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DEPARTMENT
OF UTILITIES

ENGINEERING
SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

1395 35th AVENUE
SACRAMENTO, CA
95822-2911

PH 916-264-1400
FAX 916-264-1497/1498

September 24, 2002

Law & Legislative Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: REPORT BACK - ISSUES RELATED TO STANDARD MINIMUM
QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID PUBLIC
PROJECTS AND MODIFICATIONS TO THE MINIMUM QUALIFICATIONS
QUESTIONNAIRE**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the Law & Legislation Committee approve and forward to the City Council the attached resolution to authorize modifications to the Minimum Qualifications Questionnaire established under an amendment to Section 3.60.020 of the City Code.

CONTACT PERSONS: Gary A. Reents, Engineering Services Manager, 264-1433
Candace McGahan, Supervising Engineer, 264-1416
Fran Halbakken, Project Delivery Manager, 264-7194

FOR COMMITTEE MEETING OF: October 15, 2002



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

Making a Difference in Your Neighborhood

SUMMARY

This report addresses issues raised by Councilmembers regarding the Standard Minimum Qualifications for bidders on public works construction projects, adopted by the City Council on May 14, 2002, and recommends modifications to the Minimum Qualifications Questionnaire.

BACKGROUND INFORMATION

On May 14, 2002, the City Council adopted an amendment to City Code Section 3.60.020, in response to concerns of City Council regarding the qualifications of contractors bidding on public works projects and the quality of their work. The amendment authorized the concurrent adoption, by resolution, of Standard Minimum Qualifications for contractors that are determined by a bidder's answers to a short questionnaire accompanying each sealed proposal for competitively bid projects. Councilmembers identified several issues regarding the questionnaire that they asked staff to report back to the Law & Legislative Committee, including:

- Minimum qualifications vs. pre-qualification.

The Standard Minimum Qualifications will be applied to all competitively bid public projects. These qualifications pertain to past performance of the contractor and are determined through a questionnaire submitted at the time of bid. In addition to this requirement, large and/or complex City projects also have used, and will continue to use, a pre-qualification process in which a contractor must demonstrate its ability to perform specialized construction. Past projects that have utilized a pre-qualification procedure include the Sump 2 Improvement Project, expansion of the City's two water treatment plants, construction of the Sacramento River intake structure, and various City buildings. The contractor must complete an extensive pre-qualification package tailored to the specific project and must be approved (prequalified) to perform the work prior to being allowed to bid on the project.

- Comparison of Minimum Qualifications Questionnaire to the State's Department of Industrial Relations Model Questionnaire.

After authorizing legislation was enacted with the adoption of Public Contract Code Section 20101 in 1999, the State Department of Industrial Relations (DIR) adopted a model prequalification questionnaire establishing procedures for public entities to prequalify and rate prospective bidders for public works construction projects.

Unlike some public entities, prior to the adoption of Public Contract Code Section 20101, the City of Sacramento, as a charter city, already possessed the authority to prequalify bidders on a public works construction project. The City has successfully utilized this procedure to prequalify bidders on numerous specialized projects, as noted above, and City staff intends to continue using this procedure, where appropriate, to assure that contractors performing City projects possess the necessary qualifications and experience.

The "minimum qualifications" approach enacted by the City Council on May 14, 2002, is not intended to replace this procedure, or perform a function analogous to the DIR's prequalification procedures. Rather than prequalifying and rating the ability of bidders to perform one or more public works construction contracts, the standard minimum qualifications adopted by the City Council are intended simply to establish minimum qualifications that all bidders must meet on all of the City's public works construction projects, in order to be considered a responsible bidder. As the title implies, the purpose of this requirement is to screen out bidders that do not possess a minimum level of qualifications deemed necessary to satisfactorily perform any project.

In spite of these differences, City staff used the DIR's Model Questionnaire as the starting point in developing the City's Minimum Qualifications Questionnaire. The goal in developing the questionnaire was to have a document that:

- ▶ Applied a minimum standard for all contractors, based on their past performance of public works construction contracts.
- ▶ Was objective and required no interpretation or subjective evaluation of answers.
- ▶ Did not extend project schedules.
- ▶ Did not appreciably increase project costs.
- ▶ Did not significantly complicate the bidding process for the contractor.

- Other Agencies' Programs.

As noted above, the DIR Model Questionnaire provides for a relatively elaborate prequalification process. Regional Transit uses the DIR's model with minor modifications. Other contractor qualification programs looked at by staff included those used by East Bay Municipal Utilities District, the City of Woodland, the Sacramento Housing and Redevelopment Agency, the City of West Sacramento, Fairfield Suisun Sewer District, Yolo County, the Sacramento County Water Agency, Placer County Water Agency and American Institute of Architects Document A305 - Contractor's Qualification Statement. These programs range from simple qualification statements based on past projects and reference lists to

adaptations of the DIR's model. As stated above, the City's minimum qualifications approach is not intended to perform the same function as the DIR's prequalification process.

- Outreach

Prior to the City Council's action on May 14, City staff met with the Association of General Contractors (AGC) that represents union contractors. The AGC had a lot of input into the DIR's pre-qualification model and, although it supports use of that document, understood the City's need to have a short, concise minimum qualifications questionnaire. Many of the AGC comments were incorporated in the Minimum Qualifications Questionnaire adopted by the City Council on May 14. The Associated Builders and Contractors (ABC), representing non-union contractors, also reviewed the document and wrote to say that "the questions protect the public interest without inadvertently disqualifying any responsive and capable bidders."

Since the City Council's May 14 action, staff met with the Sacramento-Sierra Building and Construction Trades Council (Trades Council) representing union construction workers. The Trades Council had suggestions for the City's questionnaire, particularly adding a requirement that the contractor use apprentices, and adding a question addressing prevailing wage violations. To accommodate their concerns, questions 12 and 13 were added to address contractor compliance with California public works apprenticeship requirements and prevailing wage requirements. Additionally, minor modifications were made to question 6 to reflect the number of times a contractor has been assessed liquidated damages rather than the amount of days assessed.

A copy of the modified Minimum Qualifications Questionnaire has been sent to the AGC, ABC, the Trades Council and the Sacramento Black Chamber of Commerce.

FINANCIAL CONSIDERATIONS

No significant financial impacts resulted from the amendment to Section 3.60.020 adopted by the City Council on May 14, 2002.

POLICY CONSIDERATIONS

Requiring contractors competitively bidding on and performing the City's construction contracts to meet a standard minimum qualification level will help ensure the highest quality construction projects for the lowest cost by reducing the potential for cost overruns, delays and other adverse consequences of work by unqualified contractors.

ENVIRONMENTAL CONSIDERATIONS

Adoption of the modified Minimum Qualifications Questionnaire constitutes general policy and procedure making that is not a project for which environmental review was required, pursuant to Section 15378 (b)(2) of the CEQA Guidelines.


ESBD CONSIDERATIONS

Not applicable. There are no goods or services being purchased as a direct result of this report.

Respectfully submitted,



Jim Sequeira
Director of Utilities



Mike Kashiwagi
Director of Public Works

RECOMMENDATION APPROVED:



Ken Nishimoto
Deputy City Manager

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION REVISING THE STANDARD MINIMUM QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID CONTRACTS FOR PUBLIC PROJECTS

WHEREAS, Section 3.60.020 of the Sacramento City Code authorizes the City Council, by resolution, to adopt standard minimum qualifications for bidders on competitively bid contracts for public projects; and

WHEREAS, on May 14, 2002, the Sacramento City Council adopted Resolution No. 2002-280 establishing such standard minimum qualifications; and

WHEREAS, this resolution revises the standard minimum qualifications adopted by Resolution No. 2002-280.

NOW, THEREFORE, BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

1. The standard minimum qualifications for bidders on competitively bid contracts for public projects that are set forth in the Minimum Qualifications Questionnaire attached hereto as Exhibit A are hereby adopted. The Minimum Qualifications Questionnaire attached hereto as Exhibit A shall supercede and replace the Minimum Qualifications Questionnaire that was attached as Exhibit A to Resolution No. 2002-280.
2. Bidders on competitively bid contracts for public projects shall demonstrate compliance with the standard minimum qualifications by completing all of the questions contained in the attached Minimum Qualifications Questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed Questionnaire, or submits false information, this will result in a determination that the standard minimum qualifications are not met, and the bidder shall not be considered a responsible bidder, pursuant to Sacramento City Code Section 3.60.020. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet the standard minimum qualifications for the Joint Venture to be considered a responsible bidder.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

3. Should any part of the attached Minimum Qualifications Questionnaire be declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Questionnaire shall remain in full force and effect.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

EXHIBIT A
MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening to be considered responsible. On May 14, 2002, the City Council adopted Resolution No. 2002-280, establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. _____ by completing all of the questions contained in this questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a responsible bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a responsible bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for the purposes of verification, investigation, and ; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

QUESTIONNAIRE

NOTICE: All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years.

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. **Classification & Expiration Date(s) of California Contractor's License Number(s)** held by firm:

2. Has your firm's contractor's license been revoked at any time in the last five years?
☐ Yes ☐ No
3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?
☐ Yes ☐ No
4. At the time of submitting this minimum qualifications questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?
☐ Yes ☐ No
5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?
☐ Yes ☐ No

6. Answer either subsection A or B, as applicable:

- A. Your firm has completed three or more construction contracts for the City within the last five years: Within those five years, has the City assessed your firm liquidated damages on three or more contracts for failure to complete contract work on time?

NOTE: If there is a pending court action challenging the City's assessment of liquidated damages on a City contract within the last five years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

- B. Your firm has not completed at least three construction contracts for the City within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

NOTE: If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

NOTE: If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.

☐ Yes ☐ No

8. Has CAL OSHA or federal OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation at any time within the last three years?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

9. In the last three years has your firm had a three year average incident rate for total lost workday cases exceeding 4.5?

NOTE: Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as: $(N/EH) \times 200,000$, where

N	=	number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)
EH	=	total hours worked by all employees during the calendar year
200,000	=	base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

☐ Yes ☐ No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

☐ Yes ☐ No

VERIFICATION AND SIGNATURE

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at _____, on _____.
(Location) (Date)

Signature: _____

Print name: _____

Title: _____

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.