

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

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1

1

The Goals

- The Competitive Bidding Process
- Uniform Public Cost Accounting Act
- Procurement Issues in Renewable Energy and Energy Conservation Contracts

2

2

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



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3

Competitive Bidding Process

- Advantages
 - Staff familiar with process
 - Low prices
- Disadvantages
 - Public Contract Code
 - Bid protests/Legal challenges
 - Issues with Low Bid



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4



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

5

5

Uniform Public Construction Cost Accounting Act (UPCCAA)
Pub. Contract Code § 22000-22045

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



6

6

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



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7

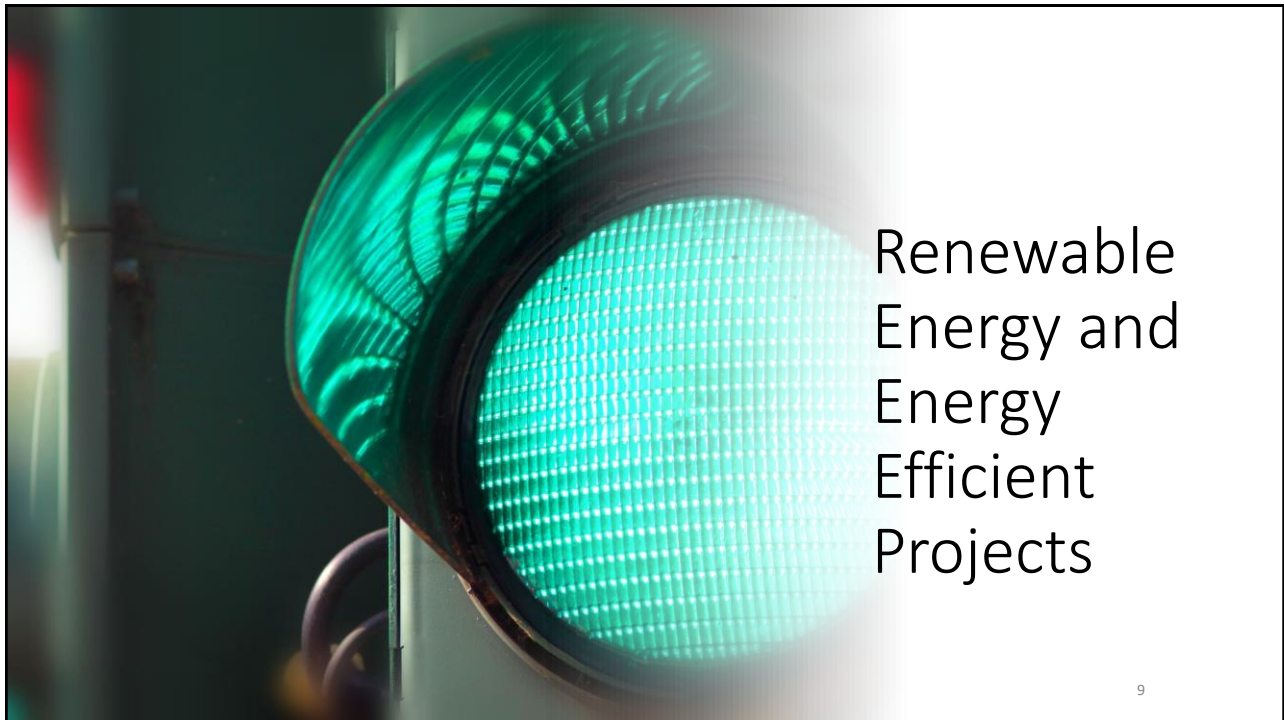
Uniform Public Construction Cost Accounting Act

- Advantages
 - Simple/efficient
 - Can be run by PW Director or City Manager
- Disadvantages
 - May be unfamiliar to cities
 - Bid protests/legal challenges



8

8



Renewable Energy and Energy Efficient Projects

9

9

Renewable Energy Projects

Common procurement proposals

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



10

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10



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

11

11



Sole-Source Procurement

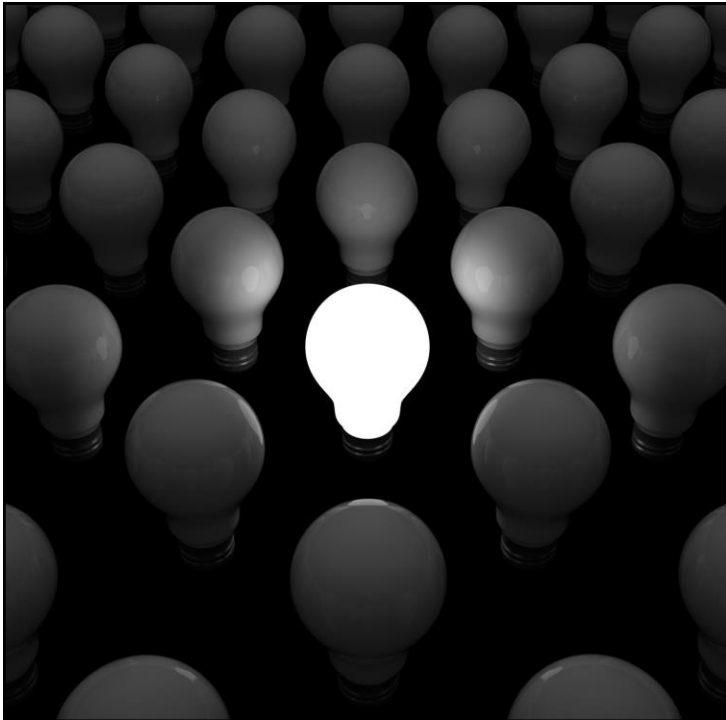
- LIMITED TO FOUR (4) SCENARIOS
 - Field test or experiment
 - Need to match others in use;
 - Only available from one source;
 - or
 - Responding to emergency
 - Emergency declared by 4/5th's vote

(Pub. Contract Code § 3400)

12

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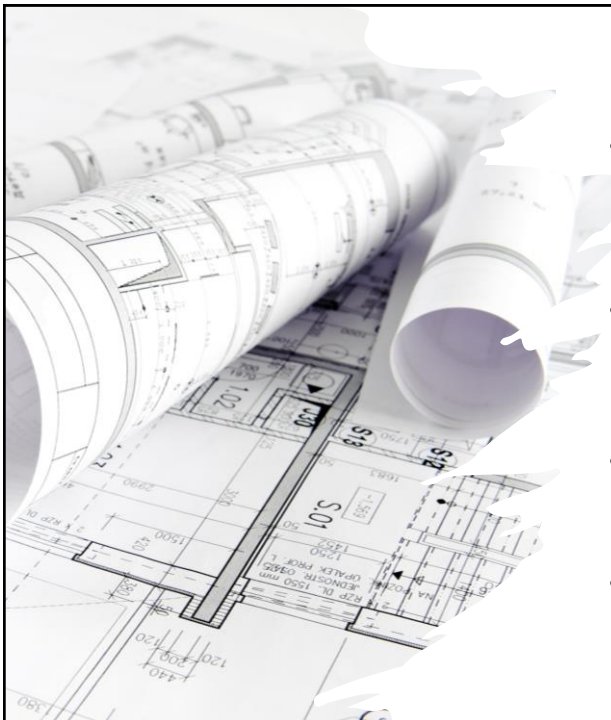


Sole-Source Procurement

- Advantages
 - Ensures that certain product/material is included or used
- Disadvantages
 - May increase costs
 - City may not actually *need* named product/material

13

13




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.
- Pub. Contract Code §22160 – 22169
 - ***Valid through 1/1/2025***

14

14



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

15

15



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

16

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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



17

SPECIAL OFFER

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Energy Conservation Contracts

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

18

18



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

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19

Energy Conservation Contracts

- 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**



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20

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