



Board Agenda Item 12

DATE: February 26, 2019

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Pre-qualification Procedure for Bidders on Certain Public Works Projects

RECOMMENDED ACTION(S):

- 1. Receive information and discuss the County's options regarding the adoption of a pre-qualification procedure and appeal process for bidders on certain public works projects, which would conform to the California Public Contract Code, section 20101, to be utilized at the discretion of the Director of the Department of Public Works and Planning; and,**
- 2. Provide direction to the Department of Public Works and Planning regarding the development of a pre-qualification procedure and appeal process for bidders on certain public works projects, which conforms to California Public Contract Code, section 20101.**

If your Board directs the Department of Public Works and Planning to develop a pre-qualification procedure and appeal process, staff would return to your Board within the next two months with a recommended policy largely based on the model guidelines created by the California Department of Industrial Relations. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose to continue the County's use for all projects of the more traditional competitive bidding model, wherein staff determines both bidder responsibility and responsiveness to bid specifications of the bid submittals, only after all bids have been submitted.

FISCAL IMPACT:

While there is no increase in Net County Cost associated with the recommended actions, the actual implementation of a pre-qualification procedure and appeal process on certain public works projects would result in some actual and potential impacts on the cost of that specific project. Pre-qualification would result in an actual increase in departmental staff costs during the bidding phase of that project. There may be potential savings in project management costs during the construction phase, by having eliminated from the bidding pool those contractors who did not meet the pre-qualification scoring requirements for that particular project. However, hearing officer and staff time related to the appeal process would be an additional foreseeable cost, and the potential for subsequent initiation of litigation arising from the denial of such an appeal could result in project delay and further cost increases.

DISCUSSION:

California Public Contract Code, section 20101 allows counties and other public agencies to require licensed contractors bidding for public works projects to “pre-qualify” for the right to bid on a specific project, or on all projects put out to bid on an annual basis. Although the law has been in place since 1999, the County has never adopted nor considered the adoption of a pre-qualification procedure and appeal process. The Department does not believe there is a need to pre-qualify bidders on all projects, and requests that your Board consider only the development of a policy to allow for pre-qualification of bidders on specific projects, as designated by the Department’s Director.

The intent of the pre-qualification procedure and appeal process would be to identify in advance matters relevant to the performance of that project, which as examples may include a firm’s resources, financial assets, work experience, and staffing capability. If your Board directs Department staff to adopt a pre-qualification procedure policy, pursuant to Public Contract Code, the requirements that must be met include:

- (1) use a “standardized questionnaire and financial statement in a form specified by the public entity”(Section 20101[a]);
- (2) adopt and apply a uniform system of rating bidders on objective criteria, on the basis of the completed questionnaires and financial statements (Section 20101[b]);
- (3) create an appeal procedure, by which a contractor that is denied pre-qualification may seek a reversal of that determination (Section 20101[d]).

If your Board directs the Department to develop a pre-qualification procedure, it would be largely based on the model guidelines created by the California Department of Industrial Relations (DIR). Assembly Bill 574 (Chapter 972, Statutes of 1999) required the DIR to develop model guidelines following consultation with agencies, cities and counties, the construction industry, the surety industry, and other interested parties. The model guidelines, issued by DIR in 2001, include explanations of the pre-qualification procedure to be included in notices to contractors, a questionnaire for contractors, a suggested scoring system for use in reviewing the questionnaire, standard reference check questions, and guidelines for conducting reference interviews.

The appeal process would be developed in consultation with County Counsel and would take into account the law as well as recent court decisions. Section 20101(d) requires every public agency that requires prospective bidders to prequalify pursuant to this law to establish “a process that will allow prospective bidders to dispute their proposed pre-qualification rating prior to the closing time for receipt of bids.” The appeal process must include written notification by the public agency of the basis for the prospective bidder’s disqualification “and any supporting evidence that has been received from others or adduced as a result of an investigation by the public entity.” (Section 20101[d][1].) The prospective bidder must be given an “opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the public entity as to why the prospective bidder should be found qualified.” (Section 20101[d][2].)

The pre-qualification procedure also would address selection of the individuals responsible for reviewing the questionnaires, and designate an appeals officer. Since the result of any appeals would need to be determined prior to bid opening, the length of bidding time on projects subject to pre-qualification might need to be extended beyond the typical 30-day advertising period, which could delay the award of the project and commencement of construction.

CAO ANALYST:

Sonia M. De La Rosa