

## REPORT TO CITY COUNCIL

**DATE: OCTOBER 28, 2020**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: JESSICA FORTE, PUBLIC WORKS DIRECTOR/CITY ENGINEER**

**SUBJECT: INTRODUCTION OF ORDINANCE NO. 20-453; UPDATING THE CITY OF AGOURA HILL'S PUBLIC PROJECTS BIDDING LIMITS TO ADJUST WITH LIMITS AS REVISED BY STATE LEGISLATURE AND AMEND CHAPTER 11 OF ARTICLE II OF THE AGOURA HILLS MUNICIPAL CODE, REVISING PROCEDURES AND REQUIREMENTS FOR BIDDING OF PUBLIC WORK PROJECTS**

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In October 2014, the City Council amended the Agoura Hills Municipal Code by adding Chapter 11 to Article II, which updated bidding procedures for Public Works Projects pursuant to the Uniform Public Construction Cost Accounting Act (UPCCAA). The amendment to public bidding procedures provided added flexibility when dealing with emergency and smaller public works projects, allowing the City the ability to prepare requests for proposals and award contracts in a more expeditious manner.

Prior to the enactment of the UPCCAA Code, the City was required to competitively bid all public works projects in excess of \$5,000. The UPCCAA provided alternative bidding procedures, related to informal bids dependent on project cost levels, and insured that the City's process was consistent with California Public Contract Code. The procedures identified under the City's ordinance, pursuant to UPCCAA, provided two project levels, informal and formal public bidding processes, on the basis of the project's construction cost.

When the City adopted the UPCCAA, the City also adopted the informal and formal bidding amounts, as they existed in 2014. Since that time, those limits have been regularly increased to keep with construction escalation, while the City's bidding limits have remained fixed at the 2014 levels. Proposed Ordinance No. 20-453 revises the City's bidding limits for informally and formally bid projects to the current levels, as set by the UPCCAA, and will automatically adjust bidding levels in the future, as revised by the State Legislature.

Additionally, the Proposed Ordinance No. 20-453 will further revise the City's public works bidding procedures to more fully reflect all the requirements of the UPCCAA, and other requirements of the California Public Contract Code, Labor Code, and Civil Code, applicable to public works contracts.

Excluding emergencies, any contract awards exceeding \$25,000, the limit of the City Manager's contract authority, shall continue to be brought forward to City Council for consideration, as is currently done.

There are no direct budgetary effects associated with the adoption of the proposed Ordinance No. 20-453.

The proposed municipal code amendment has been reviewed by the City Attorney and approved to as form.

## **RECOMMENDATION**

Staff respectfully recommends the City Council introduce, read by title only, and waive further reading of Ordinance No. 20-453; amending Chapter 11 to the City of Agoura Hills Municipal Code, revising procedures and requirements for bidding of Public Works Projects.

Attachment: Ordinance No. 20-453

## ORDINANCE NO. 20-453

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING CHAPTER 11 (PUBLIC PROJECTS) OF ARTICLE II (ADMINISTRATION) OF THE AGOURA HILLS MUNICIPAL CODE, REVISING PROCEDURES AND REQUIREMENTS FOR BIDDING OF PUBLIC WORKS PROJECTS, AND FINDING THIS ORDINANCE TO BE EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City Council of the City of Agoura Hills does hereby ordain as follows:

SECTION 1. The City Council makes the following findings in connection with the adoption of this Ordinance:

A. Prior to the enactment of the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000-22045, ("the Act"), local agencies in California, including the City of Agoura Hills, were required to competitively bid all public works projects, as defined, in excess of \$5,000 in accordance with the requirements of California Public Contract Code Section 20160, *et seq.* Further, prior to the Act, a uniform cost accounting standard was unavailable for construction work performed or contracted by or for local public agencies.

B. Pursuant to the Act, the Uniform Construction Cost Accounting Commission, in conjunction with the State Controller, has established uniform public construction cost accounting procedures for implementation by local public agencies electing to be governed by the provisions of the Act in performing or contracting for construction of public works projects. These include procedures based on whether the project is subject to informal or formal bidding, pursuant to bidding threshold dollar amounts established by the Act, and revised from time to time.

C. The City has heretofore adopted its Ordinance No. 04-411, thereby opting to be governed by the alternate bidding procedures in the Act. However, in so doing, the City adopted the informal and formal bidding amounts as they existed in 2014. Since then, those limits have been regularly increased, while the City's bidding limits have remained fixed at the 2014 levels.

D. It is the intent of the City Council in adopting this Ordinance, to revise the City's bidding limits for informally bid and formally bid public works contracts, to the current levels set forth in the Act, while providing that such levels will adjust automatically as those levels are revised by the State Legislature. The City Council's further intent in adopting this Ordinance is to further revise the City's public works procurement procedures to more fully reflect the requirements of the Act, and other requirements of the California Public Contract Code, Labor Code and Civil Code applicable to public works contracts.

SECTION 2. Chapter 11 (Public Projects) of Article II (Administration) of the

Agoura Hills Municipal Code is hereby repealed. A new Chapter 11 (Public Projects) is hereby added to Article II (Administration) of the Agoura Hills Municipal Code to read as follows:

**“Chapter 11. PUBLIC PROJECTS**

**21100. Informal and formal bidding limits and procedures.**

The informal and formal bidding limits for “public projects”, as defined in the Uniform Public Construction Cost Accounting Act, California Public Contract Code Sections 22000-22045, shall be as set forth in Public Contract Code Section 22032, as those limits may be amended from time to time. In accordance with the foregoing bidding limits, public works projects may be: (i) performed by City employees by force account, by negotiated contract, or by purchase order; (ii) let to contract by informal bidding procedures set forth in this Chapter; or (iii) let to contract by formal bidding procedures set forth in this Chapter.

**21101. Contractors list for informal bidding.**

A list of contractors shall be developed and maintained in accordance with the provisions of Public Contract Code Section 22034 and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

**21102. Notice inviting informal bids.**

(a) All contractors on the list, developed in accordance with Section 21101 of this Chapter, for the category of work being bid, and all construction trade journals, as referenced in Public Contract Code Section 22036, shall be mailed a notice inviting informal bids.

(b) Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids.

(c) If there is no list of qualified contractors maintained by the city for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified in Public Contract Code Section 22036.

(d) If the product or service is proprietary in nature such that it can be obtained only from a certain source or contractor(s), City procedures governing sole source procurements shall be followed, to the extent permitted by law.

(e) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.

(f) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time

and place for submission of bids.

(g) If, following informal bidding, all bids received are in excess of the informal bid limit amounts specified in Section 21100 of this Chapter, the City Council may, by adoption of a resolution by a four-fifths vote, award the contract, up to the higher amount set forth in Public Contract Code Section 22034(d), as the same may be amended from time to time, to the lowest responsible bidder, if it determines the City's cost estimate was reasonable.

**21103. Notice inviting formal bids.**

The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper printed and published in the City, then in a newspaper of general circulation which is circulated within the City. If there is no such newspaper circulated in the City, then publication shall be by posting the notice in at least three places within the City as have been designated the posting of its notices. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or email and mailed to all construction trade journals specified in Public Contract Code Section 22036. The notice shall be sent at least fifteen (15) calendar days before the date of opening the bids. In addition to notice required by this Section, the City may give such other notice as it deems proper.

**21104. Award of contracts.**

(a) In its discretion, the City may reject any bids presented, if the City, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the agency, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the City's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the City intends to reject the bid. If, after the first notice inviting bids, all bids are rejected, after reevaluating its cost estimates of the project, the City shall have the option of either of the following:

(1) Abandoning the project or readvertising for bids in the manner described by this Chapter.

(2) By passage of a resolution by a four-fifths vote of the City Council declaring that the project can be performed more economically by the employees of the City, may have the project done by force account without further complying with this Chapter.

(b) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the City may accept the one it chooses.

(c) If no bids are received through the formal or informal bidding procedure, the project may be performed by the employees of the City by force account, or negotiated contract without further complying with this Chapter.

(d) Notwithstanding the foregoing, the City Manager is authorized to award informally bid contracts pursuant to this Section.

**21105. Other requirements applicable to contracts for public works projects.**

(a) Pursuant to Civil Code Section 9550, *et seq.*, a payment bond is required for all contracts for public works projects over \$25,000.

(b) All public works projects over \$1,000 require payment of prevailing wages and compliance with Labor Code Sections 1720 through 1861.

(c) All contracts for public works projects require compliance with applicable provisions of the Public Contract Code whether or not informal or formal bidding, or no bidding, is required.”

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to Section 15060(c)(2) of the California CEQA Guidelines, the City Council finds that this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and therefore is not subject to CEQA. Additionally, pursuant to Section 15060(c)(3) the activity is not a “project” as defined in Section 15378 because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 5. CITY CLERK CERTIFICATION. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and post a certified copy of the text of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Agoura Hills this \_\_\_th \_\_\_\_\_ of, 2020, by the following vote to wit:

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

CITY OF AGOURA HILLS:

\_\_\_\_\_  
Illece Buckley Weber, Mayor

ATTEST:

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Kimberly M. Rodrigues, MMC  
City Clerk

APPROVED AS TO FORM:

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Candice K. Lee  
City Attorney