

REPORT TO CITY COUNCIL

DATE: DECEMBER 10, 2014

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER *GR*

BY: KIMBERLY RODRIGUES, CITY CLERK *KR*

SUBJECT: RE-ADOPT ORDINANCE NO. 14-411; AMENDING ARTICLE II OF THE AGOURA HILLS MUNICIPAL CODE BY ADDING CHAPTER 11, TO PROVIDE FOR BIDDING PROCEDURES FOR PUBLIC WORKS PROJECTS

At the October 22, 2014, City Council meeting the Council introduced, read by title only, and waived further reading of Ordinance No. 14-411. The ordinance was then, unanimously, adopted at the subsequent City Council meeting of November 12, 2014.

In compliance with Government Code Section 36933, the ordinance was set for publication within 15 days of adoption, however, there was an error and the publication did not take place. In order to meet compliance, and for the ordinance to be valid, the City Council will need to re-adopt the ordinance.

Attached for your reference is a copy of the proposed ordinance.

RECOMMENDATION

Staff recommends the City Council re-adopt Ordinance No. 14-411, Amending Article II of the Agoura Hills Municipal Code by Adding Chapter 11, to Provide for Bidding Procedures for Public Works Projects.

Attachment: Ordinance No. 14-405

ORDINANCE NO. 14-411

**AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA,
AMENDING ARTICLE II OF THE AGOURA HILLS MUNICIPAL CODE
BY ADDING CHAPTER 11 TO PROVIDE FOR BIDDING PROCEDURES
FOR PUBLIC PROJECTS UNDER THE UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Article II (Administration) of the Agoura Hills Municipal Code
is hereby amended by adding new Chapter 11 (Public Projects) to read as follows:

"CHAPTER 11 PUBLIC PROJECTS

- 21100. Intent.**
- 21101. Definitions.**
- 21102. Applicability.**
- 21103. Purchase order required.**
- 21104. Bid requirements, purchasing procedures, and contracting procedures.**
- 21105. Unauthorized purchases and contracts.**
- 21106. Prohibition against splitting projects.**
- 21107. Bid security.**
- 21108. Emergency Procurement.**
- 21109. Interpretation of bid specifications.**
- 21110. Change orders.**
- 21111. Protest procedures.**

21100. Intent.

The intent of this chapter is to provide standardized procedures for awarding contracts for public projects in conformance with the Uniform Public Construction Cost Accounting Act. Nothing in this chapter is intended to require the City to solicit bids for equipment, supplies or services or accept the lowest bid to provide equipment, supplies or services, except as required by State law and Chapter 7 of Article II of this Code.

21101. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

"Change Order" shall mean a written authorization from the City directing an addition, deletion, or revision to an awarded purchase order or contract.

"Public Project" shall be defined as that term is defined in Section 22002 of the California Public Contract Code, or any successor statute thereto.

"Uniform Public Construction Cost Accounting Act" shall mean the procedures and regulations set forth in Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the California Public Contract Code or any successor act thereto.

21102. Applicability.

All public projects shall be bid and let to contract in accordance with the procedures prescribed by the Uniform Public Construction Cost Accounting Act, or any successor act thereto, and the provisions set forth in this chapter.

21103. Purchase order required.

In order to comply with the Uniform Public Construction Cost Accounting Act procedures set forth in the California Public Contract Code and to more efficiently manage all contracts for public projects, the City shall issue a purchase order to accompany every contract for the performance of services or public projects. No contract shall be deemed to be an authorization to proceed with work unless accompanied by a properly authorized and executed purchase order. No vendor or contracting party is authorized to perform any service, perform any public project, or provide any supplies or equipment without first receiving a properly authorized and executed purchase order.

21104. Bid requirements, purchasing procedures, and contracting procedures.

This section shall govern the procedures for bidding and awarding all purchase orders and contracts to perform public projects, including any associated purchase of goods and supplies for such projects. Bidding requirements and other purchasing and contracting procedures are categorized into three different levels set forth below. Each level shall govern purchases and contracts of different values. Level 1 shall govern the least expensive purchase orders and contracts and Level 3 shall govern the most expensive purchase orders and contracts. Notwithstanding any provision of this chapter, the bidding and other procedures for awarding public project contracts shall not violate the limitations of the Uniform Public Construction Cost Accounting Act, as they may be amended from time to time by the State Controller or the State Legislature.

(a) Level 1 Projects. Public projects of forty-five thousand dollars (\$45,000) or less may be performed by City employees by force account or may be awarded by negotiated contract or by purchase order by the City Manager or his/her designee without competitive bidding.

(b) Level 2 Projects. Public projects of one hundred and seventy-five thousand dollars (\$175,000) or less may be let to contract by the informal bid procedures set forth in this subsection. Contracts that are authorized to be awarded pursuant to Level 2 procedures may be awarded by the City Manager or his/her designee. All Level 2 contracts shall require competitive verbal or written bidding, as

described below in this subsection (b). The City Manager or his/her designee shall determine whether a competitive verbal or written bidding procedure for a public project is in the best interest of the City. If the City Manager or his/her designee determines that a competitive verbal bidding procedure is in the best interest of the City, the City may solicit verbal bids as provided pursuant to subsection (1) below. Otherwise, the City shall require competitive written bids as provided in this subsection (2) below.

(1) Verbal Bids.

(i) Bids shall be verbally solicited from a minimum of three (3) sources and may be received verbally. The person who solicits the bids shall prepare a memorandum to the file documenting the identity of the bidders and the amount of the bids that were obtained.

(ii) The City Manager or his/her designee shall award the contract to the lowest responsible bidder only if he or she determines that such action is in the best interest of the City. The City Manager or his/her designee may reject all bids, or waive any irregularities or informalities in any bid or bidding.

(iii) The City Manager or his/her designee may waive the requirement to verbally solicit bids if performance of the public project is available from only one source and may solicit only two bids if performance of the public project is available from only two sources.

(2) Written Bids.

(i) Bid specifications shall be prepared and written notices soliciting written bids shall be disseminated to a list of at least three prospective bidders. Such notices shall include the closing date of the bid.

(ii) Bids shall be submitted in writing and must be received prior to the bid closing date to be considered.

(iii) The City Manager or his/her designee shall award the contract to the lowest responsible bidder only if he or she determines that such action is in the best interest of the City. The City Manager or his/her designee may reject all bids, or waive any irregularities or informalities in any bid or bidding.

(iv) The City Manager or his/her designee may waive the requirement to solicit bids if performance of the public project is available from only one source and may solicit only two bids if performance of the public project is available from only two sources.

(3) Contractors List. The City shall develop and maintain a list of contractors, identified according to categories of work, in accordance with the provisions of Section 22034 of the California Public Contract Code, or any successor statute thereto, and the criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

(4) Notice Inviting Informal Bids. At least ten (10) calendar days prior to the date informal bids are due, the City shall mail a notice inviting informal bids to all contractors from the applicable category of work to be bid, as shown on the Contractors List developed in accordance with subsection (3) of this subsection (b), and to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the California Public Contract Code, or any successor statute thereto. Said notice shall describe the project in general terms, shall clearly indicate how to obtain more detailed information about the project, and shall set forth the time and place for the submission of bids.

(5) Excess bids. If all bids received pursuant to the procedures outlined in this subsection (b) are in excess of one-hundred seventy-five thousand dollars (\$175,000), the City Council may, by passage of a resolution by a four-fifths vote, award the contract at one hundred eighty-seven thousand five hundred dollars (\$187,500) or less, to the lowest responsible bidder, without complying with the bidding procedures set forth in subsection (c) below, provided that the Council determines that the cost estimate of the project was reasonable.

(c) Level 3 Projects. Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided by law, be let to contract by the formal bidding procedures set forth in this subsection (c). Public projects which must be let pursuant to Level 3 procedures shall be approved by the City Council and shall require competitive written bidding, as described below in this subsection (c).

(1) Bid Specifications. For all public projects that must be let pursuant to Level 3 procedures, bid specifications shall be prepared, and notices inviting sealed bids shall be disseminated to at least three prospective bidders approved by the City Manager. In addition, bid plans and working details shall be formally adopted by the City Council for all public projects in accordance with the requirements of Section 22039 of the Public Contract Code or any successor statute.

(2) Notice Inviting Formal Bids. The City shall publish and mail a notice inviting sealed formal bids in accordance with the provisions of California Public Contract Code Section 22037, or any successor statute thereto.

(3) Receipt of Bids. Bids shall be sealed, and shall not be opened until the time and place designated in the bid specifications. Bids must be received prior to the bid opening to be considered.

(4) The City Council shall award the bid to the lowest responsible bidder, or reject all bids pursuant to Public Contract Code Section 22038, or its successor statute. The City Council may waive any irregularities or informalities in any bid or bidding.

(5) The City Council may waive the procedures required by this subsection (d) if the City Council determines that performance of the public project is

available only from a single source and may send a notice inviting bids to only two prospective bidders if the City Council determines that performance of the public project is available from only two sources.

21105. Unauthorized purchases and contracts.

It shall be unlawful for any officer, employee, or agent of the City to contract for the performance of public projects, or otherwise make any contract in violation of this chapter. Any order, purchase, or contract made contrary to the provisions of this chapter shall not be binding on the City, and the City shall not be obligated thereunder.

21106. Prohibition against splitting projects.

It shall be unlawful to split or separate into smaller work orders or projects any public project for the purpose of circumventing or evading the requirements of the Uniform Public Construction Cost Accounting Act or this chapter.

21107. Bid security.

Bid security shall be required as a condition of submitting a written bid unless deemed unnecessary by the City Manager or his/her designee.

If a bidder is awarded a bid and then fails or refuses to execute a contract or purchase order with the City, the City may award the bid to the next lowest responsible bidder. If the bid is awarded to the next lowest responsible bidder under these circumstances, the amount of the lower bidder's bid security shall be applied by the City to the purchase or contract price differential between that bidder and the next lowest responsible bidder, and the remainder, if any, shall be returned to the lowest bidder.

21108. Emergency procurement.

In addition to any other exemption from bidding requirements set forth in this chapter or otherwise provided by law, if an emergency situation requires that a public facility be repaired or replaced to permit the continued conduct of the operation or services of the City or to avoid danger to life or property, the City Council may proceed to replace or repair the facility in accordance with the provisions of Section 22035 of the California Public Contract Code or any successor statute thereto.

21109. Interpretation of bid specifications.

If a prospective bidder discovers discrepancies or omissions in any specification, or if the bidder is in doubt as to the meaning of any specification, the bidder shall request a written interpretation or modification from the City. If interpretations or modifications are deemed necessary, the City will then issue a written addendum to all parties known to have received copies of the specifications.

21110. Change orders.

Any alteration to, amendment of, or deviation from an awarded purchase order or contract as to scope, cost, time for completion, material, or equipment furnished as a part of the purchase order or contract, or any alteration to, amendment of, or deviation from the nature of work to be performed, shall require the completion and issuance of a change order. Additions to work cannot be combined with deletions to work to avoid the change order requirement.

The change order shall be approved by the person or body that, pursuant to Section 21104, would have authority to approve a purchase for the combined amount of the original purchase order and the change order. No change order shall be binding on the City until approved as provided herein.

21111. Protest procedures.

(a) Any actual or prospective bidder, proposer, or contractor (collectively "bidder") who believes he or she has been aggrieved in connection with the solicitation or award of a contract pursuant to this Chapter may protest, in writing, to the office of the City Clerk, within three business days after posting of the award recommendation at the location where bids or proposals are submitted. The protest shall be deemed filed only when it is actually received by the office of the City Clerk.

(b) The bidding documents shall include a statement referencing this section as the requirement for filing a protest.

(c) In the event a timely protest is filed as provided in this section, the Director of Finance may, but is not required to, suspend the award of the contract until the protest is resolved.

(d) The protest shall be in writing and shall contain the following information:

(1) The name, address and telephone number of the protester;

(2) A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(3) A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subsection (a) of this section;

(4) A precise statement of the relevant facts;

(5) An identification of the issue or issues to be resolved;

(6) Argument and authorities in support of the protest; and

(7) A statement that copies of the protest have been mailed or delivered to the finance director.

(e) If applicable, the Director of Finance shall meet and confer with the protestor in an effort to resolve the issues described in the protest.

(f) If the Director of Finance is unable to resolve the protest, the protest shall be referred to the City Manager. The City Manager shall have authority to settle and resolve a protest. The City Manager may, but is not required to, solicit written responses to the protest from other interested parties. The City Manager may establish additional procedures for the resolution of a protest and may refer the matter to a hearing officer. The City Manager's decision shall be final and conclusive."

Section 2. The City Council declares that, should any provision, section, paragraph, sentence, or word of this ordinance be rendered or declared invalid by any final action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this ordinance shall remain in full force and effect.

Section 3. The City Clerk shall cause this Ordinance to be posted in three (3) public places in the City within fifteen (15) days after its passage, in accordance with the provisions of Section 36933 of the Government Code. The City Clerk shall further certify to the adoption and posting of this Ordinance, and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the Council of this City.

Section 4. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED, AND ADOPTED this day of , 2014.

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

CITY OF AGOURA HILLS:

Illece Buckley Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Candice K. Lee
City Attorney