



# Administrative Report

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J.1., File # BF21-3048

Meeting Date: 9/23/2021

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**To: BUDGET AND FINANCE COMMISSION**

**From: JENNIFER PAUL, FINANCE DIRECTOR**

## **TITLE**

DISCUSSION OF THE UNIFORM PUBLIC CONSTRUCTION CONTRACT ACCOUNTING ACT AND OPPORTUNITIES TO STREAMLINE PUBLIC WORKS CONTRACT PROCUREMENT

## **EXECUTIVE SUMMARY**

The procurement of construction contracts for the City's capital improvement activities is regulated by the California Public Contracts Code (PCC), the City Charter and the Redondo Beach Municipal Code (RBMC), which all require the use of competitive bidding procedures when making a contract award for a public works project. These regulations can be unintentionally cumbersome for contracts of smaller value that present both lower risk of and consequences from activity that would compromise public trust. Both the City Charter and the California Uniform Public Construction Contract Accounting Act (UPCCAA) have mechanisms in place that recognize the need for lower value contracts to have less restrictive competitive bidding and awarding regulations in order to balance regulatory safeguards with expedient service to the public. This report identifies the similarities in the City's Charter, RBMC and the UPCCAA and provides potential options for the City to increase bid limits to procure contracts for public works projects in a more efficient way, while continuing to safeguard the public's trust.

## **BACKGROUND**

The PCC is the body of law that regulates construction contracts for activities deemed to be a public works project. The set of laws is intended "to eliminate favoritism, fraud and corruption in the awarding of public contracts"<sup>1</sup> by implementing a formal, competitive process for awarding contract work. Competitive bidding aligns with good purchasing practice and the formalities associated with state law mitigate the potential for corruption. The PCC also states that the "California public contract law should be efficient and the product of the best of modern practice and research"<sup>2</sup> and that it should "aid public officials in the efficient administration of public contracting"<sup>3</sup>. However, these checks and balances slow the process of procurement. In some cases, the delay is unwarranted, such as for simpler, low risk, low value projects.

An example of the cumbersome nature of the PCC can be found in the requirement that all municipal public projects over \$5,000 must be awarded to the lowest responsible bidder after a period of public notice of the opportunity (PCC Section 20162.) This formal competitive bidding procedure makes sense for projects over a certain value. However, a city could spend resources up to an exceeding \$5,000 to carry out the reporting, advertising, bid support, plan and specification publication, etc., and

it is easy to see that this limit is low from a cost benefit aspect for lower value projects. The low value of this threshold is also problematic in that it increases the likelihood that cities will need to award contracts to poorly performing or inexperienced contractors. Cities subject to this law have no efficient way to reduce participation of poor quality contractors on low cost projects. Larger cost projects do this inherently by having higher requirements for successful experience, safety performance and bonding capacity. By raising the threshold for contracts that must be awarded to the low bidder, a city can exercise some discretion to avoid those contractors without sufficient qualifications or experience on a greater number of their less expensive projects.

To address the needs of efficiency of project delivery while still providing sufficient controls and to establish uniform procedures, the State Legislature enacted the UPCCAA in 1983. The UPCCAA is a body of law added to the PCC (Section 22000 to 22045) that allows for alternative bidding and awarding procedure to cities and other local agencies choosing to adopt it. An FAQ on the UPCCAA, prepared by the State, is attached for additional information. To date over 230 municipalities have adopted the UPCCAA<sup>4</sup>.

Among other things, establishes three sets of procedures for public projects, based on the estimated value of the construction. Level 1 projects are less than \$45,000, Level 2 projects range from \$45,001 to \$175,000, and Level 3 projects are those exceeding \$175,000. These limits change occasionally by act of the Legislature, which last occurred in 2011. The primary difference between the levels is how bids are solicited and awarded. Level 1 projects can be performed by force account<sup>5</sup>, purchase order or negotiated contract. Level 2 projects require use of informal bidding procedures that require notice 10 days before bids are due to either a list of qualified contractors maintained by the City or to a specified list of construction trade journals. Under the Level 2 process, the legislative body can also delegate contract award authority to a staff member, further saving time to begin a project. Level 3 projects require a formal bidding process that includes a longer noticing period and award by the legislative body.

Pursuant to the state Constitution, cities within the State of California are formed as either general law or charter cities. General law cities must comply with the \$5,000 bid limit established in PCC Section 20162 unless they adopt the UPCCAA. Adopting the UPCCAA allows the agency to use the higher bid limits and procedures, but the agency is required to perform additional cost accounting procedures for public projects. Furthermore, upon any complaint by an interested party the agency is subject to an accounting procedures review by the California Uniform Construction Cost Accounting Commission (CUCCAC).

The City is not required to adopt the UPCCAA in order to increase to the bid limits. Adoption of the UPCCAA brings an increase in administrative burden related to mandated cost accounting procedures and policies. Furthermore, adoption of the UPCCAA potentially subjects the City to an exhaustive and time consuming accounting procedures review by CUCCAC any time a disgruntled bidder sheds doubt on the City's process. Therefore, staff does not recommend that the City adopt the UPCCAA.

For a charter city, there are better options to improve the procedures outlined in the PCC. According to PCC Section 1100.7, charter cities, such as Redondo Beach, are not subject to the provisions of

the PCC if a city charter provision or ordinance conflicts with any relevant provision of the PCC. Pursuant to this section the City has established, in the City Charter and RBMC, alternative bid limits and procedures for public works projects. In a City Charter amendment that was approved by voters on March 7, 1989, and a subsequent ordinance adopted by City Council on February 20, 1990, the City incorporated a significant amount of the language and procedures similar to the UPCCAA related to bidding for public works projects.

The City's Charter, Article XIX, Section 19, recognizes the value to the public of being able to deliver public works projects efficiently and groups public works projects according to dollar value. The City Charter allows for projects up to \$15,000 (the City's "Level 1") to be let by force account, negotiated contract or purchase order. Projects valued from \$15,000 and \$50,000 (the City's "Level 2") may be let by an informal procedure that is set by the City Council by ordinance (RBMC 2-6.1.03), which allows for a 10-day notice and authorizes the Mayor to execute the contract with the lowest responsible bidder without explicit approval of the City Council under most conditions. Projects over \$50,000 (the City's "Level 3") must follow formal bid procedures, which involve a 30-day notice and Council award.

#### **DISCUSSION:**

The Level 1 and Level 2 requirements in the UPCCAA, City Charter and RBMC make contracting more efficient by saving time in both the advertising period and the time to award and execute the contract for the project. The City's Level 1 allowances also make it possible to solicit quotes only from known and reliable contractors, resulting in fewer surprises in the administration of the contract.

The City regularly uses the Level 1 and Level 2 procedures and would benefit by matching the bid threshold amounts to those of the UPCCAA. The City's limits, at \$15,000 and \$50,000 respectively, were last adjusted in 1989 and are significantly lower than (only about 1/3 of) UPCCAA thresholds. There are two options to pursue increasing the City's bid thresholds. Both options involve an election of the voters, since it would be necessary to change the language of the City Charter. In addition, an ordinance update would be required.

#### **Option 1:**

In this first option, assuming voter approval, the City Charter would be revised to remove the expression of the bid thresholds as specific amounts and permit them to be set and changed, from time to time, by ordinance of the City Council, similar to the way the informal bidding procedures are handled. Staff could then recommend, as needed, that the ordinance be changed to match the bid threshold levels set by the State Controller, which can change no more frequently than every five years and in no less than \$15,000 increments.

By changing the City Charter to allow the Council to set the threshold levels, the Council retains full control to adjust them as required by the City for efficient delivery of projects. By tying the City threshold to the levels set by the State Controller, Council gains the confidence that it is acting in accordance with many other municipalities in the State and region.

#### **Option 2:**

In this second option, assuming voter approval, the specific amounts of the bid thresholds in the City

Charter would be increased to match or nearly match the bid threshold levels to those of the UPCCAA. This option would not allow Council to set the bid thresholds by ordinance and any future increase would require voter approval.

Changing the City Charter is appropriately complex and would involve considerable effort on the part of City staff from multiple Departments. There are likely other significant and items (in addition to smaller “clean up” items) that could also be considered in any effort to amend the Charter and obtain an affirmative vote of the citizens of Redondo Beach. Such a task would involve considerable effort on the part of City staff from multiple departments. Changing the thresholds of our methodology to more efficiently procure and deliver public works projects may not be enough to drive such an effort, but it most certainly should not be left out of such an endeavor.

### **RECOMMENDATION:**

Staff believes gains in efficiency of project delivery can be made by considering and adjustment of City Charter mandated bid threshold levels used in determining the method by which public works projects are advertised for bids and awarded. Therefore, Staff recommends the Commissions receive and file this report on potential methods to streamline the procurement of contracts for public works projects.

<sup>1</sup> California Public Contracts Code, Division 1, Section 100(d)

<sup>2</sup> California Public Contracts Code, Division 1, Section 101

<sup>3</sup> Ibid, Section 102

<sup>4</sup> [https://www.sco.ca.gov/Files-ARD-Local/Participating\\_Agencies\\_-\\_General.pdf](https://www.sco.ca.gov/Files-ARD-Local/Participating_Agencies_-_General.pdf) <[https://www.sco.ca.gov/Files-ARD-Local/Participating\\_Agencies%20-%20General.pdf](https://www.sco.ca.gov/Files-ARD-Local/Participating_Agencies%20-%20General.pdf)>, April 10, 2018.

<sup>5</sup> Work by force account means work performed by City crews or by subcontracted firms who augment City crews and perform work on a time and materials basis

### **COORDINATION**

Preparation of this report was coordinated with the Finance Department and the Public Works Department.

### **FISCAL IMPACT**

None.