

REPORT TO THE CITY COUNCIL

City of Salinas, California

DATE: August 16, 2016

FROM: Christopher A. Callihan, City Attorney

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SUBJECT: **AN ORDINANCE DEFINING PUBLIC WORKS AND GENERAL PURPOSE
PURCHASING THRESHOLDS**

RECOMMENDATION:

It is recommended that the City Council adopt an ordinance amending Sections 12-21, 12-22, 12-27, and 12-28.020 of the City's Municipal Code to (1) add a public works formal bid purchasing threshold automatically adjusted by the consumer cost index on an annual basis, (2) include a definition for public works purchases, (3) adopt a best interest exception/alternative; and (4) adjust the general purpose purchasing threshold.

DISCUSSION:

Background

At the June 7, 2016 election, voters approved the Charter update that cleaned up obsolete, contradictory language and that reorganized text and sections into a more logical format. The update also contained two operational/policy changes, one of which was the deletion of Section 81 in its entirety.ⁱ Deleting this section removed the Charter's over fifteen year-old \$50,000 competitive bidding threshold for public works projects. That Charter provision served as an obstacle to the City utilizing more modern procedures for constructing public improvements, including best value processes. In lieu of the Charter containing a prescriptive threshold, the intent of repealing Section 81 was that Council, by ordinance or resolution, could adopt a threshold and other procedures for more efficient business governance and to be consistent with the practices of larger and smaller cities.

Assuming the most appropriate threshold for the City of Salinas, a charter law city ranked 34th in size in California, is somewhere above the 15-year old \$50,000 threshold, we look to other California cities. These charter cities serve as benchmarks for what agencies allow by law currently:

- Santa Rosa, 27th in size, has a threshold of \$100,000 for formal bids
- Palmdale, 33rd in size, has a \$125,000 threshold with a broad delegation of authority that allows a noteworthy exception. Municipal Code Section 3.08.080(C) provides "City's Best Interest. Except where competitive bidding is required by federal law or

by reason of the source of funding for the project, goods, materials, equipment, supplies and services may be procured by negotiated contract and without competition, when the Director of Finance determines that, due to the nature of the supplies or equipment, bidding is not likely to serve the best interests of the City or to result in the lowest price.”

- Berkeley, 51st in size, maintains a \$200,000 threshold for formal bids
- Santa Cruz, 137th in size, has a \$99,999 threshold for formal bids
- Placentia, 170th in size, has a \$25,000 construction or improvement threshold mandating award to low bid of projects valued over \$25,000 or in lieu, award based on best value processes, including but not limited to those of design-build and construction manager at risk approaches when the City Council finds that such processes will reduce project cost, expedite project completion, or provide unique design features
- Monterey, 250th in size (with a population 1/5 the size of Salinas), has a \$65,000 public works bid threshold

General law cities, on the other hand are generally bound by limits set forth in the State Public Contracts Code (“PCC”), which is a \$5,000 limit unless the cities formally adopt the alternative bidding provisions allowed by PCC Section 22030 and the Uniform Public Construction Cost Accounting procedures. Three cities which did adopt the alternative bidding procedures include Oceanside, 28th in size; Lancaster, 31st in size; and Corona, 32nd in size. Post-adoption, each adheres to an informal process for public works purchases \$30,000-\$125,000 and a \$175,000 formal limit threshold. In support of adopting the alternative higher thresholds, Oceanside cited reductions of administrative costs and excessive staff reports, allowance of more timely bidding of public works construction, and *speed* in public works projects delivery, i.e., getting more public improvements completed more quickly.

Another noteworthy resource when focusing on public improvement purchasing thresholds and competition, is the American Bar Association (“ABA”) 2000 Model Procurement Code (“Model Code”) for State and Local Governments, a collaborative work between the ABA Section of Public Contract Law and the Section of State and Local Government Law and other national organizations interested in state and local procurement. The Model Code added model provisions and new materials for state and local governments that wished to take advantage of emerging public and private collaboration in public infrastructure development to do so safely and efficiently. And the ABA issued, in 2007, the Model Code for Public Infrastructure Procurement (“Model Code PIP”) which provides some recommendations particularly for local agencies, such as cities, that wish to utilize public resources advantageously by not just public-private partnering, but also for purchases that may yield the best value to the public.

In addition to the traditional sealed, low bid competition, the Model Code PIP lays out newer acceptable purchasing delivery methods such as Design-Bid-Build including Construction Management At-Risk, Design-Build, Design-Build-Operate-Maintain, Design-Build-Finance-Operate-Maintain, and Operations and Maintenance. These newer types of purchases result when a governing agency’s purchasing delegee(s) determines that the use of competitive sealed low bids are either not practicable or not advantageous to the agency.ⁱⁱ The newer, alternative purchases start, instead of a call for low bids, with design requirements in a Request for Proposal (“RFP”), which then establishes a minimum threshold for owner requirements in the

competition to unfold. The competition culminates in the submission of proposal development documents by offerors in response to the RFP. The Model Code PIP also details out administration and selection mechanisms for such alternative purchases.

Based on the samples and information yielded from other agencies, staff recommends that Council consider the attached Ordinance which would add a public works purchasing threshold of \$100,000, thereby subjecting any project with a value of \$100,000 and over to the formal competitive low-bid process and City Council approval, with the exception that Council can make a determination that low bids, exclusively, may not meet the City's best interest and that Council can direct purchasing on another basis. In addition, consistent with Council's 2014 resolution increasing City development impact fees by the construction cost index ("CCI") change as published by the Engineering News Record ("ENR"), staff recommends that the Ordinance include an annual adjustment of the public works purchasing thresholds that include the CCI ENR-reported percentage change. This will help ensure the threshold maintains pace with the economy.

On August 4, 2016, for public outreach purposes, Public Works Director Gary Petersen presented the one hundred thousand dollar with annual adjustment public works purchasing threshold concept to the Business Development Committee of the Salinas Valley Chamber of Commerce ("Chamber"). The concept was received favorably and is likely to receive Chamber support.

City staff are also recommending an increase to the general purpose purchasing threshold from the current level of \$20,000 to \$30,000. The current threshold has been in place for forty years and is overdue for an update. For the general purpose purchases, a survey of thirty cities was conducted. Four of the thirty have a threshold of \$20,000, ten are between \$25,000 and \$30,000, and sixteen are \$30,000 or above. The survey is attached to this Report for reference.

ISSUE:

Shall City Council adopt an Ordinance to provide a competitive purchasing threshold specific to public works projects and an increase to the general purpose purchasing threshold, with an annual adjustment tied to the construction cost index, and with a best interest of the City clause added for City Council determination as an exception?

FISCAL IMPACT:

There are no known immediate, direct, and readily quantifiable fiscal impacts; however, the City is likely to realize (a) long-term staff and administrative savings as a result of more-efficient purchases; and (b) quicker delivery of public improvement projects, in part through implementation of best-value practices.

TIME CONSIDERATIONS:

Until the Charter revisions are accepted by the Secretary of State of California, public works purchases will be subject to the current Code (Article III Sec. 12-21 limit of \$20,000) thereby requiring advertisements for sealed bids and an award to the lowest responsible bidder for any

public works purchase exceeding \$20,000. The \$20,000 is significantly below the outdated \$50,000 public works threshold recently removed from the Charter and the \$100,000 public works competitive bidding threshold being recommended by staff.

ALTERNATIVES:

The Council could choose not to adopt the recommended or any other public works and/or general purpose threshold via Ordinance, thereby leaving public works projects subject to the \$20,000 competitive threshold contained in the Code for general purchases. This would render additional public works projects subject to City Council approval on a contract-by-contract basis and subject exclusively to the low-bid (in contrast to best value) standard.

CITY COUNCIL GOALS:

The proposed Ordinance is consistent with the City Council's goal of promoting Effective, Sustainable Government; enhancing Economic Diversity and Prosperity; and safely and efficiently managing an Excellent Infrastructure.

CONCLUSION:

Staff recommends in favor of the attached Ordinance prescribing a \$30,000 general purpose purchasing threshold, a \$100,000 limit for public works purchases based on formal low bid, an annual automatic adjustment based on the construction cost index, and an exceptional alternative for Council to determine when projects over \$100,000 may be of best value to the City when based on competition other than low bid exclusively.

Back Up Pages:
Ordinance
General Purpose Purchasing Survey

ⁱ Sec. 81. - Public work not paid for by assessment. In all public work, excepting work on sewers and emergency work, where the estimated cost of the work is in excess of \$25,000 or such other amount as may be determined by law to apply to general law cities, whichever amount is greater, the Council shall advertise for sealed bids in such manner as they may provide, and the contracts shall be awarded to the lowest responsible bidder. The Council shall have authority to reject any or all bids; provided, that if the estimated cost of the work is less than \$25,000, informal bids shall be received from two or more bidders, if available, without the necessity of advertising. if the Council is advised by the City Manager that the work can be done for a sum less than the lowest responsible bid, the Council may reject all bids and order the work done by force account under the supervision and direction of the City Manager. The \$25,000 limit set forth above shall be increased by \$5,000 on July 1, 1996 and by the same amount on July 1st of each year thereafter to a maximum of \$50,000. (Repealed by City electors on June 7, 2016. Prior amendments by city electors on June 6, 1995; November 2, 1976; June 5, 1973; and November 2, 1954.)

ⁱⁱ Model Code PIP, Sec. 3-103.