

**ORDINANCE NO. 06-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING ARTICLE 2, CHAPTER V OF TITLE 2 OF THE COSTA MESA MUNICIPAL CODE RELATING TO THE PURCHASING SYSTEM AND ADDING ARTICLE 3 RELATING TO PROCEDURES FOR PUBLIC PROJECTS**

**WHEREAS**, because the formal bid limit has not been adjusted since 1991 and, by not having periodically adjusted the limit to keep up with changes to the Consumer Price Index due to inflationary cost increases, the threshold has been eroded to \$17,153 in today's dollars; and

**WHEREAS**, raising the current formal bid limit from the current \$25,000 to \$50,000 will be in keeping with the intent of the Purchasing Ordinance to adopt periodic adjustments and will further facilitate the implementation of efficient procedures for the purchase of supplies, services and equipment without compromising the formal bidding practices; and

**WHEREAS**, raising the minimum for formal bidding to \$50,000 will restore City staff's flexibility which has been lost during the past fifteen (15) years due to inflationary cost increases; and

**WHEREAS**, an indeterminate amount of resources will be saved due to increased efficiency achieved through raising the threshold limit, thus eliminating costs associated with formal bidding procedures under the current limitations.

**WHEREAS**, currently, the Public Services Department follows the procedures set forth in the California Public Contract Code Sections 20160-20175 which require that the awarding of contracts for public projects over \$5,000 must be let to bid under a formal bidding process; and

**WHEREAS**, by electing to become subject to the Uniform Public Construction Cost Accounting Act (the "Act," Public Contract Code section 22000 *et seq.*) the City would be able to use an informal bidding process for public projects contracts up to \$125,000, thus increasing the efficiency of procedures and saving the City a substantial amount of time and effort in processing public projects bids; and

**WHEREAS**, electing to become subject to the Act also allows the City to have public projects under \$30,000 be performed by City staff, negotiated contract or purchase order; and

**WHEREAS**, the City Council has elected to become subject to the Uniform Public Construction Cost Accounting Act pursuant to Resolution No. 06-\_\_\_\_\_, and now desires to adopt an informal bidding process.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Article 2 of Chapter V of Title 2 of the Costa Mesa Municipal Code is hereby amended partially as follows:

**ARTICLE 2**

Sec. 2-166. Procedure for purchases exceeding ~~twenty-five~~ fifty thousand dollars.

Except as provided in this article, purchases of supplies, services, equipment and the sale of personal property of estimated value greater than ~~twenty-five~~ fifty thousand dollars (~~\$25,000.00~~) (\$50,000.00) shall be by written contract pursuant to the following procedures:

- (a) *Notice inviting bids.* Notices inviting bids shall include a general description of the articles to be purchased or sold, state where bid blanks and specification may be secured, and the time and place for opening bids.

...  
...

- (3) *Bulletin board.* The purchasing officer shall also advertise pending purchases or sales, by a notice posted on a public bulletin board in the city hall and on the City's web site.

...  
...

(i) When in the best interest of the city, and when necessary to adhere to time lines established by other agencies, the purchasing officer may recommend to the city manager to bypass the formal bid process for the purchase of surplus property. City council will be advised by the purchasing officer, or city manager, of procurements over ~~twenty-five~~ fifty thousand dollars (~~\$25,000.00~~) (\$50,000.00) which were exempted from the formal bid process.

**Sec. 2-167. Open market procedure.**

Except as provided in this article, purchases of supplies, equipment, contractual services and sales of personal property of an estimated value in the amount of ~~twenty-five~~ fifty thousand dollars (~~\$25,000.00~~) (\$50,000.00) or less, and in the case of public works projects in the amount of five thousand dollars (\$5,000.00) or less, may be made by the purchasing officer in the open market as follows without observing the procedure prescribed in section 2-166:

...

**Sec. 2-168. Bid award appeal procedure.**

- (a) Any bid with the value in excess of five thousand dollars (\$5,000.00), but under ~~twenty-five~~ fifty thousand dollars (~~\$25,000.00~~) (\$50,000.00), may be appealed in accordance with the following procedure:

...

**Section 2.** Article 3 of Title 2 of the Costa Mesa Municipal Code is hereby added as follows:

### **Article 3 Public Projects**

#### **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.

#### **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 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.

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.

### **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.

### **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 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 \$125,000 shall require bidder's security. Bidders security shall be in an amount equal to at least ten 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 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 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 \$125,000 may require bidders' security. Bidders security shall be in an amount equal to at least ten 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.

**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 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.

**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).

**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 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 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.

**Section 3. The following Articles in Chapter V are hereby renumbered:**

- Art. ~~3~~ 4. Claims Against City, §§ 2-183 – 2-195
- Art. ~~4~~ 5. Special Gas Tax Street Improvement Fund, §§ 2-196 – 2-198
- Art. ~~5~~ 6. Excess Proceeds of Taxes Reserve Accounts, §§2-199 - 2-204
- Art. ~~6~~ 7. Use of General fund Cash Reserves, §§ 2-205 – 2-209

**Section 4.** Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

**Section 5.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**Section 6.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)  
COUNTY OF ORANGE     ) ss  
CITY OF COSTA MESA     )

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06-\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_th day of \_\_\_\_\_, 2006, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2006, by the following roll call vote:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
City Clerk and ex-officio  
Clerk of the City Council of the  
City of Costa Mesa