

ORDINANCE NO. 104988

An ordinance authorizing the Department of Public Works, Bureau of Sanitation (LASAN) to use the competitive sealed proposal selection process and alternative project delivery methods, and establishing criteria relating to such contracts for select capital improvement projects related to the development of an Advanced Water Purification Facility at Hyperion Water Reclamation Plant (HWRP) (the Project) to supply recycled water for use in facilities located at the Los Angeles World Airport (LAWA), replace potable water use in process equipment at HWRP, and supply recycled water to the Los Angeles Department of Water and Power (LADWP) and for other nearby uses through the advanced treatment processes. This ordinance also authorizes a local small business enterprise bid preference for contracts related to the Project.

**WHEREAS**, Section 371(b) of the Los Angeles City Charter permits the letting of contracts pursuant to a competitive sealed proposal method, in accordance with criteria established by ordinance adopted by at least two-thirds of the City Council, and allows for the use of progressive design-build or other appropriate project delivery systems when justified by the type of project and approved by the contracting authority;

**WHEREAS**, the purpose of this ordinance is to establish criteria for the award of contracts pursuant to a competitive sealed proposal method and authorize the use of alternative project delivery methods for contracts between LASAN and the successful contractors for procurement, pre-construction services, construction and related services for select capital improvement projects related to the Project;

**WHEREAS**, time is of the essence to construct and operate the Project because the Project needs to be constructed and operational prior to operation of the LAWA facilities for which the Project will be supplying advanced treated water, and any delay of the Project would have a concurrent disruption and delay to LAWA's intended uses for this water;

**WHEREAS**, it is in the best interest of the City of Los Angeles to expedite implementation of the Project because of the demanding and compressed time schedule to have the treated water available for LAWA's use now and when future facilities are constructed;

**WHEREAS**, it is also in the best interest of the City of Los Angeles to expedite implementation of the Project in order to more quickly reduce potable water consumption at LAWA, LASAN and LADWP facilities;

**WHEREAS**, it is advisable for LASAN to use the competitive sealed proposal selection process and a progressive design-build alternative project delivery method, pursuant to the terms of this ordinance, because this type of work is highly specialized and has time constraints, making it critically important that the contractors have the experience and expertise to carry it out in an accurate and timely manner;

**WHEREAS**, the Los Angeles City Council desires to authorize LASAN to use the competitive sealed proposal selection process and alternative project delivery methods for the Project;

**WHEREAS**, the Los Angeles City Council desires to establish the criteria for the letting of contracts by LASAN pursuant to such competitive sealed proposal selection process;

**WHEREAS**, Section 371(a) of the Los Angeles City Charter permits a bid preference in the letting of contracts for local firms (California or Los Angeles County) whereby the extent and nature of the bid preference, and any standards, definitions and policies for their implementation are provided by ordinance;

**WHEREAS**, significant benefits are associated with a local small business enterprise program, which include an increase in local jobs, greater expenditures in the local private sector and benefits to the small business economy;

**WHEREAS**, these significant benefits are described in Ordinance No. 184531 and incorporated by reference herein; and

**WHEREAS**, employing a local small business enterprise bid preference on the Project will be an opportunity for the City of Los Angeles to measure the success of this preference on a progressive design-build capital improvement project in order to evaluate whether the bid preference might be expanded to other Department of Public Works projects and contracts.

**NOW, THEREFORE,**

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

Section 1. The Department of Public Works, Bureau of Sanitation (LASAN) may use the competitive sealed proposal selection process as provided herein and the progressive design-build alternative project delivery method for the following project: Advanced Water Purification Facility Project at Hyperion Water Reclamation Plant (HWRP) (the Project). Such contracts shall be awarded by the Board of Public Works, on behalf of LASAN, subject to the City Council's right of review under Charter Section 245. No award may be made to a proposer whose final proposal is higher as to the ultimate cost to the City (as defined in Charter Section 371) than any other responsive proposal submitted. In order to utilize these methods, the Board of Public Works shall make a written finding supported by a written statement of facts that adherence to the rule that the award be made to the lowest responsive and responsible bidder is not practicable or advantageous, and shall also state in writing the reason for the particular award.

Sec. 2. Contract negotiations may be engaged in by LASAN after proposals have been opened to allow clarification and changes in the proposal. LASAN shall take adequate precaution to treat each proposer fairly.

Sec. 3. Proposals shall be solicited by issuing a Request for Proposals (RFP), which shall be subject to prior Board of Public Works approval and subject to review by the City Council under Charter Section 245. Public notice of the RFP shall be given in writing or electronically to prospective contractors. The RFP shall state the time and place at which the proposals will be received by LASAN. Proposals received after the time and date specified shall be returned unopened and shall not be considered.

Sec. 4. At a minimum, the RFP shall include: (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 evaluating proposals; and (c) a statement as to when and in what form costs or prices are to be submitted. In addition, the RFP shall require that proposers submit, at a minimum: (i) relevant experience; (ii) evidence of bonding capability; (iii) 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; (iv) updated financial and other relevant information sufficient to provide evidence of financial ability to complete the work; and (v) such other information as LASAN deems relevant and appropriate.

Sec. 5. The evaluation criteria shall be described in the RFP, which will identify 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. 6. Proposals shall be opened and their contents secured to prevent disclosure during the process of negotiating with competing proposers. 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. Except for the names of the proposers, information contained in the proposals, including price, shall not be disclosed until a recommendation for award is made to the Board of Public Works.

Sec. 7. Award shall be made only to the responsible and responsive proposer whose final proposal is most advantageous to the City, except that the Board of Public Works may reject any or all offers if rejection is in the best interest of the City. No award may be made to a proposer whose final proposal is higher as to the ultimate cost to the City (as defined in Charter Section 371), than any other responsive proposal submitted. The Board of Public Works shall document its findings regarding this determination.

Sec. 8. LASAN also may use a local small business enterprise bid preference, as defined in this ordinance, in its evaluation of proposals consistent with the following:

a. LASAN will be responsible for implementation and administration of this preference. The Department of Public Works, Bureau of Contract Administration will be the Designated Administrative Agency (DAA) regarding applicable certifications related to this preference.

b. Consistent with Section 371(a) of the Los Angeles City Charter, a "Local Business" for purposes of this section includes businesses in the County of Los Angeles. A Local Business must satisfy all of the following criteria, as certified by the DAA:

i. The business occupies workspace within the County. The business must submit proof of occupancy to the City by supplying evidence of a lease, deed or other sufficient evidence demonstrating that the business is located within the County. The business cannot satisfy this requirement by operating as a virtual office (a non-physical business location or a physical business location that is not 100 percent dedicated to the named business operation);

ii. The business must submit proof to the City demonstrating that the business is in compliance with all applicable laws relating to licensing and is not delinquent on any Los Angeles City or Los Angeles County taxes; and

iii. The business must submit proof to the City demonstrating one of the following:

(1) That at least 50 of the full-time employees of the business perform work within the boundaries of the County a minimum of 60 percent of their total, regular hours worked on an annual basis;

(2) That at least half of the full-time employees of the business work within the boundaries of the County a minimum of 60 percent of their total, regular hours worked on an annual basis; or

(3) That the business is headquartered in the County. For purposes of this section, the term "headquartered" shall mean that the business physically conducts and manages its operations from a single, physical location in the County.

c. A Local Small Business for purposes of this ordinance shall satisfy all of the following criteria, as certified by the DAA:

i. Certified by the DAA as a Local Business; and

ii. Certified by the DAA as a Small Business Enterprise (business with 100 or fewer employees with an average gross receipt of \$15 million or less over the last three tax years; a manufacturer with 100 or fewer employees; or a microbusiness that is a small business with gross receipts less than \$3.5 million, or has 25 or fewer employees.)

d. LASAN shall determine whether and to what extent requirements for Local Small Businesses should be applied to the Project and set a participation requirement tailored to the Project. LASAN shall document the basis for how it determined each participation requirement.

e. If a Local Small Business requirement will apply, it shall be included in the RFP. A proposal may be rejected as non-responsive if at the time of submitting the proposal the Contractor does not meet the Local Small Business requirement established for this Project. The RFP will specify evaluation criteria for proposers that exceed the contract specific Local Small Business participation requirement. This criteria may take the form of granting a percentage preference, assignment of additional points, or other scoring criteria as determined by LASAN.

f. A proposer or Contractor may satisfy the Local Small Business requirement if the Contractor itself is a Local Small Business. (A "Contractor" is the person, business or entity awarded the contract for the Project.)

g. If a Contractor is not a Local Small Business, it shall satisfy the Local Small Business requirement through the use of Subcontractors. A "Subcontractor" is a person, business or entity awarded a Subcontract by a Contractor. For purposes of satisfying the Local Small Business requirements, a "Subcontract" is a written agreement between a Contractor and a Subcontractor for services, including design and construction, as well as purchase of goods or equipment, by or for the benefit of the City or its residents or LASAN. For purposes of this section, "Subcontractor" excludes any person, business or entity who has been pre-qualified for this Project as a vendor and/or supplier for the reverse osmosis system package, membrane bioreactor membrane system, ultraviolet (UV) disinfection and UV advanced oxidation process system package related to this Project.

h. This Ordinance neither creates a right to receive a proposal preference, nor the duty to grant a preference.

i. Before the award of a contract, the Board of Public Works may determine that it is in the City's best interest to award the contract to a business that did not meet the requirements established for that contract opportunity. The Board of Public Works shall document its findings supporting such a decision

j. A Contractor shall not alter a Local Small Business Subcontract, either by substituting the business subcontracted or altering the amount of the Subcontract work, without the required approval(s) of the City. A Contractor that fails to maintain the Local Small Business commitment consistent with the Contractor's proposal shall be subject to a penalty up to 10 percent of the amount of the applicable Subcontract. The remedies available to the City under this section are cumulative to all other rights and remedies available to the City.

k. LASAN shall establish policies and procedures regarding this Local Small Business requirement for any contract(s) awarded for the Project and will work with the DAA to implement and administer them. These policies and procedures shall address if and how a joint venture can seek a preference as a Local Small Business. The DAA and/or LASAN may audit a Contractor's compliance with the Local Small Business requirement. The DAA shall investigate a violation of this requirement. The Contractor and Subcontractor shall cooperate with the DAA and LASAN in the course of an audit or investigation.

l. LASAN may apply a Local Small Business requirement only for those contracts relating to the Project that involve the expenditure of funds entirely within the City's control and shall not apply to contracts that involve the expenditure of funds beyond the City's control, such as state and federal grant funds, unless the grants allow for a local preference requirement.


Sec. 9. 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 in the Main Street lobby to the City Hall; one copy on the bulletin board located at the Main Street entrance to City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all of its members, at its meeting of MAY 30 2017.

HOLLY L. WOLCOTT, City Clerk


By  Deputy

Approved JUN 06 2017

 Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By   
ADENA M. HOPENSTAND  
Deputy City Attorney

Date 5-12-17

File No. 16-1381-S1