

TOWN OF SAN ANSELMO
STAFF REPORT
January 3, 2013

For the Meeting of January 8, 2013

TO: Town Council

FROM: Debra Stutsman, Town Manager
Megan Acevedo, Deputy Town Attorney

SUBJECT: Amending Town Municipal Code Provisions Regarding Public Bidding (Title 2, Chapter 10)

RECOMMENDATION:

Staff recommends that the Town Council approve and read by title only Ordinance ___ amending San Anselmo Municipal Code Title 2, Chapter 10 (Public Bidding).

BACKGROUND:

The Town of San Anselmo Municipal Code includes a Public Bidding chapter that provides the bidding and contracting requirements for public projects. The key provision to this chapter is the Town's adoption of the Uniform Public Construction Cost Accounting Act ("Act"). (Pub. Cont. Code §§ 22000 – 22045; SAMC § 2-10.01). The Act provides for alternative bidding procedures when a municipality performs public projects by contract.¹ Under the Act, public projects

¹ Under the Act, "public project" means any of the following:

- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- (2) Painting or repainting of any publicly owned, leased, or operated facility.
- (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.
- (d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:
 - (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) Resurfacing of streets and highways at less than one inch.
 - (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.... (Pub. Cont. Code §22002(c), (d).)

of \$45,000 or less may be performed by force account, negotiated contract or purchase order (Pub. Cont. Code § 22032(a))². The Act further provides for informal bidding procedures for projects that exceed this amount. By adopting the Act as part of the Town Code, the Town commits to using the procedures set forth in the Act without having to create its own bidding protocol. At the meeting of December 11, Council introduced the ordinance and the Town Manager read the it by title only.

DISCUSSION:

Although the Town Code incorporates the Act, it does not include a provision for automatically updating the Code as the state law is amended over time. As a result, the Town Code includes outdated monetary threshold amounts for determining whether a negotiated contract can be used, as opposed to informal or formal bidding procedures. For example, the Town Code states that public projects of \$30,000 or less may be performed by negotiated contract. In contrast, the Act was amended in 2011 to allow municipalities to use negotiated contracts on any public projects under \$45,000. (Pub. Cont. Code § 22032(a)). The Town could remedy this discrepancy between the Act and the Code by adding language stating that the Town Code will be updated automatically as the Act is amended at the state level.

Since the Town adopted the Act as part of its Code in 1995, several provisions of the statute have been amended. The proposed ordinance includes the current language from the Act in the relevant sections of the Town Code. For example, the Act was amended to require 15 instead of 30 days notice for formal bids; therefore, the ordinance amends section 2-10.06 to reflect that change. It further states that going forward, the amendments to state law will be automatically incorporated into the Municipal Code.

Additionally, the Public Contracting chapter specifies that the Town Council must award informal contracts (i.e., for projects over \$45,000). (SAMC § 2-10.03). However, the Code does not explicitly require Town Council approval for contracts under this threshold amount.

The Town enters into approximately 10-20 contracts that fall below the \$45,000 threshold annually, many of which range from \$2,000-\$10,000. The following examples of projects demonstrate the range of small public projects that would fall under the threshold: Small drainage projects, repair of walkways, painting contracts, small road repair contracts, roofing, and so on. Requiring staff to seek

² Section 22032 of the Public Contracts Code states:

- (a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.
- (b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this article.
- (c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

Council approval for every negotiated contract for public projects under \$45,000 would burden the staff and clutter Town Council agendas. Staff therefore recommends amending the Town Code to explicitly authorize the Town Manager to award and sign negotiated contracts as defined by the Act (i.e., projects under \$45,000).³

Conclusion

Staff respectfully requests that the Town Council approve the attached Ordinance amending San Anselmo Municipal Code Title 2, Chapter 10.

Respectfully submitted,



Debra Stutsman
Town Manager



Megan Acevedo
Deputy Town Attorney

Exhibit A – Proposed Ordinance

³ The Town Municipal Code contains a number of provisions related to the Town Manager's ability to negotiate and sign contracts; however the existing sections do not directly address public projects. As permitted by State law, the Town has authorized the Town Manager, in lieu of the Mayor, to sign written contracts and conveyances made or entered into by the Town. (SAMC §2-2.12; Cal. Gov. Code § 40602). In addition to signing contracts and conveyances, the Town has empowered the Town Manager to negotiate all contracts for services for which the Town has a service responsibility to its residents and desires to provide such service by contract. (SAMC §2-2.08(f)). However, the Municipal Code requires that the Town Council first approve such contracts. (Ibid.)

AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING THE SAN ANSELMO MUNICIPAL CODE TITLE 2 CHAPTER 10 (PUBLIC BIDDING)

THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

Section 1: Town of San Anselmo Municipal Code Title 2 Chapter 10 (Public Bidding) is hereby amended to read as follows:

Chapter 10 –PUBLIC BIDDING

Sections:

2-10.01 -Adoption of California uniform construction accounting procedures.

2-10.02 -Award of contract.

2-10.03 -Authority to award informal contracts.

2-10.04 -Maintenance and use of list of qualified contractors.

2-10.05 -Informal bidding procedure.

2-10.06 -Formal bidding procedure.

2-10.01-Adoption of California uniform construction accounting procedures.

The Town Council does hereby elect to become subject to the uniform construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000et seq.), as amended from time to time by the California Uniform Construction Cost Accounting Commission. The terms referred to herein shall have the meanings ascribed to them in the Uniform Public Construction Cost Accounting Act.

2-10.02 -Award of contract.

Public projects, as defined by Public Contract Code section 22002 and in accordance with the monetary limits described in Public Contract Code section 22032 as amended from time to time by the California Uniform Construction Cost Accounting Commission, shall be let to contract by the procedures described in Public Contract Code section 22030 et seq. Currently, the monetary limits for public projects are as follows:

(a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. .

(b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

When the California Uniform Construction Cost Accounting Commission amends state law related to these monetary limits, this section will be automatically amended.

Exhibit A

2-10.03 -Authority to award contracts.

- (a) The Town Manager shall have the authority to award contracts for public projects defined in subdivision (a) of Public Contract Code section 22032, as amended from time to time.
- (b) The Town Council shall have the authority to award informal contracts as defined in subdivision (b) of Public Contract Code section 22032, as amended from time to time.

2-10.04 -Maintenance and use of list of qualified contractors.

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

2-10.05 -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 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 subsection (a) of this section shall be completed not less than ten (10) 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.

2-10.06 -Formal bidding procedure.

Notice inviting formal bids shall state the time and place for 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 circulated within the Town.. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals designated for the County of Marin by the California Uniform Construction Cost Accounting Commission. The notice shall be sent at least fifteen (15) calendar days before the date of opening the bids.

The foregoing Ordinance No. ____ was read and introduced at a Regular Meeting of the Town Council of the Town of San Anselmo, held on the 11th day of December, 2012 and was adopted at a regular meeting on the 8th day of January, 2013 by the following vote:

- AYES:
- NOES:
- ABSENT:

Kay Coleman, Mayor

ATTEST

Town Clerk

ORDINANCE NO. _____
AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING THE SAN
ANSELMO MUNICIPAL CODE TITLE 2 CHAPTER 10 (PUBLIC BIDDING)

THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS
FOLLOWS:

Section 1: Town of San Anselmo Municipal Code Title 2 Chapter 10 (Public Bidding) is
hereby amended to read as follows:

Chapter 10 - PUBLIC BIDDING

Sections:

- 2-10.01 - Adoption of California uniform construction accounting procedures.
- 2-10.02 - Award of contract.
- 2-10.03 - Authority to award informal contracts.
- 2-10.04 - Maintenance and use of list of qualified contractors.
- 2-10.05 - Informal bidding procedure.
- 2-10.06 - Formal bidding procedure.

2-10.01 - Adoption of California uniform construction accounting procedures.

The Town Council does hereby elect to become subject to the uniform construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000 et seq.), as amended from time to time by the California Uniform Construction Cost Accounting Commission. The terms referred to herein shall have the meanings ascribed to them in the Uniform Public Construction Cost Accounting Act.

2-10.02 - Award of contract.

Public projects, as defined by Public Contract Code section 22002 and in accordance with the monetary limits described in Public Contract Code section 22032 as amended from time to time by the California Uniform Construction Cost Accounting Commission, shall be let to contract by the procedures described in Public Contract Code section 22030 et seq. Currently, the monetary limits for public projects are as follows:

(a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

(b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

When the California Uniform Construction Cost Accounting Commission amends state law related to these monetary limits, this section will be automatically amended.

2-10.03 - Authority to award contracts.

(a) The Town Manager shall have the authority to award contracts for public projects defined in subdivision (a) of Public Contract Code section 22032, as amended from time to time.

(b) The Town Council shall have the authority to award informal contracts as defined in subdivision (b) of Public Contract Code section 22032, as amended from time to time.

2-10.04 - Maintenance and use of list of qualified contractors.

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

2-10.05 - 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 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 subsection (a) of this section shall be completed not less than ten (10) 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.

2-10.06 - Formal bidding procedure.

Notice inviting formal bids shall state the time and place for 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 circulated within the Town. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals designated for the County of Marin by the California Uniform Construction Cost Accounting Commission. The notice shall be sent at least fifteen (15) calendar days before the date of opening the bids.

Deleted: (a)¶
Public projects of Thirty Thousand and no/100ths (\$30,000.00) Dollars or less may be performed by the employees of the Town by force account, by negotiated contract or by purchase order.¶
(b)¶
Public projects of One Hundred Twenty-Five Thousand and no/100ths (\$125,000.00) Dollars or less may be let to contract by informal procedures as set forth in this chapter.¶
(c)¶
Public projects of more than One Hundred Twenty-Five Thousand and no/100ths (\$125,000.00) Dollars shall, except as otherwise provided in the Uniform Public Construction Cost Accounting Act, be let to contract by formal bidding procedures.¶
(§ 1, Ord. 969, eff. September 7, 1995, as amended by § 2, Ord. 1057, eff. September 28, 2007)

Deleted: informal

Deleted: in accordance with this chapter and the Uniform Public Construction Cost Accounting Act.

Deleted: t

Deleted: The notice inviting formal bids shall also be mailed to all construction trade journals designated for the County of Marin by the California Uniform Construction Cost Accounting Commission

Deleted: The notice shall be mailed at least thirty (30) calendar days before the date of opening the bids.

Tom McInerney
Mayor

ATTEST

Town Clerk