



CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: Directors of Finance and Public Works

Subject: Amendment to Municipal Code Sections 3.12.090 and 3.12.130

This Ordinance is exempt from CEQA because it is not a project (CCR Title 14 §15378 (b) (4)).

Recommendation

Introduce the attached Ordinance Concerning Dollar Thresholds Under the California Uniform Public Construction Cost Accounting Act and the City's Federal Procurement Policy.

Purpose

The proposed Ordinance (a) revises higher bidding thresholds for those public works projects that may use the California Uniform Public Construction Cost Accounting Act and (b) revises the City's Federal Procurement Policies to reflect revisions to the federal Uniform Guidelines concerning procurements using federal funds.

If the ordinance is introduced as recommended, it will be brought back to a later regularly scheduled council meeting for final adoption.

Background

The California Uniform Public Construction Cost Accounting Act (CUPCCAA) allows a city to lift the relatively low bidding threshold for public works projects. Under the general rules, public works projects (broadly defined) valued at over \$5,000 must be competitively bid. These thresholds may be onerous as public bidding requires substantial staff time to administer. The CUPCCAA allows higher bidding thresholds. To use the CUPCCAA procedures a city must confirm that it has opted into the CUPCCAA by adopting an ordinance and providing a copy of the ordinance to the State Controller. The City has opted into the CUPCCAA by adopting an ordinance, codified in Section 3.12.090 of the Municipal Code.

Effective January 1, 2025, the thresholds were increased. In order that the city continue to have the flexibility to use the CUPCCAA provisions where appropriate, staff recommends the ordinance be amended to reflect these higher thresholds.

Federal Procurement Policy

From time to time, the City receives federal funding through awards or grants. Where federal funding is involved, the City must follow federal procurement policies. The City has adopted such policies not only in the Municipal Code (codified in Section 3.12.130) but also in its Procurement Policy. In October 2024, the federal Office of Management and Budget announced a number of changes to the Uniform Procurement Guidelines which provide the framework for the City's Federal Procurement Policy. In order that the City federal procurement policies reflect these changes, staff recommends the ordinance concerning these policies also be revised. If the ordinance is adopted, the Procurement Policy will also be revised consistently with the ordinance.

Discussion

California Uniform Public Construction Cost Accounting Act

Current Threshold	January 1, 2025 Threshold to be changed by Proposed Ordinance	Project Requirements
\$5,001 - \$60,000	\$5,001 - \$75,000	Can be performed by city employees, or contracted by force account, negotiated contract or purchase order
\$60,000 - \$200,000	\$75,001 - \$220,000	Contracted by specified informal procedures
\$201,000 and higher	\$221,000 and higher	Contracted per Public Contract Code formal bidding

These threshold amounts may be revised by statute from time to time. The attached ordinance provides for automatic adjustments of the bidding thresholds as the statute changes without having to amend the ordinance further. Rather, those thresholds will be reflected in the Procurement Policy.

Federal Procurement Policy

Although it may appear that the revisions to the Federal Procurement Policy are significant, they are not. Most of the changes in the attached ordinance simply reflect changes in the way that the existing policies are reflected in the Code of Federal Regulations (C.F.R.). There are, however, some changes to the procurement methods.

Currently, the city must use one of four procurement methods when purchasing supplies or equipment with federal funds: “Micro-purchases” (i.e, less than \$3,000); small purchase procedures (less than \$150,000); sealed bids/competitive proposals (greater than \$150,000); and noncompetitive proposals, (e.g., sole source or emergency situations).

The revised federal regulations, now reflected in the attached ordinance, provide that the city must use one of three procurement methods when purchasing supplies or equipment with federal funds: Informal procurement methods for small purchases (micro-purchases now increased up to \$50,000 and “simplified acquisitions” up to \$250,000); formal procurement methods (essentially the same as the sealed bids/competitive proposals in the current ordinance but for amounts in excess of \$250,000); and noncompetitive procurement, the same as in the existing ordinance.

Subsection E of Section 3.12.120 is also being amended to provide the city must inform its employees in writing about whistleblower rights and protections (which the City already does) and that the city has internal controls, including cybersecurity, to safeguard its information. Again, the City has these controls in place.

Other changes to the federal guidelines, such as capitalization thresholds that are not included in the ordinance, will be included in the City’s Procurement Policy.

Fiscal Impact

There is no fiscal impact from adopting this Ordinance. Adoption of the Ordinance will allow the City to use less staff time to obtain products and equipment under a certain dollar threshold and bring the City's procurement policies when federal funds are used in line with federal guidelines.

Environmental Review

Adoption of this ordinance does not require further environmental review under the California Environmental Quality Act because it is a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially sign physical impact on the environment and hence it is not a "project". CEQA Guidelines, Section 15378 (b) (4).

Attachments

1. Proposed Ordinance

Carolina Yuen

Carolina Yuen, Finance Director

R.L. Breault

Randy Breault, Public Works Director

Jeremy Dennis

Jeremy Dennis, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BRISBANE
TO AMEND SECTIONS 3.12.090 AND 3.12.130 OF THE BRISBANE MUNICIPAL CODE
CONCERNING DOLLAR THRESHOLDS UNDER THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT AND THE CITY'S FEDERAL PROCUREMENT POLICY

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 3.12.090 of the Brisbane Municipal Code is amended to read as follows:

"3.12.090 California Uniform Public Construction Cost Accounting Act

The California Uniform Public Construction Cost Accounting Act (CUPCCAA) [Public Contract Code, Section 22000 et seq.] provides cost accounting standards and an alternative method for the bidding of public works projects by public entities. By adoption of this section of the chapter, the city has elected to become subject to the CUPCCAA procedures.

(Subsections A and B, no change.)

C. Contracting Procedures Based on Dollar Amounts

1. CUPCCAA projects that do not exceed five thousand dollars (\$5,000) are not subject to competitive bidding requirements.
2. CUPCCAA projects of seventy five thousand dollars (\$75,000) or less may be performed by the employees of the city, by force account, by negotiated contract, or by purchase order.
3. CUPCCAA projects more than seventy five thousand dollars (\$75,000) up to two hundred twenty thousand dollars (\$220,000) may be let by informal procedures as set forth in subsection E of this section and in Sections 22020 through 22045 of the Public Contract Code.
4. CUPCCAA projects of more than two hundred twenty thousand dollars (\$220,000) shall, except as otherwise provided in Section 22034 of the Public Contract Code, be let by a formal bidding procedure.

(Subsections D and E, no change.)

F. The bidding thresholds set forth in subsection C shall be automatically adjusted as those amounts are changed by statute. Such adjusted amounts shall be in the City's Purchasing Policy."

Section 2. Section 3.12.130 of the Brisbane Municipal is amended to read as follows:

"Section 3.12.030 Federal Procurement Policy

(Subsections A and B, no change.)

C. General Standards. The following additional standards are required when the city procures supplies or equipment with federal funds in the form of a grant or award.

(Paragraphs 1 through 4, no change).

5. Time and Materials contracts.

- a. The city may use time a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the city is the sum of (i) the actual cost of materials and (ii) direct labor hours charged at a fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- b. Because this formula generates an open ended contract price, a time and materials type contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must contain a ceiling price that the contractor exceeds at its own risk. Further, the city must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(2 C.F. R. Section 200.318 (j) (1) and (2))

(Paragraph 6, no change.)

7. Whistleblower rights and protections. Under the law, legal protections are provided to “whistleblowers”. The city will inform its employees in writing about these whistleblower rights and protections.

8. Internal controls. The city shall adopt internal controls, including cybersecurity and other measures, to safeguard information.

D. Procurement Methods. The city must use one of three procurement methods identified below when purchasing supplies or equipment with federal funds.

1. Informal procurement methods for small purchases. These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in 2 C.F.R. Section 200.1. Informal procurement methods include micro-purchases and simplified acquisitions.

- a. Micro-purchases. Procurement by micro-purchase is acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold defined in 2 C.F.R. 200.1. To the extent practicable, the city must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the city determines the price quote is reasonable based on research, experience,

purchase history, or other information and maintains documents to support its conclusions. The city is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures and the city is self certifying its micro-purchasing threshold as \$50,000 in compliance with 2 C.F.R. Section 200.320 (a)(1)(iv).

(2. C.F. R. 200.320 (a)(1))

- b. Simplified acquisition. Procurement by simplified acquisition is acquisition of supplies or services, the aggregate dollar amount is higher than the micro-purchase threshold (\$50,000) but does not exceed the simplified acquisition threshold (\$250,000). If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (2 C.F.R. 200.320 (a)(2)).

2. Formal procurement methods. Formal procurement methods are required when the value of the procurement under a Federal award exceeds the simplified acquisition threshold (\$250,000). Formal procurement methods are competitive and require public notice. The following formal methods of procurement are sealed bids and proposals.

- a. Sealed bids are publicly solicited bids through an invitation and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. This method is preferred for procuring construction contracts.
 - (i) For sealed bids to be feasible, the following conditions should be present: (A) a complete, adequate, and realistic specification or purchase description is available, (B) two or more responsible bidders have been identified as willing and able to compete effectively for the business, and (C) the procurement lends itself to the firm fixed price contract and the selection of the successful bidder may be made principally on price.
 - (ii) If sealed bids are used, the following requirements apply: (A) bids must be solicited from an adequate number of bidders, as such is determined by the city, with sufficient response time prior to the date set for opening the bids; (B) bids must be publicly advertised; (C) the invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond; (D) all bids will be publicly opened at the time and place prescribed in the invitation for bids; (E) A firm fixed price contract is awarded in writing to the lowest responsive bid and responsible bidder; and (F) the city must document and provide a justification for all bid rejects.

(2 C.F.R. 200.320 (a))

- b. Proposals is a procurement method used when conditions are not appropriate for using sealed bids and such method may result in either a fixed price or cost

reimbursement contract. Proposals are awarded in accordance with the following requirements.

- (i) Requests for proposals require public notice and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified persons or entities. To the maximum extent practicable, any proposal submitted in response must be considered.
- (ii) The city must have written procedures for conducting technical evaluations and making selections.
- (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the city considering price and other factors; and
- (iv) The city may use competitive proposal procedures for qualification based procurements of architect/engineering professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method where the price is not used as a selection method may only be used to procure architectural/engineering professional services and not for other services provided by such firms that are a potential source to perform the proposed effort.

(2 C.F.R. 200.320 (b))

3. Noncompetition procurement. The noncompetition method may only be used if one of the following circumstances applies:

- a. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (\$50,000);
- b. The procurement transaction may only be fulfilled by a single source;
- c. The public exigency or emergency for the requirement does not permit a delay resulting from providing public notice of a competitive solicitation; or
- d. d. The city has in writing requested to use a noncompetition method and the Federal agency provides a written approval.

(2 C.F.R 200.320 (c))

E. Additional Requirements to Sealed Bids and Competitive Proposals

- 1. All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with standards of 2 C.F.R. Section 200.319 and 2 C.F.R. Section 200.320. (2 C.F.R. Section 200.319 (a)).
- 2. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements

of work, or invitations for bids must be excluded from competing on those procurements. (2 C.F.R. Section 200.319 (b))

3. Examples of situations that may restrict competition include but are not limited to:
 - a. Placing unreasonable requirements on firms for them to qualify to do business;
 - b. Requiring unnecessary experience and excessive bonding;
 - c. Noncompetitive pricing practices between firms or between affiliated companies;
 - d. Noncompetitive contracts to consultants that are on retainer contracts;
 - e. Organizational conflicts of interest;
 - f. Specifying a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - g. Any arbitrary action in the procurement process.

(2 C.F.R. Section 200.319 (c))

4. The city must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - a. Are made in accordance with 2 C.F.R. Section 200.319 (b).
 - b. Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum associated characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name” or equivalent description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and
 - c. Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(2 C.F. R. Section 200.319 (d))

5. The city must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the city must consider objective factors that evaluate price and cost to maximize competition.

The city must not preclude potential bidders from qualifying during the solicitation period. (2 C.F. R. Section 319.200 (e))

6. To the extent consistent with established and legal requirements applicable to the city, subsection E of this Section does not prohibit the city from developing procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers or types of U.S. jobs, minimum compensation benefits, on the job training for employees making work products or providing services on a contract, and other worker protections. This subsection E also does not prohibit the city from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. (2 C.F.R. 200.319 (f))
7. Noncompetitive procurements may only be awarded in accordance with 2 C.F.R. 200.320 (b). (2 C.F.R. 200.319 (g))."

SECTION 3: This Ordinance shall be in full force and effect 30 days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Cliff Lentz, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas R. McMorrow, City Attorney