

ORDINANCE NO. 4021

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING  
CHAPTER 3-60 TO THE SANTA ROSA CITY CODE RELATING TO DESIGN-BUILD  
PROCUREMENT

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Findings and Purpose.

- A. On November 6, 2012, the voters approved Measure S, adding Section 58 to the City Charter which authorizes the use of design-build procurement by competitive negotiation and directs the City Council to establish by ordinance regulations for the award, use and evaluation of such design-build contracts.
- B. Design-build contracts are an alternative contracting method in which a single contractor both designs and builds a project.
- C. The purpose of the design-build contracting process is to minimize disputes between a designer and contractor, to expedite project delivery by overlapping the design and construction phases of a project, and to reduce project costs.
- D. The purpose of this Chapter is to establish regulations for the award, use and evaluation of design-build contracts as required by Measure S.

Section 2. Chapter 3.60 is added to the Santa Rosa City Code to read as follows:

“Chapter 3.60

DESIGN-BUILD PROCUREMENT

Section 3-60.010 Definitions

"Award Authority" means the awarding authority as defined in Section 3-44.110(c) of the Santa Rosa City Code, as amended from time to time.

"Best Value" means a value determined by stated criteria that may include, but is not limited to, price, features, functions, life-cycle costs, experience and other criteria deemed appropriate by the Award Authority.

"Competitive Negotiation" means a competitive sealed Proposal procurement method which includes but is not limited to, all of the following requirements: (1) generally describes the services sought to be procured by the City, (2) sets forth minimum criteria for evaluating Proposals submitted in response to a Request for Proposals, (3) generally describes the format and content of Proposals to be submitted, (4) provides for negotiation of scope and price and (5) may place emphasis on described factors other than price to be used in evaluating proposals.

"Design-Build" means a process involving contracting with a single entity for both the design and construction of a Public Works Project pursuant to a Competitive Negotiation process. Design-Build also includes projects where in addition to design and construction, other services may be furnished by the Design-Build Entity including, but not limited to, soil/materials testing and soil remediation, or the provision of products, such as solar energy devices or playground equipment.

"Design-Build Contract" means a contract between the City and a Design-Build Entity to furnish the architecture, engineering, and related services as required for a given Public Works Project, and to furnish the labor, materials and other construction services for the same project. A Design-Build Contract may be awarded conditioned upon subsequent refinements in scope and price during the development of the design, approval by the City of a guaranteed maximum price for project construction, and may permit the City to make changes in the scope of the Public Works Project without invalidating the Design-Build Contract.

"Design-Build Entity" means the entity (whether, natural person, partnership, joint venture, corporation, business association, or other legal entity) that proposes to enter into a contract with the City to design and construct any Public Works Project under the procedures of this Ordinance.

"Design-Build Entity Member" means any person who provides licensed contracting, architectural or engineering services.

"Director" means the Director of the City's Department of Utilities, the Department of Public Works and Transportation, or the Recreation and Parks Department, or any Director's designee.

"Major Contract" means any contract let by the City for the performance of public works in an amount exceeding the cost limited established by Section 10105 of the Public Contract Code.

"Minor Contract" means any contract let by the City for the performance of a public work in N amount which does not exceed the cost limited established by Section 10105 of the Public Contract Code.

"Performance Criteria" means the requirements for the Public Works Project, including as appropriate, capacity, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the Public Works Project, expressed in conceptual documents, performance-oriented preliminary drawings, outline specifications and other documents provided to the Design-Build Entity by the Director or the Purchasing Agent, establishing the project's basic elements and scale, and their relationship to the work site suitable to allow the Design-Build Entity to make a Proposal.

"Proposal" means an offer to enter into a Design-Build Contract, as further defined in this Ordinance.

“Purchasing Agent” means the City’s purchasing agent referred to in Chapter 3.08 of the Santa Rosa City Code.

"Request for Proposals" means the document or publication whereby the City solicits proposals for a Design-Build Contract.

"Public Work" shall have the same meaning as defined in Section 3-44.020 of the Santa Rosa City Code, as amended from time to time.

Section 3-60.020 Requests for Proposals

For purposes of this Chapter only, prior to procuring a Design-Build Contract, the Director or Purchasing Agent shall prepare a Request for Proposals containing, at a minimum, the following elements and shall comply with the provisions of Section 3-60.130 if applicable:

- (a) The procedures to be followed for submitting Proposals, the criteria for evaluation of the Proposals and their relative weight, the procedure for selection of a Design-Build Entity and the timing for making awards.
- (b) The proposed terms and conditions for the Design-Build Contract.
- (c) The Performance Criteria.
- (d) A description of the project approach, work plan or other submittals to be submitted with the Proposal, with guidance as to the form and level of completeness required.
- (e) A schedule for planned commencement and completion of the Design-Build Public Works Project.
- (f) Any requirements of state or federal funding or grants to be used for the project.
- (g) The minimum qualifications that the Design-Build Entity will be required to possess to be deemed responsive.
- (h) Requirements for performance bonds, payment bonds and insurance (including professional liability insurance) as determined by the Risk Manager and the City Attorney.
- (i) The required bidding process for subcontractors not listed at the time of submission of the Proposal, in accordance with Section 3-60.160.
- (j) Any other information that the Director or Purchasing Agent in his or her discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

### Section 3-60.030 Performance Criteria

Performance Criteria shall be prepared by the Director, the Purchasing Agent, or a design professional duly licensed by the State of California who shall be referred to as the "performance criteria developer." The performance criteria developer shall be disqualified from submitting a Proposal to enter into the Design-Build Contract as a Design-Build Entity or as a subcontractor or team member of a Design-Build Entity. The Design-Build Entity shall not be permitted to delegate services under the Design-Build Contract to the performance criteria developer.

The Director or Purchasing Agent, in consultation with the performance criteria developer, shall determine the scope and level of detail required for the Performance Criteria. The Performance Criteria shall be detailed enough to permit qualified Design-Build Entities to submit Proposals in accordance with the Request for Proposals, given the nature of the Design-Build Public Works Project and the level of design to be provided in the Proposal.

### Section 3-60.040 Advertisement

Notice of Request for Proposals shall be advertised in the same manner in which formal bids generally are solicited for Public Works Projects for the City.

### Section 3-60.050 Prequalification

The Director or the Purchasing Agent may establish a prequalification process for Design-Build Entities on a project by project basis that specifies the prequalification criteria, that uses a standardized questionnaire, and that includes the manner in which the Design-Build Entities will be selected.

### Section 3-60.060 Prequalification Criteria

Pre-qualification may be limited to consideration of all or any of the following criteria supplied by a Design-Build Entity:

- (a) Submission of documentation establishing that the Design-Build Entity entering into the Design-Build Contract is a licensed contractor (Class A, B , or C, as specified in the RFP) and holds an architect and engineering license or subcontracts with a licensed architect or engineer.
- (b) Submission of documentation establishing that the Design-Build Entity or its Members have completed projects of similar size, scope, structure or building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the Design-Build Public Works Project.
- (c) Submission of a proposed project management plan establishing that the Design-Build Entity has the experience, competence, and capacity needed to effectively complete the Design-Build Public Works Project on schedule.

(d) Submission of documentation establishing that the Design-Build Entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the Design-Build Entity has the capacity to complete the Design-Build Public Works Project.

(e) Provision of a declaration that neither the Design-Build Entity, nor any Design-Build Entity Member, under its current or former name, has had a surety company complete any project within the past 5 years.

(f) Provision of a declaration providing detail for the past five years concerning all of the following:

(1) Civil or criminal violations of the Occupational Safety and Health Act against any Design-Build Entity Member.

(2) Civil or criminal violations of the Contractors' State License Law against any Design-Build Entity Member.

(3) Conviction of any Design-Build Entity Member for submitting a false or fraudulent claim to a public agency.

(4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements, state disability insurance withholding requirements, or unemployment insurance payment requirements against any Design-Build Entity Member. For purposes of this subsection, only violations by any Design-Build Entity Member, as an employer, shall be deemed applicable, unless it is shown that the Design-Build Entity Member in his or her capacity as an employer had knowledge of a subcontractor's violation or failed to comply with the conditions set forth in section 1775(b) of the State Labor Code.

(5) Civil or criminal violations of federal or state law against any Design-Build Entity Member governing equal opportunity employment, contracting or subcontracting.

(g) Provision of a declaration that the Design-Build Entity will comply with all other provisions of law applicable to the Design-Build Public Works Project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

#### Section 3-60.070 False Declaration Unlawful

The information concerning the Design-Build Entity's qualifications and experience shall be verified under oath by the Design-Build Entity and its Members. It is unlawful to submit any declaration under this Chapter containing any material matter that is false.

### Section 3-60.080 Withdrawal of Proposals

Proposals may be withdrawn by written notice to the City in accordance with the RFP for any reason at any time prior to the deadline set forth in the RFP and any proposal guarantee for the Proposal shall be returned. Timely withdrawal of a Proposal shall not prejudice the right of a Design-Build Entity to timely file a new Proposal.

### Section 3-60.090 Proposal Security

All Proposals shall be accompanied by a cashier's check or certified check made payable to the City of Santa Rosa, or a bidder's bond executed by a surety admitted to engage in such business in the State of California, for an amount equal to 10% of the amount of the Proposal and no Proposal shall be considered unless such proposal guarantee is properly enclosed therewith. The proposal guarantee shall be forfeited if the Proposal is withdrawn beyond the deadline set forth in the RFP, or if the Proposal is accepted but the Design-Build Entity fails to execute the Design-Build Contract.

### Section 3-60.100 Review and Evaluation of Proposals

Once received, Proposals shall be submitted to the performance criteria developer prior to review by the selection committee, as defined below. Clarifications may be required to ensure Proposals are responsive to the RFP. Clarifications may require revised cost and/or technical proposals. No Proposal shall be considered if the performance criteria developer confirms that the Proposal is not consistent with the information required by the Request for Proposals. Proposals will be opened in confidence. Adequate precautions shall be taken to treat each proposer fairly and to insure that information gleaned from competing proposals is not disclosed to other proposers. Prices and other information concerning the Proposals shall not be disclosed until a recommendation for award is made to the Award Authority. All Proposals received shall become a matter of public record and shall be regarded as public, with the exception of those elements of each Proposal which are identified by a proposer as business trade secrets and plainly marked "Trade Secret," "Confidential" or "Proprietary." If disclosure is required or permitted under the California Public Records Act or otherwise by law, the City shall in no way be liable or responsible for the disclosure of any such records or any part thereof.

### Section 3-60.110 Selection Committees

The Director or Purchasing Agent may appoint a selection committee to review and rank the Proposals of the Design-Build Entities for a minor contract. A selection committee shall be used to review and rank any major design-build contract. The selection committee shall use the evaluation criteria set forth in this Chapter and the applicable Request for Proposals in its review of the Proposals. The composition of the committee shall be within the discretion of the Director or Purchasing Agent and may include, but not be limited to: members of the City Council, members of department administration or staff, the performance criteria developer, any person

having special expertise relevant to selection of a Design-Build Entity (design or construction experience) and residents of the community.

#### Section 3-60.120 Selection Method

The following method shall be utilized in selecting a Design-Build Entity for award of a Design-Build Contract:

(a) Criteria utilized may include, but are not limited to:

(1) An evaluation of overall quality, capability, resource availability and financial stability of the Design-Build Entity.

(2) An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.

(3) An evaluation of the Design-Build Entity Members' experience, training and qualifications.

(4) Consideration of items such as proposed design approach, initial and/or life cycle costs, project features, quality, capacity, schedule, and operational and functional performance of the facility.

(5) The extent to which the Design-Build Entity's Proposal meets the Performance Criteria and other requirements set forth in the Request for Proposals.

(6) Analysis of the cost relative to the Design-Build Entity's ability to meet the Performance Criteria and other requirements set forth in the Request for Proposals.

(7) Whether the cost as provided in the Proposal is guaranteed firm, evidenced in writing and signed by an authorized representative of the Design-Build Entity.

(b) Depending on the number of Proposals received, the Director, Purchasing Agent, or the selection committee may develop a "short list" of top ranked Design-Build Entities.

(c) The Director, Purchasing Agent, or selection committee may require "short listed" Design-Build Entities to submit to an interview and/or make a presentation to establish a final ranking.

(d) The Director, Purchasing Agent, or selection committee will then begin negotiations with the top ranked Design-Build Entity. The negotiations may include but not be limited to project costs, scope, and schedule. If negotiations are unsuccessful, negotiations will cease with the top ranked Design-Build Entity and may begin with the next highest ranked Design-Build Entity.

(e) Award shall be made by the Award Authority to the Design-Build Entity whose Proposal is judged as providing the Best Value to the City while meeting the objectives of the Design-Build Public Works Project.

### Section 3-60.130 Authorization for Use of Design Build Proposal and Approval of Design-Build Contracts

Prior to issuing a Design Build Request for Proposal for a major contract the Department shall obtain approval of the City Council, or if applicable the Board of Public Utilities, to determine that the use of a Design Build procurement is in the best interest of the City.

All Design-Build Contracts shall be approved as to form by the City Attorney.

### Section 3-60.140 Retention

If the Award Authority awards a Design-Build Contract, retention of at least 5% of the contract in accordance with the Public Contract Code shall be withheld from progress payments, subject to the City's right, in its sole discretion, to permit progress payments for design services to be made without withholding retention or to increase the retention percentage depending on the specific project.

### Section 3-60.150 Right to Reject Proposals

Nothing in this Chapter shall require the City to accept any Proposal and the City hereby reserves the right to reject any and all Proposals. City assumes no responsibility for the costs incurred by any Design-Build Entity in preparation of any Proposal.

### Section 3-60.160 Subcontractor Listing

The City recognizes that the Design-Build Entity is charged with performing both design and construction. Due to the fact that a Design-Build Contract may be awarded prior to completion of the design, it is often impractical for the Design-Build Entity to list all subcontractors at the time of award.

(a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Chapter in a manner that retains protection for subcontractors while enabling Design-Build Public Works Projects to be administered in an efficient manner.

(b) All of the following requirements shall apply to subcontractors, licensed by the State of California, that are employed on a Design-Build Public Works Project undertaken pursuant to this Chapter.

(1) The Director or Purchasing Agent in each Request for Proposals shall specify the essential design disciplines, construction trades or types of subcontractors that must be listed by the Design-Build Entity in the Proposal.

(2) Subcontractors not listed in the Proposal shall be awarded subcontracts by the Design-Build Entity in accordance with a bidding process set forth in the Request for Proposals. The Design-



Build Entity shall furnish to City documentation verifying that all subcontractors not listed at the time of contract award were subsequently awarded subcontracts in accordance with the process set forth in the Request for Proposals. All subcontractors that are listed in the Proposal or subsequently awarded subcontracts shall be afforded the protection of all applicable laws.

Section 3-60.170 Indemnification

The successful Design-Build Contract Entity shall indemnify the City and its officers, agents, and employees in accordance with the terms of the Design Build Contract.”

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b) (3) in that the Council finds there is no possibility that the implementation of this ordinance may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

IN COUNCIL DULY PASSED AND ADOPTED this 14th day of January, 2014.

AYES: (7) Mayor Bartley, Vice Mayor Swinth and Council Members Carlstrom, Combs, Olivares, Ours, Wysocky

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: Terri Griffin, City Clerk

APPROVED: Scott P. Bartley, Mayor

APPROVED AS TO FORM:

Terri Griffin, City Attorney