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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

July 3, 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**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report is for information only.

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

FOR COMMITTEE MEETING OF: July 18, 2002

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.



CITY OF SACRAMENTO
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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 adoption, by resolution, of Standard Minimum Qualifications for contractors that are to be determined by the answers to a short questionnaire accompanying each sealed proposal for competitively bid projects. Councilmembers identified several areas of concern regarding the questionnaire that they asked staff to report back to the Law & Legislative Committee as follows:

- 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.
- ▶ 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.

To achieve these goals changes were made to the State's model. Changes to questions fell into the following categories:

- ▶ Reformatted to pass/fail configuration. A "yes" answer eliminates a contractor as a responsible bidder. The State allows for explanation of "yes" answers that then have a prequalification scoring system applied.
- ▶ Eliminated as being addressed elsewhere in the City's existing bid documents, such as questions pertaining to adequate insurance, workers compensation and bonding capacity. Contractors awarded a City contract are required to comply with the City's insurance and bonding requirements.
- ▶ Eliminated as inappropriate to the above goals, such as, requirements for submitting reviewed and audited financial statements. This requirement would create unnecessary hardship for contractors working on the standard City project and would involve

considerable staff review. These types of requirements, however, may be included as part of a pre-qualification package on specialized projects.

- ▶ Eliminated as addressing issues not of concern on City projects.
- ▶ Re-worded to be more specific to City interests, such as specifying penalties from the specific agencies with jurisdiction over City projects, such as the Central Valley Regional Water Quality Control Board and the EPA, Region IX.

- 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. Regional Transit's projects, characteristically, are of a unique nature and very large in scope, construction time, and costs. 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 AIA Document A305 - Contractor's Qualification Statement, which is a model approved for use by the American Institute of Architects and Association of General Contractors. 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 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, 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 Council's May 14 action, staff met with the Sacramento-Sierra Building and Construction Trades Council representing union construction workers. The Trades Council had several suggestions it wished to see incorporated in the City's questionnaire, particularly a requirement that the contractor use apprentices. This goes beyond the provisions of State law, which authorize and regulate, but do not require the use of apprentices. In addition, it is not apparent how imposing such a requirement would demonstrate that a contractor possesses the minimum qualifications necessary to satisfactorily perform a construction contract, which is the purpose of the City's minimum qualifications approach.

The City's questionnaire does have a provision related to a contractor's violations of apprenticeship requirements. Question 4 asks whether the contractor is disqualified from bidding by the State pursuant to California Labor Code section 1777.7, which is the State law authorizing the State to bar contractors from bidding on public works contracts for serious violations of the State apprenticeship requirements. This is consistent with City Code section 3.60.190 which indicates that City contractors are subject to State apprenticeship requirements, and which allows the City to report violations to the State for action as necessary under section 1777.7.

FINANCIAL CONSIDERATIONS

No significant financial impacts resulted from the amendment to Section 3.60.020 adopted by 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. No further action is being recommended as a result of this report.

ENVIRONMENTAL CONSIDERATIONS

Adoption of the amendment to Section 3.60.020 constituted "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.

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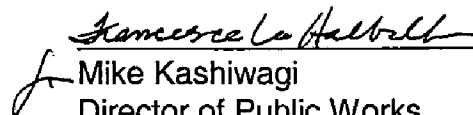
ESBD CONSIDERATIONS

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