



Memorandum

TO: MAKING GOVERNMENT WORK
BETTER COMMITTEE

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 09-02-05

Approved

Date

Council District: Citywide

SUBJECT: PROCESS STREAMLINING – PUBLIC WORKS CONTRACT AWARDS

RECOMMENDATION

- A. Approval of this staff report regarding Process Streamlining for Public Works Construction Contracts.
- B. Review and comment on recommendations regarding raising the limit of authority for the Director of Public Works to award construction contracts.

CEQA: Not a project.

BACKGROUND

This memo reports on the status of several process streamlining efforts that have been implemented or are proposed for implementation relating to public works construction contracts. This is part of an ongoing effort to save time and / or money for the delivery of capital projects.

With regards to the specific recommendations contained in this report, it is envisioned that there will be a four-step process:

1. Solicit input from Making Government Work Better Committee
2. Present the recommendations to the full Council for Approval
3. Initiate a One Year Pilot Program
4. Report Back to the Council in One Year with final recommendations for permanent changes

Job Order Contracting

The first of the process streamlining efforts that is currently being implemented is Job Order Contracting. Job Order Contracting is a proven project delivery method that is currently in use by hundreds of public agencies. California jurisdictions using job order contracting include the Counties of Santa Clara and Contra Costa and the Cities of Long Beach, Los Angeles, Sacramento and San Francisco. Job Order Contracting allows for competitive bidding of contracts using pre-priced catalogs of work. The advantage of job order contracting is that it helps the City to achieve more timely and cost effective procurement of construction services. A recent report prepared by Contra Costa County indicates that they are achieving construction cost savings of approximately 8% and administrative cost savings of as much as 40% using Job Order Contracting. In addition, Contra Costa County obtained a 63% participation rate by Small and Local Businesses for work performed using their Job Order Contracts.

The City of San Jose implemented a program to use Job Order Contracting for some small and medium sized projects. Council authorized the first JOC contract on June 21, 2005 and work is expected to begin on the first task orders in September. An example of a project that might be done under the Job Order Contracting includes demolition of facilities at the FMC property to expedite the development of this property. Another example would be to complete work on projects where contractors have defaulted and where the City needs immediate occupancy.

Contract Award Streamlining

Currently construction contracts greater than \$100,000 must be awarded by the City Council (SJMC #14.04.170). An internal analysis was conducted to review potential schedule and budget savings if contract limits were to be raised to allow the Director of Public Works to award contracts with a higher dollar value. Staff also reviewed this issue with other jurisdictions to conduct benchmarking and to better understand their practices.

ANALYSIS

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 Jose	\$100,000
San Francisco	\$10,000,000
Long Beach	\$100,000
Sacramento	\$100,000

It should be noted that all of the agencies are required to obtain Council / Board approval of the budget prior to any awards of contracts, so the relatively high authority of LA and San Francisco is subject to prior budget approval. 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 Jose, Long Beach, and Sacramento will each be recommending this BMP to their respective Councils during this year.

Based on the internal analysis and the results of the benchmarking study, staff believes that there will be savings to the Capital program if the construction contract award limit 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
0 to \$100,000	20	\$160,000
\$100,000 to \$500,000	45	\$360,000
\$500,000 to \$1,000,000	19	\$152,000
Over \$1,000,000	8	\$64,000

The suggestion 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. The proposal described below would include a number of checks and balances to ensure that the risk remains low. These protocols are fully described in Attachment A.

Section 14.04.300 of the Municipal Code states that the City Council, by resolution, may give the Director of Public Works greater authority to award or execute contracts. It is pursuant to this Section of the Municipal Code that staff is recommending implementation of a one-year pilot program to increase the authority of the Director of Public Works with regard to the award of public works construction contracts.

Staff is seeking this Committee’s review and comment on the following proposed recommendation for implementing a one-year pilot program to increase the authority of the Director with regard to the award of public works construction contracts:

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, subject to the limitations set forth in the program:

1. *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,*
2. *Reject all bids on any project where the Engineer's Estimate for the base work is \$1,000,000 or less,*
3. *For construction contracts awarded by the Director, take appropriate actions to approve the project and to incorporate appropriate environmental mitigation measures for the project,*
4. *For construction contracts awarded by the Director, establish a contingency in accordance with the contingency policy previously adopted by the City Council.*

Attachment A provides detailed information on the proposed scope and regarding the limitations of the Director's authority under the proposed pilot program.

If this recommendation is approved, staff would ensure that there is appropriate public noticing of pending and completed awards. Pending awards would be published on the City's internet site, similar to the bid hot line. A list of completed awards would be published on the regular Council Agenda, in a section similar to the section that provides notice of the City Engineer's decisions on Final Maps. The listing will include the name of the contractor to whom the award was made and the amount of the award.

If the pilot program proves to be successful, staff will recommend amending the Municipal Code to make this authority permanent.

Future Opportunities

There are four other areas of process streamlining that staff is pursuing, as follows:

1. Contract Processing Streamlining

Subsequent to a construction contract award, both the contractor and City must execute the contract. There are a number of checks and balances to ensure that bonds, insurance and proper notarization are obtained prior to execution and construction cannot begin until the contract is fully executed. Staff from the City Clerk's Office and Public Works have worked together to develop a streamlined process by making some reassignments of work. With the proposed changes, Public Works staff will use an expedited process to obtain contractor signatures on the documents.

2. Construction Management Streamlining

Currently the Council approves a construction contingency at the time of award of a construction contract in accordance with the contingency policy approved by Council on December 3, 2002.

This policy is intended to pre-authorize an appropriate amount of funding to address unforeseen conditions that arise during construction. The vast majority of public works contracts are completed without exceeding the authorized contingency amounts. However, for approximately 4% of the projects, there have been unforeseen conditions in excess of the contingency. Under the current policy, staff must secure Council approval for expenditure of additional funds, even when there is adequate money in the approved budget. 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 unnecessary costs and delays.

3. Advertising of Construction Bids

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) Bidders 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 require posting the notice to contractors on the Internet as an alternative to advertising in a newspaper of general circulation. A Charter amendment would require a vote of the electorate.

4. Architectural / Engineering Consultant Services Agreement Streamlining

Currently consultant agreements greater than \$100,000 must be approved by the City Council. Agreements below \$100,000 must be approved by the City Manager. 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.

OUTCOME

Approval of the recommendations will provide direction to staff to prepare recommendations to the full Council regarding granting additional authority to the Director of Public Works to award construction contracts.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the CIP Action Team, the General Services Department and the City Clerk.

CEQA

Not a project.

KATY ALLEN
Director, Public Works Department

ATTACHMENT A

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, subject to the conditions that (a) there is no bid protest of any kind, (b) an appropriate appropriation exists for the contract, and (c) the base contract amount is no greater than ten percent over the construction estimate specified for the project in the Adopted Capital Budget and the total projected cost of the project is within the amount appropriated for the project. For example, if the base contract amount is \$435,000 for a project with an Adopted Capital Budget of \$400,000, the Director would have the authority to award the contract.

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 a bid protest of any kind, (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. 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 conditions that (a) an appropriate appropriation for the amounts exists and (b) the amounts are within the project budget adopted by the Adopted Capital Budget.

4. For construction contracts awarded by the Director, the Director would have the authority to take appropriate actions to approve the project and 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.