municipal Code. The City Council shall establish by ordinance guidelines for the award, use, and evaluation of such construction manager at risk contracts, and may set an amount below which the City Manager may award such contracts.~~

SECTION 97: NO COLLUSION IN BIDDING

If at any time it shall be found that any party or parties to whom a contract has been awarded has, in presenting any bid or bids, been guilty of collusion with any party or parties in the submission of any bid or for the purpose of preventing any other bid being made, then the contracts so awarded may be declared null and void by the Council and the Council shall thereupon re-advertise for new bids for said work or the incomplete portion thereof. The Council shall debar from future bidding all persons or firms found to be in violation of this Section, or any future firm in which such person is financially interested.

FULL TEXT OF MEASURE H (CONTINUED)

SECTION 98: ~~ALTERATION IN CONTRACTS~~

~~Whenever it becomes necessary in the opinion of the City Manager to make alterations in any contract entered into by the City, such alterations shall be made only when authorized by the Council upon written recommendation of the Manager, whenever the cost of such alterations increases the amount of the contract by more than the amount authorized by ordinance passed by the Council. No such alterations, the cost which exceeds the amount authorized by ordinance, shall be valid unless the new price to be paid for any supplies, materials, or work under the altered contract shall have been agreed upon in writing and signed by the contractor and the Manager prior to such authorization by the Council. All other alterations shall be made by agreement in writing between the contractor and the Manager.~~

SECTION 99: CONTINUING CONTRACTS

The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when the qualified electors of the City, voting at an election for that purpose have indicated their assent as then required by the Constitution of the State of California, such proposition shall be deemed adopted. No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council ~~after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.~~

SECTION 100: NO FAVORITISM IN PUBLIC CONTRACTS

~~No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, or material, or supplies at a higher price or rate than that proposed by any other bidder, or shall favor one bidder over another, by giving or withholding information, or shall willfully mislead any bidder in regard to the character of the material or supplies called for, or shall knowingly accept materials or supplies of a quality inferior to that called for by the contract, or shall knowingly certify to a greater amount of labor performed than has actually been performed, or to the receipt of a greater amount of material or supplies than has actually been received. Any officer or employee found guilty of violation of this Section shall forfeit his position immediately.~~

SECTION 102: CONTINUANCE OF CONTRACTS

All contracts entered into by the City, or for its benefit, prior to the taking effect of the Charter, shall continue in full force and effect. ~~All public work begun prior to the taking effect of the Charter shall be continued thereunder. Public improvements for which legislative steps shall have been taken under laws or Charter provisions existing at the time this Charter takes effect may be carried to completion in accordance with the provisions of such existing laws and Charter provisions.~~

FULL TEXT OF MEASURE H (CONTINUED)

SECTION 113: ~~OFFICIAL ADVERTISING~~

~~All official advertising of The City of San Diego shall be done by contract. In June of each odd numbered year the Purchasing Agent must publish a notice in a daily newspaper of said City for ten days calling for proposals to do all the advertising of said City. The bidder must be the responsible publisher of a newspaper in said City having a bona fide daily circulation and which has been regularly published in said City for at least two years immediately preceding his bid. The award of said advertising shall in all cases be made to the lowest responsible bidder. The newspaper to which the award of advertising is made shall be known and designated as the "City Official Newspaper." "Official advertising," within the meaning of this section shall include only such advertising as shall be required to be published by law.~~

END OF MEASURE