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AGENDA REPORT

2010 APR 15 PM 5:19

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: April 27, 2010

RE: **Supplemental to Informational Report Summarizing the 2007 Low Bidder Response Analysis Study Performed by Mason Tillman Associates**

SUMMARY

On April 13, 2010, staff presented an informational report to the Public Works Committee summarizing Mason Tillman Associates' 2007 draft *Low Bidder Response Analysis Study*. The Committee directed staff to return on April 27, 2010 and submit the Consultant's full report in its entirety. This supplemental report is in response to that request. The report in its entirety, dated August 2007, is attached as *Attachment A*.

The Public Works Committee also directed staff to come back at a later date with recommendations derived from the study. Staff will develop recommendations and return to the Public Works Committee at a later date.

FISCAL IMPACT

This report is supplemental to an informational report only; no fiscal impacts are included.

BACKGROUND

Mason Tillman Associates conducted a study in 2007 to evaluate low bidder response to Oakland sewer projects as part of their Disparity Study. This report presents their 2007 draft *Low Bidder Response Analysis Study*. The study report in its entirety is in *Attachment A*.

Item: _____
Public Works Committee
April 27, 2010

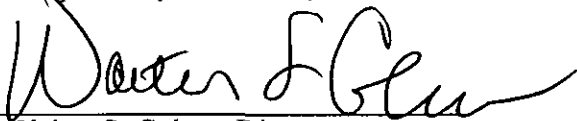
RECOMMENDATION(S) AND RATIONALE

This informational report presents Mason Tillman Associates' 2007 draft *Low Bidder Response Analysis Study*, and does not include any staff recommendations. Staff will return at a future meeting to present specific recommendations to address issues raised in the reports.

ACTION REQUESTED OF THE CITY COUNCIL

This is an informational report. Staff recommends accepting this report.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency


Reviewed by:

Michael Neary, P.E., Deputy Director,
CEDA, Department of Engineering and Construction

Prepared by:

Gus Amirzehni, P.E., Division Manager,
Engineering Design & R.O.W. Management Division

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Item: _____
Public Works Committee
April 27, 2010

Attachment A

City of Oakland Public Works Agency

Low Bidder Response Analysis

Draft for Discussion Purposes Only

Submitted to:
City of Oakland
Department of Public Works

Submitted by:
Mason Tillman Associates, Ltd.



MASON TILLMAN
ASSOCIATES, LTD

August 2007

Table of Contents

CHAPTER 1: LOW BIDDER RESPONSE ANALYSIS	1-1
I. INTRODUCTION	1-1
II. METHODOLOGY	1-1
A. Surveys	1-1
B. Interviews	1-2
C. City Records	1-3
III. STUDY FINDINGS	1-3
A. Survey Responses	1-3
B. Perception of Inability to Win a Contract	1-5
C. Difficulties with the Logistics of the Bidding Process	1-14
D. Post-Award Administrative Barriers	1-18
IV. CONCLUSION AND NEXT STEPS	1-21



List of Tables

Table 1.01	Business Survey Responses for Not Bidding, By Frequency of Response	1-4
Table 1.02	Additional Concerns Identified as Reasons for Not Bidding, By Frequency of Response	1-5
Table 1.03	Highest Contract Dollar Awards Between July 1, 2002 - December 31, 2005	1-6
Table 1.04	Highly Utilized Prime Contractors Receiving More Than 10 Constructions Contract July 1, 2002 - December 31, 2005	1-7
Table 1.05	Prime Contractors Receiving 5 or More Construction Contracts	1-8
Table 1.06	Subcontractor Utilization By Primes With Highest Contract Awards, July 1, 2002 - June 30, 2005	1-10
Table 1.07	Distribution of Days Available for Bid, 20 and Under, between 2005 and 2007	1-17





1

LOW BIDDER RESPONSE ANALYSIS

I. INTRODUCTION

Mason Tillman Associates, Ltd. (Mason Tillman) was commissioned by the City of Oakland to conduct a study to determine the factors which influenced the low number of bids received on the City of Oakland Department of Public Works's (City) construction contracts. The Study was prompted by the fact that the City Council expressed a concern that the number of contractors bidding on the City's construction contracts was low. The City was interested in learning from contractors why they were not bidding on public works projects.

II. METHODOLOGY

Mason Tillman's approach to the low bidder response analysis used three research methods: surveys, interviews, and document review. The data collection was conducted between March 2006 and July 2007. The target groups for the survey and interview research were construction contractors who had or had not bid on the City's projects within the three-year period of July 1, 2002 through June 30, 2005.

A. Surveys

Two surveys were designed for distribution to construction contractors to assess the businesses concerns related to bidding on City construction contracts. One was the City of Oakland 2006 Business Survey, a general business survey, which contained a series of questions about the construction bidding practices and was developed to inquire about general business practices. The other, entitled the Department of Public Works Construction Survey, was designed specifically to query construction contractors regarding their bidding practices. Both surveys were distributed in March 2006 to businesses that attended two City-sponsored business community meetings held in conjunction with outreach for the



City's Fairness in Purchasing and Contracting Disparity Study (City's Disparity Study). The general business survey with construction-related questions was distributed to 389 attendees at the two business community meetings. An additional 15 general business surveys were distributed to companies who could not attend either meeting, but were interested in the subject matter and requested to respond via an online survey. Completed business surveys were returned by 179 businesses. Construction contractors completed 29 of the general business surveys. The construction-focused survey was distributed to 63 construction contractors at the March 2006 business community meetings. Of the 63 surveys distributed, 33 businesses completed the survey.

Both surveys asked companies about their level of participation in the City's bidding process and whether they bid or perceived any barriers to bidding on City construction contracts. The general business survey provided a list of issues for business owners to select as relevant for their decisions related to bidding. In addition, space was provided for the respondent to submit written comments identifying additional issues not in the preset list of questions. The survey inquired into whether the companies encountered problems in any one of eight identified areas and requested an explanation of any perceived problem. The open-ended questions were an invitation for the business owner to describe any issues not listed in the survey and to provide suggestions on their resolution.

The Department of Public Works Construction Survey was similar to the general business survey in that it asked the respondents to answer both closed and open-ended questions identifying circumstances affecting their decisions to bid City Public Works projects. The construction survey, however, specifically requested an explanation of why an issue on the preset list was marked as a concern. It further inquired into the projects that the respondent had bid on, and if the respondent had not bid, requested an explanation as to why not. Both surveys allowed the respondents to either select an issue included in the questionnaire and/or describe a concern not listed on the questionnaire.

A statistical analysis was made based on the results of the surveys. Both surveys were analyzed by examining how many companies bid in the last three years and grouping their listed concerns into categories to analyze any significant patterns. Several tables were created to determine and classify the concerns listed by the survey respondents. The surveys also served as the source of identifying construction contractor interviewees and directing the documentary research.

B. Interviews

In-depth interviews were conducted to allow interviewees to describe their attitude toward bidding to the City and identify any barriers experienced in attempting to do business with the City. Experiences in actually doing business with the City were also queried. A total of 63 potential interviewees were identified from the completed business surveys, contract and



certification records, and referrals from the City. Responses from the interviews conducted with construction contractors during the anecdotal phase of the City's Disparity Study were also incorporated into the analysis. Additional interviews were conducted with the businesses that completed the business surveys to follow-up on responses to the closed-ended questions.

C. City Records

City records reviewed were drawn from the 608 construction prime contracts analyzed in the City's Disparity Study, bid notices posted on the City's website, and request for bids. Data compiled for the City's Disparity Study, covering the three-year study period, July 1, 2002 to June 30, 2005, was analyzed to determine how the awarded contracts were distributed. The frequency of the contract awards to the utilized businesses during the three-year study period was assessed. The Requests for Bids posted on the City's website from January 2006 to August 2007 were reviewed to determine the posting date and the bid opening date. The required forms in a current Request for Bids was reviewed to determine the specific information requested in each of the forms.

III. STUDY FINDINGS

This section presents the findings gleaned from the business surveys, interviews, and the review of City records.

A. Survey Responses

The close-ended responses to the business surveys are presented in this section. The categories which reflect the reasons for not bidding to the City are listed in Table 1.01. These responses include timeliness of payment process, lack of information about the bidding process and bid openings, bonding and insurance issues, handling of change orders, retainage requirements, quality of inspection and construction management, quality of the plans and specifications, and job-site security. A total of 99 responses to these inquiries were analyzed.



**Table 1.01 Business Survey Responses for Not Bidding, By
Frequency of Response**

Concerns	Number of Surveys	Frequency of Responses
Timeliness of Payment Process	38	38.38%
Lack of Information About the Process or Contracts	32	32.32%
Bonding & Insurance	28	28.28%
Handling of Change Orders	20	20.20%
Percent of Retainage	19	19.19%
Quality of Inspection and Construction Management	16	16.16%
Quality of the Plans and Specifications	14	14.14%
Job-Site Security	11	11.11%
Number of Responses	99	

In addition to the concerns listed above as reported in the business survey, respondents to the business surveys and interviews identified additional concerns. Table 1.02 displays responses to the open-ended questions. This table also notes the frequency of the responses.



Table 1.02 Additional Concerns Identified as Reasons for Not Bidding, By Frequency of Response

Concerns	Frequency of Responses
Cannot Win Contract in Oakland: City Has Favored Companies or Circumvents Acceptance of Lowest Bid Primes Have Favorite Subcontractors	7
City of Oakland Difficult to Work With: Inaccessible Managers Bid Process Not Well-Organized or Unclear	12
Internet Posting Provides Insufficient Information (Bid Area of Service Not Advertised)	1
Too Much Paperwork	2
Inadequate Time to Respond to Bid Request	2
SLBE Requirements Cannot Be Met	5
Prefer Bid Notification Rather Than Periodically Checking City Website	2

In some instances these responses were provided with explanation.

B. Perception of Inability to Win a Contract

Interview responses suggest construction contractors are less likely to bid when they perceive the likelihood of their winning the contract is low. Construction contractors report their perception is that the City awards contracts to its favorite companies and therefore the prospects for other companies to win a bid are limited. An analysis of City contract data, as depicted in Table 1.03 below shows a high concentration of contract dollars going to just a few businesses during the three-year study period, July 1, 2002 to June 30, 2005.

1. Size of Contract Awards Indicates Frequent Use of a Few Businesses on Small and Large Contracts

During the three-year study period the City awarded 57.22 percent of its construction prime contracts, or \$44,206,127, to 20 construction prime contractors. The total dollars awarded for this three-year period were \$77,252,468. The 20 businesses listed in Table 1.04 received more than 50 percent of the construction contracts awarded in the three-year study period. The 20 construction contractors represented 14.49 percent of the total businesses awarded construction contracts. The total number of contractors that received construction prime



contracts during the three-year study period was 138. Furthermore the 20 businesses represented less than 3 percent of the more than 700 construction firms identified in the City's Disparity Study as available to perform construction work as prime contractors and subcontractors.¹

The top five highly utilized contractors received 42.75 percent, or \$33,027,322 of the \$77,252,468 total prime contract dollars awarded during the three-year study period. The size of the contracts awarded to the five highly utilized prime contractors range from \$932 to \$6,010,063.² These five prime contractors received both large competitively bid contracts and small informal contracts under \$50,000 which did not have to be advertised or competitively bid.

Table 1.03 depicts the ten companies that received the most dollars.

Table 1.03 Highest Contract Dollar Awards Between July 1, 2002 - December 31, 2005

Prime Contractor Name	Number of Contracts Awarded	Percent of Total Contracts Awarded	Total Dollars Awarded	Percent of Total Dollars Awarded
Andes Construction Inc.	23	3.78%	\$8,258,032	10.69%
Ray's Electric	18	2.96%	\$7,184,346	9.30%
Gallagher & Burk Inc.	27	4.44%	\$6,561,722	8.49%
Swinerton Builders, Inc.	1	0.16%	\$6,010,063	7.78%
McGuire and Hester, Inc.	14	2.30%	\$5,013,159	6.49%
AJW Construction	14	2.30%	\$4,419,057	5.72%
Valleycrest Landscape Development Inc.	2	0.33%	\$3,911,038	5.06%
Arthur Young Debris Removal	67	11.02%	\$3,237,974	4.19%
Zakskorn Construction Company	3	0.49%	\$3,090,002	4.00%
Bay Construction Company	17	2.80%	\$3,071,400	3.98%
Top10 Sub Total	186	30.59%	\$50,756,793	65.70%
Total Contracts Awarded	608		\$77,252,468	

¹ The City's Disparity Study identified 736 available construction firms.

² Since the contract records analyzed included payments made on contracts, purchase orders, and direct purchases, the low award amounts may not necessarily represent a total payment on an agreement, but rather a single payment on a purchase order. In any event, the City's Comptroller's finance records show these five highly utilized contractors received a number of small payments.



Table 1.04 Highly Utilized Prime Contractors Receiving More Than 10 Constructions Contract July 1, 2002 - December 31, 2005

Prime Contractor Name	Number of Contracts	Total Contract Dollars	Percent of Total Contract Dollars
Arthur Young Debris Removal	67	\$3,237,974	4.19%
Gallagher & Burk, Inc.	27	\$6,561,722	8.49%
Andes Construction, Inc.	23	\$8,258,032	10.69%
David Ball, DBA.	19	\$112,390	0.15%
Valleycrest Landscape Development, Inc.	19	\$47,279	0.06%
Ray's Electric	18	\$7,184,346	9.30%
Rafael Tobar, DBA.	18	\$1,400,172	1.81%
Bay Construction Company	17	\$3,071,400	3.98%
Duncan Industries	15	\$485,341	0.63%
Commair Mechanical Services	15	\$279,368	0.36%
McGuire and Hester, Inc.	14	\$5,013,159	6.49%
AJW Construction	14	\$4,419,057	5.72%
Kone, Inc.	14	\$445,938	0.58%
Tucker Technology, Inc.	13	\$1,709,259	2.21%
Rockridge Builders	13	\$624,289	0.81%
Alaine Brown	12	\$237,610	0.31%
Summerhill Electric, Inc.	12	\$116,375	0.15%
Ortiz Construction	12	\$75,847	0.10%
Graybar Electric Company	11	\$844,832	1.09%
Arrow Sign Company	10	\$81,737	0.11%
SubTotal	363	\$44,206,127	57.22%
Total Contracts Awarded	608	\$77,252,468	

This high concentration of contracts going to just a few businesses supports the perception that the City awards its contracts to the companies they have used in the past.

Four of the highly utilized prime contractors received five or more contracts per year throughout each fiscal year of the study period, as depicted in Table 1.05. These four companies, Andes Construction, Inc., Arthur Young, Ray's Electric, and Rafael Tobar, DBA (formerly Mosto), received 25.99% of all the construction contracts awarded in the study period.



**Table 1.05 Prime Contractors Receiving 5 or More
Construction Contracts**

Award Year	Prime Contractor Name	Number of Contracts	Total Contract Dollars	Percent of Total Contract Dollars
2003	Andes Construction, Inc.	11	\$3,198,957	4.14%
	Arthur Young Debris Removal	8	\$1,097,399	1.42%
	Ray's Electric	7	\$3,988,084	5.16%
	Rafael Tobar, DBA.	5	\$510,431	0.66%
2004	Arthur Young Debris Removal	41	\$1,219,390	1.58%
	Andes Construction, Inc.	7	\$3,577,594	4.63%
	Rafael Tobar, DBA.	6	\$851,041	1.10%
	Ray's Electric	5	\$2,186,925	2.83%
2005	Arthur Young Debris Removal	17	\$920,235	1.19%
	Rafael Tobar, DBA.	7	\$38,700	0.05%
	Ray's Electric	6	\$1,009,336	1.31%
	Andes Construction, Inc.	5	\$1,481,480	1.92%
Sub Total		125	\$20,079,574	25.99%
Total Contracts Awarded		608	\$77,252,468	

Given the number of construction companies in the City of Oakland, the four highly utilized prime contractors have been awarded a disproportionately high percentage of the City's large and small contracts.

There were 138 contractors that received a contract from the City during the three-year study period. These four contractors represent 2.9 percent of the total number of contractors awarded City contracts, yet they received nearly 30 percent of the contract dollars awarded, or \$20,079,574 out of \$77,252,468.

During the three years, the four contractors were awarded 125 contracts ranging in amounts from \$200 (Arthur Young Debris Removal) to \$1,992,352 (Andes Construction, Inc.) The size of the contracts suggests that some of the smaller contracts awarded to these highly utilized contractors were informal procurements. Informal construction procurements were contracts under \$50,000 that could be awarded without being advertised or competitively bid.



2. Contractors Feel That Some Prime Contractors Do Not Consider Their Bid

Contractors assert that their competitive bids submitted to the frequently utilized prime contractors are not given consideration. The contractors assume the frequently utilized prime contractors either use the same subcontractors on many of their projects or else they do not hire many subcontractors at all. This effectively stifles competition against the frequently utilized prime contractors. Contractors which would like to bid as primes but do not due to small and local business requirements or other reasons, also cannot compete for City business working as a subcontractor or supplier.

An analysis of the subcontractors used by the highly utilized prime contractors does indicate to some extent a pattern of repetitious use of a limited number of subcontractors by three of the prime contractors that received the highest contract dollars. Three highly utilized prime contractors used a select few of the 31 unique businesses awarded subcontracts during the three-year study period as depicted in Table 1.06. Some subcontractors were reported as being used by the highly utilized prime contractors as many as nine times while more than 61 percent of the subcontractors utilized by the three prime contractors were only used once. The financial data does not reflect that other contractors have a similar pattern of using the same subcontractors. Nevertheless, the data does indicate that the top prime contractors do not utilize many subcontractors to complete their projects. Over the three-year study period, AJW Construction received 14 contracts from the City, yet he only hired nine subcontractors, three of which were trucking companies. Andes Construction, Inc. received 23 contracts, yet only used nine subcontractors, three of which were also trucking companies. Andes Construction Inc. and Ray's Electric tended to use the same subcontractors more frequently.

Table 1.06 below lists all the subcontractors used in prime contracts awarded to three highly utilized prime contractors during the three-year study period.



Table 1.06 Subcontractor Utilization By Primes With Highest Contract Awards, July 1, 2002 - June 30, 2005

Prime Contractor	Subcontractor	Number of Times Subcontractor Utilized
AJW Construction	Central Concrete	3
AJW Construction	CJC Trucking	3
AJW Construction	Williams Trucking	2
AJW Construction	AJW Construction	1
AJW Construction	AP Trucking	1
AJW Construction	Oakland Ready Mix	1
AJW Construction	Central Ready Mix	1
AJW Construction	Gallagher & Burk	1
AJW Construction	RMC Pacific	1
Andes Construction, Inc.	Bayline Construction	9
Andes Construction, Inc.	KM Transport	6
Andes Construction, Inc.	Moore & Sons Trucking	3
Andes Construction, Inc.	Berkeley Asphalt Co.	1
Andes Construction, Inc.	Irving Trucking	1
Andes Construction, Inc.	Masterliner	1
Andes Construction, Inc.	Ola's Trucking	1
Andes Construction, Inc.	Owens Concrete Saw	1
Andes Construction, Inc.	Trench Plate Rental	1
Ray's Electric	Williams Trucking	8
Ray's Electric	AJW Construction	5
Ray's Electric	JAM Services	5
Ray's Electric	Specialty Crushing	5
Ray's Electric	Striping Express	4
Ray's Electric	Del Conte Landscape	3
Ray's Electric	Diaz Corporation	3
Ray's Electric	McGuire & Hester, Inc.	3
Ray's Electric	Bayline Construction	2
Ray's Electric	Alameda Electrical Dist.	1
Ray's Electric	Aman Environmental	1
Ray's Electric	Berkeley Asphalt Co.	1
Ray's Electric	Central Concrete	1
Ray's Electric	Chrisp Company	1
Ray's Electric	David O' Keefe	1
Ray's Electric	Herning Underground	1
Ray's Electric	La Hue Associates	1
Ray's Electric	Ross Recreation	1



3. Perception That There Is Not Consistent Adherence to the Low Bid Process

Some contractors felt that the decision as to who would win the bid was predetermined while others reported the City awards its contracts based on the lowest bid. One contractor described what he perceived as arbitrary decisions in the award of construction contracts.

Without me having any history, even if I turn in the bid, and even if that bid is near or close or lower than the low bidder, they will more than likely be responding to the one that they have had a reputable history with and one that they have confidence in, in the past working with, and would not want to trust that to maybe a new guy on the block. And that may be regardless of size.

While there is no indication that contracts are awarded to other than the low bidder there is evidence that the frequently utilized prime contractors received a number of small contracts. Contracts which were awarded as either informal contracts, which did not require bidding, or as larger contracts against which small task orders were issued. Task orders could possibly have been awarded as an informal contract which would not have required an award based on low bid.

In addition, some contractors feel that the City can use other processes, such as the good faith efforts exemption, to tie up a would-be low bidder in an administrative process for a length of time without awarding the low bidder the contract. One contractor reported:

The City of Oakland is not following its own internal procedures on reviewing protests from - or giving even the opportunity for the low bidder to protest....[we were the low bidder but] we did not meet the local small business goals. The second bidder supposedly has met the local small business goals. However, we have met the good faith efforts, and based on that, we should be - based on the City of Oakland's own rules and procedures - be allowed to sit down with the City of Oakland and go over our good faith goals, our good faith efforts.

4. Barriers Created with Contract Bundling

Contractors identified rehabilitation of sanitary sewer contracts as a construction area where a significant number of contracts are awarded to just a few businesses because of the scope of the solicitations. Several respondents expressed a concern that the bids were bundled and therefore limited competition. Some contractors also asserted that the 20 percent SLBE



subcontractor goal limited the number of non-Oakland contractors that competitively bid on the sanitary sewer contracts and especially when the solicitation bundles the sewer lining and bursting, lateral replacement, clean-outs, paving, and manhole replacement in one contract.

One contractor in contrasting the solicitation standard in the City with other jurisdictions described the bundling issue as increasing the costs for the City and limiting the bidders ability to meet the SLBE goal:

The way that Oakland packages their bids, they throw everything and the kitchen sink in one bid, so we can't provide the value offered to other cities. If we were going in and just doing lining, where there may be 20 percent dig work, then we could get small local participation and pick up the 20 or 30 percent, and we would prime the other 70 percent.

The challenges in meeting the SLBE goal were also characterized as simply a matter of business capacity. One contractor stated:

[It is difficult] having to meet that SLBE percentage when there's not enough SLBE people to do the work. I mean, you know, if you put a goal, I mean I know why the goal's there. There are trying to encourage more people to go into the, you know, sewer business, SLBE's in Oakland. So far, I mean, it's been really slow and you can't force something like that. So the goal is – it's almost impossible to meet that 20 percent on these jobs because you just can't find [a subcontractor], it's either Mosto or Pacific Trenchless, and once they get full, they can't bid.

An option for meeting the SLBE goal, described by another contractor was to use a local plumber to meet the goal if the solicitation did not bundle manhole replacement with sewer lining and bursting, lateral replacement, clean-outs, and paving.

Other contractors asserted that the prime should not be required to subcontract if the prime contractor has the capacity to perform the entire job. In the words of one contractor:

I have the ability to perform work without subcontractors or with my preferred non-Oakland subcontractors and I prefer to bid my sewer replacement jobs using this business model.



There were also contractors of the view that employment of local residents was a requirement which limited the number of bidders on construction contracts.

We have been trying for almost thirteen months to get a job inside of Oakland but the structure is just - it's not friendly....Not only does [a] contractor have to have an office in there, but of course if you read the fine print you find that those residents, those workers have to be registered in the City of Oakland too. You can't get an Oakland company with Hayward employees.

Contractors also reported that the sewer replacement contract specifications are too restrictive. It was reported by a contractor that the current material standards are based on determinations made by a single person and the Oakland Standard Detail, which the contractor stated is not revised as frequently as the Green Book Standards of Construction, which is updated every two years. The contractor suggested the establishment of a project review committee which would review patented products and technology using the Green Book Standards for Construction. This would create a group of people who could review the products intended to be utilized for a project instead of relying on the current practice perceived as outdated industry standards. The project review committee could approve additional and reportedly more contemporary material standards to augment those presently stipulated in the sanitary sewer replacement contracts.

Another contractor stated that he would like to see an internal review committee set in place, and that a contractor should be on that committee.

It would make sense for the City of Oakland to have an internal committee comprised of a representative for the office of the City Attorney, the City Auditor, [and] the Public Works, to make sure what they're putting in their specs is reasonable. It would probably make sense to have a contractor on that committee, just to hear the contractors' perspective.

Another concern for contractors regarding the packaging and requirements of bids is that when specifications include the required use of proprietary products by a specific manufacturer, some contractors experience exclusivity by the manufacturer in that the manufacturer will not sell to some contractors. If they cannot access the product from the required source, then that contractor is unable to bid.



A contractor reported exclusivity of the manufacturer's proprietary product stipulated in the specification.

Well, the [project name withheld] has Seaplast, and that is a proprietary spec....[The manufacturer] only works with large, generally white male-owned companies.

The same contractor indicated that they are effectively barred from buying from the manufacturer, and they must try to purchase the product from authorized distributors who either will not sell to them or provide poor financing options for their business.

One of the distributors in the area will not sell to us because we're small.... The rest of the distributors in the area will sell to us, only on a 30-day pay though. They don't put us on any long [term] credit. And if it's on a job and we are on joint checks, they will go ahead and let us go for a few more days over. But they want nothing more than 45 days or we are shut off.

C. Difficulties with the Logistics of the Bidding Process

Respondents reported the City's bidding process is a barrier to bidding. Barriers reported include lack of information about the bidding procedures, challenges to secure information on contracts available for bidding, failure to distribute solicitations directly to the businesses, area of service not adequately advertised, inadequate time to bid or respond to a request for bid, and too much paperwork to fill out in a timely fashion

1. Lack of Information About the Bidding Process

More than 32 percent of businesses surveyed stated that the lack of information on the bidding process and advertised bids was a factor in their decision to not bid on City projects. Respondents acknowledged the City routinely posts requests for bids on its website but felt the method was both insufficient and inefficient. It was stated that notices should also be distributed directly to the businesses.

One contractor reported that the distribution of the request for bids distribution by mail, fax, or e-mail could be focused so that the contractor received only the notices relevant to their trade.



Another contractor reported that mail distribution was the most appropriate for a construction business because Internet posting requires staff time to check online periodically, when there are no indications that there will be a relevant job posted on the City's site.

The notification practice of a Sacramento agency was described by a contractor as a model to be replicated by the City:

One policy is that it works for us is the Sacramento Municipal Utility District and that's because they proactively send it out to us in order to encourage us to bid. The prime contractors also contact us because we're on a list of qualified vendor[s].

Another contractor reported experiencing difficulty trying to obtain bid information on City projects:

In the past, a lot of agencies would notify us if a RFB was coming out. Now they issue notices online. And, unless you have someone that can constantly [check for notices online] it's a real pain. Frankly, I do not have the time to do that. As far as the City of Oakland I don't even know what their bidding process looks like. Even though I pay my business taxes to the City of Oakland, I have never [received] anything from them that indicates how to [get on their bidders' list].

There was also concern expressed regarding access to relevant information regarding the bid process. Contractors described the need to have in the same place on the website, in the same page as the Bid postings, a single step by step guide to bidding complete with L/SLBE requirements and definitions, and downloadable forms.

Another contractor stated that the administration and bureaucracy are intimidating:

The bidding process is intimidating for a small contractor. Bidding in the City requires too much work. We have to spend too much time digging up records and filling out forms, and you potentially subject yourself to audits. I don't have enough staff to help me do all that and I could [otherwise] be using that time to work.

- **Lack of Response Regarding Placement on the City's Vendor List**

The most common concern regarding the City's vendor list was the lack of response to the vendor application. Once an application was submitted, contractors reported not receiving



any notification or any indication that they were on the list. Contractors reported that calls to City offices were answered electronically and return calls were not forthcoming. City employees if they did respond to the inquiries, failed to provide the assistance needed to clarify their status or secure placement on the list.

- **Geographic Location of the Project is Not Advertised**

The notices regarding current opportunities to bid currently give pertinent information regarding licenses required, project number (reference), fees for further bid information, pre-bid meeting date and time, engineer's estimate, and other pertinent information regarding bid status. However, the notices do not state the location of the job site. When checking the website for a bid opportunity, businesses need to know where the work is to take place to determine the logistics to be financially worth while for the business to inquire further at the informational meeting or request a bid package.

2. Inaccessible Staff

Some contractors have stated that they find the City difficult to work with because the staff is inaccessible or unavailable to assist them. One contractor commented that he was not allowed to schedule a meeting with the Supervisor Civil Engineer.

The Bureaucracy wouldn't let me [go in] to [see] [name withheld]. I would stop by this clerk, that clerk, and then, of course, contract admin said well if you're not qualified there is no sense in talking to [name withheld].

3. Inadequate Time to Submit a Bid

One contractor reported that there was not enough time between the notice of the request for bids and the bid opening date to adequately prepare a bid.

A contractor reported that he does not receive adequate notice to respond to the City's request for bids:

Usually 30 days is plenty of time to respond to a bid, but 10 days is not enough. All of the agencies are the same, they all [do not provide adequate notice]. I need more [time] than what the City gives to [respond] to their bids.

Mason Tillman reviewed 52 of the City's requests for construction bids posted on the City's website from 2005-2007. Each bid was reviewed to determine the lapsed time from the advertisement date and the reported bid opening date. Of the 52 posted bid requests, 21 bid



requests provided 20 or less days to bid. The 21 bid requests, dating from April 2006 to the present, with one bid request from November 2005, were further analyzed to determine the average time between the dates of the bid notice and the opening bid. The analysis revealed that 40.38 percent of the time, or for 21 out of 52 bid requests, contractors were given less than 15 days to bid. Assuming that the contractor did not download the bid opportunity on the posting day they are posted, businesses become pressured to produce a bid in a time frame they feel is the amount of time to prepare a bid would be even less than two weeks. Table 1.07 below displays the frequency of bids posted with 20 days or less to respond.

Table 1.07 Distribution of Days Available for Bid, 20 and Under, between 2005 and 2007

Number of Days Provided to Respond to Bid Request	Number of Times Bids Fall In Range	Frequency by Percent
0-10	6	28.57%
11-15	2	9.52%
16-20	13	61.90%
Total Bid Requests with 20 or Less Days to Bid	21	40.38%

4. Too Much Paperwork

One contractor comments on the paperwork:

Way too much paperwork. We sent in an inch-and-a-half of paperwork that consists of three years of personal income taxes, three years of business taxes, invoices, just a whole lot of paperwork. It takes us probably eight hours to do the paperwork.

Mason Tillman enumerated the forms a bidder on a current RFB, number G-283010, is required to submit. The review was undertaken to assess means to consolidate the forms or reduce redundant information. Forms such as "Declaration of Compliance with the Americans with Disabilities Act" and "Declaration of Compliance - Living Wage" do not require information that would frequently change, so the City might require a bidder to submit such forms only one time and keep the forms on file.

Online form submission is another paper reduction strategy. Web-based forms could be utilized. The completion of the required forms could then be simplified by having the data



entered into an Internet-based relational database so that the repetitious information could be entered once and appear in each of the relevant forms. Once the business name, address, telephone, State license classification and other administrative data are entered the information would be stored and reported in the relevant forms. This will allow the bidder to avoid having to re-enter the same information within the various forms. In addition, this information could be accessible for subsequent bid form submissions with an option to update this information if required. A reduction in the number of forms a bidder must complete to submit a bid would simplify the process for the business and reduce the time City staff spends reviewing and processing bids.

D. Post-Award Administrative Barriers

Post-award barriers identified included timeliness of payment, bonding and pre-award, handling of change orders, retainage, quality of inspection and construction management, quality of the plans and specifications, and job-site security.

1. Timeliness in Processing Payment

The timeliness of payments was a key issue for many of the survey respondents with 38.38% of the survey respondents citing this as a barrier. Respondents reported waiting more than one year for invoice payments. When the City delays in paying the prime contractor, the subcontractor's payment is typically delayed.

Contractors, and especially the SLBEs, have reported that late payments from prime contractors has had a devastating effect on their businesses. One contractor stated:

Our company had problems with the IRS which were generated by non payments from general contractors. The City of Oakland paid the general contractor and they refused to pay us. So, we had to operate without money and we paid our payroll first. We [were forced to] let our taxes and our workman's compensation insurance [become] overdue.

It took six months for this contractor to receive payment from the City.

I have waited six months for payment from a City agency.

Another contractor reported waiting a year and a half for payment from the City.

Just about every contract I have had with the City of Oakland, I am paid at least four or five months from when the work is performed. I think this is an unreasonable amount of time to



wait for payment. I have experienced this about 30 times in the past six years. I still have outstanding payments with the City of Oakland, which have extended from four months to eight months. So, there are a lot of payments where I have not gotten paid yet. I guess the longest that I have gone without payment has been about a year-and-a-half. I am not going to bid on another City of Oakland contract until my payments are current with the contracts that I have.

This contractor finds the process for getting paid timely almost unreasonable.

The requirements to get paid, all the documents that have to be signed, the t's crossed and the i's dotted, gets to the point where it's almost unreasonable as far as what they're asking for to get paid in a timely manner.

2. Concerns Related to the Performance of the Contract Work

The survey respondents listed other barriers to bidding with the City which were associated with the City's management of the construction work. The distribution of the responses that were expressions of concern with the City in these areas is detailed below. The respondents with concerns in these areas ranged from a high of 20.2 percent to a low of 11.11 percent. 1) handling of change orders was 20.2%; 2) retainage was 19.19%; 3) quality of inspection and construction management was 16.16%; 4) quality of the plans and specifications was 14.14%; and job-site security was 11.11%.

- **Handling of Change Orders**

Contractors report costly delays in the City's handling of paperwork and the approval process which makes it difficult for small businesses to work for the City.

One contractor explains that her small business has had difficulty accommodating the City's change order process:

On a change order, all you get is ten percent over cost. So they take out all the liability insurance and all the everything, and then you just get that straight number plus ten percent.... Well, in order to be a contractor, we still have to pay liability insurance. And as a small contractor, we only work one or two jobs at a time. We've still gotta pay \$2,500 a month to our liability insurance. And so when they put us in this position, with our money cut so drastically, it's difficult. And that in



itself could put us out of business, too, 'cause it would get everything canceled.

Another contractor reported that the City would not put the change order in writing.

I was working on an electrical project for the fire station and was unable to get the City to put the change order in writing despite my best efforts.

- **Retainage**

Withholding the subcontractor's retainage until the prime contractor's work is complete can result in months if not years of delay in the subcontractor receiving full payment for its services. The retainage percentage and process of releasing the funds were cited as barriers for small businesses bidding on City projects. If the City withholds retainage from the prime contractor's payment, the subcontractor does not receive its portion of the withheld payment until the prime's work is completed. This delay in the release of the project retainage therefore creates a financial burden for small businesses working as a prime or sub contractor.

One contractor reported that the City does not always release the retainage.

Sometimes the City will back off and make the retainage 5% instead of ten, but then sometimes they don't give that 5% back. They [the City] looks for ways to side-step it.

- **Quality of the Plans and Specifications**

The quality of the plans and specifications is relied on by each contractor to be able to accurately assess a bid. In the event that the contractor does not have high quality plans and specifications, the contractor may unintentionally underbid, and lose money on the project. In addition, the contracts need to also be clear and reasonable.

One contractor suggested that the City:

Change the indemnification language to limit the subcontractor or the prime contractor responsibility only for their share of the responsibility. Right now, the way indemnification clauses are written in every public agency that I've seen is, our company could be one percent responsible for an accident or an issue, and maybe the City Inspector could be 99 percent responsible. Based on the indemnification language we sign right now today, we could be covering a hundred percent of the claim...I think the City needs to



do a better job making sure they're being fair and following their own rules.

IV. CONCLUSION AND NEXT STEPS

Using the three research techniques described in the methodology, Mason Tillman examined the factors which influenced the low bidding on the City's construction contracts and the reasons the contractors gave for not bidding on City projects. Using the findings compiled from the surveys, interviews, and document review, Mason Tillman was able to discern reasons for contractors' decisions to not bid on City construction contracts.

The survey responses revealed that the three main concerns affecting a contractor's decision to bid on City contracts were the timeliness of the payment process, the lack of information provided regarding the bidding process or the contracts, and bonding and insurance. Of the responses received, 38.38 percent said that the timeliness of payments was a reason why chose not to bid. More than 32 percent of the respondents stated that the lack of information about the process or the contracts was a deterrent to bidding.

The open-ended responses to the surveys and the interviews revealed a wide range of specific concerns and perceptions that contractors have regarding doing business with the City. These included a range of concerns. An overarching concern was a general perception that the City favored certain contractors. The contractors reported the City was difficult to work with, contracts were not widely advertised, the paperwork was excessive, the time allocated to respond to a bid was too short and the specifications were restrictive and outdated. The notion of not being able to win bids and the City being difficult to work with were by far the more addressed issues most frequently articulated by the respondents in both the interviews and the surveys.

Mason Tillman proposes that the City consider further analysis of the issues and barriers presented in this Study. Minimally there should be an objective examination of actual procedures and practices employed by the City in the process of bidding and managing contracts. The examination should have as a primary objective to assess how the City's procedures and practices affect its interaction with contractors interested in bidding and those selected to perform City contracts. A focused examination of the City's customer relations policy and operating standards would also aid in understanding the perceptions of the construction contracting community and their decisions regarding bidding City contracts. Finally the City should develop a staff training module for current and new employees to ensure the model practices instituted are employed by all staff involved in the construction contracting and project management process.



The results of any modifications made in the City's handling of the construction contracting process could be measured by the number of bids received, the bid pricing and compliance with the requirement to use SLBEs.

