

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 7/16/2013	(3) CONTACT/PHONE Jeff Werst, Design Engineer (805) 781-4480	
(4) SUBJECT Submittal of a resolution adopting a policy governing bid protests and other challenges to construction contracts. All Districts.			
(5) RECOMMENDED ACTION It is our recommendation that your Honorable Board approves and direct the Chair to sign the attached Resolution to adopt a policy governing Bid Protests and other Challenges to Construction Contracts and direct staff to process future construction bids under this policy.			
(6) FUNDING SOURCE(S) Project Budgets	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation { } Hearing (Time Est. ____) {X} Board Business (Time Est. <u>30 mins</u>)			
(11) EXECUTED DOCUMENTS {X} Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5th's Vote Required {X} N/A	
(14) LOCATION MAP No	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY {X} N/A Date:	
(17) ADMINISTRATIVE OFFICE REVIEW Vince Morici, Administrative Analyst			
(18) SUPERVISOR DISTRICT(S) All Districts -			

Reference: 13JUL16-BB-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Jeff Werst, Design Engineer, Public Works

Cody Van Dorn, Department Administrator, General Services Agency

VIA: Paavo Ogren, Director of Public Works

Janette Pell, Director of General Services Agency

DATE: 7/16/2013

SUBJECT: Submittal of a resolution adopting a policy governing bid protests and other challenges to construction contracts. All Districts.

RECOMMENDATION

It is our recommendation that your Honorable Board approves and directs the Chair to sign the attached resolution to adopt a policy governing Bid Protests and other Challenges to Construction Contracts and direct staff to process future construction bids under this policy.

DISCUSSION

Construction contracts are bid through both the General Services Agency (GSA) and Public Works Department. Historically, each department has differed in terms of how construction bid protests have been addressed. In processing recent bid protests, it became evident there was a need for both departments to evaluate the bid protest process and develop a single countywide policy to handle future protests. The attached bid protest policy represents a joint effort by both GSA and Public Works to have a single countywide policy for addressing bid protests to the award of any construction contracts that are advertised for bidding through this Board.

To develop a countywide policy, GSA, Public Works, County Counsel, and the Administrative Office outlined areas of concern, developed a systematic process for development, review and agreement to the final details of a policy to address bid protests of construction contracts. A working committee was formed and functioned under the review of an Oversight Committee, which included the Directors of GSA and Public Works, County Counsel, and the Assistant County Administrative Officer. The working committee researched bid protest procedures from other counties as an aid in identifying an appropriate model to work towards. Following meetings in April and May, a policy procedure was developed with the concurrence of the Oversight Committee.

Key elements of the policy include:

- Authority for bid protest determination is delegated to the respective Department Head who has independent authority to determine whether a bid is a responsive bid and whether a bidder is a responsible bidder.
- The Department Head decision is final. Any request for reconsideration by the Board of Supervisors would have to occur under public comment of the BOS meeting for contract award.
- Bid protest submittals and responses are subject to specific guidelines, including deadlines for submittal and response.
- Bidders failing to follow the written procedures are deemed to have waived their right to challenge the award of the construction contract.
- Communication channels between the protesting party, the County, and the apparent low bidder are established for the protest.
- In cases warranting more review of submitted protest evidence, oral presentations can be called for by the respective Department Head.
- Department Heads will issue a written dismissal or decision on the formally submitted protest within 30 days from any written or oral presentation on the protest.
- Provisions are incorporated to allow actions by Department Heads regarding bidders seeking relief on bid mistakes under Public Contract Code Section 5100 et seq.

The recommended policy, once adopted, will provide a uniform countywide method for processing bid protests of construction contracts in a timely manner. The bid protest policy will be included or referenced as part of the bidding documents for both GSA and Public Works so bidders are notified of the procedure and timing to address a formal protest.

Regarding protests for professional service contracts, the working committee recommended this be considered in the fall of 2013. The Oversight Committee concurred with revisiting the matter at a later date.

Looking ahead, there is further opportunity to refine and streamline bidding processes in the County. GSA and Public Works staff will continue to meet and review means to enhance bid advertisement and award process management through a possible centralized electronic bidding website to better serve the construction industry and provide for uniform means to coordinate efforts and processing of bids.

Once your Board provides direction on this policy, staff will return under a future consent agenda to request adoption of the policy for the San Luis Obispo County Flood Control and Water Conservation District.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel has provided detailed input towards development of the proposed policy. The County Administrative Office has actively participated in order to review a final policy to present to your Board.

FINANCIAL CONSIDERATIONS

Implementation of the proposed policy is not expected to have any additional financial impact. Staff in the respective departments is presently available to address bid protests and must undertake a similar effort in data collection and evaluation which would not vary materially under the new policy. Costs to address bid protests are incorporated into the various capital and maintenance project

budgets that require bidding procedures to be used. Therefore, there is no impact on General Fund or Department budgets.

RESULTS

Adoption of the Proposed Policy Governing Bid Protests and other Challenges to Construction Contracts will provide for a single countywide process leading to final resolution for addressing irregularities or issues which arise through the bidding process for County construction contracts. Inclusion of the policy in future County bidding documents, whether through hard copy or by reference, will provide proper instruction and greater transparency to bidders. Establishment of the policy provides for a well governed community.

ATTACHMENTS

1. Resolution Adopting a Policy Governing Bid Protests and other Challenges to Construction Contracts
2. Proposed Countywide Construction Contract Bid Protest Policy

File: CF 160.40.01 Contract Bidding (new)

Reference: 13JUL16-BB-1

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