

CITY OF CHOWCHILLA CALIFORNIA



Item 4.1

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REPORT TO THE CITY COUNCIL

Meeting of: April 9, 2019

AGENDA SECTION: Public Hearing

SUBJECT: Introduction and Option to Waive the First Reading of an Ordinance of the City Council of the City of Chowchilla, in the County of Madera, California, Amending Chapter 4.04 of the Chowchilla Municipal Code for the Procurement of Public Projects, Architect-Engineer and Land Surveying Services

PREPARED BY: Jason Rogers, Director of Public Works

ATTACHMENTS: Chapter 4.04 Procurement of Public Projects, Architect-Engineer and Land Surveying Services, Proposed ordinance, UPCCAA Policies and Procedures Manual

REVIEWED BY ADMINISTRATOR

REVIEWED BY ATTORNEY

REVIEWED BY FINANCE

RECOMMENDATION:

Staff recommends the City Council introduce an ordinance to update the City of Chowchilla's ordinance related to Procurement of Public Projects, Architect-Engineer and Land Surveying Services in order to be consistent with the California Uniform Public Construction Cost Accounting Act.

BACKGROUND:

The Uniform Public Construction Cost Accounting Act (UPCCAA), enacted in 1983 under Public Contract Code section 22000 et seq., provides public agencies with an optional, alternative and less-burdensome bidding procedure for public works projects that are valued at a certain amount. Assembly Bill 2249 (AB 2249) increased these amounts so that more public works contracts can be awarded using these relaxed bidding procedures.

On January 22, 2019, the City Council recently updated the City's Procurement Policy to comply with the Office of Management and Budget (OMB) newly issued Uniform Guidance Procurement rules that govern the use of Federal monies. Additionally, general cleanup to the policy and increased purchasing levels were increased in accordance with the Uniform Public Construction Cost Accounting Act.

REASON FOR RECOMMENDATION:

The City of Chowchilla elected to become subject to the UPCCAA in December 2000 and amended the Municipal Ordinance to be in accordance with the act. Staff reviewed City of Chowchilla Ordinance related to the Procurement of Public Projects, Architect-Engineer and Land Surveying Services (Chapter 4.04) to determine if our ordinance automatically incorporated changes to the UPCCAA. While the ordinance makes reference to the UPCCAA, it also set limits that are not in concurrence with the UPCCAA updated limits.

The Act requires that agencies comply with certain notice, bidding and accounting procedures set forth in the UPCCAA Policies and Procedures Manual. These procedures are designed to allow more flexibility for agencies dealing with public works projects in a timely manner. The procedures enable staff to more promptly handle small projects by eliminating the requirement to solicit formal bids, dispense with time-consuming and expensive bidding procedures, and for larger projects, these procedures allow agencies to utilize informal bidding procedures to more quickly solicit competitive bids while still streamlining the process.

However, while the City is a participating agency and subject to the UPCCAA, the City's Municipal Ordinance has not been updated to reflect the increased thresholds enacted by the recent changes to the Act and are significantly below the threshold limits of the UPCCAA.

As of January 1, 2019, for entities subject to UPCCAA, public projects valued at \$60,000 or less may be performed by the local agency or by negotiated contract and public projects valued at \$200,000 or less can be contracted using informal procedures. Only public projects valued at over \$200,000 will require formal bidding procedures under AB 2249.

Any local agency can voluntarily elect to become a participating agency of the Act. Participating agencies benefit from the raised force account limit and the informal bidding procedures. More projects are completed in a timely manner as a result of the streamlined awards process and the reduction in paperwork related to advertising and report filing.

FISCAL IMPACT:

There is no fiscal impact by amending the policy.

ALTERNATIVES:

Do not update the ordinance.

ACTIONS FOLLOWING APPROVAL:

A second reading of the updated ordinance and adoption.

CITY ORDINANCE # -19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, IN THE COUNTY OF MADERA, CALIFORNIA AMENDING CHAPTER 4.04 OF THE CHOWCHILLA MUNICIPAL CODE FOR THE PROCUREMENT OF PUBLIC PROJECTS, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

WHEREAS, the City of Chowchilla adopted the procedures of the Uniform Public Construction Cost Accounting Act in December of 2000; and,

WHEREAS, the City of Chowchilla's Chapter 4.04 of the Municipal Ordinance has not been simultaneously updated over time as changes were made to the California Uniform Public Construction Cost Accounting Act; and,

WHEREAS, in order to be in accordance with the Uniform Public Construction Cost Accounting Act, the City's current Ordinance for the Procurement of Public Projects, Architect-Engineer and Land Surveying Services must be updated; and,

WHEREAS, the updated language increases the limits for which public works projects shall be procured; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHOWCHILLA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.05 of Title 5 of the Chowchilla Municipal Code is Hereby Amended to Read as Follows:

Article V. - Procurement of Public Projects, Architect-Engineer and Land Surveying Services

4.04.230 - Adoption of the Uniform Public Construction Cost Accounting procedures.

Except as otherwise provided, public projects shall be procured in accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000-22045), adopted and incorporated herein by this reference, three copies of which have been filed with the office of the city clerk.

(Ord. 414-00 § 1 (part), 2000)

4.04.240 - Responsibility for procurement of public projects.

The city administrator shall be responsible for the procurement of public projects and may delegate the responsibility to the appropriate department designee.

(Ord. 414-00 § 1 (part), 2000)

4.04.250 - Provisions applicable to all procurements of public projects.

A. Unlawful to Split or Separate Projects to Evade Competitive Bidding. It is 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.

- B. Qualified Contractors List. The city will maintain a list of qualified contractors, identified according to categories of work. The California Uniform Construction Cost Accounting Commission shall determine minimum criteria for development and maintenance of the contractors list.
- C. Construction Trade Journals. The California Uniform Construction Cost Accounting Commission will determine the appropriate construction trade journals that shall receive mailed notice of all informal and formal construction contracts being bid for work within Madera County.
- D. Award of Bid.
1. Awarding Authority. The city administrator shall have the authority to award contracts and to delegate authority to award contracts to the appropriate department designee.
 2. Award to Lowest Responsible Bidder. If a contract is awarded, it shall be awarded to the lowest responsible bidder.
 3. Award of Tie Bids. If two or more bids are the same and the lowest, the city may accept the one it chooses.
 4. No Bids. If no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with these procedures.
 5. All Bids Received are in Excess of ~~One Two~~ Hundred Thousand Dollars. If all bids received are in excess of one two hundred thousand dollars, the city council may by passage of a resolution by a four-fifths majority vote, award the contract, at one two hundred and ten thousand dollars or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.
- E. Rejection of Bids.
1. Options. In its discretion, the city may reject any bids presented. If after the first invitation of bids all are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:
 - a. Abandon the Project. Abandoning the project or re-advertising for bids in the manner described in these procedures.
 - b. Perform Project by Force Account. By passage of a resolution by a four-fifths majority vote of its governing body declaring that the project can be performed more economically by the employees of the city, may have the project done by force account without further complying with these procedures.
- F. Emergency Procedures.
1. Authority to Proceed at Once. 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.
 2. Work May be Done by Day Labor. The work may be done by day labor under the direction of the city, by contractor, or by a combination of the two.
 3. Compliance with Public Contract Code Section 22050. In case of an emergency, if notice for bids to let contracts will not be given, the city shall comply with Public Contract Code Chapter 2.5 (commencing with Section 22050).

(Ord. 414-00 § 1 (part), 2000)

4.04.260 - Competitive sealed bids for projects exceeding ~~one~~ two hundred thousand dollars.

- A. Conditions for Use. All contracts of the city for public projects exceeding ~~one~~ two hundred thousand dollars shall be let to contract by compliance with the competitive sealed bidding procedures set forth in this section, in accordance with Public Contract Code Sections 22000-22045, except as otherwise provided in Section 4.04.270 (Competitive sealed bids for projects of one hundred thousand dollars or less) and 4.04.280 (Competitive bid not required for projects of twenty-five thousand dollars or less).
- B. Adoption of Plans, Specifications, and Working Details. After review and presentation by staff, the city council shall adopt plans, specifications, and working details for all public projects exceeding ~~one~~ two hundred thousand dollars.
- C. Examination of Plans and Specifications. Any person may examine plans, specifications and working details that are adopted by the city council for any project.
- D. Notice Inviting Formal Bids. A notice inviting formal bids, or notice to contractors, shall be issued and shall:
 - 1. State the time and place for receiving and opening of sealed bids; and
 - 2. Distinctly describe the project.
- E. Mail Notice Inviting Formal Bids. The city administrator, or designee, shall mail a notice inviting formal bids to each contractor on the contractor's list and all construction trade journals, as follows:
 - 1. Mail to all Construction Trade Journals. A notice inviting bids shall be mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission.
 - 2. Mail at Least Thirty Calendar Days Before Bids are Due. The notice inviting bids shall be mailed to contractors and construction trade journals not less than thirty calendar days before bids are due.
 - 3. Notify Additional Parties. Additional parties may be notified at the city's discretion.
- F. Publish Notice Inviting Formal Bids. The notice inviting formal bids shall be published at least fourteen calendar days before bids are due:
 - 1. Publish in all Construction Trade Journals. The notice shall be published in all construction trade journals that are specified by the California Uniform Construction Cost Accounting Commission; and
 - 2. Publish in a Newspaper Within the Jurisdiction. The notice shall be published in a newspaper of general circulation, printed and published in the jurisdiction of the city; or
 - 3. Publish in a Newspaper of General Circulation. If no newspaper is printed and published within the jurisdiction of the city, the notice shall be published in a newspaper or general circulation which is circulated within the jurisdiction of the city; or
 - 4. Post in at Least Three Locations. If there is no newspaper that is circulated within the jurisdiction of the city, publication shall be made by posting the notice in at least three places within the jurisdiction of the city as have been designated by ordinance or regulation of the city as places for the posting of the notices.
 - 5. Other Notice. The city may give such other notice, as it deems proper.

6. City Council Window Posting. The notice shall be posted in the city council chambers window or in a place the city council deems appropriate for posting for all construction bid notices.
- G. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(Ord. 414-00 § 1 (part), 2000)

4.04.270 - Competitive sealed bids for projects of ~~one two~~ hundred thousand dollars or less.

- A. Conditions for Use. All contracts of the city for public projects of ~~one two~~ hundred thousand dollars or less may be let to contract by informal procedures set forth in this section, in accordance with Public Contract Code Sections 22000-22045.
- B. Notice Inviting Informal Bids. A notice inviting informal bids, or notice to contractors, shall be issued and shall:
 1. State the time and place for the submission of bids; and
 2. Describe the project in general terms and how to obtain more detailed information about the project.
- C. Mail Notice Inviting Informal Bids. The city administrator, or designee, shall mail a notice inviting informal bids to:
 1. Mail to Each Contractor on List. Each appropriate contractor included on the contractor's list developed in accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000-22045) and maintained by the city; or
 2. Mail to Each Contractor on the List and all Construction Trade Journals. Each appropriate contractor included on the contractor's list and all construction trade journals specified by the California Uniform Construction Cost Accounting Commission. It shall be the sole discretion of the public works director whether to mail the notice only to contractors, only to construction trade journals or to contractors and construction trade journals.
 3. Mail to Additional Parties. Additional parties may be notified at the city's discretion.
 4. Mail Notice at Least Ten Calendar Days Before Bids are Due. The notice inviting informal bids shall be mailed to contractors or construction trade journals, or both, not less than ten calendar days before bids are due.

(Ord. 414-00 § 1 (part), 2000)

4.04.280 - Competitive bids not required for projects of ~~twenty-five sixty~~ thousand dollars or less.

The city may award contracts for public projects of ~~twenty-five sixty~~ thousand dollars or less without competitive bidding. If the city elects to procure public projects of ~~twenty-five~~ sixty thousand dollars or less by competitive bidding, it is recommended that the procedure for soliciting informal public projects be used.

(Ord. 414-00 § 1 (part), 2000)

4.04.290 - Bid security.

- A. Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction projects when the price is estimated to exceed ~~one~~ two hundred thousand dollars. Bid security shall be a bond provided by a surety company authorized to do business in the state of California, or the equivalent in cash, or otherwise, supplied in a form satisfactory to the city. Nothing in this section shall prevent the requirement of such bonds on construction contracts under ~~one~~ two hundred thousand dollars when the circumstances warrant.
- B. Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent of the amount of the bid, unless otherwise specified by the city council.
- C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonmaterial manner with the security requirements.
- D. Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in subsection H (Correction or Withdrawal of Bids—Cancellation of Awards) of Section 4.04.070 (Competitive sealed bidding), no action shall be had against the bidder or the bid security.

(Ord. 414-00 § 1 (part), 2000)

4.04.300 - Performance bond and payment bonds.

A. Performance Bond.

- 1. Requirement and Amount of Performance Bond. When a public works contract is awarded in excess of ~~one~~ two hundred thousand dollars the original contractor shall submit a performance bond satisfactory to the city, executed by a surety company authorized to do business in the state, and approved by the city administrator, or designee, or otherwise secured in a manner satisfactory to the city, in an amount equal to one hundred percent of the price specified in the contract. The bond shall be delivered to the city and shall become binding on the parties upon execution of the contract.
- 2. Reduction of Amount of Performance Bond. After notice to the city council, the city administrator may reduce the amount of the performance bond to fifty percent of the contract price when a written determination is made that it is in the best interests of the city to do so.

B. Payment Bond.

- 1. Requirement and Amount of Payment Bond. When a public works contract is awarded in excess of ~~twenty-five~~ sixty thousand dollars, the original contractor shall submit a payment bond satisfactory to the city, executed by a surety company authorized to do business in the state, and approved by the city administrator, or designee, or otherwise secured in a manner satisfactory to the city, in an amount equal to one hundred percent of the price specified in the contract.
- 2. Reduction of Amount of Payment Bond. Unless otherwise authorized by law, after notice to the city council, the city administrator may reduce the amount of the payment bond to fifty percent of the contract price when a written determination is made that it is in the best interests of the city to do so.

- C. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the city to require other security in addition to those bonds, or in circumstances other than specified in this section.

(Ord. 414-00 § 1 (part), 2000)

4.04.310 - Public announcement, selection, and negotiation.

- A. Public Announcement. It is the policy of the city to announce publicly all requirements in excess of ~~twenty-five~~ **sixty** thousand dollars for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the city administrator, or designated staff, shall request firms to submit statements of qualifications and performance data.
- B. Selection. A selection committee composed of three members, including the public works director, and the head of the using department in need of the architect-engineer or land surveying services shall conduct discussions with no less than three firms regarding the proposed contract and the relative utility of alternate methods of approach for furnishing the required services and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.
- C. Negotiation. The designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the public works director determines in writing to be fair and reasonable to the city. In making this decision, the city administrator, or designee, shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered.

(Ord. 414-00 § 1 (part), 2000)

PROVED, PASSED, and ADOPTED this _____ day of _____, 2019.

APPROVED:

Mayor John Chavez

ATTEST:

Joann McClendon, CMC
City Clerk

I, Joann McClendon, City Clerk of the City of Chowchilla, California, do hereby certify that the foregoing Ordinance number 495-19 was duly introduced for the first reading on April 9, 2019 and adopted at a regular meeting of the City Council of the City of Chowchilla on _____, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I hereunto set my hand and affix the official seal of the City of Chowchilla on this _____ day of _____, 2019.

Joann McClendon, CMC
City Clerk

Article V. - Procurement of Public Projects, Architect-Engineer and Land Surveying Services

4.04.230 - Adoption of the Uniform Public Construction Cost Accounting procedures.

Except as otherwise provided, public projects shall be procured in accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000-22045), adopted and incorporated herein by this reference, three copies of which have been filed with the office of the city clerk.

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 - 4. No Bids. If no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with these procedures.
 - 5. All Bids Received are in Excess of ~~One~~ **Two** Hundred Thousand Dollars. If all bids received are in excess of one two hundred thousand dollars, the city council may by passage of a resolution by a ~~four-fifths~~ **majority** vote, award the contract, at ~~one two~~ **two** hundred and ten thousand dollars or less, to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.
- E. Rejection of Bids.
 - 1. Options. In its discretion, the city may reject any bids presented. If after the first invitation of bids all are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:

- a. Abandon the Project. Abandoning the project or re-advertising for bids in the manner described in these procedures.
- b. Perform Project by Force Account. By passage of a resolution by a ~~four-fifths~~ majority vote of its governing body declaring that the project can be performed more economically by the employees of the city, may have the project done by force account without further complying with these procedures.

F. Emergency Procedures.

1. Authority to Proceed at Once. 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.
2. Work May be Done by Day Labor. The work may be done by day labor under the direction of the city, by contractor, or by a combination of the two.
3. Compliance with Public Contract Code Section 22050. In case of an emergency, if notice for bids to let contracts will not be given, the city shall comply with Public Contract Code Chapter 2.5 (commencing with Section 22050).

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 2. Publish in a Newspaper Within the Jurisdiction. The notice shall be published in a newspaper of general circulation, printed and published in the jurisdiction of the city; or
 3. Publish in a Newspaper of General Circulation. If no newspaper is printed and published within the jurisdiction of the city, the notice shall be published in a newspaper or general circulation which is circulated within the jurisdiction of the city; or
 4. Post in at Least Three Locations. If there is no newspaper that is circulated within the jurisdiction of the city, publication shall be made by posting the notice in at least three places within the jurisdiction of the city as have been designated by ordinance or regulation of the city as places for the posting of the notices.
 5. Other Notice. The city may give such other notice, as it deems proper.
 6. City Council Window Posting. The notice shall be posted in the city council chambers window or in a place the city council deems appropriate for posting for all construction bid notices.
- G. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

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 1. Mail to Each Contractor on List. Each appropriate contractor included on the contractor's list developed in accordance with the Uniform Public Construction Cost Accounting Act (Public Contract Code Sections 22000-22045) and maintained by the city; or
 2. Mail to Each Contractor on the List and all Construction Trade Journals. Each appropriate contractor included on the contractor's list and all construction trade journals specified by the California Uniform Construction Cost Accounting Commission. It shall be the sole discretion of the public works director whether to mail the notice only to contractors, only to construction trade journals or to contractors and construction trade journals.
 3. Mail to Additional Parties. Additional parties may be notified at the city's discretion.
 4. Mail Notice at Least Ten Calendar Days Before Bids are Due. The notice inviting informal bids shall be mailed to contractors or construction trade journals, or both, not less than ten calendar days before bids are due.

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The city may award contracts for public projects of ~~twenty-five~~ ~~sixty~~ thousand dollars or less without competitive bidding. If the city elects to procure public projects of ~~twenty-five~~ ~~sixty~~ thousand dollars or less by competitive bidding, it is recommended that the procedure for soliciting informal public projects be used.

(Ord. 414-00 § 1 (part), 2000)

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- B. Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent of the amount of the bid, unless otherwise specified by the city council.
- C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonmaterial manner with the security requirements.
- D. Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in subsection H (Correction or Withdrawal of Bids—Cancellation of Awards) of Section 4.04.070 (Competitive sealed bidding), no action shall be had against the bidder or the bid security.

(Ord. 414-00 § 1 (part), 2000)

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A. Performance Bond.

- 1. Requirement and Amount of Performance Bond. When a public works contract is awarded in excess of ~~one two~~ hundred thousand dollars the original contractor shall submit a performance bond satisfactory to the city, executed by a surety company authorized to do business in the state, and approved by the city administrator, or designee, or otherwise secured in a manner satisfactory to the city, in an amount equal to one hundred percent of the price specified in the contract. The bond shall be delivered to the city and shall become binding on the parties upon execution of the contract.
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of the contract price when a written determination is made that it is in the best interests of the city to do so.

- C. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the city to require other security in addition to those bonds, or in circumstances other than specified in this section.

(Ord. 414-00 § 1 (part), 2000)

4.04.310 - Public announcement, selection, and negotiation.

- A. Public Announcement. It is the policy of the city to announce publicly all requirements in excess of ~~twenty-five~~ sixty thousand dollars for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the city administrator, or designated staff, shall request firms to submit statements of qualifications and performance data.
- B. Selection. A selection committee composed of three members, including the public works director, and the head of the using department in need of the architect-engineer or land surveying services shall conduct discussions with no less than three firms regarding the proposed contract and the relative utility of alternate methods of approach for furnishing the required services and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.
- C. Negotiation. The designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the public works director determines in writing to be fair and reasonable to the city. In making this decision, the city administrator, or designee, shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered.

(Ord. 414-00 § 1 (part), 2000)