

**ORDINANCE NO. \_\_\_\_\_**

An ordinance authorizing the Board of Water and Power Commissioners (Board) to award contracts utilizing alternate project delivery methods pursuant to a competitive sealed proposal method for the construction of a facility or facilities as necessary response actions to the presence of hazardous substances in the San Fernando Groundwater Basin (SFB). Alternative project delivery methods include Construction Manager at Risk, Design-Build, and Progressive Design-Build. This ordinance further authorizes the Los Angeles Department of Water and Power (LADWP) to establish criteria for and conduct negotiations relating to the award of such contracts.

**WHEREAS**, Section 371(b) of the Charter of the City of Los Angeles permits the use of competitive sealed proposals, in accordance with criteria established by ordinance and adopted by a two-thirds vote of the Council, and also allows for the use of design-build or other appropriate project delivery methods when consistent with competitive bidding requirements, justified by the type of project, and approved by the contracting authority;

**WHEREAS**, the purpose of this ordinance is to establish criteria for the letting of contracts utilizing alternative project delivery methods between the LADWP and the successful proposers for design, procurement, preconstruction services, construction, and related services for the performance of response actions to address the release of hazardous substances that are adversely affecting the beneficial use of groundwater in the SFB, including the North Hollywood, Tujunga, Rinaldi-Toluca, Erwin, Whitnall, Verdugo, Headworks and Pollock Well Fields;

**WHEREAS**, a primary goal of this project is to support one or more response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to address the release of hazardous substances in groundwater of the SFB, to be completed in substantial compliance with the National Contingency Plan (NCP) as set forth in 40 Code of Federal Regulations Part 300 and under CERCLA;

**WHEREAS**, on or about October 14, 2014, the Mayor issued Executive Directive No. 5, which directed LADWP to reduce the purchased potable water by 50% by 2024, included a renewed focus on groundwater remediation, and identified the SFB cleanup as the key project in that effort. Responding to releases of hazardous substances in the SFB is also necessary to restore the full use of the SFB as a water resource;

**WHEREAS**, contracts utilizing alternate project delivery methods will facilitate contemporaneous coordination between the LADWP staff, consultant(s), and construction contractor(s) to expedite efficient project development and to allow staged completion of engineering and construction of major components; and

**WHEREAS**, due to the specialized nature of the remediation projects, LADWP will require contract terms of up to five years to complete the entire project, pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Administrative Code of the City of Los Angeles.

**NOW, THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. The LADWP may enter into contracts utilizing alternate project delivery methods on a competitive sealed proposal basis, to respond to releases of hazardous substances in the SFB. Such alternative project delivery methods may include, but are not limited to, Construction Manager at Risk, Design-Build, or Progressive Design-Build.

Sec. 2. Contract negotiations may be engaged in by LADWP to allow clarification and changes in the proposal after proposals have been opened and their contents secured to prevent disclosure during the negotiation process. Adequate precautions shall be taken to treat each Proposer fairly and to ensure that information gleaned from competing proposals is not disclosed to other Proposers. Information contained in the proposals, including price and the name of the Proposers, shall not be disclosed until a recommendation for award is made to the Board of Water and Power Commissioners. Information in the proposals shall not be considered confidential nor proprietary.

Sec. 3. Any decision by LADWP to use the competitive sealed proposal method permitting negotiations for contracts shall be supported by a written finding, supported by a written statement of facts, that adherence to the rule that the contract award be made to the lowest responsive and responsible bidder is not practical or advantageous.

Sec. 4. Proposals shall be solicited by the issuance of a Request for Proposals (RFP) to obtain proposals from qualified firms or from firms at large. The RFP shall be published in the same manner as notices for public works contracts performed by LADWP. The RFP shall state the time and place at which the proposals will be received by LADWP. Proposals received after the time and date specified shall be returned and shall not be considered. LADWP retains the right to reject all proposals.

Sec. 5. At a minimum, the RFP shall include: (a) a description of the services and items desired or the scope of work to be performed; (b) a statement of the evaluation criteria that will be used in evaluation proposals; and (c) a statement as to when and in what form costs or prices are to be submitted. In addition, the RFP may require that proposers submit: (i) relevant experience; (ii) qualifications; (iii) approach; (iv) risk assessment; (v) schedule; (vi) evidence of bonding capability; (vii) a listing of subcontractors or a selection plan for subcontractors that meets

specified requirements and which is sufficient to ensure that fair practices are used in such selection; (viii) updated financial and other relevant information sufficient to provide evidence of financial ability to complete the work; and (ix) such other information as LADWP deems relevant and appropriate.

Sec. 6. The evaluation criteria shall be described in the RFP in a plan of evaluation that identifies evaluation factors and their relative importance to the proposed work or project. The criteria shall include, but not be limited to, a means to measure how well a proposal meets desired performance requirements and how the lowest ultimate cost will be determined.

Sec. 7. No award(s) may be made pursuant to the alternative method to a proposer whose final, negotiated proposal is higher as to the ultimate cost to LADWP, as defined in Section 371(a) of the Los Angeles City Charter, than any other responsive proposal submitted, as determined by LADWP.

Sec. 8. Projects to respond to releases of hazardous substances in the SFB are subject to the California Environmental Quality Act (CEQA), Public Resources Code Section 2100, et seq. As such, it is important to note that the Board of Water and Power Commissioners (Board) has made no final determinations regarding the response actions. The Board retains its full discretion to make a determination regarding the response actions, including the selection of no response action at all. The Board will review the CEQA analysis and make a determination pursuant to law. Bidders recognize and assume this risk. No construction option shall be exercised prior to the completion of CEQA compliance.

Sec. 9. This ordinance has a primary goal to support one or more response actions pursuant to CERCLA in substantial compliance with the NCP, to address groundwater pollution in the SFB, as applicable. Since these response actions would be implemented pursuant to CERCLA, it is important to note that the Board has not completed the selection of the response action(s) subject to this ordinance. The Board retains its full discretion to make a determination regarding implementation and selection of one or more response actions, including the selection of no response action at all. The Board will make a determination regarding the selection of a response action pursuant to law. Bidders recognize and assume this risk. No construction shall commence prior to the completion of the selection of the response action.

Sec. 10. Pursuant to Los Angeles City Charter Section 1022, the services advertised for in this RFP are for expert services which require knowledge and skills that are not available within LADWP and can be performed more economically and feasibly by independent contractors than by City employees.

Sec. 11. Notwithstanding any other ordinance, rule or law of the City of Los Angeles to the contrary, the Board may award a contract or contracts authorized pursuant to this ordinance for the construction of one or more responses to releases of hazardous substances in the SFB using the aforementioned criteria pursuant to Sections 371(a), 371(b) and 373 of the Charter of the City of Los Angeles for a term of five years without further approval by the Los Angeles City Council.

Sec. 12. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By   
ERIC ROSENBLATT  
Deputy City Attorney

Date 2-28-18

File No. \_\_\_\_\_

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I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles April 24, 2018 and was passed at its meeting of May 1, 2018.

CITY CLERK

MAYOR

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Ordinance Passed \_\_\_\_\_

Approved \_\_\_\_\_