

## Do state public bidding requirements apply to GHADs?

While there are no California court decisions addressing whether a GHAD is subject to public bidding requirements, specific provisions of GHAD Law appear to exempt GHADs from such requirements and provide for GHADs to determine their own procedures for awarding contracts.

In order to avoid favoritism, corruption, and waste of public funds, the California Public Contract Code specifically requires most large public work projects to be awarded pursuant to an open bidding process, in which the public agency is required to accept the lowest bid from a responsible bidder. *Associated Builders and Contractors v. Contra Costa Water District*, 37 Cal. App. 4<sup>th</sup> 466, 469-70 (1995). The Public Contracts Code is the basis of contracts between most public entities in the state and their contractors and subcontractors. *Pub. Cont. Code § 1100.7*. The Public Contract Code contains detailed requirements which state that public agencies are to comply with the open bidding procedure for contracts above a stated minimum amount, and accept the bid from the lowest responsible bidder. *Id.*

The Public Contract Code defines “public entity” as the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state. The term “public works contract,” as used in the Public Contracts Code, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. *Pub. Cont. Code § 1100 (emphasis added)*.

There are certain exceptions to the general requirement that public agencies comply with the Public Contract Code procedures, including certain exceptions for emergency occurrences. “Emergency” is defined 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”. *Pub. Cont. Code § 1102*.

There are no cases or secondary sources providing guidance or an interpretation of whether the Public Contract Code requirements are applicable to GHADs. However, the GHAD Law contains two relevant provisions with respect to public contracting requirements. Public Resources Code section 26600 provides that “the board of directors may negotiate improvement contracts or may award such contracts by competitive bidding pursuant to procedures adopted by the board of directors.”<sup>1</sup> Further, Public Resource Code section 26601 provides that an “improvement caused to be undertaken pursuant to this division, and all activities in furtherance thereof or in connection therewith, shall be deemed specific actions necessary to prevent or mitigate an emergency within the meaning of paragraph 4 of subdivision (b) of Section 21080” [CEQA].

The provision of GHAD Law providing that a GHAD board may negotiate contracts or may award such contracts by competitive bidding pursuant to procedures adopted by the board

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<sup>1</sup> Public bidding requirements were enacted in the 1940’s. The Legislature was aware of these requirements when it enacted the GHAD law. Section 26600 is allowing GHADs an option to follow public bidding requirements, but it does not require adherence.

appears to allow a GHAD to negotiate contracts or determine their own bidding procedures without compliance with the Public Contract Code. The general provisions of the Public Contract Code would most likely not apply to GHADs because the law dealing with GHADs contains more specific contracting procedures in Section 26600. *See Las Tunas Beach GHAD v. City of Malibu*, 38 Cal. App 4<sup>th</sup> 1002, 1010 (1995) (determining that more specific provisions of the GHAD Law control over more general provisions in other statutory schemes).

Even if the Public Contract Code provisions were to apply, much of the work to be performed under contract for a GHAD could be excluded from the public bidding requirements due to the emergency nature of GHAD functions. GHAD Law provides that all improvements undertaken by the GHAD are deemed specific actions necessary to prevent or mitigate an emergency and “improvement” is broadly defined to include any activity that is necessary or incidental to the prevention, mitigation, abatement, or control of a geologic hazard, including without limitation construction, maintenance, repair or operation of any improvement. Thus, most actions performed by the GHAD would meet the statutory definition of an emergency. The Public Contract Code definition of emergency (set forth above) is very similar to the emergency definition under CEQA. Since both CEQA and the Public Contract Code exempt actions requiring immediate action to prevent or mitigate all “improvement” work, as defined in GHAD Law, performance of GHAD functions to construct and maintain improvements could be considered “emergency” actions excepting such actions from both CEQA and certain public bidding requirements.

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