

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Informal Bidding Ordinance
DATE: For Council Meeting on September 13, 2010

City Council Goals:

To provide for effective and efficient delivery of City services. (1)

To develop management and fiscal systems to maximize effectiveness of city services and accountability to Brisbane taxpayers and citizens. (11)

Purpose:

To update the City's existing informal bidding ordinance to conform with the changes in State law that will facilitate use of this alternative bidding procedure.

Recommendation:

Introduce Ordinance No. 546.

Background:

In the mid 1980's, the State Uniform Public Construction Cost Accounting Act ("the Act") was adopted to provide an alternative, informal method of bidding on public projects. The Act allowed local agencies to award contracts for the construction, alteration, improvement or repair of public facilities by a notice inviting bids sent to a list of contractors who had been pre-qualified by the agency to perform that type of work. A notice was also required to be published in the construction trade journals. This method could be used as an alternative to formal public bidding. However, such contracts could not exceed a limit of \$75,000.

In order to use the informal bidding procedure, the legislative body of the agency was required to adopt a resolution agreeing to implement the Uniform Construction Cost Accounting procedures established by the Uniform Construction Cost Accounting Commission, and to send a certified copy of that resolution to the California State Controller.

In 1991, the Brisbane City Council adopted Ordinance 376, adding Chapter 15.22 to the Municipal Code, entitled "Informal Bidding Procedures/Public Works Contracts." The City also registered with the State Controller by submitting a Council resolution agreeing to be bound by the Uniform Construction Cost Accounting Rules. The City is still listed on the Controller's website as one of agencies which has elected to use the Act.

Notwithstanding Brisbane's election, it would appear that BMC Chapter 15.22 was never actually implemented. Based upon my experience with another city that also adopted an informal bidding ordinance which was later ignored, there may have been two reasons for this lack of use – first, the construction cost accounting procedures were deemed to be too complicated, and second, the \$75,000 limit was too low to make the extra work worth the extra effort.

Changes in circumstances and in the State law have now rendered the informal bidding procedures more attractive for regular use. The change in circumstance is the change in accounting rules that are now applicable to public agencies. There is no longer a substantial difference between the accounting rules the City is required to follow and the rules contained in the Commission's guidelines. The major change in the state law was an increase in the contract limits from \$75,000 to \$125,000 (and up to \$137,500 in certain circumstances), and an increase to \$30,000 for contracts awarded by purchase order, negotiation, or force account. The procedure for awarding contracts by informal bidding was also simplified to make it faster and less expensive.

Discussion:

The proposed ordinance will completely replace Chapter 15.22 of the Municipal Code. The definitions in Section 15.22.020 are taken directly from the state law. Maintenance work is excluded from the ordinance, although it has been rather uniquely defined. (It should be noted that maintenance work is also excluded from the public bidding provisions of state law).

Under the new limits, contracts of \$30,000 or less may be performed by the City's own employees by force account, or may be awarded by a negotiated contract or by purchase order. It is important to note that the State Uniform Construction Cost Accounting Rules only apply to work performed by the City's own employees by force account and do not apply to contracts awarded by informal bidding.

Section 15.22.060 of the ordinance provides that contracts of \$30,000 or less may be awarded by the Director of Public Works/City Engineer. Contracts in excess of \$30,000 and not more than \$125,000 which are bid pursuant to the informal bidding procedures may be awarded by the City Council by majority vote. However, if all bids received exceed this amount, the City Council by a 4/5th vote may award a contract not higher than \$137,500 if the Council finds that the original cost estimate for the project was reasonable. But contracts originally estimated to cost more than \$125,000 must still be awarded only by formal public bidding.

The State law now allows the City to use two alternative methods of soliciting informal bids – or, at the City's option, it may use both methods. One method is to compile a list of pre-qualified contractors and then send a notice inviting bids only to those contractors on the list who are qualified for the type of work to be performed (plus any additional contractors the Director wishes to include). The other method is to publish a notice inviting bids in the construction trade journals for San Mateo County, as designated by the Commission. The notices only need to contain a brief description of the project and where to obtain more detailed information. Notices inviting bids can be eliminated entirely if the Director determines that the product or service to be acquired by the City is proprietary.

Fiscal Impact:

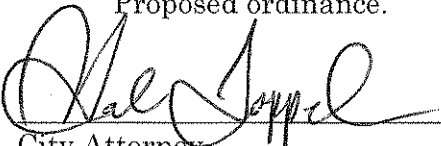
The informal bidding procedures now allowed by state law should reduce the staff time required for the bidding and award of contracts for public projects that are within the monetary limits of the ordinance.

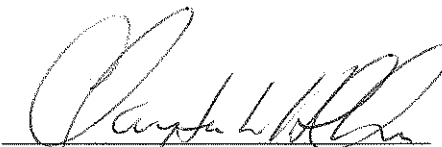
Measure of Success:

Success can be measured by the extent to which the informal bidding procedures in the proposed ordinance are actually used by City staff and found to be easier, less expensive and faster than formal public bidding.

Attachments:

Proposed ordinance.


City Attorney


City Manager

ORDINANCE NO. 546

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING
CHAPTER 15.22 OF THE MUNICIPAL CODE CONCERNING
INFORMAL BIDDING PROCEDURES**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 15.22 of the Brisbane Municipal Code is amended in its entirety to read as follows:

**Chapter 15.22
INFORMAL BIDDING PROCEDURES**

Sections:

15.22.010	Authority and purpose of Chapter
15.22.020	Definitions
15.22.030	List of qualified contractors
15.22.040	Size of project; method of bidding
15.22.050	Notice inviting informal bids
15.22.060	Award of contracts
15.22.070	Emergency contracts

§15.22.010 Authority and purpose of Chapter

This Chapter is adopted pursuant to the authority of Article 3 of Chapter 2, Part 3, Division 2 (commencing with Section 22000) of the California Public Contract Code and constitutes an "informal bidding ordinance" as described in Section 22034 of said Code. The purpose of this Chapter is to establish an informal bidding procedure applicable to certain contracts for public projects as a result of the City having elected, by resolution of the City Council, to become subject to the uniform construction cost accounting procedures promulgated by the State Controller.

§15.22.020 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section, unless the context or the provision clearly requires otherwise:

A. "Commission" means the California Uniform Construction Cost Accounting Commission, as established under Section 22020 et seq. of the Public Contract Code.

B. "Director" means the Director of Public Works/City Engineer of the City of Brisbane.

C. "Public Contract Code" means the Public Contract Code of the State of California

D. "Public project" means any of the following, excluding maintenance work:

- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any facility owned, leased, or operated by the City.
- (2) Painting or repainting of any facility owned, leased, or operated by the City.

E. "Maintenance work" includes all of the following:

- (1) Routine, recurring, and usual work for the preservation or protection of any facility owned or operated by the City for its intended purpose.
- (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.
- (5) Work performed to keep, operate, and maintain water, power, waste and stormwater disposal systems owned by the City.

F. "Facility" means any plant, building, structure, ground facility, utility system, real property, streets and highways, or other public work improvement.

§15.22.030 List of qualified contractors

The Director shall maintain a list of qualified contractors, identified according to categories of work. The list shall be developed and maintained in compliance with such minimum requirements as may be specified from time to time by the Commission.

§15.22.040 Size of project; method of bidding

A. Public projects of thirty thousand dollars (\$30,000.00) or less may be performed by the employees of the City by force account, by negotiated contract, or

by purchase order, or the Director may elect to follow the informal bidding procedure specified in Paragraph B of this Section.

B. Public projects of one hundred twenty-five thousand dollars (\$125,000.00) or less may be let to contract by informal bidding procedures set forth in this Chapter.

C. Public projects of more than one hundred twenty-five thousand dollars (\$125,000.00) shall, except as otherwise provided in this Chapter, be let to contract by formal bidding procedure.

§15.22.050 Notice inviting informal bids

A. Where the City proposes to award a contract for a public project pursuant to the informal bidding process, a notice inviting informal bids shall either be:

- (1) mailed to all contractors for the category of work to be bid, as shown on the list of qualified contractors maintained by the City in accordance with Section 15.22.030 of this Chapter; or
- (2) mailed to the required construction trade journals for San Mateo County designated by the Commission pursuant to Section 22036 of the Public Contract Code.

B. At the discretion of the Director, additional notices inviting informal bids may be given by any or all of the following means:

- (1) The notice may be mailed to both the qualified contractors and the construction trade journals;
- (2) The mailed notice may be sent to additional contractors who are not on the City's list but are deemed by the Director to be qualified to perform the particular work out for bid;
- (3) The notice may be mailed to any additional construction trade journals or other publications selected by the Director, including trade journals designated by the Commission as optional for San Mateo County.

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

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

E. Notwithstanding the foregoing provisions of this Section, no mailing of a notice to contractors or construction trade journals shall be required where the Director determines that the product or service to be acquired by the City is proprietary.

§ 15.22.060 Award of contracts

A. Contracts for public projects of thirty thousand dollars (\$30,000.00) or less may be awarded by the Director.

B. Contracts for public projects in excess of thirty thousand dollars (\$30,000.00) and not exceeding one hundred twenty-five thousand dollars (\$125,000.00), which are bid pursuant to the informal bidding procedure established by this Chapter, may be awarded by majority vote of the City Council.

C. If all bids received are in excess of one hundred twenty-five thousand dollars (\$125,000.00), the City Council may, by adoption of a resolution by a four-fifths vote, award a contract for an amount not exceeding one hundred thirty-seven thousand five hundred dollars (\$137,500.00), to the lowest responsible bidder, if the City Council determines that the City's original cost estimate for the project was reasonable.

§ 15.22.070 Emergency contracts

The provisions of this Chapter shall in no way limit or restrict the ability of the City to perform emergency repair or replacement work without adopting plans, specifications, or working details, or giving notice for bids to let contracts, as authorized by Section 22035 of the Public Contract Code, and in accordance with the emergency contracting procedures set forth in Chapter 2.5 (commencing with Section 22050) of the Public Contract Code.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2010, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney