



# Board Agenda Item 57

DATE: August 6, 2019

TO: Board of Supervisors

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

SUBJECT: Contractor Pre-Qualification and Appeal Procedure for Performance of Certain  
Public Construction Projects

## RECOMMENDED ACTION(S):

**Approve Contractor Pre-qualification and Appeal Procedure for pre-qualification of contractors for eligibility to bid to perform certain public construction projects, per California Public Contract Code; and authorize the Director of the Department of Public Works and Planning, upon review and approval by County Counsel as to legal form, to update the procedure, as necessary.**

Approval of the recommended action will approve a mechanism compliant with California Public Contract Code requirements that enables the Department of Public Works and Planning to conduct pre-qualification procedures for certain public works construction projects and establishes an associated appeal process. The procedure is intended to apply to projects which, at the sole discretion of the Department's Director, are determined to be particularly complex or require specialized experience. This item is countywide.

## ALTERNATIVE ACTION(S):

If the recommended action is not approved, the County's procedure for contractor eligibility to bid on certain public construction projects will not be established.

## FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action; however, the actual implementation of the procedure on certain public construction projects would result in some actual and potential impacts on the cost of specific projects. Pre-qualification would result in an actual increase in departmental staff costs during the bidding phase of a specific project. There may be potential savings in project management costs during the construction phase, due to the elimination of contractors from the bidding pool who do not meet the pre-qualification scoring requirements for a specific project. However, hearing officer and departmental 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 specific project delay and/or further cost increases.

## DISCUSSION:

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 not adopted, nor considered, the adoption of a related procedure until recently.

Although the Department does not recommend pre-qualification on all public construction projects, there are certain projects for which, based upon complexity and nature of the work, pre-qualification of prime contractors wishing to bid may be desirable. Consequently, on February 26, 2019, the Department presented an item to the Board pursuant to which information regarding pre-qualification of contractors was provided. In accordance with the Board's direction, a pre-qualification and appeal procedure for bidders, conforming to Public Contract Code, section 20101, was to be developed to apply to certain public works projects.

The intent of the recommended procedure is to identify matters relevant to the performance of a specific project in advance, which may include a firm's resources, financial assets, work experience, and staffing capability. In accordance with the Public Contract Code, the procedure must:

- (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]).

The proposed procedure is comprised of an overview, which includes the following appendices:

- (1) Appendix A: Model Pre-Qualification Questionnaire
- (2) Appendix B: A List of Scorable Questions and the Scoring Instructions;
- (3) Appendix C: Template Notice/Announcement of Pre-qualification Procedure; and,
- (4) Appendix D: Pre-Qualification Appeal Procedure.

The proposed procedure was developed in accordance with Public Contract Code, section 20101, which mandates every public agency that requires prospective bidders to pre-qualify 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 procedure was developed in consultation with County Counsel and takes into account statutory requirements and other legal considerations.

The proposed procedure would authorize the Department's Director to determine which public construction projects should be subject to contractor pre-qualification and to modify or supplement the standard questions and associated scoring based on the particular requirements associated with a specific project. The procedure also authorizes the Director to select the individual members of the Evaluation Committee, responsible for questionnaire review. When the procedure is utilized by the Department, the results will be included in the agenda item to award the construction contract for the specific project.

The Pre-Qualification Appeal Procedure (Appendix D) provides for written notification by the County of the basis for the prospective bidder's disqualification and includes the opportunity to "request a copy of any supporting evidence" resulting from the investigation conducted by the County. (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].)

In addition, your Board's approval of the appeal procedure also authorizes the Department's Director to designate the Reviewing Officer, responsible to conduct the informal hearing on any appeals from the denial of pre-qualification status. As expressly provided in Appendix D, the Department's Director sole discretion,

may select as the Reviewing Officer either: (1) a Hearing Officer appointed pursuant to Chapter 2.81 of the Fresno County Ordinance Code; or (2) any individual, other than one who served as a member of the Evaluation Committee, that the Director deems qualified to conduct the informal hearing.

Since the determination of any appeal would need to be completed prior to bid opening, the length of bidding time on specific projects subject to pre-qualification might require extension beyond the typical 30-day advertising period, which could delay the award of the specific project and commencement of construction.

REFERENCE MATERIAL:

BAI #12, February 2, 2019

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Contractor Pre-qualification and Appeal Procedure

CAO ANALYST:

Sonia M. De La Rosa