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May 4, 2017

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Hilda Solis
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Kathryn Barger

From: Scott Minnix *SMM*
Director

BOARD MOTION OF DECEMBER 20, 2016, ITEM NO. 14 – REPORT WITH RECOMMENDATIONS ON JOB ORDER CONTRACT (JOC) PROGRAM

As directed by your Board's Motion of December 20, 2016, the Internal Services Department (ISD) coordinated a workgroup, with the Chief Executive Officer (CEO), the Departments of Public Works (DPW), Parks and Recreation (Parks), the Community Development Commission (CDC), and County Counsel, to address the items listed in the above referenced motion. The following represents our report back with findings and recommendations relative to the tasks identified in the motion:

1. Standardized protocol relative to the initial solicitation process

A standardized protocol for active management of the initial solicitation process for Job Order Contracts (JOCs), including the review of bids, evaluation of construction firms' experience and performance on JOCs issued by other County departments and/or other public agencies and evaluation of Contractor Non-Responsibility.

2. Uniform approach to managing and evaluating JOC work orders

A uniform approach to managing and evaluating work orders issued under JOC, including quality assurance/quality control, development of bid and project scoping documents, timely project completion, corrective actions, enforcement mechanisms and documentation of contractor performance.

3. Policy changes to the County's JOC contracting

Policy changes to the County's overall approach to JOC contracting that would enhance the County's ability to evaluate contractors based on quality and/or performance criteria, such as prequalification of prospective bidders.

4. Modifications to the County Contract Database protocol

Any necessary modifications to the Internal Services Department's County Contract Database protocol, based on the recommendations above.

Background

The authority that governs the use and scope of JOC work by counties is the California Public Contract Code (PCC), Section 20128.5. The annual maximum monetary value of an individual JOC is currently \$4.6 million.

JOCs are awarded through a single, competitive solicitation process, which is an Invitation for Bids (IFB). Selected JOC contractors remain under contract to perform individual projects (or work orders) for repair, remodeling, or other repetitive work as needed throughout the annual term of the JOC.

As part of a JOC solicitation, the County includes a Construction Task Catalog (catalog), which contains individual tasks, materials/supplies, equipment, and labor that may be needed to complete JOC projects. Each item has a description and a corresponding unit price based on prevailing local market rates.

The County requests contractors to bid on the contractors' ability to perform work as a percentage of the prices listed in the catalog. For example, contractors who bid .90 (bid factor) are obligated to perform (future) work for the duration of the contract at 90 percent of the unit prices listed in the catalog.

For the majority of the County's JOCs, the catalog is developed and maintained by The Gordian Group, a private contractor under separate Board-approved contracts with each affected County department. In addition, for DPW's roadway JOCs, the catalog is developed and maintained by in-house staff.

When a project is assigned to a JOC contractor, the contractor prepares a price proposal by detailing the tasks, supplies/equipment, quantity of items, etc., needed to complete the project, and calculates the proposal cost by multiplying the catalog prices for these items by the contractor's bid factor.

Currently, County departments and CDC use JOCs as follows:

| ISD | DPW | Parks | CDC |
|---|--|--|--|
| Repair, alteration, remodeling, maintenance, refurbishment, and rehabilitation work performed on County buildings, structures, real property, and infrastructure. | Same as ISD, except including maintenance, preservation, and repair of streets and highways (Roadway JOC). | Same as ISD, except including landscape maintenance and tree trimming. | Same as ISD except including low income residential and mixed-use buildings. |

To respond to your Board’s motion, ISD convened a workgroup comprised of CEO, DPW, Parks, CDC, and County Counsel. The following are the workgroup’s findings and recommendations related to the motion.

1. Standardized protocol of the initial solicitation process

A review of each department’s initial solicitation process revealed that, with minor insignificant differences, all use the IFB process to award JOCs. All departments follow the standard process for reviewing bids and make awards to the lowest responsive and responsible bidder, as required by the PCC and the IFB process.

In regard to non-responsibility, the County’s Determinations of Contractor Non-Responsibility and Contractor Debarment Implementation Procedures provide departments with a standardized process to evaluate and deem a bidder non-responsible. The workgroup found that this process is not used consistently or frequently by the affected departments.

Recommendation:

- 1.1. ISD has initiated a review of other jurisdictions' and the Department of Industrial Relations' (DIR) pre-qualification processes to develop and implement a similar Countywide process. A detailed assessment of both the feasibility and the challenges of pre-qualifying bidders will be a part of the review for the workgroup’s consideration. This will seek to provide the County with a formal, standardized process to consider and evaluate a potential bidder’s prior experience before awarding a JOC contract.
- 1.2. Additionally, the use of an automated alert system for poorly performing contractors is discussed under item 4 below.
- 1.3. In the bid evaluation process, ISD recommends a more uniform approach in the review and evaluation of the bidders’ past performances to identify egregious

behaviors. This will seek to determine whether bidders may be deemed non-responsible, i.e., in accordance with the County's Ordinance for Determination of Contractor Non-Responsibility and Contractor Debarment. Departments will ensure that the established process is consistently followed as part of the solicitation process.

- 1.4. In addition, ISD recommends an evaluation of whether a Best Value Selection can be a viable option for the County's JOC program. CEO has indicated that it will work to recommend legislative changes to the PCC to authorize counties to implement Best Value Selection.

2. Uniform approach to managing and evaluating JOC work orders

A review of the departments' current practices in managing and evaluating work orders issued to JOC contractors revealed that, for the most part, departments have similar processes in place. However, significant differences were found in the following areas:

- Not all departments utilize the Live Book Catalog process, which is intended to eliminate the use of non-catalog items.
- Inconsistent documentation of detailed scope of work and quantity verification process.
- Inconsistent project management oversight and documentation of performance of work orders.
- Inconsistent assessment of liquidated damages for late work order proposal submittals and late project completion.
- Inconsistent departmental procedures for the use of independent estimators.
- Varying percentages for self-performance requirements.

Departments have made strides towards the standardization in some of these processes as part of addressing this motion and the concurrent "County Departments' Use of JOC Review" by Auditor-Controller (A-C). For example:

- ISD, DPW and Parks are implementing the Live Book Catalog process. This process provides a means to include non-catalog items at the time that they are needed so that the items are priced and invoiced at the contractor's bid factor. In effect, this eliminates the use of non-catalog items. CDC is exploring the feasibility of implementing this process.
- Departments are updating procedures and conducting training for all staff to strengthen price proposal review and approval processes, better define and

maintain documentation necessary for projects, and monitor work orders for performance compliance.

Recommendations:

- 2.1. ISD recommends a standardized procedure for the assessment of liquidated damages.
- 2.2. ISD recommends a departmental threshold be established for independent estimator review of JOC work order proposals.
- 2.3. ISD recommends a uniform percentage for self-performance be established, in which the JOC contractor performs a certain percentage of the work with its own workforce, as oppose to subcontracting.
- 2.4. The workgroup will continue identifying processes that will lead to standardization, as well as evaluate the benefits of using new or existing practices.
- 2.5. Departments will utilize the County's Contractor Alert Reporting Database (CARD), or a similar system to capture performance data that can be shared with all County departments. This may also provide an opportunity to gather data that departments can use during the non-responsibility review process.

3. Policy changes to the County's JOC contracting

Currently, County departments do not conduct a pre-qualification process. However, other jurisdictions may use a procedure that allows agencies to consider a construction firm's experience and performance prior to participating in the IFB process.

Recommendations:

- 3.1. As indicated in item 1, above, ISD recommends the implementation of a formal pre-qualification bid process. This is an interim step working within the current legislation. The workgroup will continue to work with County Counsel to identify a standard process that departments can use to evaluate contractors' past experience as a prerequisite to participate in the JOC solicitation process. In addition to pre-qualification, we are recommending legislative changes to the PCC to authorize counties to implement Best Value Selection, which is the long term and more effective solution.
- 3.2. ISD recommends an evaluation of the feasibility of establishing a criteria to limit the number of JOC awards by all entities of the County of Los Angeles made to one contractor. This would seek to prevent contractors who have been awarded multiple JOCs from overextending their resources and may increase the size of the pool of available JOC contractors.

4. Modifications to the County Contract Database protocol

ISD's County Contract Database (Database) serves as a report card for Countywide Prop A, construction and information technology contracts. A review of the Database revealed that in the past not all departments were fully participating in this process, but the departments are now entering JOC report card data. However, the workgroup found that the County's Contractor Alert Reporting Database (CARD) or a similar system might be a more effective tool than the Database to capture performance data, and in particular, poorly performing JOC contractors.

Recommendation:

- 4.1. CARD uses the County's existing enterprise-based eCAPs system to track poorly performing contractors. Data entered into such a system can be used to consider and evaluate potential bidder's prior poor performance under a pre-qualification process. Departments may be able to utilize data entered into CARD as a basis for identifying poor past performance or making a finding of non-responsibility.
- 4.2. The workgroup will continue working with the A-C and County Counsel to identify a process to use either CARD or an alternate system to collect data on poorly performing contractors.

Conclusion

Moving forward, the workgroup will work closely with each department's management team to address the recommendations included in this report, as well as those made in the A-C's "County Departments' Use of JOC Review" report, dated April 17, 2017.

The workgroup is also scheduled to appear at the next Audit Committee meeting, scheduled for May 18, 2017, and will report to your Board on a quarterly basis on the status of these recommendations.

If you have any additional questions regarding this report or the related recommendations, please contact me at (323) 267-2101, via email: sminnix@isd.lacounty.gov, or your staff may contact Jim Allen at (323) 267-3445, via email: jallen@isd.lacounty.gov.

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Chief Executive Officer
Chief Operating Officer
County Counsel
Director, Public Works
Director, Parks & Recreation
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