



## Legislation Details (With Text)

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|----------------------|---|----------------------|---|
| <b>File #:</b>       | 22-971  | <b>Version:</b>      | 1                                       |
| <b>Type:</b>         | Administrative Items  | <b>Status:</b>       | Passed                                  |
| <b>File created:</b> | 11/7/2022   | <b>In control:</b>   | City Council/Public Financing Authority |
| <b>On agenda:</b>    | 11/15/2022  | <b>Final action:</b> | 11/15/2022                              |
| <b>Title:</b>        | Approve recommendations regarding the City's procurement policies as they pertain to formal bid thresholds, approval levels, and reporting to City Manager and City Council; direct staff to prepare ordinances for City Council approval |                      |   |
| <b>Attachments:</b>  | 1. Att#1 Procurement Policy Review  |                      |   |

| Date       | Ver. | Action By                               | Action   | Result |
|------------|------|---|----------|--------|
| 11/15/2022 | 1    | City Council/Public Financing Authority | approved | Pass   |

### -REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Al Zelinka, City Manager

**VIA:** Dahle Bulosan, Chief Financial Officer

**PREPARED BY:** Serena Bubenheim, Finance Manager - Budget

#### Subject:

**Approve recommendations regarding the City's procurement policies as they pertain to formal bid thresholds, approval levels, and reporting to City Manager and City Council; direct staff to prepare ordinances for City Council approval**

#### Statement of Issue:

During the July 19, 2022 City Council Meeting, Mayor Pro Tem Posey requested a comprehensive review of the City's procurement policies to promote transparency and adherence to best practices. The Finance Department, under the City Manager's direction, prepared a formal review plan for City Council's consideration, which was approved on September 6, 2022. On September 20, 2022, the City entered into an agreement with PFM Group Consulting LLC (PFM) to conduct an analysis of the City's procurement policies and workflow and to provide recommendations based on best practices.

The procurement policy review consists of three phases. As part of Phase 1 (November 15, 2022) of the review process, the PFM team was asked to prioritize the assessment of City Manager and Department Directors' spending limits and formal bidding requirements for goods and services, professional services, and public works construction. Recommendations were made based on best practices, comparisons with other cities, legal compliance, and an effort to be fair and transparent. Policy direction and City Council feedback is requested for each of the proposed policy changes. Based on approved policy direction, staff will prepare an update ordinance for City Council consideration at a future meeting during Phase 2 (December - April 2023) of the project. Phase 2 of

the project will also involve reviewing other items such as contract terms, software agreements, real estate, subrecipient agreements, concessions and leases, emergency procurement, and code of ethics for inclusion in ordinances to update the City's municipal code. Phase 3 (May - September 2023) involves reviewing workflows and implementing policy changes approved by City Council. In addition, staff would work with the PFM team to find opportunities to utilize technology further to increase transparency and efficiency. Training would also be deployed to ensure successful implementation.

**Financial Impact:**

There is no financial impact with this item.

**Recommended Action:**

A) Approve recommended bid thresholds, approval levels, and reporting to City Manager and City Council, and;

B) Direct staff to incorporate recommended changes and prepare ordinances as part of Phase 2 of the Procurement Project for City Council approval.

**Alternative Action(s):**

Do not approve the recommended action, and direct staff accordingly.

**Analysis:**

*Background:*

Municipal procurement policies are integral in procuring the necessary goods and services consistent with the quality that is required to meet the operational needs of City departments, while ensuring taxpayers receive the maximum value for each dollar spent. The goals of public procurement are transparency, fairness, efficiency in cost and time, and effectiveness in quality and outcomes.

The National Association of State Procurement Officials (NASPO) outlines a series of principles for state and local procurement. Several key principles are listed below:

1. Assurance of consistency of procedures, decision making, goals, objectives and policies
2. Measurement of the performance of the procurement system in light of its goals and objectives
3. Assurance of the day-to-day adherence to the principles of public procurement, including a balance between accountability, innovation, and flexibility;
4. Maintenance of an environment of openness and fairness;
5. Balance between the need for fiscal accountability, the needs of user agencies, and opportunities for suppliers; and
6. Effective leadership through close working relationships and effective communication with users and user agencies.

The City's existing procurement policies work towards the aforementioned goals, advancing its

strategic objectives and promoting greater public trust. The City's Charter, Municipal Code, and Administrative Regulations along with federal and state laws provide the authoritative guidance for the City's procurement policies, which have varying requirements and levels of approval based on the type of contract awarded (i.e. professional service, legal expert services, goods, maintenance and clerical support, leases, and Public Works construction). Like any policy, the City should conduct periodic reviews of its purchasing policies to ensure they are up to date with the latest regulations while continuing to facilitate ongoing operations in an efficient and cost effective manner.

On September 20, 2022, the City engaged with PFM to conduct an assessment of the City's procurement policies and identify opportunities for updates and clarifications based upon state, federal, local and other pertinent laws and regulations and best practices. The PFM team was asked to prioritize assessment of City Manager and Department Directors' spending limits and formal bidding requirements for goods and services, professional services, and public works construction, as discussed in the September 6 staff presentation to City Council.

As part of this initial assessment, the PFM team has reviewed relevant statutes, ordinances and administrative regulations; staff research on comparable cities; best practices; and data on procurement activity and spending provided by the City. The PFM team has also conducted interviews about the City's procurement policies and processes with the City Manager's Office, Finance, Purchasing, Public Works, Police, Administrative Services, Risk Management, City Attorney, and other key stakeholders.

### ***Overview of Existing Purchasing Policies***

The City's requirements and levels of approving authority vary based on the type of contract that is being procured. Each individual procurement policy is detailed below:

#### **Goods & Services**

- Purchases of supplies and services (other than professional services)

*City Charter Section 613, Municipal Code 3.02*

| Amount           | Method          | Authority                                 |
|------------------|-----------------|---|
| \$0 - \$30,000   | Informal Bid    | Department Head, Finance                  |
| \$30,000 or more | Competitive Bid | City Council - through the budget process |

**Professional Services**

➤ Consultants, architects, engineers

*City Charter Section 613, Municipal Code 3.03, AR 228*

| Amount                | Method          | Authority                 |
|-----------------------|-----------------|---------------------------|
| \$30,000 or less      | Informal Bid    | Department Head (DH)      |
| \$30,000 to \$50,000  | Competitive Bid | DH, Finance               |
| \$50,000 to \$100,000 | Competitive Bid | DH, Finance, City Manager |
| \$100,000 or more     | Competitive Bid | City Council              |

**Public Works Construction**

➤ Physical construction and improvements of any City infrastructure

*City Charter Section 614, AR 119*

| Amount           | Method          | Authority        |
|------------------|-----------------|------------------|
| \$25,000 or less | Informal Bid    | DH, City Manager |
| \$25,000 or more | Competitive Bid | City Council     |

**Signature Authority Levels**

| Amount               | Contract Type         | Authority   |
|----------------------|-----------------------|---|
| Unlimited            | Goods                 | Dept Head & City Manager (subject to bidding requirements set forth in Muni Code 3.02 & City Council budget approval) |
| Unlimited            | Services              | Dept Head & City Manager (subject to bidding requirements set forth in Muni Code 3.02 & City Council budget approval) |
| \$0 - \$50,000       | Professional Services | Dept Head   |
| \$50,000 - \$100,000 | Professional Services | City Manager  |
| Over \$100,000       | Professional Services | City Council  |
| \$0 - \$100,000      | Expert Services       | City Attorney   |
| Over \$100,000       | Expert Services       | City Council  |
| \$0 - \$25,000       | Public Works          | Dept Head & City Manager  |
| Over \$25,000        | Public Works          | City Council  |

As part of its preliminary review, staff performed a survey of neighboring cities' procurement policies to gain a comparative understanding of Huntington Beach's policies, which was presented to City Council on September 6, 2022.

**Goods & Services**

| City                    | Formal Bid Threshold | City Council Approval Threshold |
|-------------------------|----------------------|---------------------------------|
| Newport Beach           | Over \$25,000        | Over \$120,000                  |
| Santa Ana               | Over \$25,000        | Over \$50,000                   |
| <b>Huntington Beach</b> | <b>Over \$30,000</b> | <b>Approved through budget</b>  |
| Irvine                  | Over \$45,000        | Over \$1,000,000                |
| Anaheim                 | Over \$50,000        | Over \$200,000                  |
| Costa Mesa              | Over \$50,000        | Over \$100,000                  |

**Professional Services**

| City                    | Formal Bid Threshold | City Council Approval Threshold |
|-------------------------|----------------------|---------------------------------|
| Newport Beach           | Over \$25,000        | Over \$120,000                  |
| <b>Huntington Beach</b> | <b>Over \$30,000</b> | <b>Over \$100,000</b>           |
| Irvine                  | Over \$45,000        | Over \$1,000,000                |
| Anaheim                 | Over \$50,000        | Over \$200,000                  |
| Costa Mesa              | N/A                  | Over \$100,000                  |
| Santa Ana               | N/A                  | Over \$25,000                   |

**Public Works Construction**

| City                    | Formal Bid Threshold | City Council Approval Threshold |
|-------------------------|----------------------|---------------------------------|
| Anaheim                 | Over \$15,000        | Over \$400,000                  |
| <b>Huntington Beach</b> | <b>Over \$25,000</b> | <b>Over \$25,000</b>            |
| Santa Ana               | Over \$25,000        | Over \$250,000                  |
| Newport Beach           | Over \$120,000       | Over \$120,000                  |
| Costa Mesa              | Over \$200,000 *     | Over \$200,000                  |
| Irvine                  | Over \$200,000 *     | Over \$1,000,000                |

\* Per Public Contract Code section 22032 (c), which is set by the State of California

***PFM Team Recommendations:***

Contracts for Public Works:

1. Opt into the California Uniform Public Construction Cost Accounting Act (UPCCAA).

- Sixty percent of California cities have opted into UPCCAA. Benefits include expedited contracting and simplified bidding.
  - Sets the bidding requirements as follows:
    - i. Formal bidding requirements for contracts over \$200,000.
    - ii. Projects of \$200,000 or less can be procured through informal bidding process, with notice requirements set by state law.
    - iii. Projects of \$60,000 or less can be procured through negotiated contract or purchase order. City should set the threshold slightly lower at \$50,000.
  - Statute allows process to be applied to maintenance contracts, as defined as:
    - i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
    - ii. Minor repainting.
    - iii. Resurfacing of streets and highways at less than one inch.
    - iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
    - v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
2. Adopt a design-build ordinance.
- Under design-build, the City would let a single contract for design and construction. Design-bid has been long used by the private sector. And, increasingly, public agencies have turned to design-build for large and complicated projects.
  - Potential benefits include:
    - i. Single point of accountability;
    - ii. Fewer change orders and claims; and
    - iii. Cost certainty and faster project completion.
  - Potential disadvantage includes difficulty evaluating design proposals with respect to constructability and site suitability.
  - City should establish a prequalification process for design-build firms.
  - City Manager approval should be required for decision to proceed with design-build procurement.
  - All contracts for design-build should be subject to Council review and approval.
3. Delegate approval authority for all construction contracts up to \$400,000 and with more than three bids.
- Director would be able to approve and sign all contracts up to \$50,000, consistent with UPCCAA, after Finance review of funding availability.
  - City Manager would be able to approve and sign all contracts more than \$50,000 and up to \$400,000 where there were three or more bids.
  - City Council approval would be required for all contracts of more than \$400,000 and for any contracts that are subject to competitive bidding and where there are fewer than three bids or are sole source.
    - i. Anaheim uses a threshold of more than \$400,000 for Council approval.
  - The City should consider phasing in an even higher threshold over time: in other words,

it may want to consider an ordinance that gradually increases the Council approval threshold to \$1 million over the next five years.

#### Contracts for Goods and Services:

1. Increase formal bid threshold from \$30,000 to \$50,000 and align with other contracts.
  - No competitive bidding required for contracts up to \$50,000. This would establish the same threshold as Anaheim (\$50,000) and Costa Mesa (\$50,000), and one slightly higher than Irvine (\$45,000).
2. Expand Council approval authority.
  - Director should be able to approve and enter into contracts of up to \$50,000 after Finance review to ensure available funding.
  - City Manager would be able to approve and enter into most contracts up to \$1 million.
  - Council review and approval would be required for contracts:
    - i. Over \$1 million - this is the same threshold as in Irvine;
    - ii. Over \$400,000 where the contract had not already been approved as part of the budget; and
    - iii. Where the contract was competitively bid and there were fewer than three bids or the contract was let as a sole source.

#### Contracts for Professional Services:

1. Increase formal bid threshold from \$30,000 to \$50,000 and align with other contracts.
  - No competitive bidding required for contracts up to \$50,000. This would increase the threshold for Huntington Beach to the same one as used by Anaheim, Riverside and Santa Clarita.
2. Expand City Manager approval authority.
  - Under AR 228, department directors already can approve professional services contracts of up to \$50,000 after Finance review to ensure available funding.
  - The City Manager should be able to approve and sign all contracts between \$50,000 and up to \$400,000 where there were three or more bids and where there is underlying Council approval of the budget.
  - City Council review and approval would be required for all contracts of more than \$400,000 and for any contracts that are subject to competitive bidding that results in fewer than three bids.
    - i. This is lower than the City Council approval threshold for Irvine, but higher than the Anaheim threshold of \$200,000. The City should consider phasing in an even higher threshold over time: in other words, it may want to consider an ordinance that gradually increase the Council approval threshold to \$1 million over the next five years.

#### Contracts for Legal and Expert Services (subcategory of Professional Services)

1. Maintain current thresholds.
  - The HB City Attorney expressed support for the current threshold for City Council approval for legal and expert services contracts over \$100,000. City Attorney would

retain authorization to select and approve legal and expert services contracts up to \$100,000.

- City Council and HB City Attorney should review findings and determine if there may be ways to reform existing reporting on legal and expert services consistent with the goal of greater transparency and other procurement reporting requirements without creating litigation or other legal risk for the City.

#### Reporting to City Manager and City Council

1. Purchasing and Public Works should prepare a monthly report to the City Manager including:
  - A list of all contracts and amendments entered into by the City during the prior month;
  - Analysis of procurement methods utilized (e.g. negotiated contract, purchase order, competitive bidding, competitive request for proposals, sole source, emergency);
  - Analysis of levels of competition on procurements by amount of contract; and
  - Analysis of contract costs compared to contract estimate.
2. City Manager should provide a monthly report to City Council on all contracts entered into since the previous meeting including amount and a brief summary of scope.
3. City Manager should provide a quarterly report to City Council on cost, competition and time to contract.

Based on the feedback and approval from City Council regarding the PFM team's recommendations, staff will prepare the recommended changes and corresponding ordinances for City Council approval as part of Phase 2 of the Procurement Policy Review Project.

Beyond these initial policy recommendations, the PFM team is continuing assessment of other key areas of the City's procurement policies, including, emergency procurements; insurance requirements; compliance with various state and federal regulations; contractor payments; evaluation process for vendor selection; staffing and technology requirements for implementation; and various other internal and external procurement workflows. Other findings and recommended changes uncovered through this additional review will be presented to City Council for feedback and consideration.

#### **Environmental Status:**

Not Applicable

#### **Strategic Plan Goal:**

Financial Sustainability, Public Safety or Other

#### **Attachment(s):**

1. Procurement Policy Review Presentation