



TOWN OF FAIRFAX

STAFF REPORT

September 2, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Introduction and first reading by title only of an Ordinance Amending Chapter 3.36 ("Public Bidding") of the Fairfax Town Code to Increase Contract Award Limits per the Uniform Public Construction Cost Accounting Act

RECOMMENDATION

Introduce and waive first reading and read by title only An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 3.36 ("Public Bidding") of the Fairfax Town Code to Increase Contract Award Limits per the Uniform Public Construction Cost Accounting Act.

DISCUSSION

(Note: this item was continued from the April and May Council meetings)

In 1995, the Town Council adopted an ordinance (Municipal Code Chapter 3.36) making the Town subject to the uniform construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act (UPCCAA), Cal. Public Contract Code §§ 22000 *et seq.* The UPCCAA governs the public bidding process and requirements.

This Chapter 3.36 has never been updated. Staff is recommending amendments to the Chapter to reflect increases in the UPCCAA's contractual limits over the past 20 years. It is also being proposed that any future changes to the monetary limits under UPCCAA shall automatically apply to this Chapter. The revisions also include language clarifying that notices inviting formal bids shall be mailed pursuant to the requirements of the California Uniform Construction Cost Accounting Act. Attached is a redline of the Town Code showing the proposed revisions.

The specific changes to the contract limits are as follows:

- (A) Increases the limit from \$15,000 to \$45,000 or less for those public projects which may be performed by employees (i.e., force account) or by negotiated contract or purchase order awarded by the Town Manager. Approval of contracts by the Town Manager would be subject to the Council's administrative purchasing policy adopted by Town resolution.
- (B) Increases the limit from \$50,000 to \$175,000 or less for those public projects that may be let to contract by informal bidding procedures.
- (C) Increases the limit from \$50,000 to \$175,000 or more for those public projects required to be let to contract by formal bidding procedures.

These revisions will provide greater flexibility for staff to perform work in house and also allow the Town to obtain better pricing for public works projects under \$45,000. Preparing bid

packages (i.e., plans and specifications) can be very time consuming and costly for smaller projects. Many contractors will not submit a bid for a smaller project because they deem the requirements too onerous. In addition, the bid process does not guarantee lower pricing. On the contrary, some contractors “game” the system by waiting at the last minute (literally) to see who is submitting a bid and then increase their bids at the last minute if no one submits one. If the Town believes the bids are too high, it would need to reject the bids and re-advertise the project which would, obviously, delay the project. Typically, staff gets multiple quotes/cost estimates for work, but in some instances it can be more cost effective to negotiate with one contractor who can better meet the demands of the specific project (e.g., small striping projects).

The significant difference between informal and formal bidding procedures is the advertising requirement. From a staff perspective, we treat formal and informal bidding the same. Larger municipalities with dozens of the projects to be bid probably benefit from informal bidding. That being said, staff recommends the Town adopt the revisions so that the Town ordinance remains consistent with UPCCAA and, perhaps, there would be a time in the future that the Town could benefit from informal bidding.

FISCAL IMPACT: None

ATTACHMENTS

1. Redline of Town Code Chapter 3.36
2. Proposed Ordinance

CHAPTER 3.36: PUBLIC BIDDING

Section

- 3.36.010 Adoption of California uniform construction accounting procedures
- 3.36.020 Award of contract
- 3.36.030 Authority to award informal contracts
- 3.36.040 Maintenance and use of list of qualified contractors
- 3.36.050 Informal bidding procedure
- 3.36.060 Formal bidding procedure

§ 3.36.010 ADOPTION OF CALIFORNIA UNIFORM CONSTRUCTION ACCOUNTING PROCEDURES.

The Town Council does elect to become subject to the uniform construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act, Cal. Public Contract Code §§ 22000 *et seq.* The terms referred to herein shall have the meanings ascribed to them in the Uniform Public Construction Cost Accounting Act. (Prior Code, § 3.36.010) (Ord. 644, passed - -1995)

§ 3.36.020 AWARD OF CONTRACT.

(A) Public projects of \$~~415,000~~ or less may be performed by the employees of the town by force account or by negotiated contract or purchase order awarded by the Town Manager. The approval of contracts by the Town Manager is subject to the Town's administrative purchasing policies adopted by Council resolution.

(B) Public projects of \$~~17550,000~~ or less may be let to contract by informal procedures as set forth in this chapter.

(C) Public projects of more than \$~~17550,000~~ shall, except as otherwise provided in the Uniform Public Construction Cost Accounting Act, be let to contract by formal bidding procedures.

(D) Any adjustments to the above bidding procedure monetary limits (Public Contract Code Section 22020) made by the State Controller shall automatically apply to this section 3.36.020.

(Prior Code, § 3.36.020) (Ord. 644, passed - -1995)

§ 3.36.030 AUTHORITY TO AWARD INFORMAL CONTRACTS.

The Town Council does delegate to the Town Manager the authority to solicit and receive bids for informal contracts in accordance with this chapter and the Uniform Public Construction Cost Accounting Act; provided, however, that, the award of any such contracts shall be made by the Town Council.

(Prior Code, § 3.36.030) (Ord. 644, passed - -1995)

§ 3.36.040 MAINTENANCE AND USE OF LIST OF QUALIFIED CONTRACTORS.

The Town Manager shall maintain a list of qualified contractors identified according to categories of work. The list shall be developed and maintained in accordance with the criteria determined by the California Uniform Construction Cost Accounting Commission.

(Prior Code, § 3.36.040) (Ord. 644, passed - -1995)

§ 3.36.050 INFORMAL BIDDING PROCEDURE.

(A) All contractors on the list for the category of work being bid, or all construction trade journals specified for the County of Marin by the California Uniform Construction Cost Accounting Commission, or both all such contractors and all such construction trade journals, shall be mailed a notice inviting informal bids unless the product or service is proprietary.

(B) All mailing of notices to contractors and construction trade journals pursuant to division (A) above shall be completed not less than ten calendar days before bids are due.

(C) The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

(Prior Code, § 3.36.050) (Ord. 644, passed - -1995)

§ 3.36.060 FORMAL BIDDING PROCEDURE.

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 14 calendar days before the date of opening the bids in a newspaper of general circulation circulated within the town. The notice inviting formal bids shall be mailed pursuant to the requirements ~~also be mailed to all construction trade journals designated for the County of Marin by of the California Uniform Construction Cost Accounting Act Commission.~~ The notice shall be mailed at least 30 calendar days before the date of opening of the bids.

(Prior Code, § 3.36.060) (Ord. 644, passed - -1995)

ORDINANCE NO. ____
AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 3.36 (“PUBLIC BIDDING”) OF THE FAIRFAX TOWN CODE
TO INCREASE CONTRACT AWARD LIMITS PER THE
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, pursuant to Chapter 3.36 of Town Code, the Town of Fairfax has elected to become subject to the uniform construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act, Cal. Public Contract Code §§ 22000 et seq.; and

WHEREAS, the informal bid limits prescribed by Section 22032 of the California Public Contract Code have increased; and

WHEREAS, this Ordinance is intended to maintain consistency between Town Code Chapter 3.36 and the Uniform Public Construction Cost Accounting Act;

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: Fairfax Town Code, Section 3.36.020, shall be revised to read as follows:

“§ 3.36.020 AWARD OF CONTRACT.

(A) Public projects of \$45,000 or less may be performed by the employees of the town by force account or by negotiated contract or purchase order awarded by the Town Manager. The approval of contracts by the Town Manager is subject to the Town’s administrative purchasing policies adopted by Council resolution.

(B) Public projects of \$175,000 or less may be let to contract by informal procedures as set forth in this chapter.

(C) Public projects of more than \$175,000 shall, except as otherwise provided in the Uniform Public Construction Cost Accounting Act, be let to contract by formal bidding procedures.

(D) Any adjustments to the above bidding procedure monetary limits (Public Contract Code Section 22020) made by the State Controller shall automatically apply to this Section 3.36.020.”

SECTION 2: Fairfax Town Code, Section 3.36.060, shall be revised to read as follows:

“§ 3.36.060 FORMAL BIDDING PROCEDURE.

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 14 calendar days before the date of opening the bids in a newspaper of general circulation circulated within the town. The notice inviting formal bids shall be mailed pursuant to the requirements of the California Uniform Construction Cost Accounting Act.”

SECTION 3: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4: CEQA. Pursuant to 14 California Code of Regulations § 15061(b)(3), this Ordinance is categorically exempt from the California Environmental Quality Act because the Town Council of the Town of Fairfax finds that there is no possibility that the implementation of this Ordinance will have significant effects on the environment.

SECTION 5: This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 2nd day of September 2015, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Barbara Coler, Mayor

Attest:

Michele Gardner, Town Clerk

Date