

REPORT TO THE CITY COUNCIL



DATE: September 3, 2019

TITLE: An Ordinance Amending Chapter 3.44 (Purchasing) of the Desert Hot Springs Municipal Code, Clarifying and Amending Procurement Procedures; and Amending Chapter 3.45 (Public Works Projects), Increasing Competitive Bidding Threshold Amounts in Accordance With State Law

Prepared by: Luke Rainey, Deputy City Manager

Reviewed by: Jennifer Mizrahi, City Attorney

RECOMMENDATION

- 1) Approve for First Reading and read by title only: "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 3.44 (Purchasing) of the Desert Hot Springs Municipal Code, clarifying and amending procurement procedures; and amending Chapter 3.45 (Public Works Projects), increasing competitive bidding threshold amounts in accordance with State law; and
- 2) Adopt a Resolution of the City Council repealing Resolution No. 2009-016 (which would take effect upon the effective date of the proposed Ordinance).

BACKGROUND

For Public Works Contracts:

The City adopted an ordinance which added Chapter 3.45 (Public Works Projects) to the Desert Hot Springs Municipal Code ("Chapter 3.45"). Subsequently, the City elected to follow the California Uniform Construction Cost Accounting Commission's cost accounting procedures, thereby allowing the City to avail itself of the Uniform Public Construction Cost Accounting Act ("Act"), including its alternative public works contract bidding procedures set forth in Public Contract Code Sections 22032 et seq. Chapter 3.45 provides procedural and bidding requirements and guidelines pertaining to the City's authority to enter into and perform public works contracts, all in accordance with and subject to the requirements set forth under the Act.

Since the City's adoption of Chapter 3.45, multiple provisions of the Act have been amended, necessitating corresponding amendments to Chapter 3.45. Assembly Bill 2249 ("AB 2249") which became effective January 1, 2019, codified one such amendment to the Act. AB 2249 increased the bid threshold amounts. Now, AB 2249 authorizes public projects of \$60,000 or less to be performed by the employees of the City; authorizes public projects of \$200,000 or less to be let to contract by informal bidding procedures; requires public projects of more than \$200,000 to be let to contract by formal bidding procedures; and permits the City Council, in the event all informal bids received for the performance of public projects are in excess of \$200,000, to award the contract at \$212,500 or less to the lowest responsible bidder by passage of a resolution by a four-fifths vote, if it determines the cost estimate of the City was reasonable.

Further, the Ordinance proposes to amend Chapter 3.45 to establish emergency contracting procedures, to basically allow for the City Manager to proceed to repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts. In addition, it allows for a streamlined bidding procedure when the City can enter into a public works contract when the price and terms were established by another government agency under certain conditions and strict adherence to the Public Contract Code.

For Purchases of Supplies and/or Equipment (which includes by definition “services”):

The City the proposed Ordinance would amend Chapter 3.44 (Purchasing) of Title 3 (Revenue and Finance). On May 5, 2009, the City adopted Resolution Number 2009-016, which adopted the City of Desert Hot Springs Purchasing Procedures (the “Policy”), establishing procedures regarding purchasing of goods and services, which included purchasing procedures pertaining to public works construction.

Government Code Sections 54202 and 54203 provide that policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency shall be adopted by ordinance. Due to the overlapping nature of the Policy and this ordinance, and changes to substantive portions of said Policy via this ordinance, the City desires that this ordinance supersede said Policy and upon effective date of this ordinance, the Policy shall be repealed in its entirety, and thenceforth shall be null and void and of no further force or effect.

Most notably, the changes in the proposed Ordinance related to “supplies and/or equipment” are as follows (the below is not an exhaustive list):

- a) Changes the City Manager authority to purchase supplies and equipment from \$30,000 to \$50,000
- b) Purchases in excess of \$50,000 would need approval by City Council and let to formal bid.
- c) Allows “piggybacking”, which is a way to streamline the formal contract procedures, using another public agency’s contract prices, when that public agency complied with a formal bidding process.
- d) Purchases of \$50,000 or less can be had by negotiated purchase, done by the City Manager or his/her designee.
- e) Professional service agreements in excess of \$50,000 would need approval by the City Council.
- f) Professional service agreements of \$50,000 or less can be had by negotiated agreement, done by the City Manager or his/her designee.
- g) Note that in both cases, changes orders can be negotiated and agreed to by the City Manager in an amount not to exceed 30% of the original amount of the agreement.
- h) Amends the current code to reflect current practices, such as not having a purchasing department, or formal purchasing agent. The City does not have such a department. Instead, each department is in charge of its own purchases.
- i) Allows the City Manager to make emergency purchases of supplies and/or equipment in emergency situations.

EXHIBITS:

- 1) Proposed Ordinance
- 2) Proposed Resolution Repealing Resolution Number 2009-016