



City of Chula Vista

Staff Report

File#: 17-0464, **Item#:** 6.

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 2.56 (PURCHASING SYSTEM) TO ADD JOB ORDER CONTRACTING (JOC) AS A PROCUREMENT METHOD AND ESTABLISH RELATED POLICIES AND PROCEDURES, ESTABLISH UNIFORM POLICIES AND PROCEDURES FOR DEVELOPER-PERFORMED PUBLIC WORKS, EXEMPT THE CITY'S PURCHASING SYSTEM FROM THE REQUIREMENTS OF THE CALIFORNIA PUBLIC CONTRACT CODE, AND PROVIDE FOR AUTOMATIC INDEXED ADJUSTMENTS TO JOC DOLLAR THRESHOLDS (FIRST READING) (4/5 VOTE REQUIRED)

RECOMMENDED ACTION

Council place the ordinance on first reading.

SUMMARY

On November 4, 2014, Chula Vista voters approved modifications to City Charter Sections 1009, 1010, and 1011 (Measure A) that delegated authority to the City Council to make procurement rules for awarding City public works contracts and other types of City contracts, including exceptions to the standard approval and competitive bid process where determined to be in the best overall interest of the City by at least four affirmative votes of the City Council. These proposed amendments to the City's purchasing ordinance would add and clarify policies and procedures for certain construction projects. The amendments would add Job Order Contracting (JOC) as a permissible project procurement method. JOC is procurement method typically used for minor or recurring tasks, such as maintenance, repairs, and renovations, which involve minimal design requirements. JOC is utilized to maximize efficiencies for and expedite the award of small, repetitive construction contracts. Additionally, the proposed amendments would establish uniform policies and procedures for Developer-Performed Public Works, exempt the City's purchasing system from the provisions of the California Public Contract Code, and provide for automatic indexed adjustments to dollar thresholds within the ordinance.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required. In addition, notwithstanding the foregoing, the "Project" also qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines.

Environmental Determination

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The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. In addition, notwithstanding the foregoing, the Director of Development Services has also determined that the "Project" qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION RECOMMENDATION

Not Applicable

DISCUSSION

2.56.010 (Centralized Purchasing System Established).

State law provides that the Public Contract Code is applicable to Charter Cities in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provisions of the Public Contract Code. This proposed amendment would expressly exempt the City's purchasing system from the requirements of the Public Contract Code and thereby clarify our "local control" over such policies. Staff recommends adopting this ordinance amendment.

2.56.145 (Job Order Contracts).

This proposed amendment would add job order contracting (JOC) as a permissible procurement method for certain construction projects. JOC is procurement method designed to expedite the process of awarding small and repetitive construction contracts for minor or recurring tasks, such as repairs, maintenance, or renovations, which involve minimal design requirements. JOC master contracts are competitively bid, fixed price, on-call, as-needed contracts that are based on specific unit pricing contained in unit price books. Unit price books set forth detailed repair and construction items of work, including descriptions, specifications, units of measurement, and individual unit prices for each item of work. JOCs are typically awarded on multi-year basis with a specified maximum amount for the entire contract term.

After award of a master JOC contract, a construction project is completed through use of individual task orders. The initial step is the preparation of a task order scope of work for which a contractor develops a fixed price, lump sum cost proposal based on already established competitively bid unit prices. After an accurate and complete cost proposal is received, the City can issue a notice to proceed to complete the task order.

The primary advantage of JOC is reduced procurement time. JOC eliminates the time and expense of completing the normal design-bid-construct cycle for each project. JOC speeds up the time that a contractor can begin work by minimizing unnecessary levels of engineering, design, and contract procurement time. This enhances the value, efficiency, and flexibility for delivery of these types of construction projects.

Another advantage of JOC is potential cost savings. JOC can provide for costs savings in the

procurement, design, construction, and post-construction stages. A typical procurement process includes a number of steps for awarding individual construction contracts (preparation of bid documents; advertising/posting bid; pre-bid meetings; preparing responses to bidder questions; preparing addenda; opening bids; determining apparent low bidder; responding to protests; collecting bonds, insurance, and other related documents; and issuing a notice to proceed). For JOC, only the master contract follows this process. Once the JOC contract is awarded, task orders can be issued under the master JOC, and the lengthy bid process is significantly streamlined.

A traditional design-bid-build process requires professional design services to prepare bid documents and specifications. Under JOC, these costs are significantly reduced because JOC simply requires a detailed scope of work, which is substantially less than a full set of bid documents.

Cost savings are potentially further found in reduced construction costs as JOC bidders typically offer volume discounts because they are bidding on a larger volume contract rather than one small project and contractors do not include contingencies in their bids. Further, JOC is intended to be collaborative in order to reduce change orders and claims.

The proposed amendments would establish policies and procedures for JOC procurement, as well as guidelines for the award, use, and evaluation of JOC. The JOC amendments require competitive bidding, advertising with detailed bids and technical specifications, maximum 4-year terms, maximum contract and task order amounts of \$2,000,000 (including all change orders), and require staff to review and report on the whether the JOC procurement method has demonstrable benefits for the City. Pursuant to Section 1010 of the City Charter, the Council is authorized to approve the JOC as an exception to the approval and competitive bid process if determined to be in the best overall interest of the City by at least four affirmative votes of the City Council. Staff recommends adopting this ordinance amendment.

2.56.160 (Contracts On Public Works).

B. This proposed amendment would correct a current clerical error regarding dollar thresholds for the Purchasing Agent as public works awarding authority from “\$100,00” to “\$100,000”.

H. This proposed amendment would adopt uniform City policies and practices with regard to Developer-Performed Public Works (DPPWs). DPPWs are public works performed by private developers in connection with private projects that are subsequently dedicated to, accepted by, or acquired by the City. DPPWs are common in Chula Vista, and other jurisdictions, in order to allow private developers to perform public works in connection with private projects in order to maximize efficiencies and the value of public and private resources, while also allocating the risk of the performance of such works to private developers.

The amendments would establish uniform City-wide policies and procedures for DPPWs to ensure appropriate safe guards are in place to protect the public interest. The amendments would implement policies and procedures regarding permissible procurement and contracting methods, requirements for bid and award, requirements for construction and acceptance by the

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City, as well as the required procedures for the implementation and waiver of DPPW requirements under the code.

The amendments require a developer to obtain the City's authorization prior to proceeding with a DPPW. In accordance with the dollar thresholds for other public works, DPPWs with an estimated maximum contract value of \$2,000,000 or less, require approval from the City Manager, or designee. DPPWs with an estimated maximum contract value of more than \$2,000,000 require approval by the City Council.

The amendments define four categories of change orders that require advance City approval. The categories are as follows:

1. Change orders that require additional payment by the City (regardless of funding mechanism) toward construction costs. This is a common category of change order, with several potential causes. Examples include expanding the size of a facility, using a more expensive product, and unforeseen site conditions.
2. Change orders that result in additional ongoing maintenance or overhead costs to the City. For example, replacing a planned open turf area with a splashpad or other water feature at a park would result in significant additional ongoing maintenance costs to the City.
3. Change orders that result in a material delay in project completion.
4. Change orders that result in a material modification to the design or construction. This category of change order includes shifting budgeted dollars between categories, such as offsetting a cost overrun in roadway construction by reducing planned landscaping. In addition, this category would also include material modifications to the original project scope (regardless of funding and timing concerns).

For change order requests that do not fall into any of the above categories, the City's advance approval will not be required, and the changed order will be managed administratively by the Developer. For those change order requests that do fall into one or more of the above categories, advance approval of the City will be required.

The amendments also provide for waiver of provisions of the code, both prior and subsequent to award of a DPPW. Waiver of certain requirements of the code may be advisable or desirable for certain projects. For example, certain dollar thresholds, limitations, and/or City approvals may not be necessary or applicable to a certain project and therefore compliance therewith would not be cost efficient or otherwise serve the public interest. All waivers of provisions of the code will require a finding that such waiver is in the best interest of the public and that appropriate safe guards are in place to protect the public interest. Waivers for projects with an original project award amount of more than \$2,000,000, will be required to be approved by resolution of the City Council. Waivers for projects with an original project award amount of \$2,000,000 or less may be approved by the City Manager, or designee.

Additionally, the amendments provide for the City Council to authorize a waiver of provisions of the code for a "Special Purpose Project", which is defined as a Developer-Performed Public Work that is intended to be owned, leased, and/or operated by a party other than the City for a period of no less than ten (10) years after completion. This amendment is intended to allow for waivers for very limited project types, typically large-scale, multiagency, or other unique projects, where the City Council makes specific findings that doing so is in the best interest of the public and appropriate safe guards are in place to protect the public interest.

Pursuant to Section 1010 of the City Charter, the Council is authorized to approve exceptions to the approval and competitive bid processes described in the Charter if determined to be in the best overall interest of the City by at least four affirmative votes of the City Council. Staff recommends adopting the above ordinance amendments.

2.56.170 (Automatic Indexed Adjustments).

This proposed amendment would apply automatic indexed adjustments to the dollar limits in section 2.56.145 (Job Order Contracts) in the same manner and to the same extent as those adjustments for section 2.56.140 (Cooperative Purchasing) and section 2.56.160 (Public Works). Staff recommends adopting this ordinance amendment.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The JOC Program supports the City's Strategic Plan of Operational Excellence by providing fast and timely delivery of projects; lowering overhead cost of construction procurement and delivery; development of a partner relationship based on work performance; reduction of legal fees and reduced program management fees; transparency with itemized unit pricing; elimination of change orders (contractor initiated change orders should not occur in a properly functioning program); and, standard pricing and specification utilizing a published unit price book (UPB), resulting in efficient and effective estimating, design, and fixed-price construction.

CURRENT YEAR FISCAL IMPACT

The primary advantage of Job Order Costing (JOC) is reduced procurement time which leads to greater efficiencies. JOC can also provide for costs savings in the procurement, design, construction, and post-construction stages.

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ONGOING FISCAL IMPACT

There are no projected budgetary impacts related to this item but there are potential operational efficiencies resulting from JOC.

ATTACHMENTS

Draft Ordinance

Staff Contact: Rick Hopkins, Director of Public Works