

## MEASURE S

### CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE S

Section 1217 of Article XII of the San Jose City Charter sets forth the requirements for procuring public works contracts exceeding \$100,000. Measure S, which the City Council placed on the ballot, would make several changes to Section 1217 and reorganize it.

Currently, Section 1217 makes public bidding the primary procurement method for public works contracts exceeding \$100,000. It requires the City to award such contracts to the lowest responsive and responsible bidder. The San Jose Municipal Code, not Section 1217, governs procurement of public works contracts under the \$100,000 threshold.

The \$100,000 threshold was last increased from \$50,000 in November 2001. Section 1217 does not authorize the threshold to increase with inflation.

Measure S would increase the threshold to \$600,000 and would authorize annual adjustments for inflation in the construction industry.

Currently, Section 1217 makes the bid amount the exclusive means of determining the lowest responsive and responsible bidder. Although this would remain the primary means of determining the low bidder, Measure S would add an alternative patterned on approaches used by the University of California and the City and County of San Francisco.

This alternative would allow consideration of a bidder's qualifications. A panel, without knowing the bid amounts, would assign each bidder a qualification score based on an evaluation of objective criteria in areas such as a bidder's safety record, past performance, labor compliance, demonstrated management competence, financial condition and relevant experience. The City would use a formula based on the bid amount and qualification score to determine the low bidder. Measure S provides that the City Council would adopt an ordinance setting forth this alternative approach.

Currently, Section 1217 allows the City to procure a "design-build" contract without public bidding if (1) the contract exceeds \$5,000,000, and (2) the City Council determines the contract would save money or result in faster project completion. Measure S would lower the threshold to \$1,000,000. This change would align Section 1217 with State law applicable to the use of design-build contracts by certain local agencies.

Currently, Section 1217's low-bid requirement prevents the City from implementing certain otherwise lawful programs supporting the use of small, local and economically disadvantaged businesses. For example, the City has a small and local preference program that it can apply only to contract procurements not subject to Section 1217's low-bid requirement. Measure S would add the necessary authorization for the City to apply such programs to contracts subject to Section 1217's low-bid requirement.

Currently, Section 1217 requires the City Council to publish notices inviting bids in a newspaper of general circulation. Measure S would allow electronic publication of such notices.

Currently, Section 1217 excludes maintenance and repairs incidental to maintenance from the definition of public works project. Measure S would clarify that construction, erection, improvement or demolition incidental to maintenance is also excluded.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE S-Continued

Finally, Measure S would make non-substantive, organizational changes to Section 1217.

A "Yes" vote would amend the City Charter to implement the changes described above.

A "No" vote would not make these changes.

/s/ Richard Doyle  
City Attorney, City of San Jose

The above statement is an impartial analysis of Measure S. If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?nid=5694> or call 408-535-1260 and a copy will be sent at no cost to you.

## ARGUMENT IN FAVOR OF MEASURE S

**Measure S enables San Jose to stretch its public works dollars further, protecting taxpayers from shoddy construction and fraudulent bidding on our public works projects. Please vote Yes.**

Existing rules don't protect taxpayers from unqualified or fraudulent contractors who intentionally submit cheap, below-market bids to win a contract, knowing that they will demand expensive and time-delaying "change orders" later. This leads to higher costs, defective construction, project delays, unnecessary disputes, and expensive litigation.

Voting Yes on Measure S will ensure that San Jose taxpayers will get their money's worth from public works contracts by:

- Prioritizing selection of contractors based on lowest cost;
- Allowing the City to also consider such factors as job performance history, experience, and proven work quality when awarding projects;
- Lowering the "design-build" contract threshold from \$5,000,000 to \$1,000,000 to provide greater flexibility.

**Other government agencies that have adopted these reforms report numerous benefits**, including fewer disputes, fewer costly "change orders," less litigation, and more public works projects completed on-time, and on-budget.

By requiring the use of objective criteria for determining the best contractor for the project, Measure S ensures a fair, transparent public works construction bidding process.

**In addition to increasing the efficiency of the contracting process, Measure S reforms the public works bidding process by:**

- Increasing opportunity for small, local, and economically-disadvantaged businesses to compete for public contracts;
- Modernizing how we notify the public about bidding opportunities to ensure that more construction firms will compete for every project.

**Measure S ensures San Jose residents get projects built by contractors who offer the lowest cost, and have the best record of accomplishment for experience, work quality and expertise.**

We've seen enough public works contractor "horror stories." Vote Yes on Measure S to protect San Jose's taxpayers from unqualified and unethical contractors.

## ARGUMENT IN FAVOR OF MEASURE S-Continued

**Please vote Yes on Measure S.** [SmartContractsYesonS.org](http://SmartContractsYesonS.org)

/s/ Jim Cunneen  
Former CEO, Chamber of Commerce, Former Republican  
Assemblyman

/s/ Steve Flores  
Plumber/Pipefitter, Plumbers & Pipefitters UA Local 393

/s/ Maria Aguilar  
Business Owner

/s/ Claudia Folzman  
Chief Financial Officer, Construction Company

/s/ Lan Diep  
Councilmember, District 4, City of San Jose

**NO ARGUMENT AGAINST MEASURE S WAS SUBMITTED**