

ORDINANCE NO. 1067

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS REPEALING AND REPLACING CHAPTER 16 OF TITLE 3 OF THE LOS BANOS MUNICIPAL CODE PERTAINING TO THE AWARD OF PUBLIC WORKS PROJECTS

The City Council of the City of Los Banos does ordain as follows:

WHEREAS, Chapter 16 of Title 3 of the Los Banos Municipal Code sets forth the City's procedures for the selection of contractors to perform public works projects; and

WHEREAS, the City of Los Banos last amended Chapter 16 of Title 3 of the Los Banos Municipal Code in March of 1993 and now, after fourteen years, is need of updating this chapter; and

WHEREAS, the City Council has heretofore elected to subject the City of Los Banos to the State of California Uniform Public Construction Cost Accounting Act set forth in Article 2 (commencing with Section 22010) of Chapter 2 Part 3 of Division 2 of the California Public Contract Code for the purpose of, among other things, simplifying the bidding process for public construction projects;

WHEREAS, this ordinance will increase the bid limits for public projects in Chapter 16 of Title 3 of the Los Banos Municipal Code to reflect the current informal and formal bid limits in Sections 22032 and 22034 of the Act and to otherwise conform Chapter 16 of Title 3 to the Act.

Section I:

Chapter 16 of Title 3 of the Los Banos Municipal Code is hereby repealed and replaced in its entirety and replaced with the following new Chapter 16 of Title 3 to read in full as follows:

CONTRACTING FOR PUBLIC WORKS PROJECTS

3-16.010 Application.

The provisions of this Chapter shall apply only to contracts for public projects as defined in the California Public Contract Code section 22002.

3-16.020 Election to be Subject to the Uniform Construction Cost Accounting Procedure

The City Council of the City of Los Banos has elected to become subject to the Uniform Construction Cost Accounting Procedures set forth in at in Article 2 of

the California Public Contract Code (commencing with Section 22010) by adoption of Resolution No. 4971.

3-16.030 Public Projects-General Bid Limits.

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.

B. Public projects of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) or less may be let to contract by the informal procedures prescribed in Section 3.16.520.

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 the formal bidding procedures prescribed in Section 3.16.050 of this chapter.

3-16.040 Public Projects-Informal Bidding Procedures.

The following shall govern the selection of contractors when a public project which is anticipated to fall within the monetary limits on informal bids described in subsection C of Section 3.16.500 is to be performed:

A. The City shall prepare a notice of the opportunity to bid which describes the project in general terms, states the time and place for the submission of bids and describes how to obtain more detailed information about the project.

B. The City shall mail the notice to all contractors for the category of the work to be bid, as shown on the list of contractors developed and maintained by the Department of Public Works in accordance with criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission ("Commission").

C. The City may also mail the notice to all construction trade journals specified by the Commission for the County of Merced. Additional contractors and/or construction trade journals may also be notified at the discretion of the Director of Public Works; provided, however, (1) if the City has not prepared a list of qualified contractors for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission; and (2) if the product or service is proprietary in nature such that it can be legally obtained only from a certain contractor(s), the notice inviting informal bids may be sent exclusively to such contractor(s).

D. All mailings of notices to contractors and construction trade journals pursuant to this section 3.16.520 shall be completed not less than ten (10) calendar days before bids are due.

E. The City Manager shall have the authority to award informal contracts pursuant to this section 3.08.520 with a value of Thirty Thousand Dollars (\$30,000.00) or less pursuant to the findings and recommendations presented by the Director of Public Works. Such contracts shall have the prior approval of, and be executed by, the City Manager and shall be approved as to form by the City Attorney. All contracts with a value in excess of Thirty Thousand Dollars (\$30,000.00) to be awarded pursuant to this section 3.08.520 shall

require the approval of the City Council and shall be executed by the Mayor and approved as to form by the City Attorney. Unless the agreement provides otherwise, the City Manager may approve dollar increases to contracts that have been approved by the City Council. The extent of the City Manager's authority to approve such increases shall be in the amount of ten (10) percent of the original contract amount, unless otherwise modified by City Council at the time of the award of the contract.

F. If all informal bids received exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00) and the City Council determines that the cost estimate was reasonable, the City Council may award the contract to the lowest responsible bidder at up to One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$137,500.00) by resolution approved by a four-fifths (4/5) vote of the City Council. Such contracts shall be executed by the Mayor and approved as to form by the City Attorney. Otherwise, such work shall be awarded to the lowest responsible bidder pursuant to the formal bid procedures prescribed in Section 3-16.050 of this Chapter.

3-08.050 Public Projects-Formal Bid Procedure.

Except as otherwise provided herein, public projects exceeding the amount specified in subsection B of Section 3-16.030 shall be awarded to the lowest responsible bidder pursuant to the formal bid procedure as hereinafter prescribed.

A. The City Council shall authorize advertisement of all public projects which are anticipated to exceed the amount specified in subsection B of Section 3-16.030.

B. The Director of Public Works shall prepare for advertisement a notice inviting formal bids, stating the time and place for the receiving and opening of sealed bids and distinctly describing the public project. The Director of Public Works shall publish each and every notice inviting bids in accordance with the following requirements:

1. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation, printed and published in the City; or, if there is no newspaper of general circulation which is circulated within the City, publication shall be by posting the notice in at least three places within the City as have been designated by ordinance or regulation of the City as places for the posting of its notices;

2. The notice inviting formal bids shall also be mailed to all construction trade journals specified by the Commission for the County of Merced at least thirty (30) calendar days prior to the date of opening the bids; and

3. In addition to notice required by this section the Public Works Director may give such other notice as he or she deems proper.

C. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security:

1. Cash;
2. Cashier's check made payable to the City;
3. A certified check made payable to the City; or

4. A bidder's bond executed by an admitted surety insurer, made payable to the City.

D. The security shall be in an amount equal to at least ten (10) percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it. If the bidder to whom the contract is awarded shall for ten (10) days after the award fail or neglect to enter into the contract and file the required securities, the City shall deposit in its treasury the bid security if the security is in the form of cash or its equivalent.

E. Provisions shall be included in any invitation for bid and in any contract documents for the furnishing of securities and/or the withholding of retentions earned to ensure performance under a contract in an amount and type as determined proper by the Director of Public Works. Provisions shall be included in any invitation for bid and in any contract documents for insurance coverage in an amount, type and term as may be specified by the City.

F. The contractor shall not pay less than the general prevailing rates of wages, as determined by the Director of the Department of Industrial Relations, to all workers employed on a public project."

3-08.070 Public Projects-Rejection of Formal Bids.

In its discretion, the City Council may reject any and all bids presented if the Public Works Director, prior to rejecting all bids, furnishes a written notice to an apparent low bidder, informing the bidder of the City's intention to reject the bid at least two (2) business days prior to the hearing at which the City Council intends to reject the bid. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the City Council may: (a) abandon the project; (b) re-advertise for bids in the manner prescribed by this chapter; or (c) perform the work with City employees, after passing a resolution by a four-fifths (4/5) vote of the City Council declaring that the project can be performed more economically by City employees."

3-08.080 Public Projects-Award of Formal Bid Contracts.

All contracts for public work with a value of more than One Hundred Twenty-Five Thousand Dollars (\$125,000.00) shall require the approval of the City Council and shall be executed by the Mayor and approved as to form by the City Attorney. Unless the agreement provides otherwise, the City Manager may approve dollar increases to contracts that have been approved by the City Council. The extent of the City Manager's authority to approve such increases shall be in the amount of ten (10) percent, or as otherwise modified by City Council at the time of the award. If a contract is awarded, it shall be awarded by the City Council to the lowest responsible bidder. The determination of the "lowest responsible bidder" shall be at the discretion of the City Council pursuant to the findings and recommendations presented by the Director of Public Works at the time of award of contract. In determining the lowest responsible bidder, the following shall be considered by the City Council, in addition to price:

A. The ability, capacity and skill of the bidder to perform the contract or provide the services required;

B. Whether the bidder can perform the contract or provide the services promptly, or within the time specified, without delay or interference;

- C. The sufficiency of the bidder's financial resources to perform the contract or provide the service;
- D. The ability of the bidder to provide future maintenance and services where such maintenance and service is essential;
- E. The quality and timeliness of the bidder's performance on previous contracts for the City;
- F. Litigation by the bidder on previous contracts with the City;
- G. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- H. The bidder is licensed under the Contractors' State License Law (commencing with Section 7000 of the Business and Professions Code of the State of California, as the same may be amended from time to time) to perform the work for which it submitted a bid proposal.

3-08.090 Public Projects-No Formal Bids.

If no bids are received through the formal or informal procedure, the project may be performed by the employees of the City by force account or through a negotiated contract without further complying with this Chapter.

3-08.100 Public Projects-Emergencies.

A. In cases of emergency when repairs or replacements are necessary, the City Council, pursuant to a four-fifths (4/5) vote, may replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services and supplies for those purposes without giving notice for bids to let contracts.

B. Before the City Council takes any action pursuant to paragraph A of this section, it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency.

C. If the City Council orders any action specified in paragraph A of this section, it shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated to determine, by a four-fifths (4/5) vote, that there is a need to continue the action. When the City Council reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

D. Notwithstanding the authority of the City Council to order any action specified in paragraph A of this section, the City Manager is authorized, in case of an emergency, to order repairs or replacements of a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes. The City Manager shall report to the City Council at its next regularly scheduled meeting the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency. The City Council shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that

meeting will occur not later than fourteen (14) days after the action, and at least every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action, unless the City Manager has terminated that action prior to the City Council reviewing the emergency action and making a determination that there is no longer a need to continue the action.

E. The work authorized under this section may be done by day labor under the direction of the Director of Public Works, by contractor, or by a combination of the two.

3-16.110 Subsequent Modification of Public Contract Code

Should any sections of the California Public Contract Code referred to in this Chapter be amended, modified or replaced by the State Legislature, the sections amended, modified or replaced shall govern the provisions of this Chapter.

Section II:

This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen (15) days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance; and, within fifteen (15) days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Villalta and seconded by Council Member Faria on the 19th day of December, 2007.

Passed on the 2nd day of January, 2008 by the following vote:

AYES: Council Members Brooks, Faria, Sousa, Mayor Jones
NOES: None
ABSENT: Council Member Villalta

APPROVED:

/s/ Tommy Jones
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk