Public Contracting: Purchasing Requirements and Renewable Energy/Energy Efficiency Projects

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The Goals

- The Competitive Bidding Process
- Uniform Public Cost Accounting Act
- Procurement Issues in Renewable Energy and Energy Conservation Contracts
Competitive Bidding Process
Public Contract Code §§ 20160-20175.2

Formal Bidding
- Notice Inviting Bids/ RFP
- Submission of sealed bids
- Public opening of bids
- Award contract to lowest responsible bid/responsive bidder
- May also reject all bids and readvertise

Advantages
- Staff familiar with process
- Low prices

Disadvantages
- Public Contract Code
- Bid protests/Legal challenges
- Issues with Low Bid
Competitive Bidding Process

- Required to adopt policies and procedures governing bidding regulations and purchases of supplies and services
  (Gov. Code § 54202)

- Be familiar with local purchasing regulations before advising clients on contract procurement

Uniform Public Construction Cost Accounting Act (UPCCAA)

- Less formal contracting procedures for contracts under $200,000
- Must adopt resolution and notify state controller (PCC § 22030)
- Must enact informal bidding ordinance
Uniform Public Construction Accounting

- **UPCCAA Ordinance Requirements:**
  - How notice to contractors will be provided
  - City Council may delegate authority to award contracts to PW Director, City Manager, Purchasing Agent

Uniform Public Construction Cost Accounting Act

- **Advantages**
  - Simple/efficient
  - Can be run by PW Director or City Manager

- **Disadvantages**
  - May be unfamiliar to cities
  - Bid protests/legal challenges
Renewable Energy Projects

Common procurement proposals
- Formal/Informal RFPs
- Sole-Source
- Design-Build
- Cooperative Purchasing/"Piggybacking"
- Job Order Contracts
- Energy Conservation Contracts
Formal/Informal RFP

- Traditional RFP
- RFQ to narrow applicants
- Informal bid process

- Typically another procurement method is pitched

- Should ensure method is based on criteria allowed by that City

Sole-Source Procurement

- LIMITED TO FOUR (4) SCENARIOS
  - Field test or experiment
  - Need to match others in use;
  - Only available from one source; or
  - Responding to emergency
    - Emergency declared by 4/5ths vote

(Pub. Contract Code § 3400)
Sole-Source Procurement

- Advantages
  - Ensures that certain product/material is included or used

- Disadvantages
  - May increase costs
  - City may not actually need named product/material

Design-Build

- Design AND construction services are contracted from a single entity
  - Avoids delay claims

- CITIES may only use design-build contracts for public works projects valued over $1 million

- Must also design a conflict-of-interest policy for design-build contracts.

  - Valid through 1/1/2025
Design-Build: a 4-Step Process

Pub. Contract Code § 22164:
• City provides scope and estimated price of project documents
• City issues RFQ to create shortlist:
  • Include evaluation criteria
  • PLA/skilled and trained workforce requirement for prequalification
• City determines qualified bidders
• City issues RFP to qualified bidders
  • City may award on “best value” or “low bid” selection techniques

Cooperative Purchasing

Pub. Contract Code §§ 10298-10299, 12100-12113

• “Piggyback” off state or other local agencies
• Need local purchasing ordinance authorizing action
• Competitive bidding already done
Job Order Contracts

- JOC are agreements for fixed price per unit for existing facility renovation/repair
  - No specified specific project
  - On-call services and goods
- Not allowed for General Law Cities
  - 76 Ops Cal Atty Gen 126 (1993)
- Can’t order everything off a menu

Energy Conservation Contracts

- Energy conservation facilities
  - Gov. Code § 4217.10 et seq.
- Alternate energy equipment
  - Solar, biomass, wind
- Conservation measures
Energy Conservation Contracts

- Future cost avoidance and savings from energy projects to justify upfront costs of conservation measures through savings program

- Hearing Requirement
  - 14-day notice posting requirement
  - Findings supporting conservation

- “Conservation measures” = equipment
  - Gov. Code § 4217.11

- Requires two findings
  1. Energy cost savings exceeds anticipated marginal project costs
  2. Difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.
    - Gov. Code § 4217.12

- No case law on what constitutes sufficient findings