



AGENDA REPORT

TO: City Councilmembers

FROM: John Alden
Executive Director, CPRA

SUBJECT: Amendments to Police
Commission Contracting
Ordinances

DATE: July 1, 2021

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending Oakland Municipal Code Chapter 2.04, *Purchasing System*, to Amend Section 2.04.051 to Confirm and Clarify the Authority of the City Administrator to Waive RFP/Q Requirements for Professional Services Contracts Up to Fifty Thousand Dollars (\$50,000) on Behalf of the Police Commission.

EXECUTIVE SUMMARY

In 2019, the City Council adopted ordinances providing to the Police Commission authority to enter into contracts. Since the adoption of those ordinances, the Office of the City Attorney has observed that portions of those ordinances can be read ambiguously, especially with respect to waiver of competitive process for contracts under \$50,000, and thus should be amended to more clearly reflect the Council's original intention to provide contracting authority to the Police Commission. Staff therefore recommends that the City Council adopt an ordinance amending OMC section 2.04.051 to confirm and clarify the City Administrator's authority to waive RFP/Q requirements on behalf of the Police Commission for professional services contracts up to \$50,000.

BACKGROUND / LEGISLATIVE HISTORY

Staff recommends that the City Council adopt an ordinance amending OMC section 2.04.051 to confirm and clarify the City Administrator's authority to waive RFP/Q requirements on behalf of the Police Commission for professional services contracts up to \$50,000.

In July 2019, the City Council adopted Ordinance 13547 C.M.S., amending OMC Chapter 2.04 Purchasing System, to add section 2.04.022 to authorize the Police Commission to enter Professional Service Agreements necessary to fulfill its duties as defined in Measure LL, codified in section 604 of the Oakland City Charter.

Under OMC section 2.04.022(F), "[a]ll contracts approved by the Commission are subject to the competitive and other processes and procedures required under Sections 2.04.050 and 2.04.051 [...] *unless City Administrator or City Council waiver by resolution is obtained as necessary for each of the programs/policies.*" (emphasis added).

Ordinance 13547 C.M.S. also amended OMC sections 2.05.051(A)(2) and (B) as follows (new language indicated by underline):

2.04.051 – Competitive process and qualification-based awards for professional services contracts.

A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Thousand Dollars (\$50,000.00).

2. Police Commission Responsibility. The CPRA Director shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for all contracts to be awarded by the Police Commission. The RFP/Q process shall be conducted in accordance with Section 2.04.040 B.4., above.

B. Waiver—City Administrator Authority, City Council Authority. Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000.00). The foregoing is not applicable to the Police Commission. Upon a finding by the City Council or its designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount. OMC § 2.04.051 (B) (new language indicated by underline).

Although OMC section 2.04.022(F) clearly indicates the Council's intent that the Commission be able to obtain a waiver from either the City Administrator or City Council, the new language in sections 2.04.051 (A)(2) and (B) can be read to create ambiguity as to the authority of the City Administrator to waive RFP/Q requirements on behalf of the Police Commission.

The City Council's authority to waive the RFP/Q requirements for contracts in any amount upon a finding that it is in the best interests of the City remained unchanged by Ordinance 13547 C.M.S.

However, staff believes OMC sections 2.04.051 (A)(2) and (B) can be read to create ambiguity as to the authority of the City Administrator to waive RFP/Q requirements for professional services contracts up to \$50,000 on behalf of the Police Commission. To that end, staff believes that waiver from the City Council rather than the City Administrator is appropriate. Accordingly, staff recommends that the City Council pass an ordinance revising sections 2.04.051 (A)(2) and (B) to address any ambiguity. A draft of the proposed ordinance is attached as **Attachment A**.

Revising OMC sections 2.04.051 (A)(2) and (B), aims to clarify and confirm the intent of the City Council that the City Administrator also has the authority to waive the RFP/Q requirements for professional services contracts up to \$50,000 on behalf of the Police Commission.

The proposed revisions to OMC sections 2.05.051(A)(2) and (B) are as follows (new language indicated by underline; deleted language indicated by strikethrough):

2.04.051 – Competitive process and qualification-based awards for professional services contracts.

A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Thousand Dollars (\$50,000.00).

2. Police Commission Responsibility. The CPRA Director shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for all contracts to be awarded by the Police Commission for which a RFP/Q process is required. The RFP/Q process shall be conducted in accordance with Section 2.04.040 B-4., above. The informal RFP/Q process set forth in Section 2.04.040 B.3 is not required for professional services contracts up to fifty thousand dollars (\$50,000.00) for which a waiver is obtained pursuant Section 2.04.051 B., below.

B. Waiver—City Administrator Authority, City Council Authority. Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000.00). ~~The foregoing is not applicable to the Police Commission.~~ Upon a finding by the City Council or its designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount.

ANALYSIS AND POLICY ALTERNATIVES

The benefits of these recommended actions are as follows:

- An ordinance revising OMC section 2.04.051 will eliminate ambiguity in the authority of the City Administrator to waive the RFP/Q requirements for professional services contracts up to \$50,000 on behalf of the Police Commission.
- Removing ambiguity regarding the City Administrator's authority to waive the RFP/Q requirements for professional services contracts up to \$50,000 on behalf of the Police Commission also will avoid recurring litigation on this issue.
- Revising OMC section 2.04.051 also makes it less likely that City Council time and attention will be required for future Police Commission contracts.
- Council demonstrates support of the Police Commission and its goals and efforts.

In the alternative, the Council could leave the existing statutes as they are currently written. This alternative preserves the status quo, including continued ambiguity about the appropriate mechanisms for competitive process waivers for contracts under \$50,000. Since the Commission's budget for contracting and its contracting needs are such that most contracts are under the \$50,000 threshold, many Commission contracts will continue to suffer from this ambiguity. That continued ambiguity is challenging for staff to navigate. Ambiguity also leaves such contracts open to challenge, which could result in this ambiguity being resolved in court.

Thus, resolving this ambiguity now and in a manner of which the Council approves is preferable to the status quo.

FISCAL IMPACT

These amendments have no immediate fiscal impact, beyond staff time to memorialize the amendments appropriately in the City's Ordinances.

In the long run, these amendments may reduce potential litigation and administrative costs in the contracting process by creating clearer rules for contracting processes.

PUBLIC OUTREACH / INTEREST

Staff have not completed any public outreach beyond the City's Sunshine Ordinance and Brown Act requirements for posting this material to the public.

COORDINATION

The Police Commission, the Community Police Review Agency, and the Office of the City Attorney have all assisted in this matter.

SUSTAINABLE OPPORTUNITIES

Economic: None identified.

Environmental: None identified.

Race & Equity: None identified.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance Amending Oakland Municipal Code Chapter 2.04, *Purchasing System*, to Amend Section 2.04.051 to Confirm and Clarify the Authority of the City Administrator to Waive RFP/Q Requirements for Professional Services Contracts Up to Fifty Thousand Dollars (\$50,000) on Behalf of the Police Commission.

For questions regarding this report, please contact John Alden, CPRA Executive Director, at 510-238-7401.

Respectfully submitted,



JOHN ALDEN
Executive Director, CPRA

Prepared by:
John Alden, CPRA Executive Director

Attachments (1):
Attachment A: Proposed Ordinance Amendments