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September 21, 2022

**ITEM TITLE: SECOND READING AND ADOPTION OF ORDINANCE 2022-1217, AMENDING CHAPTER 3.06.020 OF THE MUNICIPAL CODE, RELATING TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT LIMITS (0300-95)**

**ORIGINATING DEPARTMENT:**

Public Works

**EXECUTIVE SUMMARY:**

Under the California Public Contracting Code (PCC) provisions applicable to the City, all public works projects (i.e. projects to improve infrastructure, buildings, and other capital assets of the City) valued over \$5,000 must be competitively bid under a specific formal procedure that compels the City to prepare engineering drawings and specifications, to publish the opportunity to bid on the project, and to award a construction contract to the lowest responsive and responsible bidder.

At the August 2, 2017 council meeting, the City adopted the provisions of the California Uniform Public Construction Cost Accounting Act (CUPCCAA), which allows the City to use the alternative bidding procedures set forth in CUPCCAA. The alternative bidding procedures provided under CUPCCAA are based on various bid limits that are adjusted from time to time by the California legislature.

Ordinance No. 2022-1217 modifies the CUPCCAA informal bidding procedures in Chapter 3.06 of the Imperial Beach Municipal Code to be based on the informal bidding procedure bid limits as determined by the California legislature. The modification will allow the City to use the adjusted CUPCCAA bid limits, even as those limits fluctuate with changes to state law. This will allow the City's Municipal Code to stay relevant and current without bringing forth new ordinances every time there is a limit change.

**RECOMMENDATION:**

Conduct the second reading, waive further reading and adopt Ordinance No. 2022-1217.

**OPTIONS:**

- Conduct the second reading, waive further reading and adopt Ordinance No. 2022-1217.
- Approve Staff recommendation with alternative amendments/modifications.
- Request additional information and an additional report.

## **BACKGROUND/ANALYSIS:**

The \$5,000 project value limit triggering a formal bidding process for public works construction projects can create inefficiencies and cause delays as the formal bidding process can be both cumbersome and time consuming, especially for small projects. California law provides public agencies relief from the formal bid process on smaller projects if the agency adopts the CUPCCAA by resolution and establishes the specific administrative procedures necessary to be in compliance with the Act by allowing the use of alternative procedures to award projects valued at up to \$175,000. However, participating local governments must take steps to ensure accountability to the public, transparent accounting practices, and fair treatment of contractors. If adopted the following bidding procedures may be implemented as an alternative to the regular formal bidding process:

- a. Public projects of \$45,000 or less may be obtained by negotiated contract or by purchase order;
- b. Public projects of \$175,000 or less may be awarded by the informal bidding procedures set forth in the CUPCCAA;
- c. Public projects of more than \$175,000 must be awarded by traditional formal bidding procedures.

At the August 2, 2017 council meeting Resolution No. 2017-7840 was approved to allow the City to use the alternative bidding procedures of the CUPCCAA with the limits as listed above.

However, Public Contract Code was updated by AB 2249, effective January 1, 2019 which raises the ceiling on the value of public works projects that the City can perform with its own forces or contract for with a purchase order up to \$60,000; and simplifies the procedures for bidding public works contracts of less than \$200,000 in value by using an informal bidding process. Following the Code change, the CUPCCAA was updated at the state level to increase the project values for informal bidding procedures.

In summary, CUPCCAA now provides for alternative bidding procedures when an agency performs public project work by contract at the following project values.

- a) Public projects of \$60,000 or less may be performed by negotiated contract or by purchase order (PCC 22032(a)). This is up from the prior amount of \$45,000.
- b) Public projects of \$200,000 or less may be contracted by the informal procedures set forth in the Act (PCC 22032(b)). This is up from the prior amount of \$175,000.
- c) Public projects over \$200,000 are subject to the formal bidding process (PCC 22032(c)). This is up from the prior amount of \$175,000.

Ordinance 2022-1217 increases the City's flexibility in awarding public contracts, while maintaining Council control, transparency, accountability and a level playing field for contractors. This ordinance also updates the Municipal Code to keep the City up to date with the new legislation by basing the City's CUPCCAA bid limits in the City's municipal code on the bid limits adopted by the California legislature. The revisions will allow the City to continuously use the CUPCCAA bid procedures, even if the limit fluctuates. This will allow the City's Municipal Code to stay relevant and current without bringing forth new ordinances every time there is a limit change.

While the proposed ordinance increases the City's flexibility in awarding public contracts, it should be noted that the City may always choose to follow the standard formal public bidding procedure for any public works project when doing so is deemed to best serve the City or public.

The introduction and first reading of Ordinance No. 2022-1217 was conducted at the regular meeting of the City Council on August 17, 2022.

**ENVIRONMENTAL DETERMINATION:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

There is no direct fiscal impact associated with implementing this program. It is expected that participating in this program will result in future savings due to more efficient processes for hiring contractors on small public works projects.

**ATTACHMENTS:**

Att. 1 Ordinance No. 2022-1217