



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 9/21/2010
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Set Time: 11:30 AM PUBLIC HEARING
Estimated Report Time: 30 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Don Ridenhour - Director
Public Works
REPORT BY: Juan Arias, PRINCIPAL PUB WORKS ENGINEER - 259-8374
SUBJECT: Uniform Public Construction Cost Accounting Act - Procedures Implementation

RECOMMENDATION

Director of Public Works requests the following Board actions for the implementation of procedures for the award of contracts for public works projects as authorized by the Uniform Public Construction Cost Accounting Act (the "Act" or "UPCCAA") (Public Contract Code section 22000, and following):

1. Adoption of a Resolution Establishing Uniform Public Construction Cost Accounting Act for Napa County Public Works Projects.
2. First reading and intention to adopt an ordinance Amending Napa County Code Section 2.36.040 (Specific Duties Designated) Relating to the Authority of the Purchasing Agent and by Adding a New Chapter 2.38 (Informal Bidding Procedures) to Title 2 of the Napa County Code to Provide Informal Bidding Procedures Under the Uniform Public Construction Cost Accounting Act (Section 22000, et seq. of the Public Contract Code).

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

(CONTINUED FROM AUGUST 24, 2010)

EXECUTIVE SUMMARY

On June 8, 2010 the Board approved recommendations from the County Executive Officer, the Community and Intergovernmental Affairs Manager, the Director of Public Works, the Director of Environmental Management, and the Purchasing Manager regarding the County's contracting process. One area of recommendations specifically related to Local Vendor Preference for construction projects. The Board directed staff to develop and return in August with a draft ordinance and resolution implementing the Uniform Public Construction Cost Accounting Act (UPCCAA) procedures as allowed under Public Contract Code Sections 22030-22045.

UPCCAA allows for simplified, alternative procedures for bidding and awarding public construction projects in certain circumstances. Not only will the UPCCAA save money and staff resources, it will also allow, when lawful, for a greater possibility of local construction firms to be awarded business.

Today's discussion will also provide information regarding the progress made since June 8, 2010 on the local vendor preference policies requested by the Board.

PROCEDURAL REQUIREMENTS FOR PROPOSED ORDINANCE

1. Open Public Hearing.
2. Staff reports.
3. Public comments.
4. Close Public Hearing.
5. Clerk reads the Ordinance Title.
6. Motion, second, discussion and vote to waive the balance of the reading of the ordinance.
7. Motion, second, discussion and vote on intention to adopt the ordinance.

PROCEDURAL REQUIREMENTS FOR PROPOSED RESOLUTION

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

As reported to the Board on June 8, 2010, as part of the Local Vendor Preference presentation, the Public Contract Code (PCC) and the County Code currently require that County public works construction projects estimated to cost \$6,500 and above be competitively bid and contracts be awarded to the lowest responsive and responsible bidder.

There is a segment of the Public Contract Code (Public Projects: Alternative Procedure, Section 22000-22045) known as the Uniform Public Construction Cost Accounting Act (UPCCAA) that allows for simplified alternative procedures for bidding and awarding public construction projects in certain circumstances. The UPCCAA applies to public works projects and contracts that typically involve the construction; remodeling; repair; or renovation of public buildings, roads, and other public improvements owned or to be used by the public agency. It does not apply to contracts for supplies, equipment, or services. While the act may apply to maintenance work, staff does not

recommend opting into the act for maintenance work since maintenance work is currently not subject to the bidding requirements that public works projects are. Opting into the act for maintenance work would require following cost accounting procedures which are currently not required.

A. UPCCAA

UPCCAA is voluntary and it allows local agencies to perform public project work up to \$30,000 with its own work force if the agency elects to follow the cost accounting procedures set forth in the Cost Accounting Policies and Procedures Manual of the California Uniform Construction Cost Accounting Commission. In addition, the Act provides for the following alternative bidding procedures:

- | Public projects of \$30,000 or less may be performed by negotiated contract or by purchase order (PCC 22032(a)).
- | Public projects of \$125,000 or less may be let to contract by the informal procedures set forth in the Act (PCC 22032(b)); however if all bids received are in excess of \$125,000, the Board may, by adoption of a resolution by a four-fifths vote, award the contract, at \$137,500 or less, to the lowest responsible bidder, if the Board determines the cost estimate was reasonable (PCC 22034(f)).
- | Public projects of more than \$125,000 shall be let to contract by formal bidding procedures (PCC 22032(c)) except as otherwise provided in PCC 22034(f).

The specific mention of bidding procedures emphasizes the omission of other statutory requirements (such as bond payments, prevailing wages, etc) and implies that their applicability is found in specific statutory provisions rather than the UPCCAA. Therefore UPCCAA does not supersede other contracting requirements for performance bonds, prevailing wages, and certificates of insurance, etc.

B. Opting into UPCCAA

In order to opt into UPCCAA the following is required from the County:

1. The Board must elect by resolution to become subject to the UPCCAA and file a copy of the resolution with the State Controller's Office (PCC 22030)
2. Per PCC 22034, by electing to become subject to the uniform construction accounting procedures set forth in Article 2 (commencing with PCC section 22010) the County shall enact the subject informal bidding ordinance which is to govern the selection of contractors to perform public projects pursuant to subdivision (b) of PCC Section 22032.

Many jurisdictions have opted into UPCCAA since the allowed alternative bidding procedures save time and money on the delivery of smaller public construction projects. This is due to the fact that:

- | No informal or formal bidding is required for projects costing less than \$30,000.
- | Property management staff may perform through its own forces, purchase order, or negotiated contract more routine public works projects costing up to \$30,000.
- | Plans and specifications are not required for projects costing less than \$125,000.
- | No advertisement in newspapers is required for projects costing less than \$125,000.
- | Staff time preparing reports to the Board is not required since Board action is not required for projects costing less than \$125,000. By passing the ordinance the Board would delegate the authority to award informal contracts to the Director of Public Works and to the Purchasing Agent.

It is to be noted that the Board may discontinue the County's participation under the UPCCAA at any time by

adopting a resolution stating this fact. A copy of the resolution would then be filed with the Office of the State Controller.

C. UPCCAA and Local Vendor Preference Policies:

As reported to the Board on June 8, 2010 as part of the Local Vendor Preference presentation, opting into UPCCAA will allow for the possibility of local construction firms to be awarded business for the following reasons:

1. Since UPCCAA allows that public projects of \$30,000 or less to be performed by negotiated contract or by purchase order, where allowed by law, staff could request quotes from qualified local companies in the immediate area first for these smaller projects. Quotes would only be requested from a wider area if qualified local companies are not available or the price quotes from local companies are deemed too high. This provision could not apply to federally funded projects.
2. Under the UPCCAA, participating agencies (in this case the County) would pre-qualify a list of contractors, identified according to categories of work. In issuing request for bids, the County would be required to send a request for bid to each pre-qualified firm within the category of work needed. The County would also be required to notify a mandated list of professional trade journals. Although out of County firms would need to be given an opportunity to pre-qualify, local firms that completed the necessary materials to get on the County's list would have the assurance of inclusion in the RFP distribution for the category of work they are pre-qualified to perform and the bid process would be significantly less complex and more cost effective. This provision could apply to federally funded projects as well. Local construction companies participating in the stakeholder meetings indicated that this would assist them in competing for local projects.

D. UPCCAA and Contractor Pre-qualification:

Pre-qualification of contractors is allowed for public agencies under PCC 20101. In accordance with PCC 20101, the State of California Department of Industrial Relations has developed the attached document entitled "Pre-qualification of Contractors Seeking to Bid on Public Projects: The 1999 State Legislation and the Model Forms Created by the Department of Industrial Relations".

Staff recommends utilizing a simplified pre-qualification form for the vast majority of Napa County projects and only utilizing the full model pre-qualification process for multi-million dollar projects such as the Juvenile Justice Center, the Sheriff's Facility, and the Fifth Street Parking Garage. Staff has found it advantageous to utilize this more detailed pre-qualification process for major multimillion dollar projects, including the review of contractor financial statements, due to the complexity of those projects and the inherent risks to the County if a non-qualified contractor is the low bidder.

The goal of a simplified pre-qualification process for smaller contracts is to avoid having an onerous pre-qualification process discouraging small local contractors from bidding on those projects. Another goal of using a simplified pre-qualification process is to reduce staff time and costs required in the evaluation of the pre-qualification packages. The simplified process for smaller projects would not include submittal and review of financial statements. The simplified method requires enough information for staff to determine the qualifications of contractors to bid on smaller projects.

E. UPCCAA Implementation Timeline:

The following is the recommended UPCCAA implementation timeline:

- 1 Board approval of resolution for opting into UPCCAA - September 21, 2010;

- | Adoption of the attached ordinance setting forth the requisite Informal Bidding Procedures - September 21, 2010 (introduction and first reading) and September 28, 2010 (second reading and adoption)
- | UPCCAA implementation - November 1, 2010
- | Creation of Contractor list and Contractor pre-qualification - November to December 31, 2010
- | Effective date for bidding projects under UPCCAA rules - January 1, 2011

F. UPCCAA Attachments:

In addition to the ordinance and resolution, attached for the Board's information are:

1. Frequently Asked Questions (FAQ) and answers regarding UPCCAA prepared by the State of California Controller's Office Division of Accounting and Reporting Local Government Policies Section.
2. Proposed construction contractor pre-qualification boilerplate documents.
3. List of agencies that have opted into the Act.

G. Purchasing Agent's Authority:

The ordinance being presented to the board today requires amendment of Section 2.36.040 of the Napa County Code, which designates various powers to the purchasing agent. Specifically, subsection 2.36.040 H must be amended in order to provide the purchasing agent the authority under UPCCAA to award contracts up to \$125,000.

In addition, the proposed ordinance also updates subsection 2.36.040 G to reflect the legislature's recent amendment to Government Code Section 25502.3, which lays out the contracting authority the board may provide to purchasing agent for entering into professional services agreements. The legislature's amendment clarified that current limit authorizing the purchase agent to enter into personal services agreements on behalf of the County is an annual aggregate limit, as opposed to a mere aggregate limit. The change to 2.36.040 G implements the change made to state law into the County Code and will have the effect of streamlining the process for small contract amendments and extensions by avoiding the need for many such contracts to come before the Board. While this change would have been brought separately by the CEO's office, it is incorporated into changes presented in this ordinance at the advice of counsel to avoid confusion otherwise created from different ordinances simultaneously amending the same code section.

This new signing authority basically grants the Purchasing Agent authority to sign service contracts up to the annual limits specified in Government Code 25502.3 (Currently \$57,700 year) on an annual basis, whereas previously when this limit was exceeded for any contractor on a lifetime basis the contract would require Board approval. While this new flexibility is cost effective and beneficial, in order for the Board to have input on long term contracts, the County Executive Officer and Purchasing Manager are currently drafting more restrictive language to bring to the Board for approval, via a revised purchasing policy, that sets a cap on the number of years and the total lifetime (dollar value) threshold the Purchasing Agent can authorize for any given contract.

H. Progress on June 8 Board Adopted Local Vendor Preference Policies:

Since June 8 staff has made the following progress in the implementation of the Board adopted local vendor preference policies:

- | The Public Works Department, Conservation Development and Planning, and Purchasing Department met with the local contracting community on July 27, 2010 to apprise them of upcoming contracts and discuss the Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and Invitation for Bids (IFBs)

subscription updates to the County's web page. Representatives from five local companies were present and a second meeting is tentatively scheduled for January 2011.

- | As of late July all RFP/RFQ/IFB opportunities are now located in one place on the County's web site. A link to the current RFP/RFQ/IFB opportunities has been added to the Home Page and in the "info for Businesses" section of the County's web site.
- | As of late July a page on the County's web site has been created to list all awarded contracts and name of the firm awarded the contract.
- | As of late July the subscription service in the My Napa area of the web site has been activated. Interested parties can now receive email alerts when RFP/RFQ/IFB opportunities are posted on the site.
- | Where RFP/RFQ/IFB opportunities would benefit from knowledge of local circumstances, staff has included points in the scoring of these.
- | Staff has been mailing notices of RFPs, RFQs and IFBs to local consultants/contractors.
- | Staff has been limiting professional service liability insurance to contracts that are specifically for professional services and has been attaching insurance requirements to the RFP/RFQ.
- | In contracting for new services, staff has been informing the Workforce Investment Board (WIB) of vendors that have been selected to perform County services. In addition the contractors have been informed of the services of the WIB and have been encouraged to contact them to assist with their hiring needs. More recently this has been done for the Rutherford Dust Restoration projects that began construction this summer.
- | As of June 17 there is information regarding the WIB at the Conservation Development and Planning Department counter so applicants picking up a permit are given information about the WIB. Additionally, there is now a link to the WIB's web page on the Planning Department's page of the County web site.
- | A report has been created and distributed where the number of RFP/RFQ/IFB's and contracts issued to local firms will be tallied by each County Department on a quarterly basis.
- | A performance measurement template was sent out for those departments that issue more than 5 contracts in a fiscal year or have contracts with a combined total of more than \$500,000.

Staff is also in the process of implementing the following:

- | Purchasing is adding language to the purchasing policy outlining the local vendor program that the board approved on June 8 for Board presentation in the Fall; including establishing a policy that where qualifications are otherwise equal and the law allows, the County would select the local vendor.
- | Purchasing and the CEO's office are working on an agenda item to address the use of a local vendor preference for goods and materials for presentation in the Fall of this year.
- | Including specific language in RFPs/RFQs to encourage larger out of the area firms to subcontract with qualified smaller local firms where appropriate.
- | Meeting with Department heads to clarify the County policy on when the use of sole source vendor selection is appropriate.

SUPPORTING DOCUMENTS

- A . Ordinance
- B . Resolution
- C . Pre-qual Full
- D . Pre-qual Simplified
- E . FAQ
- F . Agencies

CEO Recommendation: Approve

Reviewed By: Helene Franchi