

ORDINANCE NO. 2-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE SECTION 3.42.250 - PREQUALIFICATION OF BIDDERS TO AUTHORIZE CITY OFFICERS TO PREQUALIFY BIDDERS FOR MAINTENANCE SERVICES CONTRACTS

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The purpose of this revision is to provide for the authority of City officers to prequalify bidders for maintenance services contracts.

Section 2: Application

The following Section 3.42.250 of the Elk Grove Municipal Code is hereby amended to read as follows:

Article 5. Public Projects Subject to the Public Contract Code

3.42.250 Prequalification of bidders.

(A) Purpose. This section is enacted pursuant to California Public Contract Code Section 20101, which authorizes the City to establish a system for prequalification of prospective bidders on public works construction and maintenance projects. In addition, pursuant to the City's general police powers under California Constitution Article 11, Section 7, the City desires to apply this process to the award of public works maintenance contracts in order to ensure that bidders are qualified to perform City public works maintenance.

(B) Prequalification of bidders.

(1) The City hereby establishes a system for prequalification of prospective bidders for public works construction and maintenance projects. The City may use the prequalification system identified in this section for any public works project.

(2) The City Engineer is authorized to adopt and apply a uniform system of rating bidders for each project based on: (1) the requirements of California Public Contract Code Section 20101, and (2) the model guidelines and standardized questionnaire created by the State of California Department of Industrial Relations, as modified at the City Engineer's discretion to address the needs of the particular project, or projects, to which they are to be applied.

(3) (a) Prequalification of prospective bidders shall be conducted for public works projects that involve the construction, retrofitting, remodeling, renovation or expansion of public buildings, water or wastewater treatment

facilities, water works; maintenance of roadways, drainage facilities, roadway landscaping, or parks; or require significant specialized experience or expertise, unless the City Engineer determines that it is in the best interests of the City to forgo prequalification of prospective bidders on a particular project. In making his or her determination whether it is in the best interests of the City to forgo prequalification of prospective bidders on a particular project, the City Engineer's decision shall be supported by one or more of the following reasons:

- (i) prequalification of prospective bidders is likely to unreasonably adversely affect the cost of the project,
- (ii) the complexity, scale or cost of the project do not warrant use of this prequalification process,
- (iii) there is an urgent need, based upon concerns for the health and safety of the public, to pursue the project on an expedited basis,
- (iv) the particular project is of such a specialized nature that there is a very limited pool of qualified potential bidders, and for this reason the purposes of the prequalification process may be accomplished by use of a bid questionnaire, or
- (v) the project will not be competitively bid.

(b) Notwithstanding subsection (B)(3)(a) of this section, the City Engineer is authorized to require prequalification of prospective bidders on any public works project or to engage in a program of prequalification of prospective bidders, on public works projects on a recurring basis as provided in California Public Contract Code section 20101.

(4) If prequalification of prospective bidders is required for a particular project, the City Engineer shall determine which bidders are qualified to bid that project based upon the uniform system of rating bidders. If the City Engineer determines any bidder is not qualified to bid a project, the City Engineer shall provide to the bidder written notice that includes the basis for the determination and an identification of any supporting evidence therefore, and an opportunity for the bidder to appeal the determination pursuant to subsection (C) of this section. A copy of all prequalification determinations shall be filed with the City Clerk at least ten (10) days prior to the scheduled bid opening.

(C) Appeals.

(1) Any person aggrieved by a determination made by the City Engineer pursuant to subsection (B)(4) of this section may appeal the determination only by complying with the requirements set forth in this subsection. Such an aggrieved person shall be referred to herein as "appellant." Without a timely appeal, the appellant waives any and all rights to challenge the decision of the City Engineer, whether by administrative process, judicial process or any other legal process or proceeding.

(2) The appellant shall submit a written notice of appeal to the City Clerk, along with a complete written description of all factual and legal bases for

the appeal and accompanied by a fee in the amount established by resolution of the City Council, no later than ten (10) calendar days after the City has mailed written notice of the determination made by the City Engineer. Should the appellant prevail in its appeal, the deposit shall be returned to the appellant and the City shall bear the costs of the appeal. If the appellant does not prevail, the deposit shall be used to pay all costs associated with the appeal. If the deposit is insufficient to pay the entirety of the costs of the appeal, the appellant shall pay the remaining costs within thirty (30) calendar days after the decision. Any failure by the appellant to timely pay any outstanding appeal costs, as required herein, shall be considered by the City in future prequalification proceedings.

(3) If the appellant gives the required notice of appeal, provides the necessary deposit and requests a hearing, the hearing shall be conducted so that it is concluded no later than five (5) business days prior to the last date for the receipt of bids on the project or twenty (20) calendar days following City's receipt of the notice of appeal, whichever is sooner. The hearing shall be an informal process conducted by an arbitrator, who shall be an attorney experienced in public works and construction matters. The arbitrator may be selected by the mutual consent of the appellant and the City. If an agreement cannot be reached regarding the selection of the arbitrator, the appellant and the City shall each exchange a list of three arbitrators they would be willing to accept. In turn, beginning with the appellant, each party shall strike one name from the other party's list until only one name remains and that remaining person shall be the arbitrator. If the arbitrator selected is unavailable, the parties shall repeat the process until they succeed in selecting an available arbitrator.

(4) At the hearing, the appellant and the City shall each be provided an opportunity to be represented by legal counsel and to present or rebut any evidence bearing upon the issues presented in the appeal. Each party shall bear his, her, its, or their own attorneys' fees, regardless of the outcome of the appeal.

(5) The arbitrator shall consider relevant evidence presented during the hearing and provide a written decision on the appeal to the City, with a copy to the City Clerk, and the appellant within one business day after the close of the hearing. The time identified in this section for providing the arbitrator's decision may be extended only by consent of the City and the appellant and such an extension shall not affect or require a delay in a scheduled time for opening of bids for any public works project. Failure by the arbitrator to render a timely decision shall be deemed a denial of the appeal.

(6) The arbitrator's decision shall be final.

Section 3: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care

towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

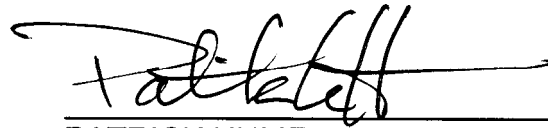
Section 4: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity to any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 5: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: 2-2009
INTRODUCED: January 14, 2009
ADOPTED: January 28, 2009
EFFECTIVE: February 27, 2009



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Date Signed: February 2, 2009

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 2-2009**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on January 14, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 28, 2009 by the following vote:

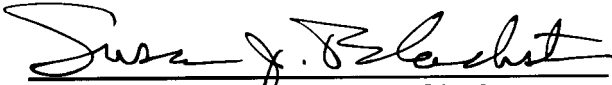
AYES : COUNCILMEMBERS: *Hume, Scherman, Cooper, Davis, Detrick*

NOES: COUNCILMEMBERS: *None*

ABSTAIN: COUNCILMEMBERS: *None*

ABSENT: COUNCILMEMBERS: *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).


**Susan J. Blackston, City Clerk
City of Elk Grove, California**