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Title:	INTRODUCTION AND FIRST READING OF ORDINANCE 22-2213, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 2611 (EXCEPTIONS TO BIDDING REQUIREMENTS FOR PURCHASES OTHER THAN FOR PUBLIC PROJECTS) OF CHAPTER 6 (PURCHASING SYSTEM) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE TO AMEND THE COOPERATIVE PURCHASING REGULATIONS" (CITY COUNCIL)				
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Report to Mayor and City Council

Tuesday, June 07, 2022

Discussion

SUBJECT:

INTRODUCTION AND FIRST READING OF ORDINANCE 22-2213, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 2611 (EXCEPTIONS TO BIDDING REQUIREMENTS FOR PURCHASES OTHER THAN FOR PUBLIC PROJECTS) OF CHAPTER 6 (PURCHASING SYSTEM) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE TO AMEND THE COOPERATIVE PURCHASING REGULATIONS" (CITY COUNCIL)

I. SUMMARY

Staff seeks City Council approval to amend the cooperative purchasing regulations of the City's Purchasing Ordinance codified in Sections 2600 *et seq.* of the Carson Municipal Code, to allow City to utilize cooperative purchasing as a bidding exception even if the solicitation process implemented by the cooperative purchasing agency did not result in award of a contract to the lowest responsible and responsive bidder. There are many benefits associated with such practices, including the following:

1. Enables City to more quickly purchase items on an as needed basis, while also making a low price available to City;
2. Allows smaller jurisdictions to get a better price due to economies of scale and better value for their investment by combining their purchasing power with the purchasing power of the cooperative purchasing agency which often operates on a national scale; and
3. Provides an easier way to navigate and understand what is available, reducing the amount of time City staff needs to perform new research, allowing City staff to focus on ensuring the best return on investment decisions are made.

If adopted, the attached ordinance will effectuate such amendment.

II. RECOMMENDATION

WAIVE further reading and **INTRODUCE** for first reading ORDINANCE NO. 22-2213, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 2611 (EXCEPTIONS TO BIDDING REQUIREMENTS FOR PURCHASES OTHER THAN FOR PUBLIC PROJECTS) OF CHAPTER 6 (PURCHASING SYSTEM) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE TO AMEND THE COOPERATIVE PURCHASING REGULATIONS”

III. ALTERNATIVES

1. TAKE NO ACTION on the draft ordinance.
2. TAKE such action as the City Council deems appropriate consistent with the requirements of the law.

IV. BACKGROUND

Absent an express requirement by statute, charter or ordinance, a city does not have a requirement to use a competitive bid process and/or award to the lowest bidder. *Davis v. City of Santa Ana*, 108 Cal.App.2d 669 (1952). Section 914 of the City of Carson’s Charter provides that the City Council “may, by ordinance, establish procedures for the procurement of supplies, services, construction of public works, on-call contracts, and the like. Such ordinance may provide requirements and procedures for competitive bidding, and award to the lowest responsive and responsible bidder except that no competitive bidding.” In 2017, the City Council adopted such an ordinance set forth in Sections 2600 *et seq.* (“Purchasing Ordinance”) of the City’s Municipal Code (“CMC”). The CMC requires purchases of materials, supplies, equipment, and services of an estimated aggregate

annual value that is \$25,000 or greater to go out for competitive bidding with certain exceptions, such as for professional services, emergency purchases, sole source, and cooperative purchasing. CMC §§ 2610, 2011. Competitive bidding under the CMC requires award of the contract to the lowest responsible and responsive bidder, which is “the bidder who submits the lowest monetary bid that responds to the terms upon which bids were requested, and who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract.” This lowest responsible and responsive bidder standard ensures that the City receives the lowest available pricing which is important for larger purchases.

Cooperative purchasing is one of the bidding exceptions referenced above, and City is permitted to dispense with the competitive bidding process utilizing this exception outlined in CMC 2611(g) which in part reads as follows:

(g) Cooperative Purchasing. The City, through the Purchasing Manager, may purchase materials, supplies, equipment, or services through a joint powers or other cooperative purchasing program with any local, county, State, or Federal public entity or entities, or any association of public agencies, including the California League of Cities, the California State Association of Counties, and the National Conference of Mayors; provided, that:

- (1) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of any participating entity or association; and
- (2) The Purchasing Manager determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Chapter; and
- (3) The Purchasing Manager determines that, as a result of cooperative purchasing, the price of the materials, supplies, equipment, or services is likely to be lower than it would be if purchased directly by the City pursuant to this Chapter.

The cooperative purchasing concept serves as a substitute for City soliciting bids directly by taking advantage of the another cooperative purchasing agency’s solicitation process, and has the following benefits to City:

1. Enables City to more quickly purchase items on an as needed basis, while also making a low price available to City;
2. Allows smaller jurisdictions to get a better price due to economies of scale and better value for their investment by combining their purchasing power with the purchasing power of the cooperative purchasing agency which often operates on a national scale; and
3. Provides an easier way to navigate and understand what is available, reducing the amount of time City staff needs to perform new research, allowing City staff to focus on ensuring the best return on investment decisions are made.

However, under the CMC as it is currently written, cooperative purchasing also requires the Purchasing Manager to conduct due diligence and make an affirmative determination that

the competitive bidding process utilized by the cooperative purchasing agency (“Cooperative Purchasing Agency”) is at least the same as that required in the CMC which means any time City seeks to purchase something using cooperative purchasing, the vendor or party from whom City seeks to procure the item or services and to whom the Cooperative Purchasing Agency awarded the contract, would have qualified as the lowest responsible and responsive bidder as if the City had directly solicited that bidder under the regulations of the CMC. While there are times the Cooperative Purchasing Agency does award contracts to the lowest bidder thereby allowing City to utilize cooperative purchasing under the CMC, there are other times where the Purchasing Manager finds the Cooperative Purchasing Agency did not award a contract to the lowest bidder due to various reasons that are more tailored to the unique needs of the Cooperative Purchasing Agency.

By way of example, sometimes the Cooperative Purchasing Agency utilizes a bidding process based on “Best Value” which during its evaluation process considers factors not ordinarily considered by City under the CMC, such as whether the bidder maintains a national presence or the quality of the bidder’s marketing plan. This often may result in a contract awarded to the low bidder but because the analysis of how the low bidder is determined is different from how City determines low bidder, the Purchasing Manager is unable to make an affirmative determination that the “Best Value” approach meets the City’s lowest responsible and responsive bid standard. Additionally, at times the Cooperative Purchasing Agency solicits bids for an aggregation of items rather than the individual item City seeks to purchase thereby resulting in the Cooperative Purchasing Agency awarding the contract based on pricing submitted for the aggregate of items. This could lead to a result where City purchases the desired individual item for a higher price than that would be available to City had City gone out for competitive bidding.

In spite of the above, staff seeks to amend the Purchasing Ordinance to allow City to utilize cooperative purchasing as a bidding exception, without the Purchasing Manager having to make an affirmative determination that the Cooperative Purchasing Agency awarded its contract to the lowest responsible and responsive bidder as that term is defined in the CMC because there are times when the benefits of using cooperative purchasing outweigh City not purchasing an item for the absolute lowest price, as detailed above. Other cities such as the City of Los Angeles, utilize cooperative purchasing in the same manner as that described in the proposed ordinance. The proposed ordinance also contains a couple minor clean-up items for clarification purposes.

As an aside, the ordinance currently being proposed will be for the purpose of addressing staff’s immediate needs to have the CMC’s cooperative purchasing provisions revised. Staff is currently in the process of retaining a consultant to conduct a comprehensive review and audit of the City’s procurement and contracts processes and it is anticipated that at the conclusion of such audit there will be additional proposed revisions to the Purchasing Ordinance which would be presented to the City Council at a later date.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Ordinance No. 22-2213 (pgs. 5 - 13)

Prepared by: City Attorney's Office