



Policy Type: Board

Category: Procurement

Policy Name: Public Works Contracts - Board Policy 5.7

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5.7 PUBLIC WORKS CONTRACTS

5.7.1 Overview

This section discusses public works contracts and the unique requirements for such contracts.

5.7.2 Policy

It is the policy of the Board that all public works contracts comply with applicable laws and administrative codes, including the Public Contract Code (PCC) and Uniform Public Construction Cost Accounting Act (UPCCAA), which was adopted by the County.

5.7.3 Background

The County enters into public works contracts for the purpose of erecting, constructing, altering, repairing, or improving real property or any public structure, building, road, or other public improvement of any kind. The UPCCAA, PCC and State Controller's decisions guide the preparation, solicitation, award, and administration of the County's public works contracts.



The County may commission a variety of public works projects and fund those projects with federal, state and local funds. Examples of public works projects include building construction and remodels, transportation improvements (roads, sidewalks, bikeways, rail, parking lots, and airport projects), utilities projects, parks and recreation projects, and water and sewer projects. This work typically requires the preparation of detailed work plans and specifications, and the projects must be carried out in accordance with complex laws, rules and regulations, including, but not limited to building codes, Labor Code, Government Code, Business and Professions Code, Public Contract Code and California's Environmental Quality Act.

5.7.4 Purpose

The purpose of Section 5.7 is to establish the policy for soliciting and contracting related to public works.

5.7.5 Application of the Policy

5.7.5.1 Authority

The Director of Procurement has the authority to administer the solicitation, award and contract management of Minor Public Works contracts, which are contracts valued at a certain maximum statutory limit established by the State Controller. The Director of Procurement's authority includes the ability to amend the contract value of Minor Public Works contracts up to the maximum statutory limit in order to allow for payment of incidental changes or additions to the work necessitated by unforeseen conditions or requirements. Contract value increases that are beyond the maximum statutory limit and the authority of the Procurement Director must be submitted to the Board of Supervisors for approval.

5.7.5.2 Method(s) of Solicitation



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The procedures and type of solicitation methods in public works contracts are governed in detail by applicable California law, and the County has little discretion in the application of that law. Generally, in the case of a public works contract, the County must prepare complete plans and specifications or performance specifications sufficient to describe the desired construction services and result, advertise for bids, and award the contract to the lowest responsive and responsible bidder, a process known as the design-bid-build project delivery method. The Public Contract Code authorizes the County to also use the design-build and construction manager at-risk project delivery methods. Design-build and construction manager at-risk projects are generally awarded on a best value basis. For design-build projects, the County has a single contract with an entity to do both design and construction. Construction manager at-risk projects have separate contracts with design and construction firms, but require the construction firm to work with the designer to refine and improve the design before commencing construction.

The County recognizes that before rejecting any low bidder as "not-responsible," that bidder must be given a hearing on the issue of its responsibility before a panel or an individual designated by the Board or County Executive. If the bidder is found to be not-responsible at the hearing, then the County must state its reasons for this finding in writing. It is the County's policy to honor the bidder's rights to such due process in every case.

It is also the County's policy to thoroughly investigate each low bidder's fitness and capacity to perform the contract work, and to act aggressively to reject those bids where the evidence of a bidder's responsibility merits rejection.



The type of solicitation method used will depend on the value of the contract. Therefore, Agencies/Departments must consult with the Procurement Department or the Facilities and Fleet Department to determine the appropriate method of solicitation. Regardless of the value of the contract, Agencies/Departments are required to engage in competitive pricing.

Agencies/Departments must issue a new solicitation when there is a major change in scope of the project or if the change causes a major delay, or a change to the schedule that makes the fee structure inappropriate, or if a reasonable price for a contract change order cannot be negotiated. Questions regarding the UPCCAA and/or PCC in relation to a public works bid or contract should be referred to County Counsel.

5.7.5.3 Contractor Prequalification

Public Contract Code (PCC) Section 20101 enables public entities to prequalify contractors (and subcontractors) for bidding on public works projects. The establishment of a uniform system to evaluate the ability, competency, and integrity of bidders on public works projects is in the public interest; will result in the construction of public works projects of the highest quality for the lowest cost; and is in furtherance of the objectives stated in the Public Contract Code for competitive bidding. This policy evidences the County's desire to achieve these goals and implement the process set forth in statute.

The Director of the Facilities and Fleet Department, the Director of the Roads and Airports Department, the Director of the Parks and Recreation Department, or the Director of Facilities for the SCVHHS, may recommend to the Board, on a project-by-project basis, approval of contractor prequalification and implementation of a standard questionnaire in accordance with the requirements of PCC Section 20101. The County will



use the California State Department of Industrial Relations (DIR) model questionnaire as a guide in drafting its own questionnaire; any deviations from the model are subject to review by County Counsel. The DIR documents and any procedure adopted by the County must meet the requirements of PCC Section 20101. Completed prequalification questionnaires and financial statements, as well as information gathered from contractors' references will be evaluated by a review panel established by the appropriate Agency/Department Director or designee. Only bidders determined to be qualified will be provided with bid packages and invited to bid on the particular project subject to the prequalification procedure.

5.7.5.4 Project Labor Agreements

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner and one or more labor organizations prior to award of a construction contract. A PLA is designed to eliminate potential project delays resulting from labor strife, ensure a steady supply of skilled labor on a project, and provide a contractually binding means of resolving worker grievances. Pursuant to a PLA, an owner agrees to require all contractors and subcontractors to accept the PLA's terms.

(A) Purpose

The purpose of this policy is to promote efficiency of construction operations during the County's construction of capital projects and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects.

The types of projects that are most amenable to PLA usage are large capital projects that have a substantial financial requirement, are technically complex, involve numerous contractors and employees in



different trades, have critical time lines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner.

(B) Threshold for Use of PLA

All projects estimated to have a construction component exceeding two million dollars (\$2,000,000), shall include a PLA in order to further the County's interests, i.e., time sensitivity in maintaining or providing a vital government service. The PLA must be forwarded to the Board of Supervisors at the time the Board is requested to approve and adopt plans and specifications. The Office of the County Executive may recommend to the Board of Supervisors individual exemptions.

For capital projects having construction costs at or below two million dollars (\$2,000,000), agencies/departments may also evaluate whether there is a unique feature or requirement of a project (i.e., time sensitivity in maintaining or providing a vital government service) that would benefit from the use of a PLA. When staff determines that a County interest is furthered by implementing a PLA for a particular capital project, the recommendation will be forwarded to the Board of Supervisors for consideration.

(C) Targeted Hiring

All County funded construction projects determined to benefit from a Project Labor Agreement (PLA) shall include a hiring program for underrepresented individuals in the field of local construction. The hiring program, shall include established utilization rates for hours to be performed by underrepresented workers who are graduates from a State and/or County approved apprenticeship or pre-apprenticeship programs.



An underrepresented worker is an individual who prior to commencing work on a project, is a current or past County client, including but not limited to clients of Social Services, Reentry, and Foster Care.

The hiring program shall not be included where prohibited by federal or state law or if its inclusion would jeopardize state or federal funding available for the project.

5.7.5.5 Conflict of Interest Policy for Design-Build Projects

Public Contract Code section 22162, subdivision (c), requires the County to develop guidelines for a standard organizational conflict of interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the County relating to the solicitation of a design-build project to submit a proposal as a design-build entity, or to join a design-build team for a design-build project procured pursuant to Public Contract Code section 22160 *et seq.* This policy is intended to supplement and be consistent with existing applicable conflict of interest law, including but not limited to the Political Reform Act, Government Code section 87100 *et seq.*, and Government Code section 1090 *et seq.*

All persons and entities who perform services for the County relating to the creation of a solicitation for a design-build project ("Project") are prohibited from submitting a proposal for that Project, either individually, or by joining a design-build team that submits a proposal for the Project.

5.7.5.6 Best Value Construction Policies and Procedures; Conflict of Interest Policy



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Best value procurement for public works construction contracts is a procurement process whereby a contractor is selected on the basis of objective criteria to determine the best combination of price and qualifications. To engage in the best value construction procurement method, Public Contract Code section 20155, subdivision (c) requires the Board of Supervisors to adopt and publish procedures and required criteria that ensure all selections are conducted in a fair and impartial manner. These procedures are required to conform to Public Contract Code section 20155 et seq. County departments shall be authorized to utilize the best value procurement method for public works construction for standalone projects in excess of one million dollars (\$1,000,000), or such other amount authorized by State law, as allowed under Public Contract Code section 20155. County departments shall also be authorized to utilize the best value method for public works construction for annual contracts for repair, remodeling, or other repetitive work according to unit prices, up to three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index. Use of the best value procurement method for public works construction shall be subject to approval by the Board of Supervisors, under the following conditions:

- (A) Before engaging in the best value selection method, contractors shall be prequalified using procedures pursuant to Public Contract Code section 20101 and Board Policy Manual section 5.7.5.3. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).



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- (B) Pursuant to Public Contract Code section 20155.4, subdivision (a), a best value contractor shall not be prequalified unless the contractor has agreed to and provides an enforceable commitment to the County that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2660) of Part 1 of the Public Contract Code. Pursuant to Public Contract Code section 20155.4, subdivision (b)(1), the then existing Santa Clara County Countywide Project Labor Agreement, dated January 24, 2017, between the County of Santa Clara and the Santa Clara and San Benito Counties Building & Construction Trades Council, or equivalent document that binds all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, shall qualify as an enforceable commitment required by subdivision (a), provided the contractor agrees to be bound by that project labor agreement.
- (C) Pursuant to Public Contract Code section 20155.3, subdivision (a), the Board of Supervisors, in its discretion, must make a written finding at a public meeting that awarding the contract on the basis of best value, for the specific project under consideration, will accomplish one or more of the following objectives: reducing project costs, expediting the completion of the project, or providing features not achievable through awarding the contract on the basis of the lowest bid price. If the Board of Supervisors fails to make this finding, selection on the basis of best value shall not proceed.
- (D) Pursuant to Public Contract Code section 20155.3, subdivision (b), after the Board of Supervisors makes the requisite written finding approving of the selection on the basis of best value, the solicitation for bids shall be prepared, and notice shall be given pursuant to



Public Contract Code section 20125. The solicitation may identify specific types of subcontractors that are required to be included in the bids. Compliance with Chapter 4 (commencing with Section 4100) of Part I of the Public Contract Code with regard to construction subcontractors identified in the bid, is mandatory, if applicable.

Annual contracts for repair, remodeling, or other repetitive work to be done according to unit prices, shall allow listing of subcontractors at the time the contractor submits a job order proposal in response to a job order request from the County.

- (E) Pursuant to Public Contract Code section 20155.3, subdivision (d), the best value solicitation shall do all of the following: (1) invite prequalified bidders to submit sealed bids; and (2) include a section identifying and describing the criteria that will be considered in evaluating bids, the methodology and rating or weighting system that will be used in evaluating bids, and the relative importance or weight assigned to the criteria identified in the request for bids.
- (F) At a minimum, the criteria used to evaluate the bids shall include the criteria set forth in Public Contract Code section 20155.1, subdivisions (e) through (j).
- (G) Pursuant to Public Contract Code section 20155.5, the Director of the Department responsible for the solicitation shall appoint an evaluation committee to evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents. The evaluation committee shall assign a qualifications score to each bid. Pursuant to Public Contract Code section 20155.3, subdivision (e), final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.



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- (H) Pursuant to Public Contract Code section 20155.5, subdivision (a)(2), members of the evaluation committee shall be free from conflicts of interest. Before appointing any person to the evaluation committee, prospective members shall be free from conflicts of interest. This includes, but is not limited to, compliance with Board Policy Manual section 5.2 and existing applicable conflict of interest law, including but not limited to the Political Reform Act, Government Code section 87100 et seq., and Government Code section 1090 et seq.
- (I) Pursuant to Public Contract Code section 20155.5, subdivision (b), if fewer than three responsive bids are received in response to the solicitation, no award shall be made.
- (J) Except as provided in Public Contract Code section 20155.5, subdivision (c), the award of the contract shall be made to the bidder whose bid is determined, in writing, to be the best value. To determine the best value contractor, each bidder's price shall be divided by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.
- (K) Pursuant to Public Contract Code section 20155.5, subdivision (d), following determination of the best value contractor, a written decision of the contract award shall be issued. Pursuant to Public Contract Code section 20155.5, subdivision (e), the written decision shall identify the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.



- (L) Any award made on the basis of this Section shall conform to the requirements for withholding retention as set forth in Public Contract Code section 20155.6.
- (M) This Section shall not apply to the best value selection method for Construction Management At-Risk contracts, as set forth in Public Contract Code section 20146.
- (N) This Section shall expire and be automatically repealed as of January 1, 2025, unless the Legislature extends the County's participation in the best value contracting pilot program.

5.7.6 Applicable Legal Authority

The applicable legal authority for this Section includes, but is not limited to the following:

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

Related Policies

None.

Related Forms and Information

None.

History

Date	Changes Made
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6/23/2020	Policy Amended. View legislative file.
10/8/2019	Policy Amended. View legislative file.
4/26/2016	Policy Amended. View legislative file.
3/19/2014	Policy Uploaded. (Kyle Larson)