

TOWN COUNCIL STAFF REPORT

Title: Adopt the resolution establishing a conflict-of-interest policy covering design-build projects and authorize staff to use design-build services for future projects.

Meeting Date: November 17, 2021

Prepared by: Haislip Hayes, PE Public Works Director

RECOMMENDATION:

Staff Recommends the Town Council:

Adopt the resolution establishing a conflict-of-interest policy covering design-build projects and authorize staff to use design-build services for future projects.

BACKGROUND:

State law allows public agencies to procure construction services using a design-build method instead of the more traditional design-bid-build process utilized in the construction of many public projects. Design-build services combine professional design services and construction services into a single contract with one vendor or team of vendors. This method has been popular in private sector construction for decades but is still relatively new in the public sector. On January 1, 2015, SB785 became effective and repealed most of the existing legislation regarding the design-build process for public agencies. SB785 replaced this legislation with a single statute applicable to local agencies. The amended Public Contract Code section 22160 *et seq.* authorizes the Town to utilize the design-build project delivery method for certain statutorily designated projects. Staff is considering this project delivery methodology as a way to accelerate project delivery while mitigating financial risk. Projects such as 60 Joaquin and future housing projects, work at the airport, and other large projects may benefit from this process. In preparation for use of the design-build methodology for these projects, a resolution adopting a conflict-of-interest policy must be approved by the Town Council. The other requirements of SB785 outlined below will be incorporated into the ensuing procurement and selection process.

ANALYSIS:

Public agencies have traditionally used a design-bid-build approach for public projects. This is a process wherein one firm is initially awarded the design services contract and subsequent to the completion of design, the public agency bids out the construction portion of the project. As noted above with the passage of SB785, the option of design-build became more accessible to public agencies. Using the design-build process incorporates both the design and construction services into a single contract. Based on information from both the private and public sector there are several advantages to using the design-build process. The advantages include:

- A single point of accountability as the same firm is responsible for both the design and construction of the facility
- Fewer change orders
- Fewer claims
- Reduced delivery time as design and construction can overlap
- Higher quality construction work
- Greater cost certainty

The new design-build authority created by PCC section 22160 applies only to certain agencies and certain types of projects. The new design-build statutes require the Town to meet the following criteria as a condition of exercising design-build authority:

- Only projects in excess of \$1,000,000 may be procured using design-build under the new law.
- Only projects for the construction of a building or buildings and improvements directly related to the construction of a building or buildings may be procured using design-build under the new law.

To utilize the design-build process, state law specifies certain requirements and processes the Town needs to follow. The two main requirements are specific steps to be followed during the procurement process as well as requiring the Town adopt a conflict-of-interest policy covering design-build projects.

Conflict-of-Interest Policy

Before commencing the design-build procurement process, the Town is required to develop and adopt a standard organizational conflict-of-interest policy. This policy would address a proposer:

- That is unable or potentially unable to render impartial assistance or advice to the Town.
- Whose objectivity in performing the contract work is or might be otherwise impaired.
- That has an unfair competitive advantage.

The proposed policy addresses the responsibilities of the Town as required by State law as well as contractors that may propose on Town design-build projects. This policy would apply to design-build vendors as well as design-build teams that submit qualifications and proposals.

Procurement Process

Bridging Documents

The first step to the statutory design-build procurement process involves the development of a set of documents by a certified and registered design professional setting forth the scope and estimated price of the project. These documents are generally referred to as bridging documents. Bridging documents describe the minimum baseline project requirements all proposers must meet. The statutory requirement provides the documents may include, without limitation, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship,

preliminary plans or building layouts, or any other information deemed necessary to adequately describe the Town's needs.

Request for Qualifications (RFQ)

The design-build statute mandates a two-step Request for Qualifications and Request for Proposal (RFQ-RFP) process where prospective design-build firms are first prequalified and, for those firms that are deemed qualified, then requested to submit proposals. The RFQ must include, without limitation, the following elements:

- The basic scope and needs of the design-build project, the expected cost, the methodology the Town will use to evaluate proposals, the procedure for selection of the design-build entity and any other information the Town deems necessary to inform interested firms of the opportunity.
- Factors the Town intends to consider in evaluating whether a firm is qualified, including technical design and construction expertise, safety record, and other non-price related factors.
- A template request for statement of qualifications that requires the prospective design-build entities to submit specific company information including company structure, experience of personnel, financials, safety record, and capacity.
- A certification form requiring the design-build entity, including its general partners or joint venture members, to certify the information it is providing in response to the RFQ is certified under penalty of perjury.
- An agreement form in which the design-build entity agrees to commit to the Town that the entity, if selected, and its subcontractors at every tier will comply with labor requirements.

Request for Proposals (RFP)

After the Town prequalifies the design-build entities pursuant to evaluation of statements of qualifications submitted in response to the RFQ, the Town must prepare an RFP that invites the short-listed entities to submit competitive sealed proposals. The RFP must include, without limitation, the following elements:

- The basic scope and needs of the design-build project, the expected cost, the methodology the Town will use to evaluate proposals, whether the Town will use best value or low bid to select the design-build entity and any other information the Town deems necessary to inform the short-listed design-build firms of the opportunity.
- The factors the Town intends to consider in evaluating proposals including proposed price and, where the best value selection method is used, non-price related factors.
- The weight assigned to each of the evaluation factors.
- Where the best value selection method is used, the Town may include provisions in the RFP reserving the Town's right to request proposal revisions and to hold discussions and negotiations with responsive proposers. If the Town elects to reserve this right, the RFP must include a procedure that ensures any discussions

or negotiations are conducted in good faith. The Town must also indicate in the RFP that award will be made to the responsible design-build entity whose proposal is determined by the Town to offer the best value to the public.

- Where the low bid selection method is used, the Town must specify that the proposals are to include lump-sum bids and that award will be made to the lowest responsible design-build entity submitting a responsive proposal.

Best Value v. Low Bid

As mentioned above, the Town has the choice of selecting the design-build entity on the basis of best value or low bid at the RFP stage. This choice is entirely at the Town's discretion. Low bid selection is consistent with design-bid-build practices and results in the selection of the lowest proposed price by a responsible bidder. The best value selection requires the Town to evaluate the proposals using a set of criteria established in the RFP. The criteria must include price, design and construction expertise, and life-cycle costs. Under this process the award of the design-build contract must be made to the responsible design-build entity whose proposal is determined by the Town to offer the best value to the public.

Labor requirements

In addition to the described detailed procurement process, the design-build statutes also include a skilled and trained workforce requirement. This requirement mandates the design-build entity enter into an enforceable commitment to meet the following workforce requirements on the project as a condition of being prequalified to submit a proposal.

Other Requirements

Additionally, the design-build statutes also include some miscellaneous requirements. The design-build entity must provide payment and performance bonds for construction and errors and omissions insurance coverage for the design element of the project. At the Town's discretion, the RFQ and RFP may include requirements regarding specific types of subcontractors that must be included in the design-build entity's statement of qualifications and proposal. Listed subcontractors are protected by the Subletting and Subcontracting Fair Practices Act, codified in the Public Contract Code. Following award of the design-build contract, the design-build entity must provide public notice of availability of construction work to be subcontracted that is in excess of one-half of one percent. Finally, retention withheld by the Town may not exceed five percent of the contract price.

ATTACHMENTS:

Attachment A: Town Council Resolution 21-