



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: July 24, 2013 ITEM NUMBER: 9

SUBJECT: OVERVIEW OF PUBLIC CONTRACTING

DATE: July 18th, 2013

FROM: Committee Attorney Office

PRESENTATION BY: YOLANDA SUMMERHILL, COMMITTEE LEGAL COUNSEL

FOR FURTHER INFORMATION CONTACT: Brenda Green (714) 754-5221

RECOMMENDATION

Below is an overview of public contracting for the Charter Committee's consideration.

BACKGROUND

The following is an overview of the rules and procedures governing public contracting as a 1) general law city under Public Contract Code § 1100 (referred to herein as the "Standard Procedures"), 2) general law city utilizing the Uniform Construction Cost Accounting Act (referred to herein as "UCCAA Procedures") and 3) charter city.

DISCUSSION/ANALYSIS

Public contracting involves the process that a public agency must follow when awarding a contract for the construction of a public works project or to procure goods and services. A public work is defined as the erection, improvement, painting, or repair of public buildings and works; work in streams, bays, etc.; street or sewer work, except maintenance or repair; and furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers. The various schemes that a public entity may avail itself are discussed more thoroughly herein.

I. Standard Procedures

The first set of rules and procedures governing public contracting can be found primarily in Government Code §§ 4002 & 53069.85; Labor Code §§1720-1743 and Public Contract Code §§1101 & 20161 and case law interpreting these provisions.

A. Threshold & Notice Inviting Bids

The Standard Procedures require competitive bidding for a public work project costing \$5000.00 or more.

The procedure for awarding a public contract under the Standard Procedure begins with the public agency issuing a notice inviting bids that includes the date set for opening of bids at least 10 days prior, the place and time the bids of the prime contractors are to be received and distinctly explain the project to be completed.

The public agency must publish the notice at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the city, or if there is none, it shall be posted in at least three public places in the city that have been designated by ordinance as the places for posting public notices.

B. Lowest Responsible Bidder

The bidder must respond to the bid within the timeframe set accompanied by bidder's security-10% of the amount of the project (typically a bidder's bond). The contract must be awarded to the lowest responsive and responsible bidder. Typically, the lowest responsible bidder is, in actuality, the lowest monetary bidder. However, there are some scenarios when that is not the case. For instance, the lowest responsible bidder must be *responsive* in the bidding documents along with being considered *responsible*. A bid is considered *responsive* if it promises to do what the bidding instructions demand; non-responsiveness may include when something is left out of the application. Some examples of a non-responsive bid are erasures that are not initialized or a bid was not signed. While that may seem pretty straightforward, there is an entire body of case law deciding what constitutes a responsive bid. A *responsible* bidder is one who is able to perform the contract if awarded. Factors a public agency can consider in determining a bidder's responsibility includes experience on other public projects; experience doing the same type of work; length of tenure with its bonding or insurance company; financial stability; and whether it has been terminated or assessed liquidated damages on other projects. A public agency can reject a non-responsive bid or a non-responsible bidder, however, it must provide the bidder with notice of the rejection with facts supporting its action and allow the bidder an opportunity to be heard to provide evidence in opposition to the public agency's findings.

C. Mistakes

Once a bid is opened, the bidder may not modify the bid documents. In some cases, the bid documents may contain a mistake. In the case of mistake, the public agency may consent to a withdrawal of the bid if the public agency establishes that the requirements of Public Contract Code § 5103¹ have been met. If the public agency does not allow the contractor to withdraw its bid, the contractor can file an action to seek relief within 90 days to recover the amount forfeited. However, a bidder who claims mistake or forfeits its bid security cannot participate in further bidding on the same project. § 5105.

D. Awarding the Bid

After the public agency determines who is the lowest responsive and responsible bidder, the contract is awarded by the City Council.

¹ PCC § 5103: Bid was mistake, written notice provided, mistake made the bid materially different than he or she intended to be, mistake was made in filling out the bid and not due to an error in judgment or carelessness.

E. Advantages & Disadvantages

Many public agencies utilizing the Standard Procedures feel hamstrung by the \$5,000 threshold triggering competitive bidding since, in today's money, virtually any project will trigger competitive bidding. Moreover, under the Standard Procedures, the opportunity to bid is available to virtually anyone, leaving a lot of variation in the quality of work.

F. Retention

Retention is the amount of funds withheld from each progress payment in order to provide additional security for completion of the project and its correctness. Currently, the maximum amount which may be retained by a city or other public entity on each progress payment (and at the end of the project until it is accepted as complete) is five percent (5%). A contractor can substitute another form of security, such as a bond, deposit in an escrow account, etc., in lieu of the required retention. A city may, but is not required to, reduce the retention to nothing after one-half of the work is completed to the satisfaction of the public entity. The retention must be released (with some exceptions) within 60 days after the date of completion of the project.

There is one exception to the five percent (5%) limitation. Cities may still withhold a ten percent (10%) retention if:

1. prior to the bid the city council or director of the department awarding the bid finds that the project is "substantially complex" and requires a higher than five percent (5%) retention,
2. after a properly noticed and scheduled public hearing, and
3. the finding and the actual retention requirement is included in the bid documents.

II. Uniform Public Construction Cost Accounting Act

As an alternative to the Standard Procedures, the California Legislature adopted the Uniform Construction Cost Accounting Act ("UCCAA"). At present, over half of the cities in California, including the City of Costa Mesa ("City"), participate in the UCCAA. Costa Mesa Municipal Code provisions governing public projects under the UCCAA are set forth in Title 2, Chapter V, Article 3 Public Projects.

A. Threshold

Under the City's municipal code, the monetary thresholds and corresponding procedures are as follows:

- Public projects costing less than \$45,000 may be performed by the employees of the city if it can demonstrate the project will be less expensive if performed in-house, by negotiated contract, or by purchase order.
- For public projects below \$175,000, an informal bidding procedure is required.
- For contracts greater than \$175,000, formal bidding with City Council award is required.

B. Informal bidding procedures.

Under the UCCAA, the City is required to mail a notice to specified construction trade journals, inviting all licensed contractors to submit the name of their firm to the City for inclusion on the City's list of qualified bidders for the following calendar year. This process must be done annually. Once a list is established, the City is required to send a notice inviting informal bids to all contractors on the list, as well as specified construction trade journals, for the category of work to be bid.

All mailing of notices to contractors and construction trade journals must be completed not fewer than ten (10) calendar days before bids are due. The notice inviting informal bids must describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

The City may require bidders' security in an amount equal to at least ten (10) percent of the amount of the bid for projects within the informal bidding procedures. The authority to award informal bids for public projects is delegated to the city manager.

If all bids received are in excess of the amount set forth in Public Contract Code Section 22034(f), as amended from time to time (currently \$175,000), the city council may, by passage of a resolution by a four-fifths (4/5) vote, award the contract, at the amount set forth in Public Contract Code Section 22034(f), as amended from time to time, or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.

C. Formal bid procedures.

Public works projects costing in excess of \$175,000 require formal bidding procedures. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fifteen (15) calendar days before the date of opening the bids in a newspaper of general circulation which is circulated within the City of Costa Mesa. The notice shall also be mailed at least thirty (30) calendar days before the date of opening the bids to all construction trade publications, as determined by the commission pursuant to Public Contract Code section 22036, which are circulated within the County of Orange.

All bids shall be presented under sealed cover to the city clerk and include bidder's security in an amount equal to at least ten (10) percent of the amount bid. The City Council awards the contract to the lowest responsible bidder.

D. Rejecting Bids

The City may reject any and all bids presented. If after the first invitation for bids all bids are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:

- (1) Abandoning the project or re-advertising for bids in the manner described above.
- (2) By passage of a resolution by a four-fifths vote of the city council declaring that the project can be performed more economically by the employees of the city, may have the project done by force account without further complying with this division.
- (3) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two (2) or more bids are the same and the lowest, the city may accept the one it chooses.
- (4) If no bids are received through the formal or informal procedure, the project may be performed by employees of the city by force account, or by informal bidding procedures set forth above without further public bidding.

F. Record Keeping & Tracking

The Act also establishes a Commission made up of representatives from the construction industry and public agencies. The Commission is responsible for the review and development of uniform public construction cost accounting policies and procedures to be followed by public agencies electing to participate in the program. The Commission develops policies and procedures for these purposes, which encourage public agencies

to track all cost elements — personnel, materials, supplies, equipment, and overhead at the project level.

G. Advantages & Disadvantages

The UCCAA was created as an alternative to the Standard Procedures based on some of the disadvantages referenced above. Under the UCCAA, public agencies have broader discretion to award contracts informally if the cost is below \$175,000. The less formal process is typically less expensive than the formal bidding process. Additionally, the list of contractors provided by the Commission tends to provide contractors with a proven track record. Some of the disadvantages of the UCCAA are that a number of public agencies complain of the record keeping requirements and changes in the rules promulgated by the Commission every five (5) years.

H. Retention

The rules for retention are identical under the UCCAA as they are for the Standard Procedures.

III. Charter Cities

There is wide variation in charter cities' regulation of public contracting. Because of the variation, a spreadsheet is attached that demonstrates some of the different regulations promulgated by charter cities regarding public contracting. The statutory rules on maximum retention purport to apply to charter cities as well as general law cities.

FISCAL REVIEW

No fiscal impact at this time.

YOLANDA SUMMERHILL

Attachments:

- SPREADSHEET ON CHARTER CITIES REGULATIONS ON PUBLIC CONTRACTING
- SPREADSHEET ON RULES AND PROCEDURES FOR PUBLIC CONTRACTING UNDER GENERAL LAW, UNIFORM CONSTRUCTION COST ACCOUNTING ACT & CHARTER CITIES
- COSTA MESA MUNICIPAL Title 2, Chapter V, Article 3 Public Projects.

**AGENDA ITEM NO. 9
COSTA MESA CHARTER COMMITTEE
VARIOUS CHARTER CITIES
PUBLIC CONTRACTING REQUIREMENTS**

<p>Newport Beach</p>	<p>Requirements for bidding process (to lowest responsible bidder):</p> <ul style="list-style-type: none"> - project for construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies/materials for project <u>exceed \$120,000</u> - Notice by publication in official newspaper with 1 or more insertions (at least 10 days before time of opening bids) - All bids must be accompanied by certified or cashier's check, or bidder's bond executed by corporate surety authorized to engage in such business in CA, made payable to City (if amount of deposit not specified in notice or specifications referred to therein, amount deposited must be NOT LESS than 10% of aggregate amount of bid) - City may reject any and all bids and re-advertise in its discretion <p>Projects for maintenance and repair of such facilities excepted from requirements if city council determines city department can perform more economically</p> <p>City Council may bypass bidding process completely if:</p> <ul style="list-style-type: none"> - City Council (based on estimates approved by City Manager) decides public works would be BETTER or MORE ECONOMICALLY performed by City with its own employees OR supplies/materials would be purchased MORE ECONOMICALLY on open market; AND City Council adopts resolution (passed by at least 5 affirmative votes of Council); <u>OR</u> - City Council determines work or supplies/materials are of urgent necessity for the PRESERVATION of LIFE, HEALTH, or PROPERTY (resolution passed by at least 5 affirmative Council votes required AND resolution must contain declaration of facts constituting such urgency)
<p>Irvine</p>	<p>Requirements for bidding process (to lowest responsible bidder):</p> <ul style="list-style-type: none"> - Project for construction of public works involves

	<p>expenditure of <u>more than \$4,000</u> (or such other amount prescribed by ORDINANCE)</p> <ul style="list-style-type: none"> - Notice by publication in official newspaper w/ 1 or more insertions (at least 10 days before time of opening bids) - City may reject any and all bids and re-advertise in its discretion <p>City Council may bypass bidding process completely if:</p> <ul style="list-style-type: none"> - City Council (based on estimates approved by City Manager) decides public works would be BETTER or MORE ECONOMICALLY performed by City with its own employees OR supplies/materials would be purchased MORE ECONOMICALLY on open market; AND City Council adopts resolution (passed by at least 4 affirmative votes of Council); <u>OR</u> - City Council determines work or supplies/materials are of urgent necessity for the PRESERVATION of LIFE, HEALTH, or PROPERTY (resolution passed by at least 4 affirmative Council votes required AND resolution must contain declaration of facts constituting such urgency)
Huntington Beach	<p>Requirements for bidding process (to lowest responsible bidder):</p> <ul style="list-style-type: none"> - project for construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies/materials for project exceed AMOUNT SET BY ORDINANCE - Notice by publication in official newspaper w/ 2 or more insertions (at least 10 days before time of opening bids) - City may reject any and all bids and re-advertise in its discretion <p>City Council may bypass bidding process completely if <i>(after rejecting bids, or if no bids are received, or without advertising for bids if the total amount of contract or project is below amount set by ordinance)</i>:</p> <ul style="list-style-type: none"> - City Council (based on estimates approved by City Manager) decides public works would be BETTER or MORE ECONOMICALLY performed by City with its own employees OR supplies/materials would be purchased MORE ECONOMICALLY on open market; AND City Council adopts resolution (passed by at least a

	<p>MAJORITY VOTE by Council); OR</p> <ul style="list-style-type: none"> - City Council determines work or supplies/materials are of urgent necessity for the PRESERVATION of LIFE, HEALTH, or PROPERTY (resolution passed by at least a MAJORITY VOTE by Council AND resolution must contain declaration of facts constituting such urgency) – <u>urgent necessity exception applies even if all public works contracts exceed amount set by ordinance</u>
<p>Santa Ana</p>	<p>"Public works construction": project for erection/improvement of public buildings, streets, drains, sewers, or parks</p> <p>Maintenance/repair of public buildings, streets, drains, sewers, or parks shall NOT be considered public works construction</p> <p>Requirements for bidding process (lowest and best bidder):</p> <ul style="list-style-type: none"> - Contract exceeds amount set by ORDINANCE - Notice by publication for 2 or more days in a newspaper of general circulation in the City of notice calling for bids (at least 10 days before time of opening bids) - Competitive bidding shall be regulated by rules and procedures adopted by Council through ORDINANCE <p>Any rule permitting the dispensing of bidding and/or performing of work with City forces for ANY reason (including emergency) shall require 2/3 affirmative vote by Council</p>
<p>Anaheim</p>	<p>Requirements for bidding process (to lowest responsible bidder):</p> <ul style="list-style-type: none"> - project for construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies/materials for project exceed AMOUNT SET BY CA PUBLIC CONTRACTS CODE - Notice by publication in official newspaper w/ 2 or more insertions (at least 10 days before time of opening bids) - City may reject any and all bids and re-advertise in its discretion <p>City Council may bypass bidding process completely if</p>

	<p><i>(after rejecting bids, or if no bids are received, or without advertising for bids if the total amount of contract or project is below \$50,000):</i></p> <ul style="list-style-type: none"> - City Council (based on estimates approved by City Manager) decides public works would be BETTER or MORE ECONOMICALLY performed by City with its own employees AND City Council adopts resolution (passed by at least a MAJORITY VOTE by Council); OR - City Council determines work is of urgent necessity for the PRESERVATION of LIFE, HEALTH, or PROPERTY (resolution passed by at least a 2/3 VOTE by Council AND resolution must contain declaration of facts constituting such urgency) <p>Procedures for procurement of materials/supplies and equipment = ESTABLISHED BY ORDINANCE Projects for EXTENSION, REPLACEMENT OR EXPANSION of the transmission or distribution system of any PUBLIC UTILITY operated by City may be excepted from bidding requirements by a MAJORITY VOTE</p>
<p>Los Alamitos</p>	<p>Requirements for bidding process (to lowest responsible bidder):</p> <ul style="list-style-type: none"> - project involving expenditure of <u>more than \$10,000</u> for construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds - Notice by publication in official newspaper with 1 or more insertions (at least 10 days before time of opening bids) - All bids must be accompanied by certified or cashier's check, or bidder's bond executed by corporate surety authorized to engage in such business in CA, made payable to City (if amount of deposit not specified in notice or specifications referred to therein, amount deposited must be NOT LESS than 10% of aggregate amount of bid) - City may reject any and all bids and re-advertise in its discretion <p>Projects for construction, resurfacing, maintenance or repair of streets, drains or sewers = excepted from requirements if such work is performed by City of County of Orange</p> <p>City Council may bypass bidding process completely if:</p>

	<p>- City Council (based on estimates approved by City Manager) decides public works would be purchased MORE ECONOMICALLY on open market; AND City Council adopts resolution (passed by a MAJORITY VOTE of Council); <u>OR</u> City Council determines work or supplies/materials are of urgent necessity for the PRESERVATION of LIFE, HEALTH, or PROPERTY (resolution passed by An ABSOLUTE MAJORITY of Council AND resolution must contain declaration of facts constituting such urgency)</p>
Carlsbad	<p>"City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work."</p>
Desert Hot Springs	<p>"The City shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work."</p>
El Centro	<p>"The City and its agencies, including, but not limited to El Centro Regional Medical Center, are exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of public contracting and purchasing."</p>
El Cajon	<p>"Public Works Contract": "an agreement for erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, which is paid for in whole with tax revenue paid by residents of the city of El Cajon."</p> <p>Public Works Contracts having a total value of less than or equal to \$50,000 = exempt from public bidding and shall follow such procedures for open market sale or purchase as set by Council</p> <p>"City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contract greater than \$50,000, including, but not limited to, the compensation rates to be paid for</p>

	<p>the performance of such work."</p> <p>Does not require payment of prevailing wages unless otherwise provided for by law</p>
Solvang	<p>"The City shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work."</p> <p>City may accept gifts/donations (including donations of material and labor) for construction of any public works project</p> <p>City shall have power to perform any work of improvement by use of its own forces (NOT required to contract)</p> <p>City may also contract with other public agencies for the construction of works of public improvement</p>
Victorville	<p>"The City shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work." – <i>SAME AS Desert Hot Springs & part of Solvang's City Charter</i></p>
Buena Park	<p>"The provisions of California Labor Code Section 1770 et. Seq. regarding prevailing wages on public works and related regulations, as now existing and as may be amended, are accepted and made applicable to the City; its departments, boards, officers, agents and employees."</p>

**AGENDA ITEM NO. 9
COSTA MESA CHARTER COMMITTEE
VARIATION IN PUBLIC CONTRACTING REQUIREMENTS
JULY 24TH, 2013**

	General Law City	Uniform Construction Cost Accounting Act (UCCAA)	Costa Mesa's Ordinance	Charter City
Process	Competitive bidding required for contracts greater than \$5,000.00. Notice Inviting Bids	-Pubic projects of <\$45,000 can be performed by <i>city employees</i> . - < \$175,000 by <i>informal bidding</i> . -> \$175,000 by <i>formal bidding</i> . ¹	-Pubic projects of <\$45,000 can be performed by <i>city employees</i> . - < \$175,000 by <i>informal bidding</i> . -> \$175,000 by <i>formal bidding</i> .	Depends on the charter city. See corresponding spreadsheet.
Transparen cy	Requires City Council approval.	All documents regarding decision making process are public documents	All documents regarding decision making process are public documents	A charter cannot make bidding and contracting documents exempt from review or production
Openness	Any contractor can bid	Any contractor can get on the list of qualified bidders; notices sent to trade publications	Any contractor can get on the list of qualified bidders; notices sent to trade publications	Charter city may be able to have more stringent rules on qualification for locally funded projects only

¹ Public Contract Code § 22032.

Retention	Maximum 5% except where specific findings are made allowing 10% ²	Maximum 5% except where specific findings are made allowing 10%	Maximum 5% except where specific findings are made allowing 10%	Maximum 5% except where specific findings are made allowing 10%
Quality	Quality of the work is subject to variation.	Bidders first get on list of qualified contractors	Informal Bidding-City can use its list of qualified contractors.	For locally funded projects only, charter city may be able to have more stringent qualification process
Prevailing Wages	Prevailing wages required for public works contracts. General rate for each craft, classification or type of workers needed to execute the contract.	Prevailing wages required.	Prevailing Wages required	Prevailing wages are not necessarily required for purely municipal funded projects. Some city charters require prevailing wages. ³

² Public Contract Code § 7201 (to be repealed 1-1-16).

³ Legislation has been proposed that eliminates charter cities' exemption from prevailing wages for locally funded projects.

Costa Mesa, California, Code of Ordinances >> TITLE 2 - ADMINISTRATION >> CHAPTER V. - FINANCE
>> ARTICLE 3. PUBLIC PROJECTS >>

ARTICLE 3. PUBLIC PROJECTS

Sec. 2-173. Uniform public construction cost accounting act adopted.

Sec. 2-174. Definition of terms.

Sec. 2-175. Award of contract.

Sec. 2-176. Prohibition against splitting or separating projects.

Sec. 2-177. Bidding procedures.

Sec. 2-178. Rejection of bids; options; failure to receive bids.

Sec. 2-179. Adoption of plans, specifications, and working details.

Sec. 2-180. Emergencies procedure.

Secs. 2-181, 2-182. Reserved.

Sec. 2-173. Uniform public construction cost accounting act adopted.

There is hereby adopted by the City Council of the City of Costa Mesa, California, for the purpose of prescribing regulations governing contracts awarded by the city for public projects, the California Uniform Public Construction Cost Accounting Act (California Public Contract Code § 22000 et seq.). Nothing herein contained, however, shall preclude the City of Costa Mesa from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded.

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-174. Definition of terms.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Facility* means any plant, building, structure, ground facility, real property, street, highway or other public work improvement.
- (b) *Maintenance work* includes all of the following:
 - (1) Routine, recurring and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) Resurfacing of streets and highways at less than one (1) inch.
 - (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants and servicing of irrigation and sprinkler systems.
- (c) *Public project* means any of the following:
 - (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any publicly owned, leased or operated facility.

- (2) Painting or repainting of any publicly owned, leased or operated facility.
- (3) Public project does not include maintenance work.

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-175. Award of contract.

- (a) Public projects of the amount set forth in Public Contract Code section 22032(a), as amended from time to time, may be performed by the employees of the city by force account, by negotiated contract, or by purchase order.
- (b) Public projects of the amount set forth in Public Contract Code section 22032(b), as amended from time to time, may be let to contract by informal bidding procedures as set forth in section 2-177
- (c) Public projects of the amount set forth in Public Contract Code section 22032(c), as amended from time to time, or in a greater amount, shall be let to contract by formal bidding procedures as set forth in section 2-177

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-176. Prohibition against splitting or separating projects.

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-177. Bidding procedures.

- (a) *Formal bid procedures.* Public works projects which are subject to formal bidding procedures as set forth in section 2-175(c), above, shall be awarded to the lowest responsible bidder in accordance with the following procedures:
 - (1) The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fifteen (15) calendar days before the date of opening the bids in a newspaper of general circulation which is circulated within the City of Costa Mesa or, if there is none, in at least three places within the city as have been designated by city ordinance or regulation as places for the posting of its notices. The notice shall also be mailed at least thirty (30) calendar days before the date of opening the bids to all construction trade publications, as determined by the commission pursuant to Public Contract Code section 22036, which are circulated within the County of Orange. In addition to notice required by this section, the city may give other notice as it deems proper.
 - (2) All bids shall be presented under sealed cover to the city clerk.
 - (3) Projects over one hundred twenty-five thousand dollars (\$125,000.00) shall require bidder's security. Bidder's security shall be in an amount equal to at least ten (10) percent of the amount bid and shall be in cash, cashier's check made payable to the city, a certified check made payable to the city or a bidder's bond executed by an admitted surety insurer which meets the rating requirements established by the city manager or his designee, made payable to the city.
 - (4)

A bid for which bidder's security is required shall not be considered unless one of the forms of bidder's security is enclosed with it. If the successful bidder fails to execute the contract, the amount of the bidder's security shall be forfeited to the city as set forth below.

- (5) The city council may on refusal or failure of the successful bidder to execute the contract award it to the next lowest responsible bidder. If the city awards the contract to the second lowest responsible bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used or to the surety on the bidder's bond if a bond is used. This procedure shall be followed with the next lowest bidder in order upon any additional refusal or failure of the next lowest responsible bidder to execute the contract.
 - (6) The city may require bidders to meet certain criteria in order to be placed upon a bidder's list to bid on a public works project. Such criteria shall be established for each construction trade so as to ensure that only bidders meeting certain minimum standards may bid on specific public works projects.
- (b) *Informal bidding procedures.* Public works projects which are subject to the informal bidding procedures as set forth in section 2-175(b), above shall be awarded to the lowest responsible bidder in accordance with the Uniform Construction Cost Accounting Act, Section 22000 et seq. of the Public Contract Code, including the following procedures:
- (1) The city shall maintain a list of qualified contractors, identified according to categories of work. The development and maintenance criteria of the contractors list shall be determined by the California Uniform Construction Cost Accounting Commission.
 - (2) All contractors on the list for the category of work being bid or all construction trade journals specified in the California Public Contract Code Section 22036, or both, shall be mailed a notice inviting informal bids unless the product or service delivery is proprietary.
 - (3) All mailing of notices to contractors and construction trade journals pursuant to the California Public Contract Code Section 22036 shall be completed not fewer than ten (10) calendar days before bids are due.
 - (4) The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 - (5) The authority to award informal bids for public projects is delegated to the city manager.
 - (6) If all bids received are in excess of the amount set forth in Public Contract Code Section 22034(f), as amended from time to time, the city council may, by passage of a resolution by a four-fifths (4/5) vote, award the contract, at the amount set forth in Public Contract Code Section 22034(f), as amended from time to time, or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.
 - (7) Projects under one hundred twenty-five thousand dollars (\$125,000.00) may require bidders' security. Bidders security shall be in an amount equal to at least ten (10) percent of the amount bid and shall be in cash, cashier's check made payable to the city, a certified check made payable to the city or a bidder's bond executed by an admitted surety insurer which meets the rating requirements established by the city manager or his designee, made payable to the city.

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-178. Rejection of bids; options; failure to receive bids.

- (a) In its discretion, the city may reject any and all bids presented. If after the first invitation for bids all bids are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:
- (1) Abandoning the project or readvertising for bids in the manner described in this division.
 - (2) By passage of a resolution by a four-fifths vote of the city council declaring that the project can be performed more economically by the employees of the city, may have the project done by force account without further complying with this division.
 - (3) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two (2) or more bids are the same and the lowest, the city may accept the one it chooses.
 - (4) If no bids are received through the formal or informal procedure, the project may be performed by employees of the city by force account, or by informal bidding procedures set forth above without further complying with this article.

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-179. Adoption of plans, specifications, and working details.

The city shall adopt plans, specifications, and working details for all public projects exceeding the amount specified in Public Contract Code section 22032(c).

(Ord. No. 06-13, § 1, 6-20-06)

Sec. 2-180. Emergencies procedure.

In cases of emergency, when repair or replacements are necessary to permit the continued conduct of the operation or services of the city or to avoid danger to life or property, the city council, after making a finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and, that the action is necessary to respond to the emergency, may by a four-fifths (4/5) vote, proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts. The city manager shall have the power to declare a public emergency when it is impractical to convene a meeting of the city council, subject to confirmation by the city council, by a four-fifths (4/5) vote, at its next meeting and reviewed at least at every regularly scheduled meeting thereafter until the action is terminated. This procedure shall be subject to any other requirements of Public Contract Code section 22050, as amended.

(Ord. No. 06-13, § 1, 6-20-06)

Secs. 2-181, 2-182. Reserved.