



# City of Rialto

## Legislation Text

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File #: 21-0639, Version: 2

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For City Council Meeting [September 28, 2021]

TO: Honorable City Council  
FROM: Marcus Fuller, City Manager  
Eric Vail, City Attorney

Request City Council to Adopt **Resolution No. 7777** Electing Under Public Contract Code Section 22030 to Become Subject to the Uniform Public Construction Cost Accounting Procedures; and to Introduce **Ordinance No. 1662** to Amend Chapter 2.48 - Purchasing, of the Rialto Municipal Code.  
**(ACTION)**

### **BACKGROUND**

Chapter 2.48 - Purchasing of the Rialto Municipal Code regulates the City's purchasing procedures, and was originally adopted pursuant to Ordinance No. 742 on March 20, 1978. At that time purchasing regulations were established requiring City Council approval of any purchase or contract in an amount exceeding \$10,000 - the City Administrator's "Signature Authority."

Amendments to the purchasing regulations have occurred over time, as follows:

- Ordinance No. 1062, adopted May 3, 1989, to implement a 1% local business preference.
- Ordinance No. 1165 adopted March 3, 1992, replacing Chapter 2.48 in its entirety to update and conform to bidding standards at that time, including an increase of the Signature Authority to \$15,000.
- Ordinance No. 1201, adopted November 2, 1993, to implement a 2% local business preference.
- Ordinance No. 1334 adopted July 2, 2002, replacing Chapter 2.48 in its entirety to update and conform to bidding standards at that time.
- Ordinance No. 1664 adopted February 26, 2019, amending certain provisions within Chapter 2.48

The last whole-sale update to the purchasing procedures was in 2002, and the Signature Authority of \$15,000 has not been updated since 1992.

Currently, section 2.48.250 of the Rialto Municipal Code regulates the purchase of materials, supplies and equipment under informal bidding procedures for costs up to \$15,000. These procedures require a notice inviting bids to be issued, with at least three written bids received, and with award to the lowest responsible bidder. Also, "Open Market" purchases of up to \$1,000 may be made by the Purchasing Manager to any selected vendor.

Currently, section 2.48.290 of the Rialto Municipal Code regulates the purchase of materials, supplies and equipment under formal bidding procedures for costs over \$15,000. These procedures require a

notice inviting bids to be published once for 10 days before opening bids, with bids solicited from the City's approved vendor list, with formal sealed bids required, and with award by the City Council to the lowest responsible bidder.

Currently, section 2.48.410 of the Rialto Municipal Code regulates the City's award of contracts for professional services. These procedures require formal or informal written proposals from at least three qualified consultants and allow for approval of professional services by Purchase Order for work valued at \$15,000 or less by staff, or for work valued at over \$15,000 by contract approved by the City Council.

Chapter 2.48 - Purchasing of the Rialto Municipal Code also regulates the award of contracts and the purchase of materials and supplies for Public Projects (section 2.48.460 - Public works projects) and makes reference to the provisions of California's Public Contract Code (PCC) § 20160 et seq. PCC § 20160-20174 identifies the rules governing contracting by cities and outlines very specific criteria that must be followed when advertising for and awarding public projects valued over \$5,000 (known as formal bidding procedures). Under this section, a "Public Project" is defined as a project for the erection, improvement, painting, or repair of public buildings and works; work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; street or sewer work except maintenance or repair; and furnishing supplies or material for any such project, including maintenance or repair of streets or sewers.

The formal bidding procedures requires the City to publish a notice inviting bids at least 10 days prior to the date set for opening bids for any public project in excess of \$5,000. The notice must be published at least twice, not less than five days apart, in a newspaper of general circulation in the City. In addition, all bids must be submitted in sealed envelopes, and the City Council must award the contract to the lowest responsible bidder.

Thus, the City is burdened with formal bidding of any purchase of materials and supplies, services or work related to a Public Project, placing an administrative burden both on the City staff as well as the smaller vendors, firms, suppliers, and contractors with whom the City solicits bids. Formal bidding does not allow administrative flexibility for obtaining quotes or informal bids, or for expediting the process to obtain materials and suppliers, or services, relating to Public Projects.

To address this challenge, the State Legislature established the Uniform Public Construction Cost Accounting Act (UPCCAA; PCC 22000-22045) in 1983 to provide alternative bidding procedures with higher dollar thresholds that would account for escalating construction costs over time. The UPCCAA defines "public project" to include: construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased or operated facility; painting or repainting of any publicly owned, leased or operated facility; or in the case of a publicly owned utility system, only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher. Under the UPCCAA, "public project" does not include: routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose; minor repainting; resurfacing of streets and highway at less than one inch; landscape maintenance work; or work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems.

Currently, 273 California cities have previously elected to adopt the UPCCAA procedures due to the

enhanced ability to more efficiently implement smaller public projects that are valued between \$5,000 and \$60,000. The UPCCAA also introduces certain less formal procedures for contracts of \$200,000 or less. These less formal procedures provide local agencies with more flexibility in bidding small public projects while also continuing to require open and competitive bidding and award to the lowest responsive and responsible bidder.

A “Frequently Asked Questions” FAQ regarding electing to participate in UPCCAA is included as **Attachment 1**, and a list of participating agencies is included as **Attachment 2**.

### **ANALYSIS/DISCUSSION**

The City Manager is recommending a complete revision to Chapter 2.48 of the Rialto Municipal Code to restate the purchasing regulations applicable to competitive bidding for “Supplies and Services” and competitive bidding for “Public Projects.” The City Manager is also recommending an increase in the “Signature Authority” for the purchases of Supplies and Services in light of the growing cost of supplies, services and construction of Public Projects, and by the fact that the City of Rialto’s total budget has significantly increased to approximately \$200 million.

The current Signature Authority of \$15,000 places an administrative burden on Staff and reduces are efficiencies in delivery of programs and projects for the City Council by requiring the most ministerial items to be scheduled for City Council approval on the bi-monthly meeting agenda. A comparison of the Signature Authority established in other San Bernardino County cities is provided in the following Table.

<b><u>City</u></b>	<b><u>Signature Authority</u></b>	<b><u>FY20/21 Budget (Total)</u></b>
Grand Terrace	\$10,000	\$8,042,957
Twentynine Palms	\$25,000	\$9,915,808
Big Bear Lake	\$25,000	\$27,595,555
Barstow	\$25,000	\$30,966,944
Yucaipa	\$50,000 (Services) / \$25,000 (Materials)	\$34,587,867
Adelanto	\$25,000	\$40,631,850
Montclair	\$15,000	\$44,064,526
Loma Linda	\$25,000	\$44,574,700
Hesperia	\$50,000	\$90,777,651
Highland	\$20,000	\$96,644,305
Apple Valley	\$50,000	\$98,199,970
Chino Hills	\$25,000	\$124,148,232
Colton	\$25,000	\$175,458,657
Redlands	\$30,000	\$192,476,491
San Bernardino	\$50,000	\$212,201,958
Rancho Cucamonga	\$100,000	\$224,576,730
<b><i>Rialto</i></b>	<b><i>\$15,000</i></b>	<b><i>\$225,511,080</i></b>

Chino	\$50,000	\$226,961,522
Victorville	\$50,000	\$229,642,597
Fontana	\$100,000	\$247,729,600
Ontario	\$100,000	\$553,761,426

As shown, Rialto's FY 20/21 originally adopted budget of \$225.5 million was the fifth largest in San Bernardino County, but with the second lowest Signature Authority (lowest is Grand Terrace at \$10,000 with a FY 20/21 budget of \$8 million). Based on Rialto's overall budget in comparison to Rancho Cucamonga and Fontana, a recommendation is to set the Signature Authority to \$100,000.

In relation to the increase in Signature Authority is to establish increased thresholds for informal and formal bidding of Supplies and Services. The following outlines the changes recommended for informal bidding:

***Informal Bidding Threshold for Supplies and Services:***

- Currently = **\$15,000** with "Open Market" purchase of up to **\$1,000**
- Recommended = Increase to **\$100,000** with "Open Market" purchase of up to **\$10,000**

***Informal Bidding Procedure for Supplies and Services:***

- Currently = written notice inviting informal bids to solicit at least 3 written bids awarded by Staff to lowest responsible bidder
- Recommended = **No Change**, written notice inviting formal bids to solicit at least 3 written bids awarded by Staff to lowest responsible bidder

***Formal Bidding Procedure for Supplies and Services:***

- Currently = written notice inviting formal bids published once at least 10 days prior to bid opening and sent to all firms on the approved vendor list, with formal sealed bids received and publicly opened, and award by City Council
- Recommended = **No Change**, written notice inviting formal bids published once at least 10 days prior to bid opening and sent to all firms on the approved vendor list, with formal sealed bids received and publicly opened, and award by City Council

Also, importantly the City's Local Business Preference established in Chapter 2.47 of the Rialto Municipal Code (providing a 5% price reduction in determining the lowest bidder in the purchase of Supplies and Services) will continue to apply to the revised Chapter 2.48 and is not modified by the proposed Ordinance. Note, however, this preference does not and cannot apply to Public Projects as state law requires that bids for Public Projects be awarded to the lowest responsible bidder regardless of the location of their business.

As it relates to Public Projects, currently the City follows state law that imposes formal bidding procedures for any project with a cost of over \$5,000. However, UPCCAA procedures adopted by nearly 300 cities establish higher thresholds for various levels of Public Projects:

- “Force Account” for work up to \$60,000;
- “Informal Bidding” for work up to \$200,000; and
- “Formal Bidding” for work over \$200,000

The UPCCAA may revise and increase these thresholds from time to time, and the proposed revisions to Chapter 2.48 incorporate these thresholds with an allowance for their automatic increase as they may be adopted pursuant to the UPCCAA.

For bidding procedures under “Force Account” at work less than \$60,000 the UPCCAA allows that the work may be accomplished as follows:

- Performed by employees of the City, giving the City flexibility to use its own staff for repair projects in lieu of bidding; or
- By negotiated contract, allowing the City to obtain informal quotes rather than developing detailed plans and specifications for small repairs and renovation, which can result in additional financial savings and more efficient completion of the work; or
- By Purchase Order, by utilizing an on-call agreement with vendors providing routine work that falls within the definition of a Public Project.

For bidding procedures under “Informal Bidding” at work values from \$60,000 to \$200,000 the proposed revisions to Chapter 2.48 will require the following procedures:

- Adoption of plans and specifications by the City Engineer or designee to provide the City with design immunity pursuant to Government Code section 830.6;
- Establishment of bidders list of qualified contractors pursuant to PCC 22034;
- Written notice inviting bids sent to all contractors on the City’s bidders list, and to all construction trade journals pursuant to PCC 22036, at least 10 days prior to bid opening;
- Bidder’s Security (10%) required;
- Publicly opened sealed bids or electronic bids;
- Award of contract to lowest responsible bidder by City Manager

For bidding procedures under “Formal Bidding” at work values over \$200,000 the proposed revisions to Chapter 2.48 will require the following procedures:

- Adoption of plans and specifications by the City Council to provide the City with design immunity pursuant to Government Code section 830.6;
- Establishment of bidders list of qualified contractors pursuant to PCC 22034;
- Written notice inviting bids sent to all contractors on the City’s bidders list, sent to all construction trade journals pursuant to PCC 22036, published in the newspaper at least 14 days prior to bid opening;
- Bidder’s Security (10%) required;
- Publicly opened sealed bids or electronic bids;
- Award of contract to lowest responsible bidder by City Manager

Additional procurement procedures are recommended in the revisions to Chapter 2.48 and include:

- Pre-qualification of contractors for Public Projects pursuant to PCC 20101;
- Change Orders, including an allowance for Change Orders established by City Council or up to \$200,000 for contracts awarded by City Council if no allowance is established, and a procedure for exceptions allowing the City Manager to authorize Change Orders with ratification by City Council;
- Field Orders, allowing for inclusion of allowances in bids for Public Projects in lieu of Change Orders;
- Acceptance of Public Projects by the City Manager, or designee, upon recommendation of the City Engineer, with authorization to execute and cause to be recorded Notices of Completion for Public Projects and release of Securities held by the City;
- Correction or withdrawal of bids on Public Projects;
- Bid protests;
- Assistance to disadvantaged business enterprises (DBEs)

Special procurement procedures are also recommended in the revisions to Chapter 2.48 and include:

- Sole source procurement, identifying the specific criteria that must be applied;
- Special expertise procurement, identifying the specific criteria that must be applied;
- Emergency procurement, identifying the specific criteria that must be applied pursuant to PCC 22050
- Design-Build procedures pursuant to PCC 22160-22169;
- Exceptions to Chapter 2.48 are identified, including: state purchases, mandated expenditures, shared services, and whenever a determination is made by the City Council or City Manager that the purchase is in the best interests of the City, recurring charges, Task or Job Orders pursuant to master (or on-call) agreement; cooperative purchasing agreements or programs,

The revisions to Chapter 2.48 also include specific provisions relating to disposition of surplus property (whereas currently 2.48.400 merely provides the Purchasing Manager with the authority to dispose of surplus property without specificity as to procedure).

The revisions to Chapter 2.48 also maintain the City's current regulations prohibiting:

- Employee conflict of interest and disclosures (currently found at 2.48.140 and 2.48.145)
- Gratuities and kickbacks (currently found at 2.48.150)
- Contingent fees (not currently established in Chapter 2.48)

A Resolution is recommended as **Attachment 3**, to formally elect to participate in UPCCAA and modernize the City's purchasing regulations related to Public Projects.

An Ordinance is recommended as **Attachment 4**, to consider amending in its entirety Chapter 2.48 - Purchasing, to revise the method of procurement for Supplies and Services setting thresholds for informal and formal bidding at \$100,000 including the Signature Authority for approval of Purchase Orders and Contracts or Agreements by the City Manager at \$100,000, and to incorporate the bidding procedures for Public Projects set forth by the UPCCAA.

### **ENVIRONMENTAL IMPACT:**

The action is exempt from California Environmental Quality Act (CEQA) pursuant to Section 15378(b) (5) of the CEQA Guidelines because the requested action is a governmental administrative activity that will not result in direct or indirect physical changes in the environment.

**GENERAL PLAN CONSISTENCY:**

This action is consistent with Guiding Principle 3A of the General Plan:

Our City government will lead by example, and will operate in an open, transparent, and responsive manner that meets the needs of the citizens and is a good place to do business.

**LEGAL REVIEW:**

The City Attorney prepared and supports this staff report, resolution, and ordinance.

**FINANCIAL IMPACT:**

Operating Budget Impact

None.

Capital Improvement Budget Impact

None.

**RECOMMENDATION:**

Staff recommends that the City Council:

1. Adopt the proposed Resolution electing under Public Contract Code Section 22030 to become subject to the Uniform Public Construction Cost Accounting Act and its procedures; and
2. Introduce for first reading and schedule for adoption the proposed Ordinance amending in its entirety Rialto Municipal Code Section 2.48 - Purchasing.