

Attachment B

**CITY OF NEWPORT BEACH  
CHARTER UPDATE COMMISSION STAFF REPORT**

Agenda Item No. 2  
February 16, 2010

**TO:** HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

**FROM:** Public Works Department  
Stephen G. Badum, Public Works Director  
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**SUBJECT:** CHARTER SECTION 1110 – PUBLIC WORKS CONTRACTS

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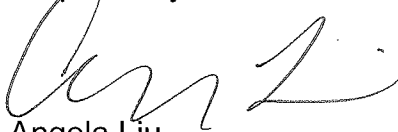
**RECOMMENDATION:**

Recommend to the City Council that Charter Section 1110 1) be amended to increase the contract cost limits requiring formal bidding to \$125,000 (Alternative 1); and 2) include a provision granting City Council the power to regulate all aspects of public works projects, including the bidding, award and performance of public works contracts, through ordinance or resolution.

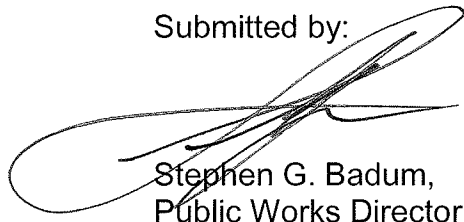
**DISCUSSION:**

A "white paper" with relevant background information and suggested alternatives for the Commission's consideration is appended as Attachment "A." Charter Section 1110 is appended as Attachment "B." Public Contracts Code Section 22032 is appended as Attachment "C." A summary providing an overview of charter cities who establish contract award authority by resolution or ordinance is appended as Attachment "D."

Prepared by:

  
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Submitted by:

  
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Attachments: Section 1110 White Paper  
Charter Section 1110  
Public Contracts Code Section 22032  
Charter Cities Summary

# **EXHIBIT A**

## CONTRACTING AUTHORITY FOR PUBLIC WORKS PROJECTS

### Statement of Issue:

Should Charter Section 1110 be amended to increase the threshold requirement of formal bidding for public works projects over \$30,000?

### Relevant Background:

Charter Section 1110 currently provides that all public works projects over \$30,000 are required to undergo formal bidding procedures and to be let by Council. The formal bidding process requires compliance with a number of set procedures, including written proposals and specific notice requirements. The contract is then awarded to the lowest responsible bidder. Please refer to Attachment B.

Over the years, the threshold requirement of formal bidding for public works contracts has been raised to account for inflation and rising construction costs. In 1974, Section 1110 was amended to increase the dollar limit from \$5,000 to \$12,000. In 1986, the dollar limit was raised to \$30,000. As the last adjustment was made over twenty years ago, this \$30,000 limit contrasts sharply with existing state law and standards adopted by other charter cities.

California Public Contracts Code Section 22032 provides that public works projects of \$30,000 or less may be performed by negotiated contracts. Public work contracts of \$125,000 or less may be awarded through informal bidding procedures. Public projects exceeding \$125,000 shall be awarded through formal bidding procedures. Please refer to Attachment C.

A brief review of the public works projects awarded by the City within the past two years revealed the following:

#### **Fiscal Year 2008: 32 Public Works Projects Awarded**

<b>\$30,000 or less</b>	<b>\$50,000 or less</b>	<b>\$125,000 or less</b>	<b>Over \$125,000</b>
1 project	2 projects	7 projects	22 projects

#### **Fiscal Year 2009: 20 Public Works Projects Awarded**

<b>\$30,000 or less</b>	<b>\$50,000 or less</b>	<b>\$125,000 or less</b>	<b>Over \$125,000</b>
0 projects	0 projects	6 projects	14 projects

The City has only had one public works project under \$30,000 and two projects under \$50,000. Most public works projects were priced between \$50,000 and \$125,000, or higher.

### Alternatives:

The Commission has the following alternatives identified by staff:

Alternative 1:

Recommend a change to increase the threshold requirement for formal bidding of public works contracts from \$30,000 to \$125,000, consistent with the guidelines provided by state law in Public Contracts Code Section 22032 and standards adopted by other charter cities. Recommend the inclusion of a provision granting City Council the authority to adopt ordinances and resolutions as needed, to regulate all aspects of public works contracts.

By using California Public Contracts Code Section 22032 as a guide, any contracts for projects valued under \$125,000 would be let by City staff on an informal basis. Informal bidding would still avail these smaller projects the benefits of competitive bidding but the process would be more timely and cost effective.

While this represents a significant jump in dollar value, it should be noted that the \$30,000 figure was last adjusted over twenty years ago. Consequently, a recalibration of this figure is long overdue. Furthermore, Charter Section 1110 applies only to budgeted capital projects which would have already been approved by City Council during the budget process.

As a mechanism to ensure that the formal bidding threshold limit continues to stay relevant to current market conditions, Charter Section 1110 could also be amended to include a provision with the following language:

“The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contracts, including, but not limited to, compensation paid for performance of such work.”

This provision would grant City Council authority to establish resolutions or ordinances as needed to oversee the administration of public works contracts. For example, if market climate necessitates a need to readjust the threshold limit on public works contracts, Council can establish a new threshold limit based on the Consumer Price Index or construction indices via a simple resolution.

This approach has already been utilized by a number of cities throughout the state. Please refer to Attachment D for a sampling of charter cities that have adopted this approach.

Reducing the administrative burden of formal bidding for lower cost projects will achieve savings in staff time and City resources. Adoption of this amendment allows the City to use the same authority that other cities and counties employ to enter into cost-effective and efficient public works contracts. The benefits of competitive procurement would remain unchanged.

Alternative 2:

Recommend no change to Charter Section 1110. All public works projects over \$30,000 will continue to be subject to formal bidding procedures.

# **EXHIBIT B**

## **SECTION 1110. CONTRACTS ON PUBLIC WORKS.**

Every project for the construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies or materials for any such project, when the total expenditures required for the project exceed Thirty Thousand Dollars (\$30,000), or such lesser amount as may be established by ordinance, shall be let by the City Council by contract to the lowest responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids. Projects for the maintenance or repair of such facilities are excepted from the requirements of this paragraph if the City Council determines that such work can be performed more economically by a City department than by contracting for the doing of such work.

All bids shall be accompanied by either a certified or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in California, made payable to the City. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein, or if no amount be so specified then in an amount not less than ten percent (10%) of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract, within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of his or her bidder's security shall be declared forfeited to the City and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted and the amount thereof collected and paid into such fund.

The City Council may reject any and all bids presented and may readvertise in its discretion.

The City Council, without advertising for bids, or after rejecting bids, or if no bids were received, may declare and determine that, in its opinion, based on estimates approved by the City Manager, the work in question may be performed better and more economically by the City with its own employees or the supplies or materials may be purchased more economically on the open market, and after the adoption of a resolution to this effect by at least five affirmative votes of the Council may proceed to have said work done or said supplies or materials purchased in the manner stated, without further observance of the provisions of this Section. Such contracts likewise may be let without advertising for bids, if such work or supplies or materials shall be deemed by the City Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by at least five affirmative votes of the Council and containing a declaration of the facts constituting such urgency.

(As amended by amendments effective April 28, 1966, June 6, 1974, and November 4, 1986)

# **EXHIBIT C**

**CALIFORNIA CODES  
PUBLIC CONTRACT CODE  
SECTION 22032**

**22032.** (a) Public projects of thirty thousand dollars (\$30,000) or less may be performed by the employees of a public agency by force account, by negotiated **contract**, or by purchase order.

(b) Public projects of one hundred twenty-five thousand dollars (\$125,000) or less may be let to **contract** by informal procedures as set forth in this article.

(c) Public projects of more than one hundred twenty-five thousand dollars (\$125,000) shall, except as otherwise provided in this article, be let to **contract** by formal bidding procedure.

# **EXHIBIT D**

**CONTRACTS ON PUBLIC WORKS**

**\$ LIMIT SET BY CHARTER**

City	County	\$ Limit
Newport Beach	Orange	\$30,000
Placentia	Orange	\$25,000
Huntington Beach	Orange	\$25,000

**\$ LIMIT SET BY ORDINANCE OR RESOLUTION**

City	County	Charter Language	Ordinance Limit
Rancho Mirage	Riverside	City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contracts, including, but not limited to, the compensation rates to be paid for the performance of such work.	Use of PCC\$22032 Guidelines. \$125,000 or less, City Manager approval.
Carlsbad	San Diego	The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work.	Use of PCC\$22032 Guidelines. \$125,000 or less, City Manager approval. City Manager may delegate awarding authority by memorandum or by administrative order.

Anaheim	Orange	Every contract involving an expenditure in excess of an amount as specified in Division 2, Part 3, Chapter 1, Article 4 of the Public Contracts Code of California shall be let to the lowest responsible bidder after notice by publication in the official newspaper by two or more insertions, the first of which shall be at least ten days before the time for opening bids.	Use of PCC\$2032 Guidelines. \$125,000 or less, City Manager approval.
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Pomona	Los Angeles	...city shall not be bound by any contracts unless made in writing and authorized by the Council. The Council shall adopt all necessary requirements to implement this section.	\$125,000 or less, City Manager approval.
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Redwood City	San Mateo	All contracts entered into by the city shall be signed by the city manager and any other officer or officers of the city as the council may by ordinance provide.	\$100,000 or less, City Manager approval.
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Irvine	Orange	Except as otherwise provided by law, the Purchasing Agent will contract for the purchase of all supplies, equipment, and services in a manner that is consistent with sound professional practices and which allows for open competition; provided that the Purchasing Agent will only purchase items that have been specifically identified as not requiring further approval, including but not limited to City Council or City Manager approval, without first obtaining such approval.	Via Resolution. Up to \$100,000, Dept. Director approval. \$100,000 - \$1mil, City Manager approval. \$1mil + City Council approval.
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San Mateo	San Mateo	The City Manager or an officer authorized by City Manager shall purchase or contract for...public works required by the city in the manner prescribed by ordinance.	Less than \$100,000 City Manager may award or delegate authority to dept head at designated dollar levels. *PW Director has awarding authority for contracts up to \$4 million for projects funded with Federal Economic Stimulus Plan funds.
San Marcos	San Diego	The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.	\$100,000 or less, City Manager approval.
Buena Park	Orange	Charter not posted.	Award of public projects of a value less than established by city council resolution. Per/TC with PW director. Under \$30,000 City Manager approval.
Santa Ana	Orange	The City Council shall adopt by ordinance rules and procedures for competitive bidding for all public works contracts, which rules and procedures shall establish limits for public works contracts approved by the City Manager.	\$25,000 or less, City Manager approval
La Quinta	Riverside	The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.	The city council may, by resolution, prescribe specific procedures and rules governing the solicitation of bids and award of contracts for public works projects. (Ord. 315 § 4 (part), 1998)