

DATE ISSUED: February 22, 2001

REPORT NO. 01-039

ATTENTION: Land Use & Housing Committee  
Agenda of February 28, 2001

SUBJECT: Pre-Qualification of Contractors Seeking to Bid on Public Works Projects

REFERENCE: Manager's Report 00-251

### SUMMARY

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

Manager's Recommendation - Adopt a one year, pilot pre-qualification program for City of San Diego construction contractors.

Other Recommendations - None

Fiscal Impact - None.

### BACKGROUND

On November 15, 2000, the Land Use & Housing Committee (LU&H) directed staff to develop a pilot program for the pre-qualification of public works contractors. The decision came in response to growing concern over the reliability and responsibility of some contractors during this construction boom. The City of San Diego, as an agency, has a significant amount of construction work projected for the next two to three years. Programs such as water and sewer rehabilitation as well as projects such as public buildings, parks and roadways are generating millions of dollars in construction activity. At the same time, other local public agencies as well as segments of private industry, are experiencing similar surges in construction activity.

A net effect of the current level of construction activity has been an influx of newly formed construction companies and contractors new to the region. In some cases, contractors are bidding and winning the award of several contracts requiring concurrent construction activity in excess of what their staffing levels can seemingly accommodate, both for the City of San Diego and other local agencies.

City of San Diego Charter section 94 currently requires the City to award public works contracts to the "lowest responsible and reliable bidder." Currently, a construction firm is considered "responsible" if the firm holds an active contractor's license, demonstrates a sufficient level of bonding and has the required insurance. Experience has shown that such minimal requirements may not be adequate to ensure that a firm is economically and structurally fit.

## DISCUSSION

On October 10, 1999, the State Assembly passed a bill granting public agencies the authority to pre-qualify public works contractors. Under this bill, the term “responsible bidder” is defined 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 further offers a model pre-qualification program, which was designed by the Department of Industrial Relations. Using said model as a framework, staff has developed a pre-qualification process designed to assess a firm’s past performance and its capacity to responsibly execute a given project. Input was solicited and received from the Association of Building Contractors (ABC), the Association of General Contractors (AGC), the Black Contractors Association (BCA), the Engineering & General Contractors Association (EGCA), Latino Builders, National Electrical Contractors Association (NECA), the Public Works Advisory Committee (PWAC) and Women Construction Owners and Executives (WCOE) as well as representatives of the surety industry.

Opposition and/or concern over the use of a pre-qualification process was raised by some of the groups solicited including BCA, EGCA and PWAC. The concerns expressed have been as follows: contractors are already pre-qualified by virtue of their contractor’s license and bonding by a State of California, Department of Insurance, listed surety; pre-qualification serves as an artificial barrier for small/emerging businesses that have a more limited track record of performance upon which to be rated and/or will be economically disincentivized to compete due to the cost associated with preparing a reviewed or audited financial statement; and it is not clear that such a pre-qualification process will eliminate or significantly decrease the default rate.

In response to those stated concerns, efforts have been taken to minimize the impact on small/emerging businesses. **For example, a financial statement shall not be required from a contractor who has qualified as a “small business” pursuant to California Government Code section 14837 (i.e., with 100 or fewer employees and average annual gross receipts of \$10,000,000 or less over the previous three years).** Pre-qualification, when applied appropriately, is also a protection for bidders as well as the City because the bonding and financial statements minimize the likelihood of contractors overextending themselves by assuming too many jobs at one time, a problem seen with firms of all sizes, but mainly with small firms. Additionally, the rating system is such that, where appropriate, the size of the firm is taken into consideration, allowing small contractors equal opportunity to compete. And, while pre-qualification does not guarantee a decrease in the default rate, it may act as a deterrent with less viable contractors self-screening themselves from consideration. Further, it is the City’s responsibility to be fiscally prudent and take available steps to prevent or decrease the likelihood of default.

Under the proposed pre-qualification program, all contractors interested in bidding on City of San Diego construction projects will be required to complete a Phase I Pre-qualification process (Phase I), which shall be held once each quarter.

Each Phase I pre-qualification process will be staffed by no less than one (1) representative of the Engineering & Capital Projects Department’s Contracts Processing staff, one (1) representative of the Human Resources Department’s Equal Opportunity Contracting staff, an accountant from the Auditor’s office, two (2) other City staff members to be appointed by the

City Manager, or designee, and a representative of the construction industry.

Interested bidders will be required to fill out a standardized questionnaire and financial statement, which will be verified under oath by the bidder in the manner in which civil actions are verified. Staff will verify the information submitted in each questionnaire, including the bidder’s organizational structure, bonding capacity, insurance, disputes/claims, the history of the firm’s performance, and compliance with safety, workers compensation, prevailing wage, apprenticeship laws and EEO. City staff members will then conduct standardized interviews of the bidder’s previous clients. The information will then be evaluated using standardized rating criteria. The questionnaires and financial statements shall not be public records and shall not be open to public inspection; however, records of the names of contractors applying for pre-qualification status shall be public records subject to disclosure under the Public Records Act.

Firms will be evaluated and scored in two large categories through the use of a standardized questionnaire to be completed by the firm and through interviews of previous clients using standardized rating criteria. A passing score is required in both areas, as follows:

Factor	Maximum Point Value	Passing Score
History of the Business and Organizational Performance	71	53
Compliance with Safety, Worker’s Compensation, Prevailing Wage, EEO and Apprenticeship Laws	58	43

Contractors with the required passing scores will be qualified to bid up to a certain dollar capacity, as deemed appropriate by the pre-qualification panel for a period of one year. **Capacity limits will be established based upon a review of the required financial documents.**

Only pre-qualified contractors will be solicited to bid on projects. The City will reserve the right to re-evaluate a firm during that year for cause such as in cases of default, findings of discriminatory business practices, findings of criminal activity, or significant changes in the firm’s principal or partner composition. Contractors will be afforded the opportunity to appeal the denial of pre-qualification status prior to the closing date for applicants. Upon request of the appellant, the City shall provide notification to the appellant, in writing, of the basis for disqualification and any supporting evidence that has been received from others or obtained as a result of the review process. The appellant shall be given the opportunity to rebut any evidence used as the basis for disqualification, following the hearing procedures in Council Policy 000-29. A firm may also request a new review of its capacity during any open pre-qualification period, **based upon changed circumstances.**

The Phase II Pre-qualification (Phase II) process shall be reserved for projects requiring highly specific technical skills and capabilities. In such cases, a project specific pre-qualification process will be held for interested firms that have successfully completed Phase I. Phase II will be used to assess a firm’s technical experience in performing equivalent scopes of work through an evaluation of past projects of a similar nature and interviews with contacts from randomly selected past projects. The scoring system for previous experience shall be tailored to the specific requirements of each project, but shall be applied uniformly to all applicants for that project. The interview portion shall be worth a total of 120 points. A score of 72 points or higher on at least

two interviews is required to pre-qualify.

Phase II Pre-qualification shall only be required upon the concurrence of the City Engineer that such a process is appropriate and necessary for the safe and successful completion of any given project.

The pre-qualification processes, as described above, will be administered for a period of one year after which time staff shall return to LU&H with a recommendation to either continue the program or discontinue its use.

## CONCLUSION

The use of a pre-qualification process is becoming more prevalent within the industry as an extra level of assurance for agencies seeking truly responsible bidders. And, as stated above, the California Assembly has acknowledged pre-qualification as an acceptable practice for local municipalities. Given the current level of public works construction activity in the City, a one year pilot pre-qualification program is a prudent measure.

## ALTERNATIVES

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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Stacey Stevenson  
Deputy Director  
Contract Services Division

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Frank Belock, Jr.  
Director  
Engineering & Capital Projects Department

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Approved: George I. Loveland  
Senior Deputy City Manager

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Note: The attachments are not available in electronic format. Copies of the attachments are available for review in the Office of the City Clerk.

Attachments: 1. Phase I Pre-Qualification Questionnaire  
2. Phase II Pre-Qualification Questionnaire