

January 6, 1999

RA99-003
HA99-001

Redevelopment Agency and
Housing Authority of the City of Sacramento
Sacramento, California

Honorable Members in Session:

SUBJECT: -- BID AND PROPOSAL PROTEST POLICY AND POST PROJECT
CONTRACTOR REVIEW POLICY

LOCATION & COUNCIL DISTRICT - CITY

RECOMMENDATION

Staff recommends adoption of the attached resolution which authorizes the Executive Director or her designee to adopt the attached Bid and Proposal Protest Policy and Post Project Contractor Review Policy.

CONTACT PERSONS

Richard Nelson, Program Operations Director, 440-1344
Martha Paterson-Cohen, Program Manager - Procurement Services, 566-1263

FOR COUNCIL MEETING OF FEBRUARY 2, 1999

SUMMARY

The attached resolution adopts the Agency Bid and Proposal Protest Policy and Post Project Contractor Review Policy. These policies are shown as Attachment I and Attachment II.

COMMISSION ACTION

At its meeting January 6, 1999, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolutions. The votes were as follows:

AYES: Castello, Dobbins, Hoag, Holloway, Newsome, Simon, Harland

NOES: Rotz

NOT PRESENT TO VOTE: Cespedes

ABSENT: Amundson, Taylor

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BACKGROUND

The Agency currently has no formal Bid and Proposal Protest Policy or Post Project Contractor Review Policy. In the past, decisions regarding procurement-related protests were developed by Agency's Legal staff, and the vendors/contractors have been allowed appeal at the Sacramento Housing and Redevelopment Commission. We are proposing a formal Bid and Proposal Protest Policy as described in Attachment I to comply with HUD regulations (Section 7460.8 Rev-1).

Additionally, the Agency has had no means by which to disqualify a Contractor who has performed unsatisfactorily. Through the Agency's reengineering process, a recommendation was made by the Construction Bidding team, comprised of Agency staff, that a systematic review of contractor performance should be conducted at the conclusion of every construction project. A copy of the Post Project Contractor Review Policy and Procedure to guide that review is included as Attachment II to this report.

By providing a Post Job Evaluation Sheet as part of the bidding package, bidders will know expected evaluation criteria prior to executing the contract and starting work. This should insure that the Agency receives more consistent contract performance, and that contractors are evaluated fairly and consistently with uniform standards.

The intent of the Post Project Contractor Review Policy is to improve construction quality, identify problem contractors, document substandard performance and suspend contractors who perform below standards.

FINANCIAL CONSIDERATIONS

The recommended action in this report has no direct financial impact. We anticipate that adoption of the policies proposed in this report will result in significant reduction in staff time to handle protests of bid awards. We will also increase efficiency in contract execution to the extent our new policies will enable us to identify, document and suspend substandard contractors.

POLICY CONSIDERATIONS

The recommended action in this report adopts two new Agency Policies: Bid and Proposal Protest Policy and Post Project Contractor Review Policy. These policies will ensure a formal, consistent manner in which we handle Agency protests as well as the post project contractor review process.

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ENVIRONMENTAL REVIEW

The proposed action does not constitute a project under CEQA per Guidelines Section 15378(b) (3), nor a federal undertaking under NEPA.

M/WBE CONSIDERATIONS

The items in this report are consistent with the Agency M/WBE Policy. Since a majority of previous protests have been regarding M/WBE issues, a formal Bid and Proposal Protest Policy will help insure fairness in these issues and adherence to the Agency M/WBE Policy.

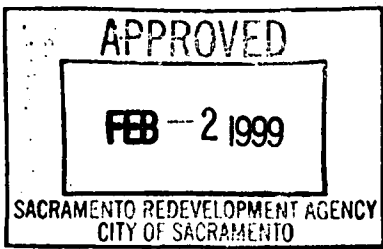
Respectfully submitted,


ANNE M. MOORE
Executive Director

Transmittal approved,



WY
WILLIAM H. EDGAR
City Manager



RESOLUTION NO. RA99-003

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
ON DATE OF _____

**BID AND PROPOSAL PROTEST POLICY AND
POST PROJECT CONTRACTOR REVIEW POLICY**

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO:

Section 1: The Protest Policy attached as Attachment I to this resolution is adopted.

Section 2: The Post Project Contractor Review Policy attached as Attachment II to this resolution is adopted.

Section 3: The Executive Director is authorized and directed to implement the Protest Policy and the Post Project Contractor review, effective immediately.

CHAIR

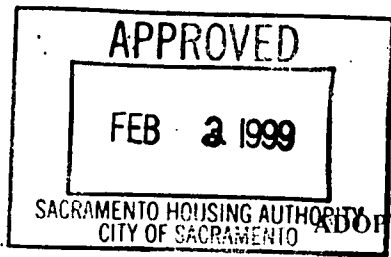
SECRETARY

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____



RESOLUTION NO. HA99-001

ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

ON DATE OF _____

**BID AND PROPOSAL PROTEST POLICY AND
POST PROJECT CONTRACTOR REVIEW POLICY**

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF
SACRAMENTO:

Section 1: The Protest Policy attached as Attachment I to this resolution is
adopted.

Section 2: The Post Project Contractor Review Policy attached as Attachment
II to this resolution is adopted.

Section 3: The Executive Director is authorized and directed to implement the
Protest Policy and the Post Project Contractor review, effective immediately.

CHAIR

ATTEST:

SECRETARY

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

ATTACHMENT I
BID AND PROPOSAL PROTEST POLICY
ALL AGENCY PROCUREMENTS

NOTE: For the purposes of this policy, the terms “bidder” and “proposer” shall be synonymous.

A. Notice of Award

The written “Notice of Intent to Award” shall constitute the Agency’s decision to award the contract. The “Notice of Intent to Award” and any written decision denying a protest shall be sent to all bidders.

B. Right to Protest

Any bidder who wants to protest the “Notice of Intent to Award” shall have ten (10) calendar days after the date the notice is issued to submit to the Agency a written protest. The written statement shall be full and complete, specifying in detail the grounds of the protest and the facts supporting the protest or it will not be considered. Any bidder who has a legitimate protest must claim to be eligible for award of the contract as being **the lowest responsible bidder**.

The Agency shall not entertain any protest submitted after the time period established in this Policy.

C. Affect of Protest of Award of Contract on Opening of Bids

When a protest has been made, the Agency shall not award the contract before deciding the outcome of a properly filed protest. If the protest has been properly made before the opening of bids, then bids shall not be opened before a decision has been made on the protest.

D. Review and Decision

The protest(s) will be reviewed by a committee consisting of the following: the Design & Construction Unit Manager or designee, the Procurement Services Unit Manager or designee, and the Compliance Officer. The review will be completed within ten (10) calendar days after receipt of protest(s). A settlement or decision shall be confirmed in writing and mailed by first class mail to all bidders. The contract will be awarded to the prevailing bidder. No further protest(s) shall be considered.

E. Appeal of Decision

The decision by the Review Committee is final and shall not be appealed within the Agency. Such decision may, however, be subject to Administrative Mandamus (California Code of Civil Procedure 1094.5).

F. Public Nature of Protest Information

Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:

- (1) The withholding of information is permitted or required by law or regulation; or
- (2) Subject to any applicable law or regulation, the information is designated proprietary by the person submitting the information to the Agency. If the person submitting material to the Agency indicates that the material contains proprietary material which should be withheld, a statement advising of this fact shall be affixed to the front page of the material submitted. And, the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

G. Maintenance of Protest Records

All written statements, pleadings, briefs, correspondence and memoranda, whether sent or received by the Agency or its Commission shall be maintained by the Agency Clerk (or designee) for a period of at least three (3) years from the date of each protest is resolved.

H. Inclusion of Protest Procedures in Bid Solicitations

Each bid solicitation will inform the prospective bidders of this Protest Policy with the statement that a copy of the Protest Policy will be available upon request.

All protests shall be handled in this same manner: protests to the bid itself must be made within ten (10) days of the request for bid (or solicitations) and all protests to the "intent to award" must be made with in ten (10) days of the date on the Intent to Award letter.

ATTACHMENT II
POST PROJECT CONTRACTOR REVIEW POLICY AND PROCEDURE
FOR CONSTRUCTION PROJECTS

POLICY:

Upon substantial contract completion, the Agency will evaluate a contractor's performance to determine the contractor's ability to perform future Agency contracts. Potential contractors shall be informed of the procedure through bidding documents, pre-bid conferences and pre-job conferences.

PROCEDURE:

Upon substantial completion of the project, the Compliance Officer and the Contracting Officer (or designee) will complete a Post-Project Evaluation Checklist (Checklist). The Checklist will be used to prepare a Summary Report. The Checklist and Summary Report will be disclosed to the contractor and the Procurement Officer in order to document the contractor's performance and suitability for future contract awards.

The Checklist is a system for measuring the ability of the contractor to fulfill the terms of the contract and comply with all applicable statutes. Demerits are given on an all or none basis. Each demerit shall be explained in detail in the Summary Report. Any Checklist totaling five or more points is considered a failing evaluation and will be forwarded to the Program Manager of the requesting department for further review. The Program Manager will complete the Decision Sheet to assess the infractions and explain what action will be taken, if any, for each item cited on the Checklist.

A copy of the Checklist, Summary Report and Decision Sheet shall be placed in the project file. The original, signed document shall be sent to the Procurement Services office for use in future bid evaluations.

The contractor shall be sent a copy of the Checklist and Summary Report for every project. Failing evaluations shall be sent by registered U.S. mail, return receipt requested, with a cover letter stating that the contractor is being placed on probationary status and the terms of such probation. The probationary period will last for one year or until the contractor successfully completes a project, whichever is longer. The Contractor may appeal Agency findings by submitting a written request for a hearing, within ten (10) calendar days of receipt of the notice, to the Procurement Services Office. The request shall clearly state the grounds for appeal. Facsimile requests will not be accepted.

If a hearing is requested, the Procurement Services Office shall convene a panel composed of the Procurement Officer, Compliance Officer and a representative of the Requesting Department to hear the appeal and render a decision within ten (10) calendar days. The probationary period, if confirmed, shall not commence until the appeal is complete.

Contractors on probation may continue to bid Agency work with the stipulation that past Checklists and Summary Reports will be used when evaluating a contractor's ability to perform.

If a contractor on probation is awarded a contract with the Agency, the Procurement Officer shall issue a letter along with the Notice of Award, stating the terms of probation. If a contractor receives a second failing evaluation, the Procurement Officer shall issue a written Notice of Suspension to the contractor suspending them from bidding Agency work for a period of one year. The letter shall state that, during the suspension, any bid received from a contracting entity in which a suspended contractor is a principal shall be rejected as if unopened. The contractor may appeal a suspension by requesting a hearing, in writing, via U.S. registered mail within ten (10) calendar days of receipt of the notice of suspension. Such requests shall clearly state the grounds for the appeal. The same hearing process shall be followed as in the first appeal.

Following the period of suspension, contractors may resume bidding on a probationary basis. The probationary period will last for one year or until the contractor successfully completes a project, whichever is longer. Past Evaluation Checklists and Report Evaluations will be used when evaluating a contractor's ability to perform.

When a contractor is selected to perform Agency work following a suspension, the Procurement Officer shall issue a letter to accompany the Notice of Award stating that, if a failing Report Evaluation is received for the project about to be awarded, a three year suspension of the contractor's eligibility to bid agency work will be imposed. Repeated failing evaluations will result in successive three year suspensions as set forth herein.