

ORDINANCE

2023-01-26-0041

**APPROVING A RESPONSIBLE BIDDER PROGRAM  
INCLUDING BEST VALUE CRITERIA FOR LOW BID  
CONSTRUCTION CONTRACTS AND AUTHORIZING  
THE CITY TO DENY CONTRACTS OR OTHER  
TRANSACTIONS WITH A PERSON OR ENTITY NOT  
DEEMED A RESPONSIBLE BIDDER UNDER THE  
PROGRAM.**

\* \* \* \* \*

**WHEREAS**, pursuant to Local Government Code §252.043 (“Chapter 252”), if the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder (“Responsible Bidder”) or to the bidder who provides goods or services at the best value for the City; and

**WHEREAS**, it is the policy of the City of San Antonio (the “City”) to use its spending powers to promote fiscal responsibility of resident tax dollars (“Fiscal Policy”); and

**WHEREAS**, for purposes of determining who is a Responsible Bidder or who provides the best value for the City, awarding contracts to or entering into transactions with persons indebted to the City, who are in current litigation with the City, contractors in which the City has had to terminate a contract with cause, persons with a history of poor performance of contractual obligations, or fail to disclose a violation of criminal law, is in detriment to the City’s Fiscal Policy; and

**WHEREAS**, Chapter 252 Section 252.0436 provides that the City by ordinance may establish regulations permitting the City to refuse to enter into a contract or other transaction with a person indebted to the City; and

**WHEREAS**, pursuant to Chapter 252, Section 252.0436, it is not a violation of this chapter for the City, under such regulations, to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the City; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1. Definitions.** The words and phrases defined in this section and used in this ordinance have the following meanings:

*Frivolous Claim* means a bad faith claim, motion or appeal that is intended to harass or delay, or has no underlying justification in law or fact, as may be evidenced by a court granting a motion for summary judgement.

**Person** means an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the City as defined in Local Government Code Chapter 252, Section 252.0436.

**SECTION 2. Persons Indebted to City.** This ordinance hereby establishes regulations permitting the City to refuse to enter into a contract or other transaction with a Person indebted to the City. Persons indebted to the City shall be deemed “not a Responsible Bidder”.

**SECTION 3. Claims or Litigation.** A Person involved in any active Frivolous Claim or litigation against the City of San Antonio shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.

**SECTION 4. Contract Termination.** A Person in which the City has had to terminate a contract with cause within the past three (3) years shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.

**SECTION 5. History of Poor Performance.** A Person with a history of poor performance of its contractual obligations, including any noncompliance with project requirements and any City project scorecards rated below 70%, within the past three (3) years shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person.


**SECTION 6. Failure to Disclose Violation of Criminal Law.** A Person which fails to disclose any violation of criminal law shall be deemed “not a Responsible Bidder” and City shall refuse to enter into a contract or other transaction with such Person for a period of three (3) years from the date of the failure to disclose. Violations of criminal law shall include: felony conviction, felony deferred adjudication, Class A misdemeanor conviction, Class A misdemeanor conviction, Class A misdemeanor deferred adjudication, Class B misdemeanor conviction within the past 10 years, Class B misdemeanor deferred adjudication within the last 10 years, an open arrest for any criminal offense (felony or misdemeanor), and family violence conviction.

Contractors are responsible for assessing risk and maintaining effective background check policy and procedures for all employees, staff and subcontractors responsible for performing services under any City contract. Contractor shall remove an employee or subcontractor from service under any City contract should Contractor become aware that the employee or subcontractor has been convicted of a crime, evaluated based on level of offense, time period, and relevance to position, as recommended by U.S. Equal Employment Opportunity Commission (EEOC) guidelines.

**SECTION 7. Effective Date.** This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.

LC  
01/26/23  
Item No. 32

**PASSED and APPROVED this 26<sup>th</sup> day of January, 2023.**



**M A Y O R**  
Ron Nirenberg

**ATTEST:**



Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**



Andrew Segovia, City Attorney





## **City of San Antonio**

### **City Council Meeting January 26, 2023**

**32.**

**2023-01-26-0041**

Ordinance approving a responsible bidder program for low bid construction contracts, including best value criteria and authorizing the City to deny contracts or other transactions with a person or company not deemed a responsible bidder under the program. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

Councilmember Cabello Havrda moved to approve. Councilmember Bravo seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry