



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 11-20-06

Approved

Date

11/21/06

COUNCIL DISTRICT: City-Wide

SUBJECT: PROCESS STREAMLINING – PUBLIC WORKS CONTRACT AWARDS PILOT PROGRAM

RECOMMENDATION

- (a) Adoption of a resolution extending the Process Streamlining – Public Works Contract Awards Pilot Program until Council adopts an ordinance making the pilot program permanent.
- (b) Direction to the City Attorney to draft an appropriate ordinance amending the Municipal Code to make the Process Streamlining – Public Works Contract Awards Pilot Program, without any changes to the terms and conditions, permanent.

CEQA: Not a Project. (Public Works)

[Referred from 11/16/06 Making Government Work Better Committee – Item (6)]

OUTCOME

Approval of the recommendations will extend the Process Streamlining – Public Works Contract Awards Pilot Program until an ordinance making the pilot program permanent is adopted.

BACKGROUND

On October 25, 2005, the City Council adopted a resolution implementing a one-year pilot program aimed at streamlining the process by which Public Works awards construction contracts. Importantly, the pilot program applies only to the award of construction contracts and does not effect the manner in which Public Works awards consultant agreements for professional services. Nor does the pilot program, or this report, have any connection to the proposal to increase the authority of the City Manager to execute consultant agreements to \$1,000,000. The pilot program generally delegated 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, subject to a number of specified limitations;
- b) Reject and award alternatives within the limits of the approved budget, regardless of whether they would cause the total contract amount to exceed \$1,000,000;
- c) Reject all bids on any project where the engineer's Estimate for the base work is \$1,000,000 or less;
- d) For construction contracts awarded by the Director, take appropriate actions to incorporate appropriate environmental mitigation measures for the project;
- e) For construction contracts awarded by the Director, establish a contingency in accordance with the contingency policy previously adopted by the City Council.

The details of the pilot program are set forth in Attachment "A" of this report, which is the actual description of the pilot program attached to the resolution approving it. The pilot program remains in effect through December 2006 and a report on the findings to date is set out in detail in Attachment "B" of this memorandum.

Prior to adoption of the pilot program, benchmarking studies with other cities on streamlining processes, stakeholder feedback, and careful scrutiny of legal requirements went into laying the groundwork for the pilot program's conditions and limitations. Staff made a concerted effort to create a solid framework for implementation so that, if proven successful, the terms of the pilot program would become the basis of a permanent delegation of authority to the Public Works Director. Given the positive findings to date and the success of the pilot program as measured by savings in time and cost, the practice of standardized notification, and the absence of legal or contractor conflict, staff is confident that future contract awards by this streamlined process would mirror current pilot program successes.

Therefore, staff recommends that Council direct the City Attorney to draft the appropriate ordinance amending the Municipal Code to make the pilot program permanent. In order to continue the program without disruption, staff is also proposing that City Council adopt a resolution extending the pilot program until an ordinance making the pilot program permanent is adopted.

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. The streamlining pilot program did not alter the public bidding requirements or the requirement to award the contract to the lowest bidder.

The San José Municipal Code (SJMC) currently requires the City Council to award construction contracts greater than \$100,000. However, Section 14.04.300 of the SJMC allows the Council, by resolution, to give the Director of Public Works greater authority to award and execute contracts. The resolution implementing the pilot program was adopted pursuant to this provision of the SJMC. While implementing a pilot program pursuant to a resolution is appropriate, it would be best to adopt a permanent program by ordinance.

In recommending the streamlining pilot program to Council, staff targeted reductions in project cost and schedule if the streamlining pilot program was implemented. The findings to date indicate that pilot program achieved the targets set and, in the case of cost savings, actually exceeded projected savings. Given the success of the Process Streamlining – Public Works Contract Awards Pilot Program, staff feels confident in the sustainability of this program as a long-term measure to reduce the time and cost of delivering capital projects. Detailed in Attachment B, the following results are reportable:

Time Savings: In the initial proposal, staff estimated that savings in time would range from 18 – 25 calendar days. Results of the pilot program to date indicate an average savings of 14 - 19 calendar days for projects awarded by the PW Director.

Cost Savings: The estimated dollar savings upon entering into this pilot program ranged from \$6,000 to \$8,000 per project. Results of the pilot program indicate an average savings of \$11,000 per project for direct labor costs. While staff recognizes that many factors other than contract award savings come into consideration when measuring project performance by cost, it is apparent that pilot program projects are experiencing a positive gain in measuring project performance by cost. Early results also indicate that a net savings in excess of \$270,000 to the Capital program is probable.

Notification Process: The attached report specifically addresses conditions and limitations applied to the one-year Streamlining Pilot Program - Council notification on contract awards, contingency conformance, bid protest notification, and the incorporation of project mitigations into the contract award process. For the permanent program, staff would recommend that the newly created Council agenda section, “Notice of City Engineer’s Award of Construction Projects,” be adopted as a standard practice.

Absence of Conflict: Often times, it is the lack of conflict that describes success in implementing a new process. The pilot program has proven successful in its ability to fit well into the existing public contracting system. Beginning with the review process, and carried through the bid, award and execution of capital project construction contracts, implementation of the streamlining process has engendered little to no resistance either within the existing City structure or in the contracting community.

Making Government Work Better (MGWB) Committee Coordination: On November 16, 2006, staff presented to the MGWB Committee the Process Streamlining - Pw Contract Awards Pilot Program report (Attachment B) and staff recommendations to extend the current program

until the delegation of authority to the PW Director could be made permanent by revising the Municipal Code. At that meeting, staff also noted a correction to the Environmental Mitigation section of the attached report. The report states that 2 of the 23 Director awarded projects required implementation of environmental measures to meet a mitigated negative declaration (MND). In correction, only one pilot project, the Union Avenue / Los Gatos-Almaden Road Project, required a MND and had erroneously been counted twice. With that minor correction clarified, committee members expressed support for the streamlining program and recommended referral, as presented, to City Council.

Future Opportunities: There are 3 areas of process streamlining that staff is exploring for future time and cost savings to the capital program:

1. Architectural / Engineering Consultant Services Agreement Streamlining
Currently consultant agreements greater than \$100,000 must be approved by the City Council. Consultant agreements below \$100,000 must be approved by the City Manager. The current proposal coming forward to City Council on procurement process reform to the City Manager's authority on consultant agreements applies to General Services contracts – it does not include Public Works consultant contracts. Therefore, staff is currently analyzing the advantages of raising this contract limit and delegating the authority to allow the Director of Public Works to approve consultant agreements. Staff will return to the full Council with a report on the results of this analysis.
2. Construction Management Streamlining
Currently, the Council approves a construction contingency at the time of award of a construction contract. Staff generally recommends the amount of contingency in accordance with the contingency policy approved by Council on December 3, 2002. If staff recommends an amount different than the amount set forth in the contingency policy, then it provides an explanation as to why the different amount is appropriate.

This contingency is intended to pre-authorize an appropriate amount of funding to address any unanticipated work necessary for the proper completion or construction of the Project. The vast majority of public works contracts are completed without exceeding the authorized contingency amounts. However, for approximately 4 percent of the projects, there is unanticipated work in excess of the contingency. Under the current procedures, staff must secure Council approval for expenditure of additional project contingency, even if funding is available. In instances where construction is underway, the time required for securing additional approvals can delay a project and result in unwarranted expenses. Staff is analyzing alternatives for Council consideration to streamline this approval process and/or to provide preauthorization for certain types of construction expenditures to eliminate the risk of any unnecessary costs and delays.
3. Advertising of Construction Bid
The City Charter requires that a notice to contractors be published in a newspaper of general circulation in the City. In a recent survey of members of the associated general contractors (AGC), it was noted that virtually all of the contractors obtained their notice

through alternative means, including a) Builders Exchanges, b) Subscriptions to the Public Works E-Mail Bid service, or c) the City's Web Site. None of the Contractors indicated that they used the newspaper as their source for information about upcoming contracts. Because of this, staff is proposing to seek a Charter amendment at some time in the future to provide alternatives to advertising in a newspaper of general circulation. A Charter amendment would require a vote of the electorate.

PUBLIC OUTREACH

Staff has reviewed this report with representatives from the Small Business Development Commission and Association of Engineers and Architects (AEA) International Federation of Professional and Technical Engineers, Local 21. Approval for 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

The recommendation outlined in this memorandum has been coordinated with the Making Government Work Better Committee, the City Attorney's Office, the CIP Action Team, and the City Manager's Budget Office.

CEQA

CEQA: Not a project.



KATY ALLEN

Director, Public Works Department

KF:jb

g: Council Committees
Attachments A& B

ATTACHMENT A

Resolution No. 72943 adopted by San José City Council on October 25, 2005 gave approval to implement a one-year Pilot Program to streamline the Public Works contracting process as outlined below.

PROCESS STREAMLINING - PW CONTRACT AWARDS

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.

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.

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.

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.

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.

PROCESS STREAMLINING - PW CONTRACT AWARDS

BACKGROUND

On October 25, 2005, the City Council adopted a resolution implementing a one-year pilot program aimed at streamlining the process by which Public Works awards construction contracts. In general, this pilot program delegates authority to the Public Works Director to award construction contracts where the base amount does not exceed \$1,000,000. Implementation of this program is part of an on-going effort to save time and/or money on the delivery of capital projects and is subject to conditions and limitations addressed in the body of this report.

PILOT PROGRAM ANALYSIS

A summary of findings for the **Process Streamlining – Public Works Contract Awards Pilot Program** is presented in this report beginning with an overview of the timeline and program projects, followed by a study of the two key objectives for instituting this pilot program – a savings in time and/or cost in the delivery of capital improvement projects. Following the time and cost savings analysis, this report addresses the conditions and limitations to which the delegation of authority is subject: the incorporation of project mitigation measures, establishment of contract contingencies in accordance with adopted policy, and Council notification of contract awards and bid protests.

Pilot Program Overview

The process streamlining pilot program was adopted for a one-year period with implementation beginning on December 1, 2005. In order to report out in a timely manner, this report covers the results of streamlining pilot program activities through October 23, 2006. During this eleven-month implementation period, no contracts were awarded in December 2005 or January 2006. This lack of construction activity in the winter months is typical of the rainy season. From February through October 2006, 24 projects qualified for participation in the streamlining pilot program. Two of the 24 projects resulted in bid rejections. Both bid rejections, a Traffic Signal Modification at Almaden Boulevard & San Fernando Street and the Keeble Avenue Sanitary Sewer Replacement Project, are attributed to sole bids deemed excessive in price for the work to be completed. However, the Keeble Avenue Sanitary Sewer Project was later re-bid and awarded by the Director. In summary, the PW Director has awarded 23 construction contracts totaling \$9,413,750 under the streamlining pilot program. Project details are tabulated in TABLE 1.

TABLE 1: Process Streamlining - Pilot Program Project List

	Project Name	Award Date	Award Amount
1	Traffic Signal Modification at Booksin & Curtner Avenues	2/27/2006	\$179,320
2	Street Lights SNI Gateway East and Burbank/Del Monte	3/1/2006	\$182,165
3	Traffic Signal Modification at Hillsdale & Ross Avenues	3/14/2006	\$261,910
4	Wenlock Drive Pedestrian Corridor / Silver Creek Reach 13	3/27/2006	\$296,579
5	New Jersey Avenue Storm Drain Improvement Project	4/17/2006	\$940,490
6	Rosemary Area Sanitary Sewer Rehab Project	4/26/2006	\$890,320
7	Holly Hill Infrastructure Improvement	5/15/2006	89,985
8	Union Avenue/Los Gatos-Almaden Rd Improvement	5/19/2006	411,286
9	Orvis Avenue Sanitary Sewer Replacement Project	6/1/2006	359,495
10	Dobern Bridge Trail Project	6/1/2006	\$184,518
11	Greater Gardner Street Reconstruction - W. Virginia Street	6/9/2006	\$194,499
12	Backesto Park Pedestrian Street Lighting Improvements	6/14/2006	\$216,000
13	NYM SJIA General Engineering Contract 06-07	6/23/2006	\$510,000
14	Traffic Signal Modification at Naglee and Park Avenues	6/23/2006	\$198,370
15	SNIWA04a: Traffic Signal Installations at Almaden Ave. & Oak St. and Oak St. & Vine St.	7/19/2006	\$279,377
16	NYM SJIA Terminal Modifications General Building	8/1/2006	\$250,000
17	Chateau Drive Storm Drain Improvement Project, Phase 1	8/1/2006	\$472,860
18	NYM SJIA Terminal Modifications Electrical/Data	8/1/2006	\$350,000
19	Keeble Avenue Sanitary Sewer Replacement Project	8/7/2006	645,500
20	Singleton Road Landfill Flaring System Project	9/8/2006	\$231,500
21	Greater Gardner Street Reconstruction - Prevost Street	9/22/2006	\$741,913
22	Butcher Dog Park Project	10/5/2006	\$566,333
23	Taylor Street Improvement Project (N. First St to Coleman)	10/23/2006	\$961,330
Total Contract Award Amount :			\$9,413,750

Time Savings

Savings in time was measured by tracking the number of days between the bid opening date and the award date for all projects awarded by the City Council and the PW Director during implementation of the streamlining pilot program. The average time for each process was then calculated. The PW Director awarded 23 construction contracts during this period with an average time from bid opening to contract award of 19 calendar days. Over this same time span, Council awarded 21 construction contracts with an average time from bid opening to contract award of 33 calendar days. By comparison, an average savings in time of 14 days was realized.

In further analysis, the PW Director delayed awarding two of the 23 streamlined projects. One delayed award, the Backesto Park Pedestrian Street Lighting Improvements, was funded by the Redevelopment Agency and required appropriation of construction funds after the bid opening and before award. This is typical of Public Works construction projects funded by the Redevelopment Agency. The other delayed award, the Rosemary Area Sanitary Sewer Rehabilitation Project, was due to a bid error that found the apparent low bid as non-responsive and the contract ultimately awarded to the second lowest bidder. Removing these two anomalies from the analysis and using the remaining 21 streamlined contracts for comparison to the 21 contracts awarded by Council, the City realized an average savings in time of 19 days.

Cost Savings

Cost savings as a result of the streamlined contract award process were measured by tracking Phase IV - Bid and Award charges to the City’s CIP budget tracking system. Typical charges to Phase IV – Bid and Award include staff costs for preparing and distributing bid documents, advertising fees, and other expenditures associated with any amendments to the bid documents. Analysis of the Phase IV cost could not be applied to all projects awarded this year as the system for tracking CIP project costs by phase is a fairly recent change that has occurred over the last 3 - 4 years. Some of the projects awarded this year were funded prior to instituting the cost by phase system and/or were part of a different funding mechanism, such as the Norman Y. Mineta San José International Airport North Concourse packages, that have yet to incorporate the cost by phase tracking system. Therefore, the cost savings analysis compares 10 Council awarded projects to 16 Director awarded projects.

The findings of this cost analysis concluded that the average cost associated with the Council award process was \$21,531. The average cost associated with the Streamlined Contract Award process was \$9,684 – a cost savings of approximately \$11,847 per project. This savings in cost is in direct labor charges. Cost savings details are tabulated in TABLES 2 and 3.

TABLE 2: Council Awarded Phase IV - Bid and Award Cost Analysis

	Project	Contract Award (CA)	Phase IV Cost
1	Welch Park Improvements Project	432,750	17,545
2	Fowler Creek Park Development Phase I	3,394,750	15,203
3	Lucretia Avenue Widening	1,101,151	46,427
4	Forest-Rosa Sanitary Sewer Rehab – Ph V Project	1,087,115	4,503
5	Roosevelt Community Center Package 1	1,179,997	11,597
6	Edenvale Branch Library Project	7,336,000	54,530
7	Former FMC Site Clearing & Preparation Project	1,003,180	9,945
8	Burbank/Del Monte & Delmas Park Pedestrian Improvement	1,215,955	7,352
9	Joyce Ellington Branch Library Project	7,100,000	27,443
10	Pearl Avenue Branch Library	6,099,900	20,763
	Total		215,307
	AVERAGE	\$	21,531

TABLE 3: Streamlined (PW Director Award) Phase IV - Bid and Award Cost Analysis

No.	Project	Contract Amount	Phase IV Cost
1	Traffic Signal Modification at Booksin & Curtner Avenues	\$ 179,320	\$ 13,074
2	Street Lights SNI Gateway East and Burbank/Del Monte	\$ 182,165	\$ 12,633
3	Traffic Signal Modification at Hillsdale & Ross Avenues	\$ 261,910	\$ 11,318
4	Wenlock Drive Pedestrian Corridor / Silver Creek Reach 13	\$ 296,579	\$ 1,398
5	New Jersey Avenue Storm Drain Improvement	\$ 940,490	\$ 20,164
6	Rosemary Area Sanitary Sewer Rehab Project	\$ 890,320	\$ 4,958
7	Holly Hill Infrastructure Improvement	\$ 89,985	\$ 15,515
8	Union Avenue/Los Gatos-Almaden Rd Improvement Project	\$ 411,286	\$ 5,807
9	Orvis Avenue Sanitary Sewer Replacement Project	\$ 359,495	\$ 11,832
10	Greater Gardner Street Reconstruction - W. Virginia Street	\$ 194,499	\$ 3,472
11	SNIWA04a: The Traffic Signal Installations at Almaden Ave. & Oak St. and Oak St. & Vine St.	\$ 279,377	\$ 10,851
12	Chateau Drive Storm Drain Improvement Project, Phase 1	\$ 472,860	\$ 8,676
13	Keeble Avenue Sanitary Sewer Replacement Project	\$ 645,500	\$ 11,833
14	Greater Gardner Street Reconstruction - Prevost Street (Fuller Ae to W. Virginia St)	\$ 741,913	\$ 10,943
15	Butcher Dog Park Project	\$ 566,333	\$ 1,904
16	Taylor Street Improvement Project	\$ 961,330	\$ 10,570
		TOTAL	\$ 154,947
		AVERAGE :	\$ 9,684

Implementation of Environmental Mitigation Measures

As part of the October 25, 2005 Council resolution to implement a one-year pilot program to streamline the Public Works contract award process, the Director had the authority to take appropriate actions to incorporate into a project the environmental mitigation measures contained in any mitigated negative declaration (MND) for that project. This ensures that the City can continue to comply with CEQA requirements. As part of the delegation of authority, the Council directed the Director to report out at six-month intervals to confirm the implementation of mitigation on capital projects and report out any changes to the mitigation. On June 2, 2006, in an informational memorandum to Council, Public Works reported that the Director awarded eleven projects with only one project requiring a MND. Mitigations have been implemented with no changes to the mitigation plan.

Since the last report, the PW Director has awarded twelve additional projects. Of those 12 projects, only one other project, the Union Avenue / Los Gatos-Almaden Road Improvement Project, requires a MND.

Mitigation requirements on this project include: 1) dust control measures; 2) two replacement trees to be planted and seven days notice to be posted for the trees removed; 3) pre-construction surveys for nesting raptors to be conducted by a qualified consultant to ensure that no nests will be disturbed; and, 4) an archeologist to monitor all excavation greater than two feet. Mitigations have been implemented with no changes to the mitigation plan

Contract Contingency

In accordance with the Council adopted contingency policy, all contingencies established for the 23 projects awarded under this streamlining pilot program were set consistent with the Council policy for setting contingencies. The Council policy sets forth the following contingencies: a 5 percent contingency for street, sidewalk and parks projects, a 10 percent contingency for utility and building projects and a 15 percent contingency for building renovations.

Bid Protests

By Council resolution, the Public Works Director would not have the authority to award a construction contract if there was an unresolved formal, written bid protest. No bid protests were filed on any of the 23 contracts awarded under this pilot program.

Council Notification

Upon adoption of the one-year pilot program, Public Works committed to institute a new additional section at the end of each Council Agenda entitled “Notice of City Engineer’s Award of Construction Projects.” This section has been added to the Council agenda and all 23 pilot program contract awards were reported out on a monthly basis in the month immediately following contract award.