

TO: BOARD OF DIRECTORS
REVIEWED: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
FROM: PETER V. SEVCIK, P.E.
DIRECTOR OF
ENGINEERING & OPERATIONS
DATE: NOVEMBER 16, 2015

**AGENDA ITEM
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NOVEMBER 18, 2015**

**REVISE PRE-QUALIFICATION POLICY AND APPEALS PROCEDURE
FOR SUPPLEMENTAL WATER PROJECT
JOSHUA ROAD PUMP STATION RESERVOIR**

ITEM

Revise Pre-Qualification Policy and Appeals Procedure for the Supplemental Water Project Joshua Road Pump Station Reservoir [RECOMMEND BY MOTION AND ROLL CALL VOTE ADOPT RESOLUTION REVISING PRE-QUALIFICATION AND APPEALS POLICY FOR SUPPLEMENTAL WATER PROJECT JOSHUA ROAD PUMP STATION RESERVOIR].

BACKGROUND

California Public Contracts Code ("PCC") Section 20101 permits the District to pre-qualify contractors who wish to bid on the District's public works contracts such as the Supplemental Water Project Joshua Road Pump Station Reservoir. PCC Section 20101 requires the District to establish pre-qualification policies and the method by which decisions regarding contractor's qualifications may be appealed. Pre-Qualification of contractors will help ensure that the Project is constructed by reputable, experienced, and qualified contractors at the best possible price.

On October 14, 2015, the Board adopted Resolution 2015-1389 establishing a Pre-Qualification Policy and Appeals Procedure for the Supplemental Water Project Joshua Road Pump Station Reservoir. Subsequently, during the final review of the Pre-Qualification Package in preparation for advertising, the District's design consultant, AECOM, suggested that the District clarify the experience requirements for the project.

FISCAL IMPACT

Funding for the project in the amount of \$2,500,000 is included in the FY 2015-2016 Supplemental Water Fund Capital Budget.

STRATEGIC PLAN

Goal 1 – WATER SUPPLY – Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

RECOMMENDATION

Staff recommends that the Board, by motion and roll call vote, adopt the attached resolution revising the Pre-Qualification and Appeals Policy for the Supplemental Water Project Joshua Road Pump Station Reservoir.

ATTACHMENTS

- A. Resolution 2015-XXXX Revised SWP Joshua Road Pump Station Reservoir Pre-Qualification Policy

November 18, 2015

ITEM 2

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2015-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
REVISING THE PRE-QUALIFICATION POLICY AND APPEALS PROCEDURE
FOR SUPPLEMENTAL WATER PROJECT
JOSHUA ROAD PUMP STATION RESERVOIR**

WHEREAS, California Public Contracts Code ("PCC") Section 20101 permits the Nipomo Community Services District ("District") to pre-qualify contractors who wish to bid on public works contracts; and

WHEREAS, it is in the public interest for the District to adopt policies and procedures that will help ensure that the Supplemental Water Joshua Road Pump Station Reservoir (the "Project") is constructed by reputable and qualified contractors at the best possible price; and

WHEREAS, it is in the public interest for the District to implement a program for pre-qualifying general contractors and selected subcontractors ("Contractors") seeking to bid on the Project; and

WHEREAS, among other things, PCC Section 20101 requires the District to adopt an appeals procedure that will allow Contractors to appeal decisions regarding their qualifications to bid on the Project; and

WHEREAS, the District intends for this Resolution to establish pre-qualification policies and the method by which decisions regarding Contractor's qualifications may be appealed; and

WHEREAS, the procedures adopted by this Resolution are intended to facilitate construction of the Project. Nothing herein, however, is intended, or should be interpreted, to compromise the District's firm commitment to selecting responsible bidders for the Project; and

WHEREAS, this Resolution supercedes and replaces Resolution 2015-1389 previously adopted by the District for the Project.

NOW THEREFORE, BE IT RESOLVED, DECLARED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

1. EVALUATION OF CONTRACTORS REQUESTING PREQUALIFICATION

The District will evaluate the information submitted by each Contractor to assess the Contractor's capability and qualifications.

The District will evaluate the prequalification packages as follows:

a) The District will determine which Contractors are responsive to the material terms and conditions of the invitation to submit pre-qualification packages. The District will then determine which of the responsive Contractors are technically, financially, and otherwise qualified and responsible to perform the Project satisfactorily and who have demonstrated the capacity to meet all other requirements of the Project.

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b) If a Contractor is found responsive and qualified based upon the information in its prequalification package, the District will conduct interviews for the Contractors. The District will not conduct interviews for Contractors determined to be non-responsive or not qualified based on the information in their pre-qualification packages.

2. ESSENTIAL REQUIREMENTS

(a) All contractors and subcontractors seeking pre-qualification must meet the essential requirements for pre-qualification in Part 1 of the Pre-qualification Questionnaire.

In addition to the essential requirements in Part 1, prime contractors must:

1. Have successfully completed at least two (2) projects that included an AWWA D110 Type I circumferentially strand wrapped prestressed concrete reservoir in the last 10 years. The referenced two (2) reservoirs shall be similar in construction in all respects to the specified reservoir and be located within a region with a mapped spectral response acceleration, S_s , of 1.0g or greater. Experience with reservoir construction having other than what is indicated shall not be considered. The prime contractor must identify their reservoir constructor and reservoir prestressor, that constructed the referenced two (2) reservoirs and that meet the essential requirements listed in (b) below, in order to be prequalified.

2. Identify two (2) or more prospective project managers and superintendents who are currently employed by contractor and have held similar positions on at least two (2) strand wrapped prestressed concrete reservoirs in the past ten (10) years, and who will be in direct charge of the Project for the full duration of the contract.

3. Provide general liability insurance covering Contractor and Subcontractors with policy limit of at least \$5 million dollars per occurrence and \$10 million dollars aggregate.

(b) In addition to the essential requirements in Part 1, subcontractors (reservoir constructor and reservoir prestressor) and prime contractors who intend to perform the following portions of the work (reservoir floor, wall, roof, and/or prestressing system) must also:

1. Have successfully completed at least five (5) AWWA D110 Type I circumferentially strand wrapped prestressed concrete reservoirs in the last ten (10) years. The referenced five reservoirs shall be similar in construction in all respects to the specified reservoir and be located within a region with a mapped spectral response acceleration, S_s , of 1.0g or greater. Experience with reservoir construction having other than what is indicated shall not be considered. All reservoirs listed for the experience requirements must have been built in the reservoir contractor's own name. The reservoir constructor must identify their reservoir prestressor, that prestressed the referenced five (5) reservoirs and that meets the essential requirements listed in 4 and 5 below, in order to be prequalified.

2. The reservoir construction shall be done by the qualified reservoir constructor and shall not be sublet. Specialty work such as rebar installation, scaffolding, prestressing and concrete finishing may be sublet to contractors experienced in these aspects of prestressed concrete

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reservoir construction. All other reservoir construction activities shall be performed by employees hired directly by the reservoir constructor.

3. Identify the proposed reservoir construction superintendent who will be in direct charge of the reservoir construction. The proposed reservoir construction superintendent shall be currently employed by the qualified reservoir constructor and shall have been the reservoir construction superintendent on no less than three (3) strandwrapped prestressed concrete reservoirs during the last five (5) years. The reservoir construction superintendent will be required to be on the project site full-time and in responsible charge during all reservoir concrete construction activities.

4. The vertical and circumferential reservoir prestressing shall be completed by a specialty reservoir prestressor who is experienced in prestressing AWWA D110 Type 1 prestressed concrete reservoirs. The reservoir prestressor must have successfully prestressed five (5) AWWA D110 Type I reservoirs in the past ten (10) years that are located within a region with a mapped spectral response acceleration, S_s , of 1.0g or greater. The reservoir prestressor shall have a minimum of two automated strandwrapping and shotcrete machines.

5. Identify the proposed reservoir prestressing superintendent who will be in direct charge of the reservoir prestressing construction. The proposed reservoir prestressing superintendent shall be currently employed by the qualified reservoir prestressor and shall have been the reservoir prestressing superintendent on no less than three (3) strandwrapped prestressed concrete reservoirs during the last five (5) years. The reservoir prestressing superintendent will be required to be on the project site full-time and in responsible charge during all reservoir prestressing construction activities. The qualified reservoir prestressing superintendent shall be responsible for overseeing preparation for placement of shotcrete, operation of power machinery during shotcrete application, operation of circumferential stressing system, and operation of the vertical stressing system. The listed reservoir prestressing superintendent shall be a certified shotcrete nozzle operator in accordance with ACI 506.

(c) Contractors must meet all of the criteria listed above in order to be pre-qualified, in addition to receiving a passing score on the other evaluation criteria. Contractors who do not meet all of the criteria will not be found qualified to participate in bidding for the contract to construct the Project.

3. **APPEAL PROCESS**

The District will notify prospective contractors of the result of the pre-qualification process in writing. Any contractor who is not pre-qualified may appeal the determination to the District General Manager. The appeal process is as follows:

(a) Within five (5) calendar days of receipt of written notice that the contractor has not been pre-qualified, the prospective bidder shall notify the District General Manager of its intent to appeal. The notice of appeal shall be made in writing and delivered to the District General Manager at the address in the Notice Inviting Submission of Pre-qualification Packages. If requested by the prospective contractor in the notice of appeal, the District General Manager shall provide notification in writing of the basis of the disqualification and any supporting evidence received from others or adduced as a result of

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an investigation by the District. The District General Manager shall provide this information within five (5) calendar days of receiving the notice of appeal.

(b) Within five (5) calendar days of receipt of the District's information, the prospective bidder shall submit any and all evidence it wants the District General Manager to consider in support of its qualifications to perform the Project or submit a written request for a hearing at which to present evidence. The evidence or request for hearing shall be in writing and delivered to the District at the address in the Instructions for Completion of General Contractors and selected subcontractors Pre-qualification Package.

(c) If the District General Manager receives a timely request for a hearing, the hearing will be held within ten (10) calendar days of the date the District's General Manager receives the request. The hearing will be before the District General Manager or his designee and will be recorded on audio and/or video tape. The prospective bidder may request that the hearing be recorded steno-graphically. If the prospective bidder requests a stenographic record, the bidder shall be solely responsible for arranging the stenographer and paying all costs for the transcript. At the District General Manager's request, the prospective bidder shall furnish the District General Manager with a copy of the transcript, and the District shall pay no more than the cost of the copy.

(d) The District General Manager shall give the prospective bidder written notice of the outcome of the appeal no later than ten (10) calendar days after the hearing is concluded. The District General Manager's decision will be final and binding.

(e) If any of the above deadlines falls on a District holiday or weekend day, then the deadline will be the next business day.

The District will strictly enforce the time limits in connection with appeals of determination of Contractor pre-qualification, and the bid date will not be extended on account of any appeal of a determination that a contractor is not qualified to submit a bid for the contract to construct the Project.

If a prospective bidder does not appeal a denial of pre-qualification through the process described above, the District's decision on pre-qualification may be adopted without further proceedings. **Failure to appeal within the time set forth above shall be deemed a failure to exhaust administrative remedies and act as a bar to subsequent litigation or other claims procedures.**

4. **AUTHORITY OF GENERAL MANAGER**

The District General Manager is authorized to modify the Model Forms created by the Department of Industrial Relations for Pre-qualification of Contractors Seeking To Bid On Public Works Projects and to prepare Pre-qualification Packages consistent with this Resolution.

5. **MISCELLANEOUS**

(a) A Contractor's pre-qualification status will immediately terminate if (1) the contractor's contracting license is suspended or terminated for any reason by the California State Licensing Board; (2) the Contractor is convicted of any crime or moral turpitude, (3) the District determines, after the Contractor is given the opportunity to respond, that the Contractor's application contains information

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that is materially false; or (4) the Contractor's control over a public works contract, whether within the District's jurisdiction or otherwise, is terminated for cause.

(b) Failure of a Contractor to give District written notice of changes in the information previously provided in its Pre-qualification Package within ten (10) days before a bid opening will result in the Contractor being ineligible to bid on the Project.

(c) Nothing contained within this Resolution, or otherwise, will require the District to rate or consider Contractors who have submitted documents that are materially false, substantially incomplete, or are untimely. Any Contractor who submits such documents will be deemed to have waived its right to be considered for bidding on the Project.

(d) The District's General Manager in his sole discretion at any time during the pre-qualification process, even after receiving and scoring applications, may cancel the pre-qualification process. If the pre-qualification process is cancelled as provided herein, and the District wishes to proceed with the Project, then the normal competitive bidding rules will apply. The District shall not be liable for the cost of prospective contractor may have incurred by submitting an application for pre-qualification, and the submittal of a pre-qualification application is a waiver to claim any such cost or losses due to cancellation of the process.

(e) Nothing contained in this Resolution is intended to delay or postpone the date for submitting and opening bids. Accordingly, to the extent practicable, the District's General Manager, or designee, will expedite the appeals process set forth here.

(f) This Resolution will remain effective until repealed or is superseded by subsequent Resolutions.

(g) This Resolution will take effect immediately upon adoption.

On the motion by Director _____, seconded by Director _____ and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

the foregoing resolution is hereby passed, approved and adopted by the Board of Directors of the Nipomo Community Services District this 18th day of November, 2015.

CRAIG ARMSTRONG
President of the Board

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ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
General Manager and Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel