



DATE: December 19, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **MUNICIPAL CODE AMENDMENTS TO ADOPT INFORMAL CONSTRUCTION BIDDING PROCEDURES AND COMPLY WITH THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT**

SYNOPSIS

Staff recommends that the City Council and the Harbor District Board of Directors adopt respective resolutions electing to become subject to the Uniform Public Construction Cost Accounting Act and introduce an ordinance to amend Chapter 28A of the Oceanside City Code relating to contract limits and purchasing procedures.

BACKGROUND

The City Council last approved a revision to the purchasing procedures on September 21, 2005. The revisions included:

- Competitive bids required for purchases over \$25,000
- Formal sealed bids for purchase over \$100,000
- Emergency purchases reportable to the City Council if over \$25,000

State law defines public works projects and sets a limit of \$5,000, above which projects must be formally bid. For this reason, the City cannot bid efficiently for construction work in the same manner it contracts for purchased supplies, equipment, and professional services.

Each formally-bid project requires a newspaper legal ad, a staff report for the bid authorization, the production and distribution of bid documents, the City Clerk's oversight for the bid opening, and a second staff report to award the project.

The whole process adds a minimum of three months to the project schedule and is expensive for both the City and the competing contractors.

However, the Public Contract Code provides a solution: Cities and special districts can elect, by resolution, to become subject to the provisions of the Uniform Public Construction Cost Accounting Act (and subsequently referred to as "Act").

The Act provides for three categories of bid processing:

1. Up to \$45,000 – Negotiated purchase
2. Up to \$175,000 – Informal bid process such as e-mail or fax quotes
3. Over \$175,000 – Formally advertised bid procurement

In addition to the revisions directly related to the Uniform Public Construction Cost Accounting Act, an overly-restrictive definition for emergency procurement is omitted, and a requirement for timely filing of construction notices of completion is added.

ANALYSIS

To reduce administrative costs, allow for more timely bidding of public works construction, and encourage local bidders, staff recommends that the City revise its purchasing ordinance to take advantage of the informal bidding procedure under the Uniform Public Construction Cost Accounting Act.

California law requires general law cities to formally bid public work contracts for all public projects over \$5,000 (Public Contract Code Section 20162). Oceanside is a charter city. Section 301 of the City charter states:

“The City is 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.”

The City's purchasing ordinance was last revised on September 21, 2005, which predates the City charter. As written, the purchasing ordinance and administration regulations regarding procurements provide that public works construction projects over \$5,000 be advertised, bid, and awarded in accordance with formal bidding procedures set forth in the Public Contract Code. Because Oceanside is now a charter city, it is not bound by state law bidding rules imposed on general law cities. As authorized by the City charter, the City may adopt its own public contracting procedures.

The Uniform Public Construction Cost Accounting Act provides clarity and workable bidding limits that will allow the City to achieve the efficiencies of informal bidding on smaller public projects that currently require formal bidding.

While increasing the dollar limits to allow an expedited *bid process* for public projects, the City Council retains full control and oversight of the *project approval process* by annually adopting the Capital Improvement Program budget. Also, all permitting and CEQA oversight requirements, including public participation, remain unchanged.

Among North County cities, the Act has been adopted by Carlsbad, Escondido, and Vista.

Formal Bid Process

Currently, the City uses a formal bid process for virtually all of its public projects. Under the formal bid process, the City Council approves the project plans and specifications, and authorizes staff to let the project to bid with a legal ad placed with the North County Times newspaper. Written bids are delivered to the City Clerk and subsequently publicly opened. Assuming the bid results are satisfactory, the contract is awarded by the City Council and must be awarded to the lowest responsible bidder.

Informal Uniform Public Construction Cost Accounting Act Process

The Act requires the City to advertise once for contractors desiring to do business with City in the upcoming year. Staff will verify the licensing and qualifications of the contractors requesting to be listed. For projects up to \$45,000, the City can negotiate with contractors on the list and approve them according to their availability and abilities. Alternatively, City personnel can perform the work directly under the force account provisions of the Act.

For projects up to \$175,000, the City uses an informal bidding process by advertising directly to the listed contractors with a license for the requested work. The City also must advertise the project to plan rooms and recognized industry publications. The City's current plan room and internet bid distribution meets or exceeds Act requirements. The City can also receive and accept bids from qualified contractors who are not on the bid distribution list.

If the bid amount is over \$175,000, but not more than \$187,500, the City Council may award a project at a higher bid price without the necessity of rebidding by formal bid process. A four-fifths vote is required.

Regardless of the dollar amount of the project, the City Council may, by a four-fifths vote, determine that City personnel can perform the work at less cost than the lowest contractor bid, and direct that the work proceed by force account with City personnel. For this reason, the Act requires that the City maintain cost accounting standards and procedures so that such findings can be verified, if necessary. The City's current accounting and financial systems meet or exceed Act requirements.

Revised Public Contract Limits

Staff recommends that the City Council concurrently revise the administrative dollar approval limits on public contracts to match the informal bidding thresholds of the Uniform Public Cost Accounting Act:

1. Up to \$45,000 – Approval by the City Engineer
2. Over \$45,000 and up to \$175,000 – Approval by the City Manager
3. Over \$175,000 – Approval by the City Council

Approval by the City Engineer or the City Manager would continue to be contingent upon findings of the Finance Director that sufficient funds are available and budgeted, and the City Attorney's approval of all contracts as to form.

Emergency Procurements

The definition of "emergency" in Section 28A.24, of municipal code does not allow for expedited construction procurements solely to prevent higher repair costs from delayed repairs.

This is the current definition in the municipal code:

"An emergency is deemed to exist if:

1. There is a great public calamity.
2. There is an immediate need to prepare for national or local defense of threatened conditions of disaster or of extreme peril to the safety of persons or property within the City.
3. There is a breakdown in machinery or an essential service or such a shortage of equipment or supplies so as to require immediate procurement in order to safeguard the public health, safety, or welfare.
4. As essential department operation affecting the public health, safety or welfare would be greatly hampered if the prescribed procurement procedure would cause an undue delay in the procurement of the needed equipment, supplies or services."

The proposed revision is to strike the above definition from the municipal code and rely on the definition of "emergency" found in Section 1102 of the Public Contract Code:

"Emergency," as used in this code, means "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

Oceanside Harbor District

Currently, Section 28A.27 of the municipal code authorizes the City Manager to provide purchasing services for the Oceanside Small Craft Harbor District. Because the Harbor District is a special district independent of the City, the Harbor District Board of Directors must also approve a resolution stating that the Harbor District also elects to be subject to the Uniform Public Construction Cost Accounting Act. No additional revisions are required to the municipal code because the City is already authorized to act as the Harbor District's purchasing agent.

FISCAL IMPACT

This proposal, if approved, will result in both cost savings and operational efficiencies in the Capital Improvement Program. These savings and efficiencies will vary from year-to-year, depending on the type and number of projects.

In the last two years, the City used the formal bid process on six public projects that were under \$175,000. Had Act procedures been adopted, twelve staff reports for these small projects would not have been required. (Each project requires a staff report to authorize bidding and another to award construction.) The estimated average cost for this type of staff report preparation is \$3,200 per project. Therefore, an estimated total cost savings of \$38,400 would have been realized.

However, this level of administrative cost savings is small relative to the dollar volume of the City's public projects. While administrative cost efficiencies from adoption of Act bidding procedures are not trivial, the real benefits come from the *speed* of project delivery.

Currently, the City is aggregating public projects into large bid packages. For example, last year, the City awarded a contract for five traffic signals at various locations, and a year ago the City completed a large \$4.5 million asphalt overlay of twelve different arterial streets. With adoption of Act bidding procedures, individual public projects can be bid as their designs are completed. This gets more public improvements completed more quickly.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council and the Harbor District Board of Directors adopt respective resolutions electing to become subject to the Uniform Public Construction Cost Accounting Act and introduce an ordinance to amend Chapter 28A of the Oceanside City Code relating to contract limits and purchasing procedures.

PREPARED BY:

SUBMITTED BY:



Gary Kellison
Senior Civil Engineer



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
George Buell, Development Services Director
Scott O. Smith, City Engineer
Cari Dale, Water Utilities Director
Hans K. Koger, Public Works Division Manager
Frank Quan, Harbor and Beaches Manager
Teri Ferro, Financial Services Director







JRD for CD



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Attachment:

1. Resolution of the City of Oceanside
2. Resolution of the Oceanside Harbor District
3. Ordinance amending Section 28.A of the Oceanside Municipal Code
4. April 25, 2011 letter from John Chiang, California State Controller

1 NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE as
2 follows:

- 3 1. That the City Council hereby elects under Public Contract Code Section 22030 to
4 become subject to the uniform public construction cost accounting procedures set forth
5 in the Uniform Public Construction Cost Accounting Act and to the California Uniform
6 Construction Cost Accounting Commission's policies and procedures manual and cost
7 accounting review procedures, as they may each from time to time be amended.
8 2. That the City Clerk is directed to notify the State Controller forthwith of this
9 election.

10
11 PASSED AND ADOPTED by the City Council of the City of Oceanside, California
12 this _____ day of December _____, 2012, by the following vote:

13
14 AYES:

15 NAYS:

16 ABSENT:

17 ABSTAIN:

18
19 MAYOR OF THE CITY OF OCEANSIDE

20 ATTEST:

21 APPROVED AS TO FORM:

22 _____
23 CITY CLERK

24 
25 _____
26 CITY ATTORNEY

27 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ELECTING TO BECOME
28 SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

1 WHEREAS, the Board of Directors did hear all persons desiring to speak either in favor
2 or in opposition.

3 NOW, THEREFORE, the Oceanside Harbor District Board of Directors DOES
4 RESOLVE as follows:

- 5 1. That the Oceanside Harbor District Board of Directors hereby elects under Public
6 Contract Code Section 22030 to become subject to the uniform public construction cost
7 accounting procedures set forth in the Uniform Public Construction Cost Accounting
8 Act and to the California Uniform Construction Cost Accounting Commission's
9 policies and procedures manual and cost accounting review procedures, as they may
10 each from time to time be amended.
- 11 2. That the City Clerk of the City of Oceanside is requested to notify the State
12 Controller forthwith of this election.

13
14 PASSED AND ADOPTED by the City Council of the City of Oceanside, California
15 this _____ day of December _____, 2012, by the following vote:

16
17 AYES:
18 NAYS:
19 ABSENT:
20 ABSTAIN:

21 _____
22 MAYOR OF THE CITY OF OCEANSIDE

23 ATTEST:

APPROVED AS TO FORM:

24
25 _____
26 CITY CLERK

27 
28 _____
CITY ATTORNEY

RESOLUTION OF THE BOARD OF DIRECTORS OF THE OCEANSIDE SMALL CRAFT HARBOR
DISTRICT ELECTING TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST
ACCOUNTING ACT

1 (i) *Maintenance Work* includes all of the following:

- 2 (1) Routine, recurring, and usual work for the preservation or protection of any
3 publicly owned or publicly operated facility for its intended purpose.
4 (2) Minor repainting.
5 (3) Resurfacing of streets and highways at less than one inch.
6 (4) Landscape maintenance, including mowing, watering, trimming, pruning,
7 planting, replacement of plants, and servicing of irrigation and sprinkler systems.
8 (5) Work performed to keep, operate, and maintain publicly owned water, power, or
9 waste disposal systems.

10 2. The first sentence of Section 28A.4 “Centralized purchasing department” is amended to
11 read as follows:

12 “There is a created a centralized purchasing department in which is vested authority for
13 the purchase of equipment, supplies and services, except for public projects.

14 Public projects shall be administered by the City Engineer or as otherwise directed by the
15 City Manager.”

16 3. Section 28A.8 “Procedures” is amended to read as follows:

17 “All purchases of equipment, supplies, services, and public projects and the sale of
18 surplus personal property shall be carried out in accordance with the procedures provided
19 for in this chapter.”

20 4. Section 28A.19 “Informal bidding procedures” is amended to add the following phrase
21 to the beginning of the first sentence:

22 “Except for public projects,…”

23 5. Subsection 28A.24(a), “*Emergency purchases and procurements*” is amended to read as
24 follows:

25 “(a) *Emergency purchases and procurements*. ‘Emergency,’ as used in this Chapter, means a
26 sudden, unexpected occurrence that poses a clear and imminent danger, requiring
27 immediate action to prevent or mitigate the loss or impairment of life, health, property,
28 or essential public services.

1 “(1) In case of emergency which requires the immediate procurement of equipment,
2 supplies or service, the city manager may authorize the purchasing officer to
3 secure by open market purchase, at the lowest obtainable price, any equipment,
4 supplies or service regardless of the amount of the expenditure. A full report of
5 the circumstances justifying all emergency purchases shall be submitted to the city
6 manager by the department head requesting said purchase. For any such
7 emergency purchase of a value greater than twenty-five thousand dollars
8 (\$25,000), such report shall be forwarded to the city council for its information.

9 “(2) In case of emergency when repair or replacements are necessary, the City may
10 proceed at once to replace or repair any public facility without adopting plans or
11 specifications, or giving notice for bids to let contracts. The work may be done by
12 force account, by one or more contractors, or a combination of the two.

13 “(3) In case of emergency, if notice for bids to let contracts for a public project will
14 not be given, the City shall comply with Public Contract Code Section 22050.”

15 6. A new Section 28A.28 is hereby added as follows:

16 **“Sec. 28A.28. Procurement Procedures for Public Projects.**

17 “(a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by City
18 employees by force account, by negotiated contract, or by purchase order.

19 “(b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be
20 let to contract by informal bidding procedures as follows:

21 “(1) *Informal Bid Procedures.* Public projects, in accordance with the limits listed in
22 Section 22032 of the Public Contract Code, may be let to contract by informal
23 procedures as set forth in Section 22032, et seq., of the Public Contract Code.

24 “(2) *Contractors List.* A list of contractors shall be developed and maintained in
25 accordance with the provisions of Section 22034 of the Public Contract Code and
26 criteria promulgated from time to time by the California Uniform Construction
27 Cost Accounting Commission.
28

1 “(3) *Notice Inviting Informal Bids.* A notice inviting informal bids shall be prepared,
2 which notice shall describe the project in general terms, describe how to obtain more
3 detailed information about the project, and state the time and place for the submission
4 of bids. The notice shall be mailed, not less than ten (10) calendar days before bids
5 are due, to all contractors for the category of work to be bid, as shown on the list
6 developed in accordance with Subsection 28A.28(b)(2), and to all construction trade
7 journals as specified by the California Uniform Construction Cost Accounting
8 Commission in accordance with Section 22036 of the Public Contract Code.
9 Additional contractors and/or construction trade journals may be notified at the
10 discretion of the department/agency soliciting bids, provided, however:

11 (i) If there is no list of qualified contractors maintained by the City for the
12 particular category of work to be performed, the notice inviting bids shall be
13 sent only to the construction trade journals specified by the Commission.

14 (ii) If the product or service is proprietary in nature such that it can be obtained
15 only from a certain contractor or contractors, the notice inviting informal
16 bids may be sent exclusively to such contractor or contractors.

17 “(4) *Award of Contracts.*

18 (i) The City Engineer is authorized to award informal contracts of one hundred
19 seventy five thousand dollars (\$175,000) or less pursuant to this Section.

20 (ii) If all bids received are in excess of one hundred seventy-five thousand
21 dollars (\$175,000), the City Council may, by adoption of a resolution by a
22 four-fifths vote, award the contract, at one hundred eighty-seven thousand
23 five hundred dollars (\$187,500) or less, to the lowest responsible bidder, if
24 it determines the project cost estimate was reasonable.

25 “(c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall,
26 except as otherwise provided in this Section, be let to contract by formal bidding
27 procedure.

28 //

1 SECTION 2. Severability

2 If any section, sentence, clause or phrase of this Ordinance or these amendments to
3 Chapter 28A is for any reason held to be invalid or unconstitutional by a decision of any court
4 of competent jurisdiction, such decision shall not affect the validity of the remaining portions of
5 this Chapter or the amendments thereto. The City Council hereby declares that it would have
6 passed this Ordinance and adopted these amendments to Chapter 28A and each section,
7 sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,
8 subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

9 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this
10 Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)
11 days after its passage in the North County Times, a newspaper of general circulation, which is
12 circulated in the City of Oceanside.

13 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30th) day
14 from and after its final passage.

15 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
16 California, held on the ___ day of _____, 2012 and, thereafter,

17 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
18 Oceanside, California, held on the ___ day of _____, 20 __, by the following vote:

19 AYES:

20 NAYS:

21 ABSENT:

22 ABSTAIN:

23
24 ATTEST:

MAYOR OF THE CITY OF OCEANSIDE

APPROVED AS TO FORM:

25
26 _____
CITY CLERK

27 
CITY ATTORNEY

28 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING
CHAPTER 28A OF THE OCEANSIDE CITY CODE TO PROVIDE INFORMAL BIDDING
PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT



JOHN CHIANG
California State Controller

April 25, 2011

To: ALL PUBLIC AGENCIES SUBJECT TO THE TERMS OF THE UNIFORM
PUBLIC CONSTRUCTION COST ACCOUNTING ACT

Re: Increase In The Informal Bid Limit Pursuant To Public Contract Code Section 22032

This letter is to inform you that the informal bid limit prescribed by section 22032 of the Public Contract Code will be increased to \$175,000 effective for the fiscal year beginning July 1, 2011. This increase is pursuant to the terms of the Uniform Public Construction Cost Accounting Act (Act) and is at the recommendation of the California Uniform Construction Cost Accounting Commission (CUCCAC).

The Act provides public agencies economic benefits and greater freedom in expediting public works projects. Agencies electing to follow the cost accounting procedures set forth in the *Cost Accounting Policies and Procedures Manual*, prescribed by the CUCCAC, will have the advantages of an increased force account limit, an increased bid limit, and an alternative informal bidding procedure.

Any city, county, redevelopment agency, special district, school district, and community college district can voluntarily elect to become a participant of the Act. After opting into the Uniform Public Construction Cost Accounting Act, by resolution of its governing board, participants enjoy the advantage of the streamlined awards process, as well as reductions in paperwork related to advertising and report filing. In return, the signatory agency agrees to provide cost accounting information in the format prescribed in the *Cost Accounting Policies and Procedure Manual* and to adhere to the terms of the Act until the agency formally opts out. For more details or contact information, please visit our website at <http://www.sco.ca.gov/ard/local/cuccac>.

Sincerely,
Original signed by:

JOHN CHIANG
California State Controller