

REPORT TO CITY COUNCIL

DATE: JANUARY 9, 2013

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER
CHRIS DODD, PUBLIC WORKS PROJECT MANAGER

SUBJECT: APPROVE RESOLUTION NO. 13-1696, ADOPTING PRE-QUALIFICATION BIDDING PROCEDURES AND ESTABLISHING A BIDDER PRE-QUALIFICATION APPEALS PANEL

The City's current procurement process for contracting of public works projects are governed by applicable sections of the California Public Contract Code and the formal bid requirements of the Agoura Hills Municipal Code (Article 2, Chapter 7). In general the process normally includes the noticing of requests for bids, an evaluation of bidder qualifications, and a review of all the bidder's individual responses. The award of bid typically goes to the lowest responsive bidder.

Past experiences show an increasing number of bid responses containing errors and exceptions, which require additional staff time for evaluation and resolution of bid issues. In addition, bid responses are typically only offered as valid for a limited amount of time, so that if there are any issues or red flags raised in the review, staff has very limited time to investigate them and get them resolved. Currently, submitted bids do not provide a clear picture of a bidders financial capabilities and access to capital resources, nor verify if they have operated under other Limited Liability Corporations, which may have pending litigation actions, or identify if they had violations related to OSHA or prevailing wage regulations.

A solution that is available to California government agencies is the use a bidder responsibility determination prior to seeking bids, known as pre-qualification procedures. This process can occur concurrently with the completion of construction documents, thus saving time while not affecting the bid opening time line. It also allows contractors that fail to pre-qualify find this out prior to investing a lot of time and resources in compiling and submitting a bid packet for consideration. This also allows City staff to identify any issues prior to the request for bid, providing adequate time to adequately look into any issues. The pre-qualification process also allows the various sub-contractors a clear directive to only submit bids to qualified prime contractors, thus reducing their overhead and investment in the bid process, which should improve costs proposed to the City.

The proposed pre-qualification procedures would be available at the City's option to pre-qualify bidders for routine annual progress and for project-specific work. Possible uses of the streamlined process would include, for example, highly technical projects requiring advanced experience and expertise; or projects with an anticipated high level of interest by bidders. The

timing of this report is related to the future Recreation Center and the desire of City staff to insure that a qualified, capable, and proven pool of contractors be available to bid on the project prior to the completion of design. Unfortunately, absent this process, it is very common for the lowest responsive bidders to underestimate the amount of work and resources that it will take to complete a project of this magnitude, causing them many times to leave a project midway through construction. Ultimately, this will cause unexpected delays and cost increases in order to complete the project. With a steadfast deadline to move out of the current recreation facility, it is imperative that the new site be completed and ready to operate in the currently established time frame. An additional benefit in adopting the proposed procedures is the establishment of standard guidelines for evaluating and selecting contractors, thereby reducing the potential for waivers, exceptions, and rejections of bids during the bid award process. If approved, the proposed actions would incorporate the provisions of California Public Contract Code, Section 20101, into Agoura Hill's procurement process. Section 20101 establishes set procedures for local agencies that will address the process and requirements.

The Department of Industrial Relations (DIR) has developed standardized questionnaires and model guidelines for the rating of bidders. DIR's model rates bidders based upon a company's overall financial stability, capability, and past performance on similar projects. The guidelines also establish a bidder appeals panel to provide an administrative forum for prospective bidders. The documents being presented to the City Council for consideration are consistent with the model guidelines prepared for by DIR.

RECOMMENDATION

Staff respectfully recommends the City Council approve Resolution No. 13-1696; adopting bidder pre-qualification procedures and documents and establishing the bidder pre-qualification appeals panel in accordance with Section 20101 of the California Public Contract Code.

Attachment: Resolution No. 13-1696

RESOLUTION NO. 13-1696

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADOPTING PRE-QUALIFICATION BIDDING PROCEDURES AND DOCUMENTS AND ESTABLISHING A BIDDER PRE-QUALIFICATION APPEALS PANEL

WHEREAS, Assembly Bill 574 added Section 20101 to the California Public Contract Code and established procedures for certain local agencies wishing to pre-qualify bidders on public works projects; and

WHEREAS, the Department of Industrial Relations (“DIR”) has developed standardized questionnaires and model guidelines for rating bidders pursuant to Public Contract Code Section 20101 (“Model Guidelines”); and

WHEREAS, the City has modeled the Pre-Qualification of Contractors Seeking to Bid on Public Works Projects for the City of Agoura Hills, attached hereto as Exhibit “A”, after the Model Guidelines; and,

WHEREAS, the City Council has determined that adopting bidder pre-qualification procedures and establishing an appeal committee will streamline the formal bidding process and further the City’s efforts to operate efficiently; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1: The City Council hereby adopts the Pre-Qualification of Contractors Seeking to Bid Public Works Projects for the City of Agoura Hills attached hereto as “Exhibit A” and incorporated herein by reference (“Pre-Qualification Guidelines”). The City’s Public Works Director/City Engineer is hereby authorized to pre-qualify bidders on all types and sizes of public works contracts, either on an annual basis or on a project-specific basis, pursuant to the attached Pre-Qualification Guidelines. The City may use the scoring system provided in the attached Pre-Qualifications Guidelines or may designate one or more alternate scoring systems for annual pre-qualifications, project specific pre-qualifications or both consistent with the requirements of the Public Works Contract Code.

Section 2: Where a timely and completed application results in a rating below that necessary to pre-qualify, an appeal can be made. An appeal is begun by the Contractor delivering notice to City of Agoura Hills (“City”) of its appeal of the decision with respect to its pre-qualification rating, no later than ten business days prior to the closing time for the receipt of bids for this public works project. Without a timely appeal, the Contractor waives any and all rights to challenge the decision of the City, whether by administrative process, judicial process or any other legal process or proceeding.

If the Contractor gives the required notice of appeal and requests a hearing, the hearing shall be conducted so that it is concluded no later than five business days after City's receipt of the notice of appeal, and no later than five business days prior to the last date for the receipt of bids on the project. The hearing shall be an informal process conducted by a panel to whom the City Council has delegated responsibility to hear such appeals (the "Appeals Panel"). At or prior to the hearing, the Contractor will be advised of the basis for City's pre-qualification determination. The Contractor will be given the opportunity to present information and present reasons in opposition to the rating. Within two business days after the conclusion of the hearing, the Appeals Panel will render its decision. It is the intention of City that the date for the submission and opening of bids will not be delayed or postponed to allow for completion of an appeal process.

A contractor may be found not pre-qualified for bidding on a specific public works contract to be let by City, or on all contracts to be let by City, until the contractor meets City's requirements. In addition, a contractor may be found not pre-qualified for either: (1) Omission of requested information or (2) Falsification of information.

Section 3: The City Council hereby establishes the Bidder Pre-Qualification Appeals Panel ("Appeals Panel") consisting of the following, or their designee(s): The City Manager, the Finance Director, and the Community Development Director. Whenever a project is to be administered by the department of one of the foregoing, the City Manager is hereby authorized to appoint to the Appeal Panel an alternate from another department. Except as otherwise provided for herein, appeals shall be conducted by the Appeal Panel in accordance with the rules set forth in the California Public Contract Code Section 20101. The sole issue before the Appeals Panel shall be the scoring of a prospective bidder. The decision of the Appeals Panel shall be the City's final administrative decision and any judicial review thereof shall be instituted no later than the time period referred to in section 1094.6 of the Code of Civil Procedure.

PASSED, APPROVED, AND ADOPTED this 9th day of January, 2013, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSTAIN: (0)
ABSENT: (0)

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

CITY OF AGOURA HILLS

**A LIST OF THE SCORABLE QUESTIONS AND THE CONTRACTOR PRE-QUALIFYING
SCORING INSTRUCTIONS**



**CITY OF AGOURA HILLS
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AGOURA HILLS, CA. 91301
818-597-7300
FAX: 818-597-7352**

A LIST OF THE SCORABLE QUESTIONS AND THE SCORING INSTRUCTIONS

The scorable questions arise in three different areas:

- (I) History of the business and organizational performance;
- (II) Compliance with occupational safety and health laws, workers' compensation and other labor legislation; and
- (III) Completion of recent projects and quality of performance.

The interview questions (interviews by the public agency of project managers on projects completed recently by the contractor) are included in group III. In a pre-qualification procedure for a single project, this last category would also include a scoring of the number of recently completed projects that are similar to the project on which pre-qualification is at issue. However, scoring linked to the similarity of past projects would **probably not be possible or useful** if the public agency as part of a procedure to pre-qualify contractors for an extended period.

Note: Not all questions in the questionnaire are scorable; some questions simply ask for information about the contractor firm's structure, officers and history. This document includes only those questions that are "scorable." The question numbers in this document are the numbers used in the questionnaire. Thus, the questions included here begin with question number 6, and there are a few breaks in the numerical sequence.

The Scores Needed for Prequalification

To prequalify, a contractor would be required to have a passing grade within each of the three large categories referred to above.

For Section I, "History of the business and organizational performance," DIR recommends use of a passing score of **57** on this portion of the questionnaire (of a maximum score of 76 on this portion of the questionnaire).

For Section II, Compliance with occupational safety and health laws, workers' compensation and other labor legislation DIR recommends use of a passing score of **38** on this portion of the questionnaire (of a maximum score of 53 points on this portion of the questionnaire).

Section III, Completion of recent projects and quality of performance, includes a series of interview questions, and may also include questions about recently completed (public or private) construction projects. For the interview questions, DIR recommends that a public agency interview project managers for the owners of two completed projects. DIR recommends a scoring system that would allow a maximum score of 120 points for each interview. For these questions, DIR recommends qualification for a contractor whose score on each of two interviews is 72 points or more; a denial of pre-qualification for a contractor whose score on either interview is less than 55 points; and an additional

interview with another reference if the score resulting from one interview is between 55 points and 72 points.

DIR makes no recommendation about how to score a contractor's answers about recently completed past projects. Because of the wide range of projects that a public agency may be planning, and the similarly wide range in the skills, abilities, and experience that a public agency will consider most important for a pending project, it is impossible to propose a useful model scoring system to apply to the answers given about a contractor's completed projects.

Questions about History of the Business and Organizational Performance

(16 questions)

1. How many years has your organization been in business in California as a contractor under your present business name and license number? _____ years

3 years or more = 2 points

4 years = 3 points 5 years = 4 pts.

6 years or more = 5 points

2. Is your firm currently the debtor in a bankruptcy case?

Yes No

“No” = 3 points“ “Yes” = 0 points

3. Was your firm in bankruptcy any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above).

Yes No

“No” = 3 points“ “Yes” = 0 points

4. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

Yes No

No = 5 points Yes = 0 points

5. At any time in the last five years, has your firm been assessed and paid liquidated damages after completion of a project, under a construction contract with either a public or private owner?

Yes No

No projects with liquidated damages of more than \$50,000, or one project with liquidated damages = 5 points.

Two projects with liquidated damages of more than \$50,000 = 3 points

Any other answer: no points

6. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

Yes No

No = 5 points Yes = 0 points

7. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

No = 5 points Yes = 0 points

* * * * *

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.

8. In the past five years, has any claim **against** your firm concerning your firm's work on a construction project, been **filed in court or arbitration?**
 Yes No

If the firm's average gross revenue for the last three years was less than \$50 million, scoring is as follows:

*5 points for either "No" or "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" if more than 2 such instances.*

If your firm's average gross revenue for the last three years was more than \$50 million, scoring is as follows:

*5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.
3 points for "Yes" indicating either 4 or 5 such instances.
0 points for "Yes" if more than 5 such instances.*

9. In the past five years, has your firm made any claim against a project owner concerning work on a project or payment for a contract, and **filed that claim in court or arbitration?**
 Yes No

If your firm's average gross revenues for the last three years was less than \$50 million scoring is as follows:

*5 points for either "No" or "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" if more than 2 such instances.*

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

*5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.
3 points for "Yes" indicating either 4 or 5 such instances.
0 points for "Yes" if more than 5 such instances.*

10. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf in connection with a construction project, either public or private?
 Yes No

***5 points for either "No" or "Yes" indicating 1 such claim.
3 points for "Yes" indicating no more than 2 such claims
Subtract five points for "Yes" if more than 2 such claims***

11. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?
 Yes No

***5 points for either "No" or "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" or if more than 2 such instances.***

12. Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?
 Yes No

No = 5 points Yes = subtract 5 points

13. Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
 Yes No

No = 5 points Yes = subtract 5 points

14. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
 Yes No

No = 5 points Yes = subtract 5 points

15. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

_____ %

*5 points if the rate is no more than one per cent
3 points if the rate was no higher than 1.10 per cent.
0 points for any other answer.*

16. During the last five years, has your firm ever been denied bond credit by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

No = 5 points Yes = 0 points

**Questions about compliance with safety, workers compensation,
prevailing wage and apprenticeship laws.**

(11 questions)

1. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

Note: If you have filed an appeal of a citation and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If the firm’s average gross revenues for the last three years was less than \$50 million, scoring is as follows:

*5 points for either “No” or “Yes” indicating 1 such instance.
3 points for “Yes” indicating 2 such instances.
0 points for “Yes” if more than 2 such instances.*

If the firm’s average gross revenues for the last three years was more than \$50 million, scoring is as follows:

*5 points for either “No” or “Yes” indicating 1, 2, or 3 such instances.
3 points for “Yes” indicating either 4 or 5 such instances.
0 points for “Yes” if more than 5 such instances.*

2. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

Note: If you have filed an appeal of a citation and the appropriate appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If yes, attach a separate signed page describing each citation.

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1 such instance.

3 points for "Yes" indicating 2 such instances.

0 points for "Yes" or if more than 2 such instances.

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.

3 points for "Yes" indicating either 4 or 5 such instances.

0 points for "Yes" if more than 5 such instances.

3. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1 such instance.

3 points for "Yes" indicating 2 such instances.

0 points for "Yes" or if more than 2 such instances.

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.

3 points for "Yes" indicating either 4 or 5 such instances.

0 points for "Yes" if more than 5 such instances.

4. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

*3 points for an answer of once each week or more often.
0 points for any other answer*

5. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.

Current year: _____

Previous year: _____

Year prior to previous year: _____

If your EMR for any of these three years is or was 1.00 or higher, you may, if you wish, attach a letter of explanation.

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.

5 points for three-year average EMR of .95 or less

3 points for three-year average of EMR of more than .95 but no more than 1.00

0 points for any other EMR

6. Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

*5 points for either "No" or "Yes" indicating 1 such instance.
0 points for any other answer.*

7. Has there been more than one occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **state's** prevailing wage laws?

Yes No

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating no more than 4 such instances.

3 points for "Yes" indicating either 5 or 6 such instances.

0 points for "Yes" and more than 6 such instances.

8. During the last five years, has there been more than one occasion on which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

Yes No

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating no more than 4 such instances.

3 points for "Yes" indicating either 5 or 6 such instances.

0 points for "Yes" and more than 6 such instances.

9. Provide the **name, address and telephone number** of the apprenticeship program sponsor(s) (approved by the California Division of Apprenticeship Standards) that will provide apprentices to your company for use on any public work project for which you are awarded a contract by *[Public Entity]*.

***5 points if at least one approved apprenticeship program is listed.
0 points for any other answer.***

10. If your firm operates its own State-approved apprenticeship program:
- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.
 - (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
 - (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

5 points if one or more persons completed an approved apprenticeship while employed by your firm.

0 points if no persons completed an approved apprenticeship while employer by your firm.

11. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

NOTE: You may omit reference to any incident that occurred prior to January 1, 1998 if the violation was by a subcontractor and your firm, as general contractor on a project, had no knowledge of the subcontractor's violation at the time they occurred.

Yes No.

If yes, provide the date(s) of such findings, and attach copies of the Department's final decision(s).

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No," or "Yes" indicating either 1 or 2 such instance.

3 points for "Yes" indicating 3 such instances.

0 points for "Yes" and more than 3 such instances.

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating no more than 4 such instances.

3 points for "Yes" indicating either 5 or 6 such instances.

0 points for "Yes" and more than 6 such instances.

Questions concerning recent construction projects completed:
(one question, plus 11 interview questions)

The following question to be scored only where a public agency is undertaking a pre-qualification procedure valid for a single project only.

1. Contractor shall provide information about its six most recently completed public works projects and its three largest completed private projects within the last three years.¹ Names and references must be current and verifiable. Use separate sheets of paper that contain all of the following information:

Project Name: _____

Location: _____

Owner: _____

Owner Contact (name and current phone number):

Architect or Engineer: _____

Architect or Engineer Contact (name and current phone number):

Construction Manager (name and current phone number):

Description of Project, Scope of Work Performed:

Total Value of Construction (including change orders): _____

Original Scheduled Completion Date: _____

Time Extensions Granted (number of days): _____

Actual Date of Completion: _____

* * * * *

¹ If you wish, you may, using the same format, also provide information about other projects that you have completed that are similar to the project(s) for which you expect to bid.