

REPORT TO THE CITY COUNCIL



DATE: April 4, 2017

TITLE: (Continued from March 7, 2017)
Election to Become Subject to the Uniform Public Construction Cost Accounting Act (UPCCAA) and Adoption of Informal and Formal Bidding Procedures under the Uniform Public Construction Cost Accounting Act

Prepared by: Jennifer A. Mizrahi, City Attorney
Benjamin R. Jones, Deputy City Attorney

RECOMMENDATION

- 1) Adopt a Resolution of the City Council electing to become subject to the Uniform Public Construction Cost Accounting Procedure; and
- 2) Introduce for first reading and read by title only, "An Ordinance Adding Sections 3.45.110 through 3.45.200 to Chapter 3.45 ("Public Works Projects") of Title 3 ("Revenue & Finance") of the Desert Hot Springs Municipal Code to Provide Informal and Formal Bidding Procedures under the Uniform Public Construction Cost Accounting Act.

BACKGROUND:

Currently, the City is generally required to solicit competitive bidding for public projects for which the expenditure exceeds just \$5,000.¹ This process requires the City to issue a notice inviting bids at least 10 days before opening the bids, and to publish such notice at least twice, not less than five days apart, in a newspaper of general circulation in the City, or if there no such newspaper, notice shall be posted in at least three public places in the City as designated by ordinance.² The process is slow and burdensome on staff time and resources.

The Uniform Public Construction Cost Accounting Act (the "Act"), codified in California Public Contract Code Sections 22000 *et seq.*, allows local public agencies to perform public project work of up to \$45,000 with their own workforces if they elect to follow the cost accounting procedures set forth in the *Cost Accounting Policies and Procedures Manual* by the California Uniform Construction Cost Accounting Commission ("Commission"), created pursuant to Public Contract Code Section 22010. In other words, local public agencies that elect to follow the Commission's policies and procedures need not solicit bids for public projects which do not exceed \$45,000. Additionally, such agencies may utilize informal bidding procedures for public projects of up to \$175,000, and therefore need not adhere to the formal bidding procedural requirements set forth in state law unless the project exceeds \$175,000.³ These thresholds are much higher than the thresholds that apply to local public agencies which do not elect to become subject to Commission's cost accounting policies and procedures.

The higher bidding thresholds apply only to those public agencies that: (1) adopt a resolution electing to become subject to the Commission's cost accounting policies and procedures under the Act; and (2) adopt an ordinance providing informal bidding procedures under the Act. To date, the City has done neither, and as such may not avail itself of the benefits of the higher bidding thresholds.

¹ Cal Pub. Cont. Code §20162.

² Cal Pub. Cont. Code §20164.

³ Cal. Pub. Cont. Code §22032.

DISCUSSION

By adopting the attached resolution, the City would elect to become subject to the cost accounting policies procedures established by the Commission under the Act. The policies and procedures are widely accepted and are set forth in the Commission's "Cost Accounting Policies and Procedures Manual," a copy of which the City's Public Works staff has retained on file. If the City elects to do so, the City would no longer be required to solicit bids for any public project work for which the expenditure will not exceed \$45,000. Instead, the City could perform the work by force account (i.e. using internal resources), negotiated contract, or purchase order.

Additionally, by electing to become subject to the Commission's cost accounting policies and procedures, the City would be entitled to utilize the informal bidding procedures set forth in Public Contracts Code Sections 22032 *et seq.* for projects of up to \$175,000. In connection with adopting the attached resolution, the City would also be required to adopt an ordinance to provide the necessary informal bidding procedures for projects between \$45,000 and \$175,000.⁴ The attached ordinance contains such procedures for informal bidding. It also provides procedures for formal bidding for projects exceeding \$175,000.

Specifically, under both the informal and formal bidding procedures, the City would be required to maintain a list of qualified contractors, identified according to categories of work.

For informal procedures, when a public project is to be performed which is subject to the provisions of the ordinance, the City must mail a notice inviting informal bids to all contractors for the category of work to be bid, as shown on the list, and to all construction trade journals as specified by the Commission in accordance with Section 22036 of the Public Contract Code. The notice inviting informal bids shall describe the project in general terms, state how to obtain more detailed information about the project, and state the time and place for the submission of bids.⁵ Under the ordinance, the Council would delegate the authority to award informal contracts to the City Manager. Additionally, if the City utilizes informal bidding procedures based on an estimation that a project would not exceed \$175,000 and all bids received are in excess of \$175,000, the City Council, by adoption of a resolution by a four-fifths vote, may award the contract, at \$187,500 or less, to the lowest responsible bidder, if it determines the City's cost estimate was reasonable.⁶

For formal procedures, at least fifteen (15) calendar days before bids are opened, mailed notice inviting formal bids shall be provided to all contractors for the category of work to be bid. If available, the notice shall also be sent electronically by either facsimile or email and mailed to all construction trade journals as specified by the Commission. The notice inviting formal bids shall be published at least fourteen (14) calendar days prior to the date of the bid opening, in a newspaper of general circulation, printed and published in the jurisdiction of the City; or, if there is no newspaper printed and published within the City's jurisdiction, in a newspaper of general circulation which is circulated within the jurisdiction of the City. If there is no newspaper which is circulated within the jurisdiction of the City, publication shall be by posting the notice in at least three (3) locations within the City's jurisdiction. Those locations are City Hall, Carl May Center/Council Chamber and the Senior Center. The notice inviting formal bids shall state the time and place for the receipt and opening of sealed bids and shall distinctly describe the project.

By adopting the attached resolution and ordinance, the City would no longer be required to adhere to the burdensome competitive bidding procedural requirements set forth in the Public

⁴ Cal. Pub. Cont. Code §22032(b)

⁵ Cal Pub. Cont. Code §22034(b).

⁶ Cal Pub Cont. Code §22034(d).

Contracts Code unless a public project exceeds \$175,000. At the same time, projects over \$45,000 and up to \$175,000 would still go out to bid via the informal procedure, which would provide the City with a means to award contracts to the lowest responsive and responsible bidder.

FISCAL IMPACT:

If the resolution and ordinance are adopted, the City will save money and increase efficiency because it will no longer be required to devote the time and staff resources necessary to adhere to the competitive bidding process for public projects for which the expenditure does not exceed \$175,000, and will not be required to solicit bids at all for public projects under \$45,000.

EXHIBITS:

- 1) Resolution Electing to Become Subject to the Uniform Public Construction Cost Accounting Procedure
- 2) Ordinance to Provide Informal and Formal Bidding Procedures under the Uniform Public Construction Cost Accounting Act.

RESOLUTION NO. 2017-012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, ELECTING TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the California Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Sections 22000 *et seq.*, the Uniform Public Construction Cost Accounting Act (the "Act"), establishes such a uniform cost accounting standard; and

WHEREAS, the California Uniform Construction Cost Accounting Commission (the "Commission") established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals.

That the Recitals set forth above are true and correct and are hereby incorporated herein by this reference.

Section 2. Election to Become Subject to the Uniform Public Construction Cost Accounting Act

The City hereby elects under Public Contract Code Section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's Cost Accounting Policies and Procedures Manual, as they may each from time to time be amended.

Section 3. Notification to State Controller

The City Council hereby directs the City Clerk to notify the State Controller in writing forthwith of the City's election to become subject to the uniform public construction cost accounting procedures as set forth herein, and to file a copy of this Resolution with the State Controller by mailing it to the following address:

Office of the State Controller
Division of Accounting and Reporting
Local Government Policy Section
P.O. Box 942850
Sacramento, CA 94250

Section 4. Severability.

That if any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 5. Repeal of Conflicting Provisions.

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Section 6. Certification.

That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

Section 7. Effective Date.

That this Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 4th day of April, 2017 by the following vote:

AYES: 5 – Betts; McKee; Parks; Zavala; and Mayor Matas.

NAYS: None.

ABSENT: None.

ABSTAIN: None.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney