



CHARTER COMMITTEE

AGENDA REPORT

MEETING DATE: SEPTEMBER 11, 2013

ITEM NUMBER:

SUBJECT: PROPOSED LANGUAGE GOVERNING PUBLIC CONTRACTING

DATE: SEPTEMBER 5, 2013

FROM: CHARTER COMMITTEE COUNSEL'S OFFICE

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BACKGROUND

At the August 28th, 2013 Charter Committee meeting, language governing public contracting was proposed for consideration. The following is an analysis of the language proposed.

DISCUSSION

1. The following language is proposed:

The Public Works Department shall comply with the bidding and awarding set forth in public contracting by the alternatives UCCAA every five years. If Commission and state controller make adjustments for material changes in public construction code that differ from requirements of this Charter, the Charter requirement will prevail.

As we have noted, the UCCAA provisions govern both the process for and thresholds at which less formal contracting procedures may be implemented. While the City has adopted the UCCAA by ordinance, as Mr. Munoz explained, the City continues to use a formal bidding procedure for most contracts.

As we understand this language, the intent would be to incorporate into the Charter compliance with the UCCAA as it is modified every five years for threshold changes. In other words, it would mandate use of the UCCAA except where a change is made in that law which "differs" from another Charter requirement.

Our concern would be that as presently worded, the provision could be read to force the staff to use the UCCAA, whereas the current ordinance authorizes but does not require the less formal process for certain contracts. Additionally, it may not always be easy to determine whether a change to the UCCAA in the future conflicts with a provision of the charter. In addition, presumably city staff and Council would have to evaluate each change in the UCCAA requirements to determine whether it is in some way inconsistent with the Charter, and it may not be clear in the future whether and how the determination will be made or enforced.

If the Committee wants the Charter to make explicit reference to the UCCAA, we would suggest the following alternative language:

The Public Services Department shall be authorized to utilize the informal bidding procedures and cost thresholds set forth in the Uniform Construction Cost Accounting Act, as the procedures and cost thresholds may be modified every five years by the Uniform Construct Cost Accounting Commission. The City shall not be obligated to comply with any provision of the Uniform Construction Cost Accounting Act, including but not limited to future changes which relate to matters other than solicitation of bids and thresholds for informal bidding.

It is important to note that while the Charter Committee has had an opportunity to review and understand the UCCAA in depth, that voters may have no understanding of what this provision does.

2. The following language is proposed:

The 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.

The above provision reflects language used in a number of city charters governing public contracting. This provision is generic but for a good reason in that it gives a charter city authority over all facets of public contracting to which it would otherwise be subject under state general law. As this group has discussed, a charter is a “Constitution” of a city that acts as an instrument of limitation on the broad power over municipal affairs¹. With this language, cities then have the flexibility to adopt, amend or repeal ordinances, resolutions and/or policies governing a specific area of public contracting without having to undertake the more arduous task of amending its charter.

Additionally, the last portion of this provision gives cities authority over whether or not to pay prevailing wages. As the staff report governing prevailing wages demonstrates, some cities take a position either requiring or prohibiting prevailing wages. For instance, the City of Newport Beach’s Charter explicitly exempts the City from paying prevailing wages with some exceptions, whereas, the City of Irvine requires the City to pay prevailing wages with some exceptions. However, the above provision does not take a stance either way, but instead, gives a city broad discretion to decide whether to pay prevailing wages at its discretion.

Because the language is so broad, however, some might argue that it gives a city too much power and/or flexibility governing public contracting, particularly to the extent there are concerns about transparency of the process and equal access to bidding opportunities for all.

¹ California Municipal Law Handbook, § 1.13(b)

