

**ORDINANCE NO. 2477**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, REPEALING ARTICLE X (PUBLIC WORKS CONTRACTS) OF CHAPTER 19 (STREETS, SIDEWALKS AND PUBLIC PLACES) AND ADDING DIVISION 3 (CONTRACTING FOR PUBLIC PROJECTS) TO ARTICLE VII (PURCHASES AND SALES) OF CHAPTER 2 (ADMINISTRATION) OF THE WEST COVINA MUNICIPAL CODE**

**WHEREAS**, on December 18, 2007, the City Council adopted Resolution No. 2007-83, adopting the California Uniform Public Construction Cost Accounting Act ("CUPCCAA" or the "Act") procedures, which provide alternative procedures for public project construction performed or contracted by public agencies, including an increased force account limit for public agencies and simplified bidding for projects under a specified threshold, resulting in a more streamlined and efficient process; and

**WHEREAS**, pursuant to Public Contract Code section 22034, each public agency that elects to become subject to the uniform construction cost accounting procedures is required to enact an informal bidding ordinance to govern the selection of contractors to perform public projects pursuant to subdivision (b) of Public Contract Code section 22032; and

**WHEREAS**, Public Contract Code section 22034 sets forth the requirements of said informal bidding ordinance; and

**WHEREAS**, the current Article X (Public Works Contracts) of Chapter 19 (Streets, Sidewalks and Public Places) references the City's adoption of the Act and provides for the ability of the City to use the alternative bidding procedures pursuant to the Act; and

**WHEREAS**, the existing provisions of Article X of Chapter 19 and the West Covina Municipal Code do not include the informal bidding provisions required by Section 22034 of the Public Contract Code; and

**WHEREAS**, in order to comply with Public Contract Code section 22034, the City Council desires to repeal Article X of Chapter 19 in its entirety and add a new Division 3 (Contracting for Public Projects) to Article VII (Purchases and Sales) of Chapter 2 (Administration) of the West Covina Municipal Code; and

**WHEREAS**, all legal prerequisites prior to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Repeal of Article X of Chapter 19.** Article X (Public Works Contracts) of Chapter 19 (Streets, Sidewalks and Public Places) of the West Covina Municipal Code is hereby repealed in its entirety. Article X shall be reserved for later use.

**SECTION 2. Amendment to Article VII of Chapter 2.** Article VII (Purchases and Sales) of Chapter 2 (Administration) of the West Covina Municipal Code is hereby amended to add a Division 3, to read as follows:

### DIVISION 3. - CONTRACTING FOR PUBLIC PROJECTS

Sec. 2-250. – Uniform construction cost accounting procedures.

The city, by adoption of Resolution No. 2007-83, has elected to become subject to the uniform construction cost accounting procedures promulgated by the State Controller pursuant to the California Uniform Public Construction Cost Accounting Act (the “Act”; Public Contract Code section 22000 et seq.). The purpose of this division is to set forth the requirements for contracting for public projects in accordance with the Act and state law.

Sec. 2-251. – Definitions.

The following words, terms and phrases when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) “Act” means the California Uniform Public Construction Cost Accounting Act, Public Contract Code section 22000 et seq.
- (b) “Emergency” has the meaning set forth in Public Contract Code section 1102.
- (c) “Facility” has the meaning set forth in Public Contract Code section 22002.
- (d) “Maintenance work” has the meaning set forth in Public Contract Code section 22002.
- (e) “Public Contract Code” means the Public Contract Code of the State of California.
- (f) “Public project” has the meaning set forth in Public Contract Code section 22002.

Sec. 2-252. – Adoption of plans, specifications, and working details.

The city council delegates to the public services director and the city engineer the authority to approve and/or adopt the plans, specifications, and working details for all public projects and maintenance work, including public projects exceeding the amount specified in Public Contract Code section 22032(c).

Sec. 2-253. – Small project procurement procedures.

Public projects and maintenance work in the amount set forth in Public Contract Code section 22032(a), as amended from time to time, or less may be performed by employees of the city by force account, by negotiated contract, or by purchase order without competitive bidding. The city manager is authorized to approve and execute contracts or purchase orders issued pursuant to this section, provided that the expenditure is within the approved budget.

Sec. 2-254. – Informal bidding procedures.

Public projects and maintenance work in the amount set forth in Section 22032(b) of the Public Contract Code, as amended from time to time, or less may be let to contract by informal procedures as set forth in the Act, including the following procedures:

- (a) Contractors list. The city shall comply with the requirements of Public Contract Code section 22034 regarding maintaining a list of qualified contractors identified according to categories of work.
- (b) Notice inviting informal bids – circulation. Where a public project or maintenance work is to be performed which is subject to the provisions of this section, a notice inviting informal bids shall be circulated using one or both of the following alternatives:
  - (1) Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with subsection (a) above.
  - (2) Notices inviting informal bids may be mailed, faxed, or emailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the public services director or designee.
- (c) Notice inviting informal bids – proprietary products and services. Notwithstanding the foregoing requirements, 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.
- (d) Notice inviting informal bids – mailing. All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed at least ten (10) calendar days before bids are due.
- (e) Notice inviting informal bids – contents. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.
- (f) Rejection of bids; bid irregularities. The city manager may, in his/her sole discretion, reject any or all bids presented and waive any minor irregularity or informality in such bids.
- (g) Award of contract. The city manager is authorized to award and execute contracts informally bid in accordance with this section, provided that the expenditure is within the approved budget and the contract is in a form approved by the city attorney. Such contracts shall be awarded to the lowest responsible bidder.
- (h) Tie bids; no bids received. If two or more bids are the same and the lowest, the city manager may accept the one he/she chooses. If no bids are received through the informal procedures set forth in this section, the project may be performed by city employees, by force account or negotiated contract without further complying with this section.
- (i) Bids over informal bidding limit. If all bids received are in excess of the amount set forth in Public Contract Code section 22034(d), as amended from time to time, the city council may, by adoption of a resolution by a four-fifths (4/5) vote, award the contract, at the amount specified in Public Contract Code section 22034(d), as amended from time to time, or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.

- (j) Acceptance of work. Upon the completion of work pursuant to a contract awarded pursuant to this section, the city manager may accept the work and may authorize the filing of the notice of completion, the release of funds retained upon such filing, and the release of any bonds upon the conclusion of their respective warranty periods.
- (k) Performance bonds. The city may require a performance bond before entering a contract awarded pursuant to this section in such amount as the public services director or his/her designee finds reasonably necessary to protect the best interests of the city. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

Sec. 2-255. – Formal bidding procedures.

Public projects and maintenance work in the amount set forth in Section 22032(c) of the Public Contract Code, as amended from time to time, or greater shall be let to contract in accordance with the procedures set forth in Public Contract Code section 22037 et seq., including the following procedures:

- (a) Advertising; contents. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. 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 printed and published within the city, in a newspaper of general circulation which is circulated within the city, or, if there is no newspaper which is circulated within the city, publication shall be by posting the notice in at least three (3) places within the city as have been designated by ordinance or regulation of the city as places for the posting of its notices. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified in Section 22036 of the Public Contract Code. The notice shall be sent at least fifteen (15) calendar days before the date of opening the bids. In addition to notice required by this section, the city may give such other notice as it deems proper.
- (b) Sealed bids. All bids shall be presented under sealed cover to the department identified in the invitation for bids. Bids shall be opened in public at the time and place stated in the notice inviting bids.
- (c) Bidder's security. All bids presented shall be accompanied by bidder's security in the form and amount prescribed by Public Contract Code section 20170 et seq., which security shall be dealt with as described therein. The city council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the city council awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the surety on the bidder's bond if a bond is used. This procedure shall be followed with the next lowest bidder in order upon any additional refusal or failure of the next lowest responsible bidder to execute the contract.
- (d) Rejection of bids; bid irregularities. The city council, in its discretion, may reject any and all bids presented in accordance with the requirements of Public Contract Code section 22038 and waive any minor irregularity or informality in such bids. If after the first

invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:

- (1) Abandoning the project or readvertising for bids in the manner described by this division.
- (2) By passage of a resolution by a four-fifths vote of the city council declaring that the project can be performed more economically by the employees of the city, the city may have the project done by force account without further complying with this division.
- (e) Award of contract. Contracts for public projects and maintenance work subject to formal bidding requirements shall be awarded by the city council. Such contracts shall be awarded to the lowest responsible bidder.
- (f) Tie bids; no bids received. If two or more bids are the same and the lowest, the city council may accept the one it chooses. If no bids are received through the formal procedures set forth in this section, the project may be performed by employees of the city by force account, or negotiated contract, without further complying with this division.
- (g) Performance bonds. The city may require a performance bond before entering a contract awarded pursuant to this section in such amount as the public services director or his/her designee finds reasonably necessary to protect the best interests of the city. If the city requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

#### Sec. 2-256. – Reporting requirements.

On a semi-annual basis, the city manager shall present to the city council during an open meeting a report listing all contracts and purchase orders that have been awarded by the city manager pursuant to the city manager's authority pursuant to this division during the preceding six months. Such reports shall include, at minimum, a description of the public project or maintenance work performed, the name of the party or parties with whom the city contracted, and the total amount of the expenditure associated with the contract (including any amendments or change orders).

#### Sec. 2-257. – Emergency procedures.

- (a) In cases of an emergency, the city council, after making a finding, based on substantial evidence set forth in the minutes of the 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, may, by a four-fifths (4/5) vote of the city council, repair or replace 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, without giving notice for bids to let contracts. The city council shall review the emergency action in accordance with the requirements of Public Contract Code section 22050(c).
- (b) In cases of an emergency, when it is impractical to convene a meeting of the city council, the city manager shall have the power to order the repair or replacement 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, without giving notice for bids to let contracts. If the city manager takes such action, 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.

Sec. 2-258. — Change orders on contracts for public projects.

- (a) The city has, in Section 19-1 of this Code, adopted the standard specifications for public works construction ("the Green Book"), except to the extent those specifications conflict with any other provision of the city's municipal code or standard specifications. The city council intends to limit the use of change orders for public works contracts notwithstanding any contrary provision of the Green Book.
- (b) Following the award of a public project or maintenance work contract or purchase order awarded pursuant to this division, such contract or purchase order may be amended by the issuance of a change order or contract amendment, provided the change which is the subject of the change order or contract amendment is reasonably related to the scope of the original contract or purchase order. Notwithstanding any provision of this division to the contrary, unless a lower limit has been set by applicable law or the city council, the city manager is authorized to approve and execute the following change orders or contract amendments for public project and maintenance work contracts and purchase orders awarded pursuant to this division without city council approval, provided that the expenditure is in the approved budget:
  - (1) For contracts or purchase orders issued pursuant to Section 2-253 of this Code, any change order or contract amendment which results in the total contract price of the amount set forth in Public Contract Code section 22032(a) or less; and
  - (2) For contracts awarded pursuant to Section 2-254 of this Code, any change order or contract amendment which results in a total contract price of the amount set forth in Public Contract Code section 22032(b) or less.
  - (3) For contracts awarded by the city council with an approved contingency, change orders within such contingency.
- (c) Any change order or contract amendment for any contract awarded pursuant to this division which results in a total contract price in excess of the amounts specified in subsection (b) of this section must be approved by the city council.
- (d) All change orders and contract amendments approved by the city manager pursuant to subsection (b)(1) and (2) of this section shall be reported to the city council in the city manager's semi-annual report required pursuant to Section 2-256 of this Code.

**SECTION 3. Environmental Compliance.** The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment. The Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.


**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of West Covina hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

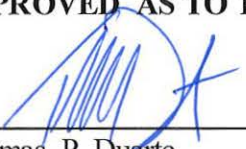
**SECTION 5. Effective Date.** This Ordinance shall take effect thirty (30) days after its final passage.

**SECTION 6. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

**PASSED, APPROVED AND ADOPTED** on the 4th day of May, 2021.

  
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Letty Lopez-Viado  
Mayor

**APPROVED AS TO FORM**

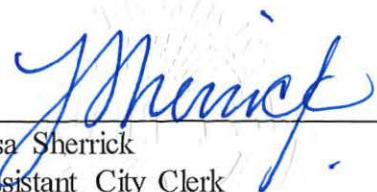
  
\_\_\_\_\_  
Thomas P. Duarte  
City Attorney

**ATTEST**

  
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Lisa Sherrick  
Assistant City Clerk

I, LISA SHERRICK, ASSISTANT CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Ordinance No. 2477 was introduced at a regular meeting of the City Council held on the 6th day of April, 2021, and adopted at a regular meeting of the City Council held on the 4th day of May, 2021, by the following roll call vote:

AYES:	Castellanos, Diaz, Lopez-Viado, Tabatabai, Wu
NOES:	None
ABSENT:	None
ABSTAIN:	None

  
\_\_\_\_\_  
Lisa Sherrick  
Assistant City Clerk