

DATE ISSUED: November 13, 2000

REPORT NO. 00-251

ATTENTION: Land Use & Housing Committee
Agenda of November 15, 2000

SUBJECT: Low Verses Responsible Bidders

SUMMARY

Issue - Should the City Council adopt a pre-qualification program for construction contractors?

Manager's Recommendation - Direct staff to conduct a pilot pre-qualification program for City of San Diego construction contractors.

Other Recommendations - None.

Fiscal Impact - None.

BACKGROUND

The county of San Diego as a whole is currently experiencing a construction boom in both the public and private sectors. This boom has resulted in increased competition between public and private agencies for qualified contractors to meet the growing demand of construction projects. Given the large number of City of San Diego projects currently underway or scheduled to begin within the next two to three years, it is an appropriate time to examine the City's bid process and our ability to identify and contract with responsible contractors in a highly competitive marketplace. For this purpose, responsible is defined as a contractor with a demonstrated capacity to provide quality work in a timely manner.

A similar effort was undertaken in July, 1994, when the Land Use & Housing Committee directed staff to develop and implement a pilot pre-qualification program for construction contractors. The direction was given in response to concerns raised by City Council, City staff and members of the public related to delays in project completion, the overall quality of work performed and the general conditions of work sites.

Working with the Association of General Contractors (AGC) and the Engineering and General Construction Association (EGCA), City staff developed a pre-qualification process intended to assess a contractor's ability to perform responsibly. The process was developed for use on large, unique projects and consisted of a Responsibility Questionnaire completed by a prospective contractor evaluated by a panel of City staff, a representative of the AGC/EGCA and a community member from the project area. For each specific project, contractors were rated on

experience, financial condition, composition of project team, litigation history, compliance with licensing and insurance requirements and default rate. Those contractors deemed responsible, based on the criteria established for evaluating the stated factors were permitted to bid on the project. Awards were granted then to the lowest pre-qualified and responsible bidder.

The pre-qualification process was used on three specialized construction projects with inconclusive results. For the three projects, a total of 20 construction firms submitted pre-qualification packages. Of those twenty firms, only two firms were rejected. Both of those firms were competing for the same project. While an appeal process was in place, neither rejected contractor availed themselves of this right.

On April 12, 1999, the City Council adopted the Design-Build Ordinance after a successful ballot initiative. Through design-build, both the design and construction components of a project are procured from a single entity or design-build team. Design-build contracts are awarded through a competitive pre-qualification and selection process and has become the standard method of assessing a firms qualification to perform on large, unique projects such as the animal shelter.

DISCUSSION

In the past twelve months, the City has permanently debarred one contractor, accepted a voluntary 18 month debarment of another contractor, and is in the process of defaulting another contractor. In addition, the City is involved in a number of legal cases resulting from contract disputes and several projects have experienced significant delays resulting in operational impacts for City staff and inconvenience to the public.

Through Design-Build, and the pilot program that came before it, large, unique projects have been addressed. However, the vast majority of City construction projects are of a more routine nature such as water and sewer group jobs, and park projects (i.e. tot lots, restroom facilities, etc). It is on these routine projects that you typically see the most general contractors bidding, often with the same contractor bidding on five or more projects within a one to two month span of time. Under the current low bid approach, there is no limit to the number of projects that a contractor can undertake at one time. A contractor is deemed responsible and awarded contracts

if said firm is the low bidder, provides proof of bonding and insurance, and complies with equal opportunity contracting requirements regardless of the number of projects currently underway by that firm. Also not considered is firms work history and experience.

Recently adopted Assembly Bill No. 574 defines responsible bidder as “a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” The Bill grants public agencies the authority to require all prospective bidders to complete a pre-qualification process for the purpose of assessing their responsibility. As a Charter City, the City of San Diego is not required to adopt the pre-qualification process called for in Bill No. 574. However, the Bill does have merit and may be an effective companion to the low bid process. Low bid in and of itself may not be the most economical approach if projects have delays in completion, diminished quality and/or protracted litigation. Used in combination, pre-qualification and low bid may provide the City with the most qualified bidders at the best price.

CONCLUSION

The use of a pre-qualification process appears to have merit and is legally defensible. Because the previous pre-qualification process was put to a more limited use, it is recommended that City staff work with organizations such as the AGC, EGCA, the Multi Cultural Contractors Group and the Latino Builders in developing a twelve month pilot pre-qualification process.

ALTERNATIVE

1. Do not implement a pilot pre-qualification process for City of San Diego construction projects.
2. Direct staff to study other approaches to construction contracting including a charter change to modify or eliminate the use of a low bid process.

Respectfully submitted,

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