

2009 International Fire Code®

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Information on referenced publications can be found in Chapter 17.

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2

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June 6, 2001

Stanley T. Nishimura
Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833-2936

RE: Contracting For Publication of State Building Standards Code

Dear Mr. Nishimura :

You have requested advice on the following question:

Is the California Building Standards Commission required to seek competitive bids for any part of the California Building Standards Code or may the Commission arrange for publication of the Code on a sole-source basis?

CONCLUSION

If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code on a sole-source basis.

ANALYSIS

The *California Building Standards Code* (the *Code*) is published as Title 24 of the California Code of Regulations and is comprised of twelve parts.¹ The Building Standards Law requires the Commission to publish or cause to be published a new edition of the *Code* every three years.²

The Commission has adopted three types of building standards: (1) standards directly adopted without change from model codes (un-amended model codes); (2) standards adopting model codes but amending them where necessary to meet California conditions (amended model codes); and, (3) standards written and adopted by California agencies to address particular California concerns that are not addressed in any model code.

The Building Standards law allows the Commission to either incorporate adopted Model Codes by reference or publish them in their entirety, but provides:

“ . . . no textual material contained in any of the model codes, as enumerated in Section 18916, shall be included in the California Building Standards Code by means other than incorporation by reference, unless the commission and the governing body of the organization that publishes the model codes first reach a written agreement concerning

the terms and conditions of the publication, including, but not limited to, whether the publication will be by the commission or the model codes organization or both.”

Health and Safety Code section 18928.1

We are informed that prior to 1989, the State Printer of California published the California Building Standards Code but that the State Printer does not have the resources to publish the *Code*. Furthermore, recent editions of the *Code* have incorporated the text of the

¹ The parts of the *California Building Standards Code* are:

- Part 1 -- Building Standards Administrative Code
- Part 2 -- Building Code (based upon the *Uniform Building Code* of the International Conference of Building Officials)
- Part 3 -- Electrical Code (based upon the *National Electrical Code* of the National Fire
- Part 4 -- Mechanical Code (based upon the *Uniform Mechanical Code* of the International Conference of Building Officials)
- Part 5 -- Plumbing Code (based upon the *Uniform Plumbing Code* of the International Association of Plumbing and Mechanical Officials)
- Part 6 -- Energy Code
- Part 7 -- Elevator Safety and Construction Code
- Part 8 -- Historical Code
- Part 9 -- Fire Code (based upon the *Uniform Fire Code* of Western Fire Chiefs Association)
- Part 10 -- Building Conservation Code (based upon the *Uniform Code for Building Conservations* of the International Conference of Building Officials)
- Part 11 -- NOT USED
- Part 12 -- Reference Standards Code

²See Health and Safety Code section 18942.

Stanley T. Nishimura
June 6, 2001
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model codes and have been published by the organizations that publish the model code without competitive bidding. The Commission is now preparing to publish the next edition of the *Code*.

The Commission had both the authority and discretion to incorporate the text of the model codes into the *Code*. It is certainly more efficient and useful to include the text of model codes in the official California *Code*. Having the complete text in the *Code* saves users time and money and avoids the delay of cross-referencing.

The contract for publication of the *Code* is a services contract and would ordinarily be subject to the competitive bidding requirements of the Public Contract Code for services contracts. (Pub. Contract Code §§ 1010335 et seq.). However, state agencies may contract for services without competitive bidding provided they comply with the criteria of the Department of General Services for the award of contracts on a non-competitive basis. (Pub. Contract Code §§ 10348, 10339).

The contract for the publication of the *Code* is unique because the Model Code agencies own the copyright to the text of the model codes and the Legislature has directed the Commission to negotiate for the publication of the code. (Health & Saf. Code §18928.1). Because the Commission must negotiate with the authors of the model codes before it can publish the text of the model codes, it is likely that it is more cost effective to award the contract to publish the *Code* on a sole-source basis because it is doubtful a publisher who did not own the copyright to the model codes could print the *Code* for less than the copyright holders.

However, as a state agency, the Commission is subject to the requirements of Executive Order W-103-94 which requires the agency secretary's approval of sole-source contracts and compliance with Department of General Service guidelines³ for sole-source contracts. There are several parts of the *Code* that are not model codes and for which no outside entity owns the copyright. We cannot determine whether these should be published on a competitive basis or on a sole-source basis. It may be that it is more cost-effective and there would be more uniformity if these parts were published by one of the model code publishers. This is something Commission staff should discuss with the Department of General Services and the Agency Secretary.

Another aspect of the Department of General Services approval are the statutory requirements⁴ involving civil service considerations, we recommend you also confirm that the State Printer cannot publish the *Code*.

³ The guidelines are found in DGS Management Memo 96-16 (formerly 94-16) and Section 5.70 of the State Contracting Manual.

⁴ See Public Contract Code section 10337, Government Code section 19130.

Stanley T. Nishimura
June 6, 2001
Page 4

Sincerely,

RAMON DE LA GUARDIA
Deputy Attorney General

For BILL LOCKYER
Attorney General

#3

Davis, Stephanie

From: Boron-Irwin, Teresa
Sent: Monday, August 02, 2010 4:44 PM
To: Davis, Stephanie
Subject: ncb's

Just reviewed them all, they are good to go forward. Thanks. I know Tom will be missed, but I am so happy for him. t

Teresa Boron-Irwin

Senior Staff Counsel

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Benny, Katrina

From: Walls, Dave
Sent: Tuesday, November 02, 2010 3:20 PM
To: Benny, Katrina; McGowan, Jim; Davis, Stephanie
Subject: contract value
Attachments: contract value.doc

FYI, this is what I provided to Debra Kearns, DGS legal council, during the last issue relating to publication of our codes

In an effort to determine a value of the contract, the California Building Standards Commission (CBSC) has evaluated several areas of cost considerations, as follows:

- CBSC considered direct cost from the publisher. In the publication of the edition of the codes at issue, the publisher, International Code Council (ICC), has stated that it will not charge CBSC to publish the contracted Parts of the California Building Standards Code. This is consistent with previous publication contracts negotiated with ICC (formerly ICBO). CBSC determined there is no cost to the state.
- CBSC contacted the Department of Housing and Community Development (HCD) regarding the cost of recently published Title 25 regulations. HCD's cost for 300 copies of a two-volume publication was \$28,500.00. In comparison to CBSC's publication, the HCD publication only publishes HCD regulations within the document. CBSC, on the other hand, publishes Title 24 regulations together with copyrighted model codes. While this information is helpful, there is no direct information that establishes a cost value to the contract.
- CBSC considered the purchase price of the current model building code verses the purchase price of the current California Building Code (CBC). While the difference is approximately \$38.00, it is difficult to determine if the difference in price is cost recovery or profit. An impact on this cost comparison of the codes is the yet to be determined purchase price of the 2007 CBC. Another caveat in this comparison is that the current CBC is based on the 1997 model building code, which is no longer in publication.

A profit margin on each book was not available.

The publication organization will not charge the State of California for the publication services nor will the State receive royalties from sales. The actual cash value of the contract to the State of California is nil and a perceived value is indeterminate, but an estimated value probably would be in excess of \$5,000.