



council agenda report

CITY OF SAN LUIS OBISPO

Meeting Date	4-15-03
Item Number	bus 6A

FROM: Michael D. McCluskey, Public Works Director
Bill Statler, Director of Finance *WS*
Jay D. Walter, City Engineer

SUBJECT: JOB ORDER CONTRACTING AND ALTERNATIVE BIDDING PROCEDURES

CAO RECOMMENDATION

Introduce an ordinance amending Chapter 3.24 of the Municipal Code to provide for the use of Job Order Contracting and Alternative Bidding Procedures for construction projects.

DISCUSSION

Background

The City's Mission Statement and the Council's budget and fiscal policies both strongly encourage enhancements in productivity, including changing cumbersome procedures.

In December 2001, the Director of Public Works authorized staff to research additional methods to accomplish construction projects. After a review of the existing Public Contract Code and inquiring of several cities and counties, we found two alternative methods that are in broad use throughout the state: Job Order Contracts (JOC) and the Uniform Public Construction Cost Accounting Act (Alternative Bidding Procedures), which offer added methods for cities to accomplish construction projects. They are particularly beneficial when focusing on smaller, repetitive-type projects that can be accomplished quickly without the need for the same formal plans and specifications that larger, more complex projects require. Based on the experience of other agencies (including Cal Poly and the County), these added methods could significantly enhance the Engineering Division's ability to deliver construction projects for the City faster and at a lower cost.

Charter Amendments. On May 7, 2002, the Council conceptually implementing the two alternative methods for construction project contracting; and on June 18, 2002, formally authorized placing a measure on the November 5, 2002 ballot to amend the City Charter to allow their use. The voters overwhelmingly approved Measure L-02 by 77%.

Current Policies and Procedures. The City's current purchasing policies and procedures governing construction projects are set forth in a number of documents, including the California Public Contract Code, City Charter, Municipal Code, Purchasing Resolution and Financial Management Manual. In addition to amending the Charter, the City now needs to amend the Municipal Code regarding formal bidding procedures (Article III of Chapter 3.24) in order to implement JOC and alternative bidding procedures. The City's Purchasing Resolution will also need to be amended and this is the subject of a companion agenda item.

6A-1

Municipal Code Amendments

Only Article III of the City's purchasing ordinance (Chapter 3.24 of the Municipal Code), which addresses the City's formal bidding procedures, needs to be amended to implement JOC and alternative bidding procedures: all other provisions of the City's purchasing ordinance remain the same. The proposed revisions to Article III are highlighted in Exhibit A of the attached ordinance (the new text is shaded and the deleted text is ~~struck-through~~). The following summarizes the changes.

Job Order Contracting. As previously discussed with the Council, JOC allows the use of a fixed unit-price contract for indefinite quantity contracts for maintenance-type construction contracts. In preparing the specifications for this master contract, a detailed and comprehensive "Construction Task Catalog" with general specifications and a "baseline" cost is prepared for each specific task that is allowed to be performed under the master contract. The City then invites formal bids from general contractors, who will bid using a percentage adjustment factor (up or down) to be applied against the "baseline" unit prices in the bid document. The JOC award is then made to the contractor with the lowest adjustment factor.

Work is subsequently performed under the JOC by the use of individual Task Orders, which are specific proposals agreed to by the City and the contractor on a project-by-project basis using the fixed unit-prices specified in the master contract. The authority to approve Task Orders is set forth in the City's Purchasing Resolution. As discussed in the companion agenda item, we recommend that the City Engineer be authorized to approve JOC Task Orders up to \$25,000; and that CAO approval be required for all Task Orders in excess of this amount. Regardless of the amount, all Task Orders will be subject to the requirement that the amount be equal to or less than the budget amount specifically approved by the Council for each project. This will be verified through the rigorous "CAO Report" and purchase order process already in place for all purchases.

On December 17, 2002, the Council approved contracting with The Gordian Group to develop the extensive catalog and specifications needed to implement the JOC system. We plan to return to the Council for approval of these documents in June 2003. Once these are approved by the Council, with the addition of Section 3.24.145 in the attached Municipal Code amendment, we will be then be able to implement the JOC program in accordance with Charter requirements.

Alternative Bidding Procedures. Until the Charter amendment approved by the voters in November 2002, all City construction contracts were governed by a Charter provision adopted in 1955, which in turn referenced a State Public Contract Code dating to the 1930's. The affect of this was to limit the ability for City employees to do minor construction work (\$5,000 or less, including staff time, materials and equipment use), and to require formal bids for all construction work in excess of \$5,000. While these dollar limits made sense seventy years ago, they don't any longer.

The framers of the 1955 Charter tried to account for the passage of time by linking dollar limits to a specific section of the State Public Contract Code, rather than specifying a dollar amount in the Charter itself, under the reasonable assumption that over time, the State would amend the dollar amounts in the referenced code section. Unfortunately, the State never has. Instead, in 1985 it adopted "alternative bidding procedures" in a separate section of the Public Contract Code than the

GA-2

one specified in the Charter. These “alternative bidding procedures” created the updated limits envisioned by the 1955 Charter framers by:

1. Allowing the use of “force account” (City staff and materials) for projects of \$25,000 or less.
2. “Open market” soliciting of bids by phone, fax or letter for projects of \$25,000 or less.
3. Direct solicitation of formal bids from qualified contactors (with notice to construction trade journals) for projects of \$25,000 to \$100,000.

In exchange for easing the requirements for lower-value projects, the alternative procedures increase them for projects costing more than \$100,000: published notice 14 days before bids are due is required (versus the current 10-day requirement); and mailed notice to trade journals 30 days before the bids are due is required (which isn’t currently required at all).

With approval of the Charter amendment, the City can now use these “alternative bidding procedures.” The changes and additions to Sections 3.24.150, 180, 185 and 187 of the proposed amendment are to implement the alternative procedures in accordance with Charter requirements.

Proposed Purchasing Guidelines Update

A companion staff report titled “Purchasing Guidelines Update” gives an overview of the City’s current purchasing system and outlines the proposed resolution changes also needed to implement JOC and the alternative bidding procedures, and integrate these changes into the City’s overall purchasing system.

CONCURRENCES

In addition to the Council’s action to authorize a ballot measure to amend the Charter, the SLO County Builders Exchange supported the City’s adoption of both alternative methods.

FISCAL IMPACT

There are no direct fiscal impacts in adopting the proposed update to the City’s Municipal Code. However, there will be indirect cost savings through improved organizational effectiveness and productivity by implementing these procedures.

ALTERNATIVES

Take No Action. Without these changes to the Municipal Code, the City cannot take advantage of the productivity improvements now envisioned in the City Charter.

ATTACHMENT

Ordinance amending Article III of Chapter 3.24 of the Municipal Code.

ORDINANCE NO. (2003 Series)

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN LUIS OBISPO
AMENDING CHAPTER 3.24, ARTICLE III OF THE MUNICIPAL CODE
TO PROVIDE FOR THE USE OF JOB ORDER CONTRACTING AND
ALTERNATIVE BIDDING PROCEDURES FOR PUBLIC CONSTRUCTION PROJECTS

WHEREAS, the citizens of San Luis Obispo approved Measure L-02 on November 5, 2002, which amended the City Charter to authorize the use of job order contracting for maintenance-related projects as provided under Section 20128.5 of the Public Contract Code and alternative bidding procedures as provided under Section 22000 of the Public Contract Code ("Uniform Public Construction Cost Accounting Act") for public construction projects; and

WHEREAS, Section 901 (E) and (F) of the City Charter states that the Council shall establish by ordinance guidelines for the use of such contracts and procedures.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Article III of Chapter 3.24 of the Municipal Code of the City of San Luis Obispo is hereby amended as set forth in Exhibit A.

SECTION 2. A summary of this ordinance, approved by the City Attorney, together with the names of the Council members voting for and against it, shall be published at least five days prior to its final passage, in The Tribune, a newspaper published and circulated in this City. This ordinance will go into on effect at the expiration of thirty (30) days after its final passage.

INTRODUCED on April 15, 2003 AND FINALLY ADOPTED by the Council of the City of San Luis Obispo on _____, 2003 on the following roll call vote:

AYES:

NOES:

ABSENT:

David F. Romero, Mayor

ATTEST:

Lee Price, City Clerk

APPROVED AS TO FORM:



Gilbert A. Trujillo, Interim City Attorney

AMENDMENT TO FORMAL CONTRACT PROCEDURES

Chapter 3.24 of the Municipal Code ARTICLE III. FORMAL CONTRACT PROCEDURE

3.24.140 Requirements for purchase.

Except as otherwise provided in this chapter, purchases and contracts for supplies, services, equipment and construction projects ~~public works not controlled by the Charter~~, which are equal to or in excess of the bid requirement amount specified by council resolution, shall be by written contract with the lowest responsible bidder pursuant to the procedures prescribed in this article.

3.24.145 Job order contracting.

As provided in Section 901 (E) of the Charter, the city may perform maintenance-related construction projects for repair, remodeling or other repetitive work under a unit-price contract for all necessary labor, materials and equipment, subject to the following conditions:

A. Such contracts are secured on a competitive basis in accordance with the procedures set forth in this Article;

B. No new construction will be performed under such contracts;

C. The specifications for such contracts provide for unit-price terms for all work that will typically be performed under individual Task Orders;

D. The specifications for such contracts establish any limits on the amount of individual Task Orders to be issued under the contract; or on any minimum or maximum cumulative amounts of Task Orders to be issued under the contract;

E. The council will specify limits on the authority to approve individual Task Orders by resolution.

3.24.150 Bids - Notice of invitation and submission.

A. Notices inviting bids shall include, but not be limited to, the following:

1. A general description of the item(s) or service(s) to be purchased, or the public work to be constructed or improved;
2. The location where bid blanks and specifications may be secured;
3. The time and place assigned for the opening of sealed bids;
4. The type and character of bidder's security required, if any; and
5. The location and deadline for submission of bids.

B. Notices inviting bids shall be ~~published~~ made as follows:

1. For supplies, services and equipment, notices inviting bids shall be published at least once in the official newspaper of the city, with the first publication occurring at least ten calendar days before the date of opening the bids.

AMENDMENT TO FORMAL CONTRACT PROCEDURES

2. For construction projects below an amount specified by council resolution, notices inviting bids shall be mailed to a list of qualified contractors, identified according to categories of work, at least ten calendar days before the bids are due. The City Engineer is responsible for developing and maintaining this list based on the criteria determined by the California Uniform Construction Cost Accounting Commission (hereinafter referred to as Commission in this Chapter). Notices shall also be mailed within ten calendar days before the bids are due to all construction trade journals as required by the Commission. If the city does not have a list of qualified contractors for the particular type of work to be performed, notices inviting bids will only be sent to the construction trade journals as required by the Commission. If the product or service is proprietary in nature and can only be obtained from a certain contractor or contractors, notices inviting bids will only be mailed to such contractor or contractors.

3. For construction projects above an amount specified by council resolution, notices inviting bids distinctly describing the project be published at least once in the official newspaper of the city, with the first publication occurring at least fourteen calendar days before the date of opening the bids. Notices inviting bids distinctly describing the project shall also be mailed at least thirty calendar days before the date of opening bids to all construction trade journals as required by the Commission.

4. The city may also give such other notice as it deems appropriate.

C. Sealed bids shall be identified as bids on the envelopes and shall be submitted to the purchasing authority.

3.24.160 Bids - Security requirement.

Bidder's security may be required when deemed necessary by the purchasing authority. Bidders shall be entitled to return of bid security. However, a successful bidder shall forfeit his bid security upon refusal or failure to execute a contract within fifteen days after notice of award of that contract, unless the city is responsible for the delay. The contract may be awarded to the next lowest responsible bidder upon the refusal or failure of the successful bidder to execute the contract within the time herein prescribed.

3.24.170 Bids - Opening and retention.

Sealed bids shall be opened in public at the time and place stated in the notice inviting bids. A tabulation of all bids received shall be made available for public inspection until the award of a contract. All bids shall be retained on file for a period of not less than two years.

3.24.180 Bids - Rejection.

The purchasing authority may reject:

A. Any bid that fails to meet the bidding requirements in any respect; or

B. All bids, for any reason whatsoever, and may readvertise for new bids or abandon the purchase.

AMENDMENT TO FORMAL CONTRACT PROCEDURES

C. In the case of construction projects, the council may, by passage of a resolution by a four-fifths vote, declare that the project can be performed more economically by employees of the city and may have the project done by force account.

3.24.185 Bids – None received.

If no bids are received, the purchase may be made through negotiated contract or other process approved by the purchasing authority, including, in the case of construction projects, performing the work by employees of the city by force account.

3.24.187 Bids for construction projects – In excess of limit.

In the event that all bids received for a construction project are more than the maximum allowed under Section 22034(f) of Public Contract Code, and bids were invited pursuant to the provisions of Section 3.24.150(B.2), the Council may, by adoption of a resolution by four-fifths vote, award the contract, in an amount not to exceed the maximum set forth in Section 22034(f) of Public Contract Code, to the lowest responsible bidder, if it determines that the cost estimate was reasonable. Otherwise, the bids shall be rejected; and if the agency decides to go forward with the project, shall be re-bid in accordance with the procedures set forth in Section 3.24.150(B.3).

3.24.190 Contract award.

Subject to the prior approval of the city administrative officer, contracts shall be awarded by the purchasing authority to the lowest responsible bidder, except as follows:

A. If, at the time of bid opening, two or more bids received are for the same total amount or unit price, quality and service being equal, and if in the discretion of the purchasing authority the public interest will not permit the delay of readvertising for bids, then the purchasing authority may accept the one she or he chooses or the lowest bid obtained through subsequent negotiation with the tie bidders.

B. Sellers, vendors, suppliers and contractors who maintain places of business located within the limit of the city shall be given preference if quality, price, service and all other factors are equal.

3.24.200 Requiring bond of successful bidder.

The purchasing authority may require as a condition to executing a contract on behalf of the city, a performance bond or a labor and material bond, or both, in such amounts as the purchasing authority shall determine appropriate to protect the best interests of the city. The form and amounts of such bond(s) shall be described in the notice inviting bids.

3.24.210 Determination of lowest responsible bidder.

In addition to the bid or quotation price, criteria for determining the lowest responsible bid or quotation, for the purposes of the Charter and this chapter, shall include, but not be limited to, the following:

A. The character, integrity, reputation, judgment, experience and efficiency of the bidder (this may include an analysis of previous work performed for the city);

AMENDMENT TO FORMAL CONTRACT PROCEDURES

B. The ability of the bidder to perform the contract, or provide the supplies, equipment or services required, within the time specified, without delay or interference;

C. The ability of the bidder to provide future maintenance, repair parts and replacement of purchased equipment or supplies;

D. Compliance by the bidder with federal acts, executive orders and state statutes governing nondiscrimination in employment; and

E. The results of any evaluation relating performance and price, such as testing, life-cycle costing, and analysis of service, maintenance and technical data.