

Saddle Creek Community Services District

Regular Meeting of April 16, 2019

AGENDA SUPPORTING DATA

7. DISCUSSION AND ACTION ITEMS:

h. Approval of a Resolution electing to be subject to the California Uniform Construction Cost Accounting Act pursuant to the California Public Contract Code.

Background

All work conducted by the District is subject to the California Public Contract Code, Government Code and related laws. The law requires that all District projects costing more than \$ 25,000 be competitively bid which requires very detailed engineering plans and specifications, as well as significant administrative requirements. In reality small projects in many cases are not cost effective, due to the procedural and administrative requirements. Considering this, the state legislature has developed a system to allow public agencies to adopt certain procedures which raise bidding limits.

Many of the District's upcoming projects will cost less than \$200,000 which can, under the Uniform Construction Cost Accounting Act (UCCAA), be contracted for with informal bidding procedures versus formal public bidding. In addition, projects costing up to \$60,000 can be negotiated on the open market with contractors without bidding; which saves significant dollars in administrative costs and engineering,

Included with this agenda item is a FAQ document covering the UCCAA, a draft Informal Bidding Policy and an approving resolution.

Recommended Motion

I move to approve Resolution 2019-xx.

CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT FREQUENTLY ASKED QUESTIONS (FAQs)

These FAQs have been compiled to assist agencies that are participating in the California Uniform Public Construction Cost Accounting Act (the Act), as contained in Public Contract Code (PCC) Section 22000, et seq. All references are to PCC, unless otherwise stated.

1. What is the Uniform Public Construction Cost Accounting Act?

The Act is legislation that was enacted in 1983 to help promote “uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state” (Section 22001). The Act is a voluntary program available to all public entities in the State, but it only applies to those public agencies that have “opted in” to the provisions set forth by the Act. The entirety of the Act is found at Sections 22000-22045.

2. What are some of the key provisions of the Act?

The Act allows for public project work in the amount of \$60,000 or less to be performed by a public agency’s force account, by negotiated contract, or by purchase order (Section 22032(a)). Public projects in the amount of \$200,000 or less may use the informal bidding procedures set forth in Section 22032(b) of the Act. Public projects at a cost of more than \$200,000 shall use formal bidding procedures to let the contract pursuant PCC Section 22032(c).

3. What are the benefits of the program?

- Increased force account limit;
- Simplified bidding for projects that are \$200,000 or less;
- Reduced number of formal bids; and
- Expedited contracting for small projects.

Many participants appreciate the program because it has given them more leeway in the execution of public works projects; sped up the award process; expedited project delivery; reduced the time, effort and expense associated with bidding small projects; and simplified administration. Few agencies have experienced challenges with the accounting requirements and overhead provisions. Moreover, where adjustment was required, it has been relatively simple; most required procedures were already in place, so there was no noticeable change to existing operations. The Standard Accounting Codes Structure satisfies reporting requirements when used properly.

4. Is the Uniform Public Construction Cost Accounting Act mandatory for public agencies?

No. The Act is a voluntary program

5. How does a public agency become subject to the Act?

The governing body must elect by resolution to become subject to the Act and file a copy of the resolution with the State Controller's Office (Section 22030). Sample documents are available at: http://www.sco.ca.gov/ard_cuccac.html. Once an agency has opted into the Act, it will remain a part of the program.

6. May a public agency withdraw from the Act?

Yes. An agency may withdraw from the Act by filing a resolution with the State Controller's Office of the agency's election to withdraw.

7. Must a participating agency "opt in" to the Act annually?

No. Once a participating agency "opts in" to the Act, the agency remains subject to the Act until it "opts out" of the Act.

8. What is the California Uniform Construction Cost Accounting Commission?

The Commission was created to administer the Act, per Section 22010. It consists of 14 members: 13 members appointed by the State Controller and one designated member of the Contractors' State License Board. Seven members represent the public sector (counties, cities, school districts, and special districts). Six members represent the private sector (public works contractors and unions). The Commission members receive no salary, but are eligible for reimbursement of their direct expenses related to the Commission.

9. What are the Uniform Public Construction Cost Accounting Procedures?

These procedures are to be used for tracking costs for work done by an Agency's own forces on a "project" as defined by the Act (Section 22002(c)). The procedures do not apply to operations or maintenance work, or any work that meets the criteria listed in Section 22002(d).

These procedures are intended to capture and record all direct and indirect labor, materials, and supervision costs as well as the appropriate overhead costs for the public agency associated with each "project" they perform with their own forces. The procedures follow industry-standard accounting methods, and in many cases are not much different from those already in place at the agency. Sample forms are available in the CUCCAC Cost Accounting Policies and Procedures Manual at http://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf

School districts may use the Standard Accounting Code Structure to comply with tracking requirements.

10. Are the cost accounting procedures applicable for agencies whose work forces only perform maintenance tasks as defined in the Act and that contract all of their public projects to third parties?

No. The cost accounting procedures are only applicable for agencies that perform public project work such as construction and alteration by force account. As maintenance does not constitute a "project" under the Act, the cost accounting procedures do not apply.

11. Are agencies required to advertise in November if they choose to maintain a list of qualified contractors?

Yes. At least once per calendar year, each Public Agency that has elected to become subject to the Act and intends to use the notice provisions outlined in Section 22034(a) shall establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing written notice to all construction trade journals designated for that Agency under Section 22036. The notice shall invite all licensed contractors to submit the name of their firm to the Agency for inclusion on the Agency's list of qualified bidders for the following calendar year.

12. May an agency that chooses to maintain a list add a contractor at any time during the year?

Yes.

13. What is meant by the term “qualified contractors” as used in section 22034(a)(1) of the Act?

Qualified contractors are contractors licensed by the State to perform the subject work. The Commission has determined that nothing in the Act prohibits a participating agency from using an objective pre-qualification process in the formation and maintenance of their Qualified Contractors Lists if they so desire.

14. Can a public agency disqualify or exclude certain contractors from the Qualified Contractors List required in Section 22034(a)(1)?

Agencies may disqualify contractors from Qualified Contractors Lists when the contractors fail to furnish information to meet the minimum criteria as established by the Commission.

15. For agencies that do not maintain an informal bidders list, are they allowed to choose who would get notifications of projects?

No. Section 22034(a)(2) provides for notifications to construction trade journals and exchanges in lieu of sending notifications to contractors on an informal bidders list. An agency may, however, send notices to selected contractors provided it has first met the advertisement requirements of Section 22034(a)

16. What is the difference between “qualifying contractors” under the Act and “prequalification of contractors” by school districts under Section 20101?

Qualifying contractors is a process that allows contractors to register with a public agency for notification of public works opportunities. The prequalification process under Section 20101 is a more complex process that requires a standardized questionnaire and evaluation of contractors using standard scoring criteria. The prequalification process is applicable under the Local Agency Public Construction Act, and does not apply to the Uniform Public Construction Cost Accounting Act.

17. Must a public agency a) notify contractors about public projects if the contractors are believed to not have the skills, credentials, or experience to perform the work required for the public project; and b) consider bids submitted by contractors that the public agency believes do not have the skills, credentials, or experience to perform the work?

- a) Yes. If a contractor is on the Qualified Contractors List, the contractor must be notified by the agency of public projects for which he or she is licensed to perform (Section 22034(a)(1)).
- b) All bids received must be considered, unless an agency makes appropriate legal findings that a contractor is not legally responsible or their bid is not responsive.

18. Does the Act allow flexibility in cases of emergency and when repair or replacements are necessary to permit the continued conduct of a public agency’s operations or services?

Yes. For the purposes of the Public Contract Code, “emergency” is defined at Section 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

The Act sets forth in Section 22035(a) how a governing body should proceed in case of emergency repairs or replacements. This section states:

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the governing body, by contractor, or by a combination of the two.

Section 22050 et seq., provide the emergency contract procedures to be followed in these cases.

19. Do the alternative bidding procedures apply only to public projects as defined in Section 22002(c)?

The alternative bidding procedures only apply to work that constitutes a “public project” as defined in Section 22002(c) and has a construction cost within the limits described in Section 22032. The alternative bidding procedures are not required for the purchase of goods or materials that are not part of a “public project”.

However, as outlined in Section 22003, a participating agency may also use the alternative bidding procedures when contracting for maintenance or other work that does not fall within the definition of a “public project” if it so chooses.

20. What will membership in the Act cost my agency?

Nothing. There are no membership fees or dues. However, the Commission does accept grants to assist it in carrying out its duties (Section 22015(c)).

21. What are the most common concerns addressed by the Act?

These are:

- Cost accounting policies and procedures;
- Informal bidding procedures; and
- Accounting procedures review.

Cost accounting requirements for the Act follow those common to the construction industry. The informal bidding on public projects up to \$200,000 is seen by agencies as an effective tool to expedite completion of small projects. While an accounting procedures review could potentially hold up a project for a minimum of 45 days pursuant to Section 22043(c)(1), these types of reviews have been rare in the Commission’s history.

22. Does an agency have to calculate an overhead rate to apply the accounting procedures?

No. Cities with populations of less than 75,000 shall assume an overhead rate equal to 20% of the total costs of the public project, including the costs of material, equipment and labor (Section 22017(b)(1)). Cities with a population of more than 75,000, may either calculate an actual overhead or assume an overhead rate of 30% of the total costs of a public project including the costs of materials, equipment, and labor (Section 22017(b)(2)).

23. When a public entity opts into the Act, does the Act supersede other contracting legal requirements such as statutory requirements for performance bonds, prevailing wages, and certificates of insurance, etc.?

No. The Act only supersedes the bidding procedures used once a public agency has opted into the Act and has notified the Controller. All other contracting requirements remain applicable.

24. Can a public agency claim to be to be exempt from following all of the requirements in Public Contract Code by claiming it only has to follow the language and procedures within the Act?

No. The Act is part of the Public Contract Code; therefore, if the Act is silent on a particular matter the rest of the Public Contract Code applies.

25. If public agencies are not following the advertising requirements in the Act, will the Commission address those agencies? Can a complaint be brought to the Commission?

Yes. Recent legislative changes have expanded the Commission’s authority to enforce provisions of the Act. The Commission may review complaints filed by interested parties where evidence is provided that:

- The participating agency performed work after rejecting all bids, claiming it could do the work less expensively (Section 22042(a)).
- The work performed exceeded the force account limits (Section 22042(b)).
- The work was improperly classified as maintenance (Section 22042(c)).
- A public agency did not comply with the informal bidding procedures set forth at Section 22034 (Section 22042.5).

26. Section 20112 specifically requires school districts to advertise twice for a two week period, while Section 22037 requires advertising once, 14 days in advance of the date of opening of bids. How do participating school districts reconcile this conflict?

When the Act is in conflict with any other section in the Public Contract Code, the Act shall supersede. The Act requires advertising once, 14 days in advance of the date of opening of bids. Districts participating in the Act may choose to maximize their outreach by advertising twice.

27. May a public agency contract separately for like work at the same site at the same time using the under \$60,000 Force Account method?

No. Section 22033 states:

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

Separating “like work” would only be permitted if the total of all the “like work” is less than \$60,000. If the work is more than \$60,000, it must be advertised and bid according to the provisions of the Act (i.e. bid informally if the total amount is less than \$200,000; bid formally if the total amount exceeds \$200,000).

28. May a public agency bid out two separate projects that occur at the same time and site, but are different types of work?

Yes. There is no violation if the work is competitively bid. If an agency wants to use the negotiated or informal bidding processes, it must apply the appropriate limits to each of the projects. Each project must be separate in scope. Projects may not be separated by trade to avoid bidding. If the total of all jobs is greater than \$60,000, then the informal or formal bid limits apply.

29. Does a value need to be assigned to the volunteer labor when the California Conservation Corps or another volunteer organization provides labor on a public project?

No. Volunteer labor from volunteer organizations does not need to be included as a cost of a public project for bid limit purposes when no costs are associated with the volunteer labor.

30. By opting into the Act, does a public agency automatically bring all of its component divisions or departments into the Act?

Yes. When a public agency elects to become subject to the uniform construction cost accounting procedures, the entire legal entity is considered subject to the Act and no divisions or departments are exempt.

31. When a public agency opts into the Act, does it automatically bring all districts under control of its governing Board into the Act?

No. Special Districts, which are governed by a board of supervisors or city council, are only subject if a separate election is made for each special district.

32. PCC 22034 requires that participating agencies adopt an Informal Bidding Ordinance. What do schools and special districts that cannot adopt Ordinances do to comply?

Agencies that do not have the ability to adopt Ordinances should discuss Section 22034 compliance with their legal counsel.

Additional inquiries and questions can be directed by email to LocalGovPolicy@sco.ca.gov, or by regular mail to:

State Controller's Office
Local Government Programs and Services Division
Local Government Policy Section
P.O. Box 942850
Sacramento, CA 94250

SADDLE CREEK COMMUNITY SERVICES DISTRICT

POLICY OF THE BOARD OF DIRECTORS OF THE SADDLE CREEK COMMUNITY SERVICES DISTRICT ESTABLISHING INFORMAL BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (Public Contract Code Section 22000 et seq.)

The Board of Directors of the SADDLE CREEK COMMUNITY SERVICES DISTRICT do approve as follows:

SECTION 1

Findings and Purpose

It is in the public interest for the Board of Directors of the SADDLE CREEK COMMUNITY SERVICES DISTRICT to elect to become subject to the Uniform Public Construction Cost Accounting Act Procedures adopted by the California Uniform Construction Cost Accounting Commission pursuant to Public Contract Code Section 22000 et seq.:. Performance of District construction and maintenance projects in accordance with these procedures will enable the District to perform said projects with its own staff and/or by contracts ordered through informal bidding procedures when it is in the best public interest of the District to do so.

SECTION 2

Informal Bid Procedures

Public projects as defined by the Act and in accordance with the limits listed in Section 22032 of the Public Contract Code may be let to contract by informal procedures as set forth in Section 22032 et seq. of the Public Contract Code.

SECTION 3

Development, Maintenance and Use of Contractors List

The General Manager shall develop a list of qualified contractors eligible to submit bids on informal contracts awarded by the District. The list of contractors shall be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and minimum criteria propagated from time to time by the California Uniform Public Construction Cost Accounting Commission.

The contractors list shall be organized in accordance with the license classifications utilized by the Contractors State License Board and according to categories of work. The General Manager of the District shall, during November of each year, mail a written notice to all construction trade journals designated by the Commission for that County in which the District is located pursuant to Public Contract Code Section 22036 inviting all licensed contractors to submit the name of their firm to the District for inclusion on the District's list of qualified bidders for the following calendar year.

The written notice shall require that the contractor provide the name, physical address and email address to which a Notice to Contractors of Proposal should be sent, a telephone number at which the contractor may be reached, the type of work which the contractor is interested in and currently licensed to do, together with the class of contractor's license held and contractor's license number. The District may include any contractor's name it desires on the list, but the list must include at a minimum all contractors who have properly provided the District with the information required as set forth above. A contractor may have his firm added to the District's contractors list at any time by providing the required information.

SECTION 4

Notice Inviting Informal Bids

Where a public project is to be performed subject to this Ordinance, a notice inviting informal bids shall be sent to all contractors for the category of work to be bid, as shown on the contractors list developed and maintained by the District. Additional contractors and/or construction trade journals may be notified at the discretion of the District provided however:

1. If there is no list of qualified contractors maintained by the District 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 obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

SECTION 5

Award of Contracts

The General Manager of the District is authorized to award informal contracts pursuant to this Section.

At the time provided in the notice inviting informal bids, the General Manager shall open all bids timely received and award a contract to the lowest responsible bidder. If two or more bids are the same and lowest, the General Manager may choose the contractor to whom the contract is to be awarded. If no bids are received, the General Manager may again solicit informal bids, perform the work with District employees, or negotiate an informal contract with a contractor chosen by the General Manager.

The Board of Directors hereby delegates to the General Manager of the District the power to declare a public emergency as defined in Public Contract Code Section 22035 and to accomplish repairs and/or replacements as permitted by said Section. Such

work shall be performed without the benefit of informal or formal bidding and without adoption of plans, specifications or working details, provided that such repair or replacements are necessary to permit the continued conduct of the operation or services of the District or to avoid danger to life or property. The General Manager of the District shall provide a full report on the emergency work performed at the next meeting of the Board of Directors, at which time the Board may confirm the existence of such public emergency by a four-fifths (4/5) vote and may take such other action necessary including but not limited to decisions as to whether the authorized work should continue without the benefit of informal or formal bidding.

SECTION 6

This Policy shall take effect and be enforced immediately upon its passage.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the SADDLE CREEK COMMUNITY SERVICES DISTRICT, County of Calaveras, State of California, this 16th day of April 2019, by the following vote:

AYES:

NOES:

ABSENT:

By:

Attest:

Peter Kampa, Secretary

RESOLUTION 2019-xx

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SADDLE CREEK COMMUNITY SERVICES DISTRICT ELECTING TO BE SUBJECT TO THE PROVISIONS OF THE UNIFORM CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Section 22000 et seq., the Uniform Public Construction Cost Accounting Act, establishes such a uniform cost accounting standard; and

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

NOW THEREFORE BE IT RESOLVED THAT THE SADDLE CREEK COMMUNITY SERVICES DISTRICT DOES HEREBY:

1. Elect under Public Contract Code Section 22030 to become subject to the Uniform Construction Cost Accounting Procedures set forth in the Act and to the Commission's Policies and Procedures and Cost Accounting Review Procedures, as they may from time to time be amended.
2. Directs the District Secretary to notify the Controller forthwith of this election, effective this date.
3. Approve the Informal Bidding Policy included herein as Exhibit A.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Board of Directors of the Saddle Creek Community Services District on April 16, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Darlene DeBaldo, President

Peter Kampa, Board Secretary

Board of Directors