

CITY OF OAKLAND
AGENDA REPORT

2010 APR -1 PM 12: 34

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: April 13, 2010

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

SUMMARY

In August 2007 Mason Tillman Associates submitted a draft *Low Bidder Response Analysis Study* to the City of Oakland Public Work Agency (PWA). The stated goal of this study was to determine the different factors that influenced the low number of construction contract bids received by PWA between July 1, 2002 and June 30, 2005. This item was previously discussed at the Public Works Committee on May 25, 2004 and February 28, 2006.

This informational report summarizes and discusses the methodology and findings of that study and closes with measures that staff has implemented to alleviate the concerns identified in the study.

FISCAL IMPACT

Since this report is informational only, no fiscal impacts are included.

BACKGROUND

From 2000 to 2005 sanitary sewer construction contracts in Oakland usually attracted only one or two bidders. With this observation, the Public Works Committee directed staff to survey local contractors to determine the reasons for this small pool of bidders. Staff conducted a survey and held follow-up interviews with contractors. Those findings and recommendations were presented to the Committee in 2005 and 2006. After reviewing staff's findings, the Public Works Committee directed staff to utilize Mason Tillman Associates (MTA) to further evaluate low bidder response as part of their larger study known as the Disparity Study.

Staff presented MTA's Disparity Study to Council on December 8, 2009. This informational report discusses the Disparity Study's low bidder response analysis and discusses their methodology, findings and recommendations. This report also provides summary discussions on some measures implemented in response to the MTA study findings.

Item: _____
Public Works Committee
April 13, 2010

It should be noted that in recent years bidder response to Oakland sewer projects has improved. From 2008 to 2009, the average number of bidders on sewer projects has increased to about four. A similar increase in bidding activity has been noted on all types of construction contracts.

KEY ISSUES AND IMPACTS

I. Study Methodology

Mason Tillman Associates (Consultant) utilized three research methods for their study: A) surveys, B) interviews with construction contractors, and C) review of City documents. The target audience for the surveys and interviews was construction contractors who had not bid on City construction projects between July 1, 2002 and June 30, 2005.

A. Surveys of Construction Contractors

The Consultant prepared two business surveys that were distributed at two City meetings in March 2006. These surveys contained both closed and open-ended questions regarding how the City's bidding and construction oversight practices affected construction contractors' decisions whether or not to bid on City construction projects. The Consultant's analysis of the survey results helped the Consultant select those construction contractors invited to attend follow-up interviews.

The first survey, the City of Oakland Business Survey or General Survey, was primarily developed to inquire about general business practices, but also contained specific questions for construction contractors regarding their perceptions of Oakland's construction bidding practices. The General Survey was distributed to 179 businesses of which 29 were completed and returned by construction contractors.

The second survey (PWA Survey) was specifically tailored to construction contractors and was returned by 33 of the 63 construction contractors to whom it had been delivered. This survey presented a list of possible concerns that could influence a contractor's decision whether or not to bid on City construction projects. These questions specifically asked contractors to provide open-ended answers as to why different issues were marked as a concern. The PWA Survey also asked contractors to identify construction projects for which they had submitted bids. If the contractors indicated that they hadn't bid on any contracts, the PWA Survey requested an explanation as to why the contractor had decided not to bid.

The results for both surveys are shown on page three of this report.

B. Mason Tillman Interviews with Construction Contractors

Follow-up interviews provided contractors a forum to provide in-depth answers to questions about Oakland's bid climate. The study does not indicate how many contractors were selected to interview nor the methodology used to select these particular contractors. The interview responses and open-ended survey question responses are presented in pages 11 through 21 of the consultant's study.

C. Review of City Records

City records were reviewed in order to analyze the distribution of awarded construction contracts, the length of the bid periods, and the amount of information required for bid submittals.

The distribution of awarded contracts was extracted from information provided in the consultant's larger Disparity Study. The Consultant reviewed information from 608 construction contracts awarded between July 1, 2002 and June 30, 2005.

II. Study Findings:

A. Survey Responses

The survey results were tabulated in Table 1.01 of the consultant's study to provide a breakdown of eight types of reasons construction contractors declined to submit bids on Oakland projects. This table is shown below.

*Table 1.01 Business Survey Responses for Not Bidding, By Frequency of Response
(from page 4 of Consultant's study)*

	Concerns	No. of Surveys	Frequency of Responses
1	Timeliness of Payment Process	38	38%
2	Lack of Information about the Process or Contracts	32	32%
3	Bonding & Insurance	28	28%
4	Handling of Change Orders	20	20%
5	Percent of Retainage	19	19%
6	Quality of Inspection and Construction Management	16	16%
7	Quality of Plans and Specifications	14	14%
8	Job-Site Security	11	11%
	Number of Responses	99	

Since this draft study was written, two City programs have been instituted to resolve several of the highest reported concerns. Implementation of the Council's Prompt

numbers 1 and 4, as payments and change orders now have to be processed within 20 working days. Similarly, the City's current transition to a web-based bidding system will increase bid process transparency as well as simplify the City's bid process, thus allaying many of the concerns expressed in item number 2 above.

Items numbers 3 and 5 question City bonding, insurance and retention requirements. As these requirements are established by City policies, they are beyond the scope of this report. Similarly, this report does not discuss item number 8, job-site security, as this issue results from Oakland's perceived crime problem and is similarly not addressed in the consultant's study.

Thus of all the items listed in Table 1.01 above, items 6 and 7 require discussion in greater detail. These two items reflect construction contractors concerns about the quality of construction management and the quality of project plans and specifications. Issues relating to these topics are discussed in Section B through D of this report below.

B. Perception of Inability to Win a Contract

The following is a summary of concerns gleaned from the interviews:

1. *Size of contract awards indicates frequent use of a few businesses*
2. *Contractors feel that some primes do not consider their bids*
3. *Perception that there is not consistent adherence to the low bid process*
4. *Barriers created with contract bundling*

The consultant's review of City records indicated three primary findings about prime contractors awarded City construction contracts:

- a) Relatively few prime contractors received a disproportionate amount of contracts (specifically ten contractors were awarded 186 contracts that equaled 65.7% of the net value of all awarded contracts);
- b) These over-represented prime contractors received both large contracts (greater than \$50,000) and small, informal contracts¹; and

¹ A footnote to *Table 1.03 Highest Contract Dollar Awards Between July 1, 2002 – December 31, 2005* explains that the Consultant's database of contract expenditures was derived from payments made on "contracts, purchase orders and direct purchases." From the amounts paid to different contractors it is inferred that some contractors received a number of informal contracts of less than \$50,000. Many of these small payments were monthly payments on a larger contract.

- c) These over-represented contractors tended to use the same subcontractors in their different construction contracts. This practice further minimized the number of contractors who were able to work on City construction contracts.

Pages 11-14 contained several comments regarding the difficulties a sanitary sewer contract poses to would-be bidders. It is suggested that the City could attract a larger number of construction bidders if these sewer projects were "unbundled" into several specialty contracts. For example a sewer rehabilitation project includes several trades: excavation, pipe lining, pipe installation, concrete work, trucking, pavement, and sewer structures such as manholes and cleanouts.

In follow-up discussions with MTA on the proposal to "unbundle" projects staff was directed to the policy that was developed by the Federal Government.

The federal government defines Bundling as the "consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business." (15 U.S.C. 632(o)(2); FAR 2.101; 13 CFR 125.2(d).) The federal government had begun the practice of bundling in the 1990's to increase buying power and decrease overhead costs.

In October 2002, the Office of Management and Budget published a "Strategy for Increasing Federal Contracting Opportunities for Small Business". This document was intended to reverse the 1990's bundling trend.

The unbundling, therefore, is a policy intended to prevent government agencies from grouping projects geographically to obtain better economies of scale. It is not intended to be applied to fragment work trades within a small geographic area.

In the past staff has also received numerous requests from one particular contractor to "unbundle" sewer projects. The main intent of these requests was to isolate specialty lining work performed by an international company that was not interested in participating in local programs.

Staff recognizes that when local businesses and contractors are excluded from City projects, overall our community and rate payers lose. However, "unbundling" projects by trade would fragment work in a manner that would be impractical to implement and would jeopardize successful project completion. Such fragmentation of inter-dependent work would, at a minimum, result in a prolonged disruption to neighborhoods as many residents would be affected for a much longer period of time by construction-related inconveniences such as noise, dust, lack of access, and service interruptions.

Item: _____
Public Works Committee
April 13, 2010

Fragmenting work would also introduce coordination problems between the different contractors, and deciding responsibility for defective workmanship could pit one contractor against another. Finally, fragmenting the work would put the City in the position of being the General Contractor, responsible for all scheduling of work on the project.

Alternatively, staff in recent months has instituted a rotating list of on-call contractors from Small Local Business Enterprise (SLBE) firms. Most of these firms have not yet worked with the City as a general prime contractor. Such on-call construction work contracts help expand the local business base in the community and create an environment where local small businesses can grow. This is discussed in more detail in Section III of this report.

In addition, it has been policy for many years to review each project for opportunities to break work up geographically into smaller contracts whenever possible. Examples include Measure DD bridge replacement projects, streetscape projects, bridge seismic retrofit projects, and sewer cyclic replacement projects.

C. Difficulties with the logistics of the bidding process

The following is a summary of the study findings that relate to the bidding process:

1. *Lack of information about the bidding process*
 - *Lack of response regarding placement on the City's vendor list*
 - *Geographic location of the project is not advertised*
2. *Inaccessible staff*
3. *Inadequate time to submit a bid*
4. *Too much paper work*

Item number 7 of Table 1.01 received several comments and was discussed with several examples in the study. Several construction contractors commented during interviews that the project designers used restrictive or proprietary specifications. The City's technical specifications are based upon the Standard Specifications for Public Works Construction (Greenbook) and are updated based on lessons learned from previous construction projects. In addition, a staff committee receives and evaluates revision requests from various City staff. For example, there were 20 changes to the specifications in 2008. Such changes were based upon recommendations received from the City Administrator's Office, the City Attorney's Office, Contract Compliance Division, Public Works Environmental Services, the Redevelopment Agency as well as design engineers working on street, underground or traffic projects and resident engineers who supervise the construction of the City's capital improvement projects. Proprietary

Item: _____
Public Works Committee
April 13, 2010

specifications are rarely used in City projects, and when they can be justified, for example on specific equipment that must be consistent for city-wide maintenance.

D. Post-award administrative barriers

The following is a summary of the study findings that relate to the contracting process:

1. *Timeliness in processing payment*
2. *Concerns related to the performance of the contract work*
 - *Handling of change orders*
 - *Retainage*
 - *Quality of plans and specifications*

One contractor expressed dissatisfaction with the City's indemnification language to limit the responsibility of the prime or subcontractor. Although this issue was listed in a section entitled "Quality of the Plans and Specifications" it is not a technical specifications issue, but instead is a statement regarding the standard City construction contract and reflects the City's offer to limit its level of risk. However, it should be noted that the City's indemnification language is similar to that used by "every public agency" as the contractor attests.

This table contains specific complaints about Construction Management regarding timely processing of contractor payments, change orders and retainage. As mentioned above, payment-related issues should be greatly alleviated through the institution of the Prompt Payment Ordinance. Although issue number 6, Quality of Inspection and Construction Management, received 16 comments, it was not discussed further in the consultant's study. Staff discussed this with MTA and no further information was available.

III. Conclusions

As mentioned earlier in this report, bidder response to Oakland sewer projects has improved in recent years. From 2008 to 2009, the average number of bidders on sewer projects was about four. This improvement may be attributed to the changes that have been implemented to improve the City's bidding environment. Specifically, the City has implemented two programs to address significant concerns expressed by surveyed construction contractors. The Council's Prompt Payment Ordinance has been implemented to require contractor's payments to be processed within 20 working days. The City has also begun a web-based bidding process that provides transparency and reduces the paperwork involved with bid submissions. In addition, the CEDA Design group will continue their efforts to upgrade and standardize contract technical specifications and plans.

Item: _____
Public Works Committee
April 13, 2010

Furthermore, in recent months staff has instituted a rotating list of on-call contractors from Small Local Business Enterprise (SLBE) firms. These contractors were solicited through a Request for Qualifications (RFQ) process that only targeted Small Local Business Enterprise (SLBE) firms. Most of these firms have not yet worked with the City as a general prime contractor. Such on-call construction work contracts facilitate the delivery of small projects promptly and efficiently, but also help to expand the local business base in the community and create an environment where local small businesses can grow. A similar RFQ process will begin shortly to solicit bids from Oakland SLBE sewer contractors for on-call sanitary sewer work.

Staff believes that these programs will continue to improve the City's bidding environment.

SUSTAINABLE OPPORTUNITIES

This is an informational report and a limited discussion for social and economic opportunities is provided. In general, the study is intended to advance the City Council's directions to expand the local business base in the community and create an environment where local small businesses and entrepreneurs can grow and flourish. Greater participation of local businesses in City projects means jobs for Oakland residents and a greater prosperity for the entire community.

DISABILITY AND SENIOR CITIZEN ACCESS

This informational report does not impact disability and senior citizen access.

RECOMMENDATION AND RATIONALE

There are no recommendations included in this informational report.

ACTION REQUESTED OF THE CITY COUNCIL

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

Respectfully submitted,

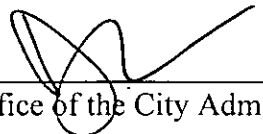


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PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Item: _____
Public Works Committee
April 13, 2010