

## ORDINANCE NO. 02-2016

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 3.42 AND ADDING CHAPTER 3.50 TO ADOPT THE PROVISIONS OF THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (UPCCAA)

**WHEREAS**, State Law generally requires that public works contracts in excess of \$5,000 must be publicly advertised and awarded to the lowest responsible and responsive bidder; and

**WHEREAS**, preparing public works projects for formal bidding as required by State law can add substantial costs to a project; and

**WHEREAS**, State Law allows public agencies to adopt alternative bidding procedures under the California Uniform Public Construction Cost Accounting Act (UPCCAA) which allows informal bidding procedures to be used for Public Works Projects up to \$175,000; and

**WHEREAS**, by adopting UPCCAA, the City of Elk Grove must conform to various accounting requirements prescribed in the Act that are targeted at tracking costs of public work projects by in-house staff, and the City will realize efficiencies and costs savings gained by adopting UPCCAA.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this Ordinance is to amend Elk Grove Municipal Code Chapter 3.42, *Contracts and Purchasing*; and enact Elk Grove Municipal Chapter 3.50, *Public Works Projects (Uniform Public Construction Cost Accounting Act)*, for the purpose of implementing the California Uniform Public Construction Cost Accounting Act.

#### Section 2: Amendments to Elk Grove Municipal Code

##### **1. Section 3.42 of the Elk Grove Municipal Code is amended as follows:**

##### **i) Repeal Section 3.42.020 (D)**

~~D. Contracts for public projects (public works) concerning prequalification of bidders, providing that nothing herein shall be interpreted to supersede any provision of State law concerning the bidding or awarding of contracts for public projects under the California Public Contract Code.~~

ii) **Repeal Article VII of Chapter 3.42 in its entirety [to be recodified in Chapter 3.50, as set forth below]**

**~~3.42.250 Prequalification of bidders.~~**

~~A. Purpose. This section is enacted pursuant to Section 20101 of the California Public Contract Code, 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: a) the requirements of Section 20101 of the California Public Contract Code, and b) 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 forego 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 forego prequalification of prospective bidders on a particular project, the City Engineer's decision shall be supported by one (1) 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 does 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 Section 20101 of the California Public Contract Code.~~

~~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 therefor, 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) 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) 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) days following the 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 (3) arbitrators they would be willing to accept. In turn, beginning with the appellant, each party shall strike one (1) name from the other party's list until only one (1) 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 (1) 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.~~

**iii) Amend Section 3.42.025 (C) in its entirety with the following:**

~~C. Public Works Contracts. Contracts for public projects (public works) governed by the California Public Contracts Code, except that the provisions of Article VII of this chapter concerning prequalification of bidders shall continue to apply; and~~

C. Contracts for Public Works Projects shall be governed by Elk Grove Municipal Code chapter 3.50.

**2. Chapter 3.50 of the Elk Grove Municipal Code is added as follows:**

**Chapter 3.50**

**Public Works Projects**

**(Uniform Public Construction Cost Accounting Act)**

**3.50.000 Purpose.**

The purpose of this chapter is to adopt and implement the provisions of the California Uniform Public Construction Cost Accounting Act hereinafter referred to as the "Act" (Section 22000, et seq. of the Public Contract Code). The City Manager shall be authorized to implement administrative policies and procedures consistent with the Act and this chapter.

**Article I. Informal Bidding Procedures**

**3.50.010 Informal Bid Procedures.**

Public projects, as defined by the Act, and in accordance with the monetary limits set forth in the Act, as now existing or hereafter amended, may be let to contract by informal procedures as set forth in the Act, this chapter, and any administrative policies and procedures promulgated by the City.

**3.50.020 Contractors List.**

A list of contractors shall be developed and maintained in accordance with the provisions of the Act and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

**3.50.030 Notice Inviting Informal Bids.**

A. Where a public project is to be performed which is subject to the informal bidding provisions of the Act and this chapter, a notice inviting informal bids may be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 3.50.20 and shall be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with the Act. All mailing of notices to contractors pursuant to this section shall be completed not less than 10 calendar days before bids are due. Additional contractors and/or construction trade journals may be notified at the discretion of the City, provided however:

1. If there is no list of qualified contractors maintained by the City 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.
2. If the product or service is such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

B. 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 the submission of bids.

**3.50.040 Award of Contracts.**

A. The City Manager is authorized to award informal contracts pursuant to the monetary limits set forth in the Act, as now existing or hereafter amended. If all bids received are in excess of the City Manger's monetary authority, the City Council may, by adoption of a resolution by a four-fifths vote, award the contract, subject to the monetary limits set forth in the Act for informal bidding, as now existing or hereafter amended, if the City Council determines the cost estimate of the public agency was reasonable.

B. Contracts subject to formal bidding under the Act shall be awarded, if at all, by the City Council.

**Article II. Prequalification of Bidders**

**3.50.051 Prequalification of Bidders.**

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

**3.50.052 Uniform System of Rating Bidders.**

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

**3.50.053 Prequalification Projects and Determinations to Forego Prequalification.**

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 Public Works Director determines that it is in the best interests of the City to forego 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 forego prequalification of prospective bidders on a particular project, the Public Works Director's decision shall be supported by one (1) or more of the following reasons:

- A. Prequalification of prospective bidders is likely to unreasonably adversely affect the cost of the project;
- B. The complexity, scale or cost of the project does not warrant use of this prequalification process;
- C. There is an urgent need, based upon concerns for the health and safety of the public, to pursue the project on an expedited basis;
- D. 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
- E. The project will not be competitively bid.

**3.50.054 Authorization to Require Prequalification.**

Notwithstanding subsection 3.50.053 of this section, the Public Works Director 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 Section 20101 of the California Public Contract Code.

**3.50.055 Determination of Prequalification.**

If prequalification of prospective bidders is required for a particular project, the Public Works Director shall determine which bidders are qualified to bid that project based upon the uniform system of rating bidders. If the Public Works Director determines any bidder is not qualified to bid a project, the Public Works Director shall provide to the bidder written notice that includes the basis for the determination and an identification of any supporting evidence therefor, and an opportunity for the bidder to appeal the determination pursuant to section 3.50.56. A copy of all prequalification determinations shall be filed with the City Clerk at least ten (10) days prior to the scheduled bid opening.

**3.50.056 Appeals.**

A. Any applicant to be considered for prequalification for bidding, that is aggrieved by a determination made by the Public Works Director pursuant to subsection 3.50.053 of this section may appeal the determination only by complying with the requirements set forth in this subsection. Such an aggrieved applicant shall be referred to herein as "appellant." Without a timely appeal, the appellant waives any and all rights to challenge the decision of the Public Works Director, whether by administrative process, judicial process or any other legal process or proceeding.

B. 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) days after the City has mailed written notice of the determination made by the Public Works Director. 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) 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.

C. 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) days following the 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.

D. 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.

E. 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 (1) 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.

F. 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 hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

### Section 5: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and




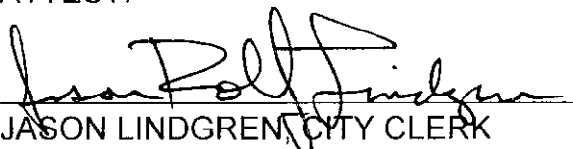
purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

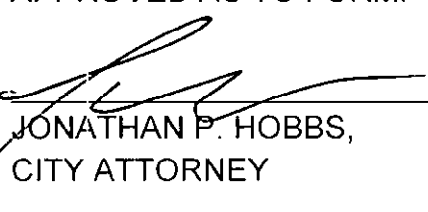
Section 6: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) 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:**       **02-2016**  
**INTRODUCED:**     February 24, 2016  
**ADOPTED:**         March 9, 2016  
**EFFECTIVE:**       April 8, 2016

  
\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:  
  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Signed: March 24, 2016


**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 02-2016**

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

*I, Jason Lindgren, 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 February 24, 2016 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on March 9, 2016 by the following vote:*

<b>AYES :</b>	<b>COUNCILMEMBERS:</b>	<i>Davis, Ly, Detrick, Hume, Suen</i>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<i>None</i>
<b>ABSTAIN:</b>	<b>COUNCILMEMBERS:</b>	<i>None</i>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<i>None</i>

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

  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**