



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 10-17-05

Approved

*Katy Allen*

Date

*10/19/05*

Council District: Citywide

**SUBJECT: PROCESS STREAMLINING – PUBLIC WORKS CONTRACT AWARDS**

## RECOMMENDATION

Adoption of a resolution implementing a one-year pilot program to delegate authority to the Director of Public Works to do each of the following:

- a) Award a construction contract where the base contract amount does not exceed \$1,000,000, including the authority to reject and award alternates within limits of the approved budget, and subject to the limitations more specifically set forth in this Council memorandum regarding bid protests, appropriations, budget approvals, and public bidding and noticing requirements;
- b) Reject all bids on any project where the Engineer's Estimate for the base work is \$1,000,000 or less;
- c) For construction contracts awarded by the Director, take appropriate actions to incorporate appropriate environmental mitigation measures for the project; and
- d) For construction contracts awarded by the Director, establish a contingency in accordance with the contingency policy previously adopted by the City Council.

CEQA: Not a project.

## BACKGROUND

On September 15, 2005, the Making Government Work Better Committee received a status report on Public Works Contract Award Process Streamlining. The MGWB Committee approved the status report and provided comments on recommendations to be brought to the full Council. This memo provides additional information on the Contract Award Streamlining

Recommendations, including responses to the comments and questions from the MGWB meeting.

Performance measures for project delivery are driving recommendations for streamlining processes for awarding construction contracts. Best management practices and benchmarking studies also indicate that streamlining the process for awarding construction contracts will result in better performance for cost and schedule goals with minimal additional risk of challenge to the bidding process if implemented with the proposed checks and balances. The streamlining proposal for contract awards is an on-going effort to reduce delivery costs and improve delivery schedules. Other streamlining efforts are underway or are being considered for implementation in the following areas:

- Job Order Contracting
- Construction Management
- Architectural / Engineering Consultant Services Agreement
- Contract Processing
- Bid Hot Line
- Advertising of Construction Bids

### ANALYSIS

The San José City Charter requires that all public works projects greater than \$100,000 be publicly bid and awarded to the lowest responsible bidder. This contract award streamlining proposal **does not** alter the public bidding requirements or the requirement to award the contract to the lowest responsible bidder.

The San José Municipal Code currently requires the City Council to award construction contracts greater than \$100,000. However, Section 14.04.300 of the Municipal Code states that the Council, by resolution, may give the Director of Public Works greater authority to award and execute contracts. It is pursuant to this Section of the Code that staff is recommending implementation of a one-year pilot program to raise the threshold for contract awards.

The specifics of the proposed pilot program are set forth in Attachment “A” of this memorandum. In general, the Director of Public Works would have the authority to award construction contracts where the base contract amount does not exceed \$1,000,000. The base contract amount is the amount of the contract not including add alternates. The proposed program would authorize the Director to reject or award add alternates, even if the award of an add alternate would cause the total contract amount to exceed \$1,000,000.

The memorandum that went to the MGWB committee stated that the Director would not have the authority to award a construction contract if “there is a bid protest of any kind.” This language has been changed to more specifically state that the Director would not have the authority to award a construction contract if there is an unresolved formal, written protest. The reason for this language change is that most protests are routine in nature and can be resolved by answering questions or providing additional information. These types of protest do not currently

come to the Council. Thus, while staff attempts to resolve all bid protests, formal, written protests that staff cannot resolve will have to be heard by the Council under the proposed pilot program.

Consistent with other public entities, the Director's authority to award a construction contract, including add alternates, is also limited by the fact that the total contract amount must be within the budget *already approved* by the City Council. This is reflected in the requirement that the Director can only award the construction contract if its total amount, including add alternates, plus the project delivery costs and appropriate contingencies are all within the total amount appropriated for the project. This MGWB memorandum included a provision that limited the Director's authority to award contracts that are no greater than 10 percent over the construction estimate. This constraint is unnecessary since all of the project costs must be within the appropriated budget. It is important that flexibility is maintained to adjust costs between phases as long as the total cost remains within budget.

Attachment "A" also has been modified to reflect the Director's authority to establish contract contingency consistent with the City's established policy. While this item was embodied in the proposed program that went to the MGWB committee, it was not previously included in Attachment "A."

Other important protections built into the pilot program are as follows:

- Projects will continue to be publicly advertised.
- There will be a public notice on the Internet of pending awards and the date that such awards will be made.
- There will be a listing of awarded contracts included on the Council agenda.

The application of the pilot program is only to the Director of the Department of Public Works; it does not apply to the directors of ESD and/or DOT when they are acting as the Director of Public Works. Expanding the authority to other directors will be considered in the future. If the pilot program proves to be successful, staff will recommend amending the Municipal Code to make this authority permanent.

#### Performance Measures

An internal analysis was conducted to review the effects on performance measures if thresholds for contract awards were increased from \$100,000 to \$1,000,000. In coordination with other jurisdictions, staff also conducted benchmarking and established best management practices.

Based on the internal analysis, staff believes that performance measures will be improved for cost and schedule if the construction contract award threshold is increased. The estimated savings is approximately 18-25 calendar days (net savings) and approximately 100 staff hours per project. The dollar savings is estimated to range from \$6,000 to \$8,000 in net savings per

project. The following table shows anticipated savings based on annual contract awards in 2004-05.

| Dollar Value             | Annual # of Contracts | Annual Cost Savings | Time Savings Per Contract (days) |
|--------------------------|-----------------------|---------------------|----------------------------------|
| 0 to \$100,000           | 20                    | \$160,000           | 18-25                            |
| \$100,000 to \$500,000   | 45                    | \$360,000           | 18-25                            |
| \$500,000 to \$1,000,000 | 19                    | \$152,000           | 18-25                            |

Other Jurisdictions

The following table shows the level of authority of the Director of Public Works / Engineering Bureau Managers to award construction contracts in the six largest cities in California:

| Jurisdiction  | Authority    |
|---------------|--------------|
| Los Angeles   | Unlimited    |
| San Diego     | \$1,000,000  |
| San José      | \$100,000    |
| San Francisco | \$10,000,000 |
| Long Beach    | \$100,000    |
| Sacramento    | \$100,000    |

Each of these six jurisdictions is part of a statewide benchmarking group that has identified a minimum \$1,000,000 authority as a “Best Management Practice.” San José, Long Beach and Sacramento will each be recommending this BMP to their respective Councils during this year.

The proposal to raise the limit for “Director” awards is consistent with the 2004 Mayor’s Budget Message, the June 2005 Grand Jury report on Procurement Procedures, and is consistent with efforts in other large cities and agencies. The municipalities that have adopted higher limits have found it to be a cost effective way of implementing projects with very low risk.

**MGWB COMMITTEE COMMENTS**

On September 15, 2005, the Making Government Work Better Committee received a status report on Public Works Contract Award Process Streamlining. The MGWB Committee approved the status report and provided comments on recommendations to be brought to the full Council. These comments are summarized with staff responses as follows:

1. A question was asked by the committee regarding the extent of the Director’s authority to incorporate appropriate environmental mitigation measures into projects.

Staff responded that this would apply only to projects that had received a “mitigated negative declaration” from the Planning Department. Under current procedures, all public works projects are reviewed by environmental specialists in the Planning

Department. These environmental specialists make determinations under CEQA as to the category of environmental clearance necessary. On certain projects, the Planning Department determines that certain projects must have mitigation measures in order to receive a “negative declaration.” On such projects, CEQA requires that the project is constructed with the mitigation measures. The recommended delegation of authority would authorize the Director of Public Works to approve such projects and incorporate these mitigation measures into the construction project in order to comply with CEQA.

Since the MGWB Committee meeting, Public Works and Planning staff are recommending the following additional elements:

- An annual report to the Council will be prepared that confirms the implementation of mitigation on capital projects. The first report will be done half way through the pilot period.
- Implementation of the mitigation measures will be ensured by Public Works and Planning. Any changes to the mitigation will be reported to the Council.

Attachment “A” has been modified to reflect these additional program elements.

2. A question was asked by the committee about where the awards will be reported out.

It is intended that a new section be added to the end of each Council agenda that would be titled “Notice of Director of Public Works Contract Awards”. In addition, staff would continue their current practice of posting all bid opening results on the Public Works Bid Hot Line Internet site, and would start a new practice of posting Pending Awards, including that date upon which such awards will be made, on this same Internet site. This will include a web posted copy of the internal staff report regarding the pending award.

3. A question was asked by the committee about the level of risk associated with the delegation of the authority and the potential for abuse or graft.

Staff believes that there would be minimal risk of abuse. All public works bid processes will be followed in accordance with the Charter and Municipal Code requirements, including the mandatory public bid opening by the City Clerk. Contracts will only be awarded to the lowest responsive bidder in accordance with these requirements. Any unresolved formal, written bid protests will be heard by the City Council, and staff will follow a process to ensure that there is full public reporting of actions.

4. A comment was made by the committee that it was important that protests and responsibility hearings come to the Council for hearings, as described in Attachment “A.”

Staff concurs that it is important that a public venue be provided to hear protests and issues of responsibility. Attachment “A” clarifies various scenarios where staff would bring items to the Council for award.

5. A question was asked by the committee regarding Small Business input into advertising and notification related to public works contracting.

The process streamlining proposal for contract awards would not change any of the advertising processes currently in place for public works contracts. These are described in the Public Outreach section of this report. These processes provide appropriate notification to all businesses seeking to do work with the City.

6. A comment was made by James Charles, Vice-Chair of the Small Business Development Commission, that he felt that small businesses needed additional involvement for public works contracting opportunities and expressed concern about the lack of data related to small business involvement in minor consultant agreements. He suggested that the pilot program should look at ways to get more involvement for small businesses and to provide better data related to small business usage. He also suggested that staff looks at benchmarking with other cities related to these practices.

In response to these concerns, staff met with representatives of the Small Business Development Commission. The pilot program for Contract Award Process Streamlining only affects projects that must be awarded in accordance with the City Charter to the lowest responsive bidder and preferences for small businesses are not permitted under the Charter.

Staff presented the pilot program to the Small Business Development Commission at its regularly scheduled meeting on October 12. The commission was supportive of the pilot program and voted to send a positive recommendation directly to the City Council.

## **OUTCOME**

Approval of the recommendations will result in improved performance measures for the delivery of capital projects. There will be improvements in both schedule and cost savings performance measures. The estimated annual savings is approximately \$500,000, and the time savings will average 18 – 25 days per project.

### **PUBLIC OUTREACH**

Staff has reviewed this report with representatives from the Small Business Development Commission. Approval of the recommended actions will not alter the current practices for providing public outreach on public works construction projects. These practices include public meetings prior to developing plans, and advertising the project in the *San José Post Record*. Bid packages for all Department of Public Works construction projects are also listed on the City's Internet Bid Line and are provided to various contractor organizations and builder's exchanges.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the CIP Action Team, the General Services Department, Planning Building and Code Enforcement Department, City Manager's Budget Office and the City Clerk.

### **CEQA**

Not a project.



KATY ALLEN  
Director, Public Works Department

ATTACHMENT A – revised 10/2/05

1. The Director would have the authority to award any public works construction contract where the **base contract amount** does not exceed \$1,000,000. This authority would be subject to the conditions that (a) there are no unresolved, written, formal bid protests and (b) the total amount of the construction contract, including add alternates, plus the project delivery costs and appropriate contingencies are all within the total amount appropriated for the project.

The Director would not have the authority to award a contract in any other situations. For example, the Director would not have the authority to award the construction contract if (a) there is an unresolved formal, written bid protest, (b) staff is not recommending award to the apparent low bidder on the grounds the bidder is not responsible, (c) additional funding is necessary for the project, and/or (d) staff is seeking to award the contract pursuant to one of the City Charter exceptions to the public bidding requirements.

2. The Director would have the authority to reject all bids on any project where the Engineer's Estimate for the base work is \$1,000,000 or less. For example, if the Engineer's Estimate on a project were \$250,000 and all the bids came in at \$300,000, the Director would have the authority to reject the bids.
3. The Director would have the authority to establish the project construction contingency up to the maximum amount in accordance with City Policy for the type of project. That policy sets a 5 percent contingency for street, sidewalk and park projects; it sets a 10 percent contingency for utilities and building projects; it sets a 15 percent contingency for building renovation projects.
4. For any construction contract awarded by the Director, the Director would also have the authority to award and/or reject any add alternates bid as part of the project. The amount of the add alternates awarded by the Director would be above the \$1,000,000 base contract amount used to determine the Director's authority. For example, the Director would be able to award a construction contract with a base amount of work equal to \$1,000,000 and with add alternates totaling \$100,000, for a total contract amount of \$1,100,000.

The Director's authority to award add alternates would be subject to the condition that the total amount of the construction contract, including add alternates, plus the project delivery costs and appropriate contingencies are all within the total amount appropriated for the project.

5. For construction contracts awarded by the Director, the Director would have the authority to take appropriate actions to incorporate appropriate environmental mitigation measures for the project. This ensures that the City can continue to comply with the requirements

of the California Environmental Quality Act even when construction contracts are awarded by the Director.

- As part of this authority, the Director will prepare an annual report to the Council that confirms the implementation of mitigation on capital projects. The first report will be done half way through the pilot period.
- Additionally, implementation of the mitigation measures will be ensured by Public Works and Planning. Any changes to the mitigation will be reported to the Council.