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DEPARTMENT  
OF UTILITIES

ENGINEERING  
SERVICES DIVISION

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April 5, 2002

Law & Legislative Committee  
Sacramento, California

Honorable Members in Session:

**SUBJECT: ORDINANCE AMENDING SECTION 3.60.020 OF THE SACRAMENTO CITY CODE TO AUTHORIZE ADOPTION OF STANDARD MINIMUM QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID PUBLIC PROJECTS**

**LOCATION AND COUNCIL DISTRICT:** Citywide

**RECOMMENDATION**

This report recommends that the Law & Legislative Committee approve and forward to the City Council the attached ordinance amending Section 3.60.020 of the City Code to authorize the inclusion of standard minimum qualifications for bidders on competitively bid public projects

**CONTACT PERSONS:** Gary A. Reents, Engineering Services Manager, 264-1433  
Candace McGahan, Supervising Engineer, 264-1416

**FOR COMMITTEE MEETING OF:** April 16, 2002

**SUMMARY**

This report recommends that Section 3.60.020 of the City Code, relating to the determination of lowest responsible bidders on public projects, be revised to authorize the inclusion of standard minimum qualifications for bidders.



CITY OF SACRAMENTO  
DEPARTMENT  
OF UTILITIES

*Making a Difference in Your Neighborhood*

Law & Legislative Committee

Amendment to City Code, Section 3.60.020 - Determination of Lowest Responsible Bidder

April 5, 2002

## **BACKGROUND INFORMATION**

The proposed amendment to Section 3.60.020 is a response to the concerns of City Council regarding the qualifications of contractors bidding on public projects and the quality of their work. Staff identified two areas that could assist in reducing the problems associated with poor performance by the City's construction contractors:

- Adequate tools for contract enforcement
- Minimum qualifications for responsible bidders.

Regarding contract enforcement, a "Public Works Administrative Penalties Ordinance" has been brought before Council recently that will allow assessment of penalties for violations of elements in the construction contract.

This proposed amendment to City Code Section 3.60.020 addresses the issue of standard minimum qualifications for contractors. Standard minimum qualifications would be determined with a short questionnaire (see Exhibit A) that would be included with all sealed proposals. Affirmative answers to any of the eight questions would disqualify a contractor as a responsible bidder. The questions are designed to eliminate from competition contractors who have a history of poor performance, or health and safety penalties. The minimum qualifications process will add another screen to the City's contracting procedure but will not be a guarantee of performance. The questionnaire will apply to the prime contractor but not to the subcontractors.

Inclusion of the Standard Minimum Qualifications Questionnaire in the sealed proposals would not change any other procedures or requirements of the bidding process. Public projects requiring specialized construction capabilities would continue to use pre-qualification procedures as necessary.

The minimum qualifications process is anticipated to be a self-policing effort. Staff will randomly check the accuracy of answers to the questionnaire. If it becomes necessary to more closely monitor responses to the questionnaire, staff may need to request more resources or eliminate the program if resources are not available.

## **FINANCIAL CONSIDERATIONS**

There are no significant financial impacts as a result of the recommended amendments to Section 3.60.020.

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Amendment to City Code, Section 3.60.020 - Determination of Lowest Responsible  
Bidder  
April 5, 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.

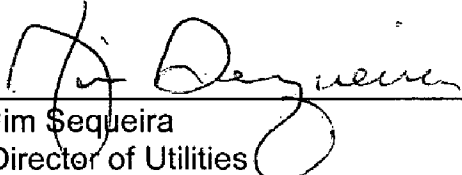
### **ENVIRONMENTAL CONSIDERATIONS**

Adoption of the recommended amendments to Section 3.60.020 constitutes "general policy and procedure making" that is not a project for which environmental review is 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 action.

Respectfully submitted,

  
\_\_\_\_\_  
Jim Sequeira  
Director of Utilities

Recommendation Approved:

  
\_\_\_\_\_  
Betty Masuoka  
Assistant Deputy City Manager

# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

## AN ORDINANCE AMENDING SECTION 3.60.020 OF THE SACRAMENTO CITY CODE TO AUTHORIZE ADOPTION OF STANDARD MINIMUM QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID PUBLIC PROJECTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

### SECTION 1.

The Sacramento City Council hereby finds and declares that:

1. Article XIV of the Sacramento City Charter provides, among other things, that competitively bid contracts for the construction of public projects shall be publicly advertised and awarded to the lowest responsible bidder.
2. This competitive bidding requirement serves the following important public policy objectives, as described by the California Supreme Court in *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161:
  - A. It stimulates advantageous marketplace competition for competitively bid contracts to construct public projects.
  - B. It guards against favoritism, improvidence, extravagance, fraud and corruption in the awarding of such contracts.
  - C. It prevents the waste of public funds and obtains the best economic result for the public in the performance of such contracts.
3. These public policy objectives are served by those provisions of Chapter 3.60 of the Sacramento City Code that implement the City Charter's competitive bidding requirement, including City Code section 3.60.020, that sets forth criteria for determining the lowest responsible bidder.
4. The public policy objectives promoted by competitive bidding would be further served by adopting standard minimum qualifications for all bidders

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on the City's competitively bid contracts to construct public projects. In particular, requiring bidders on such contracts to meet standard minimum qualifications would assist in:

- A. Promoting advantageous competition among bidders, by establishing minimum qualifications that would be applied in a uniform manner to all bidders;
  - B. Guarding against favoritism, improvidence, extravagance, fraud and corruption in the awarding of such contracts, by allowing all bidders meeting standard minimum qualifications to compete on an equal basis for contracts; and
  - C. Ensuring the construction of public projects of the highest quality for the lowest cost, preventing the waste of public funds and obtaining the best economic result for the public, by requiring that contractors performing the City's competitively bid construction contracts possess the minimum level of qualifications needed to satisfactorily perform the contracts. This, in turn, would reduce the likelihood of costs overruns, delay and numerous other adverse consequences of unsuitable performance attributable to a contractor's lack of the minimum qualifications needed to complete a public construction contract in a satisfactory manner.
5. In furtherance of these important objectives, City Code section 3.60.020, specifying the criteria used to determine the lowest responsible bidder for public projects that are required to be competitively bid, should be amended to include specific authorization for the adoption and use of standard minimum qualifications.

## **SECTION 2.**

Section 3.60.020 of the Sacramento City Code is hereby amended to read as follows:

### **3.60.020 Determination of lowest responsible bidder.**

Where any provision of the City Charter or this chapter requires competitive bidding and award of the contract for a public project to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

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- A. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality of a public project to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract; (iii) the ability of the bidder to perform the contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (v) the quality of the bidder's performance on previous contracts with the city.
- B. The City Council may by resolution, from time to time, adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If such standard minimum qualifications are included in the bid specifications for a contract, no bidder shall be considered "responsible" unless it is determined to be responsible in consideration of the factors set forth in subsection A, above, and also meets such standard minimum qualifications at the time of bid opening. The adoption and use of standard minimum qualifications shall not in any way limit or affect the City's ability to: (i) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive and/or responsible bidder; or (ii) establish different and/or additional qualification requirements for specific contracts.
- C. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of small and emerging business enterprises in the City's contracting for public projects. The lowest responsible bidder shall be the responsible bidder whose bid is responsive to the bid requirements, including without limitation any small and emerging business enterprise program requirements included in the bid specifications, and whose bid price is the lowest, after all bid prices are calculated to include any applicable bid price preferences.

DATE PASSED FOR PUBLICATION:  
DATE ENACTED:  
DATE EFFECTIVE:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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**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 \_\_\_\_\_, 2001, the City Council adopted Resolution No. \_\_\_\_\_, 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 to third parties for the purposes of verification, investigation, and in connection with any protest, challenge or appeal of any action taken by the City. 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. Has your firm's contractor's license been revoked at any time in the last five years?

☐ Yes ☐ No

2. 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 terminated by the project owner?

**NOTE: You need not include any terminations for convenience by the owner.**

☐ Yes ☐ No

3. 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 (Violations with intent to defraud; willful violations) or Labor Code section 1777.7 (Violations of § 1777.5 - Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions)?

☐ Yes ☐ No

4. 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



5. 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 a total of 15 days or more 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 government construction contracts a total of 15 days or more?

**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

6. 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

7. 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
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

8. Has the federal EPA, Region IX or California Air Quality Management District or Regional Water Quality Control Board assessed penalties against either your firm, or the owner of a project on which your firm was the contractor, three or more times in the past 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

### 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.