Purpose

To establish a policy for Minor Change Order; Addenda to Contract Documents, Plans and Specifications; Substitution of Subcontractors; the Selection and Employment of Private Contractors for Construction projects; Partnering; and Mediation.

Background

State law and County Administrative Code provide for certain delegation of authority and flexibility for Public Works Construction Projects. All references to the Board of Supervisors shall include their roles as the Board of Directors of County Special Districts.

Policy

I. Addenda

It is the policy of the Board of Supervisors that the Director of Public Works, the Director of General Services, the Director of Parks and Recreation, and the Director of Purchasing and Contracting are authorized to approve addenda to contract documents, plans, specifications, and advertisements as needed in order to correct ambiguities, errors, and omissions, but never to make material modifications.

II. Substitution of Subcontractors

It is the policy of the Board of Supervisors that, in accomplishing construction contracts, when the prime contractor requests the substitution of a listed subcontractor as permitted in Public Contract Code, Section 4107, the duly authorized office shall be the Director of General Services, the Director of Parks and Recreation, or the Director of Public Works, for the construction contracts administered by their respective departments.

In every case when the prime contractor requests a substitution, the duly authorized officer shall ascertain that the reason for the substitution is permitted in Public Contract Code, Section 4107; the duly authorized officer shall notify the listed subcontractor by certified or registered mail as stipulated and, if no written objection is filed, shall determine that such failure to file a written objection constitutes consent to the substitution.

In the event that the listed subcontractor files a written objection within the allowed time, the duly authorized officer shall advise the Awarding Authority to

arrange for a hearing date and the Awarding Authority shall advise the subcontractor of the time and place of the hearing by certified or registered mail at least five working days ahead of such hearing. The Awarding Authority shall approve or disapprove the proposed substitution at said hearing.

III. Minor Change Order Policy

It is the policy of the Board of Supervisors that in accomplishing Public Works contract work, minor changes to the work shall be accomplished as follows:

A. Construction Contracts

The Director of Public Works, the Director of Parks and Recreation, the Director of General Services, and the Director of Purchasing and Contracting are authorized to order changes to the work pursuant to Section 20142 of the Public Contract Code.

B. Improvement Act Contracts

The Director of Public Works is authorized to order changes to the work pursuant to Section 20455 of the Public Contract Code.

C. Road Contracts

The Director of Public Works is authorized to execute changes for any contract for work upon County highways, pursuant to Section 20395 of the Public Contract Code.

D. Sanitation District Projects

The Director of Public Works is authorized to order changes in work pursuant to Section 20142 of the Public Contract Code.

E. Flood Control District Projects

The Director of Public Works is authorized to order changes in work pursuant to the limits set in Section 21551(b) & (c) of the Public Contract Code.

IV. Selection and Employment of Private Contractors for Construction Projects

A. A formal bidding and contracting process shall be employed in accordance with the Public Contract Code.

B. The Director of Public Works is authorized to purchase materials and let contracts for work or let contracts covering both work and materials without advertising for bids for emergency work where doing so complies with the requirements of Section 20395(e) and Section 22050 of the Public Contract Code, County Charter Section 705, and County Administrative Code Section 402.

C. County labor force shall be maintained at a level adequate to accomplish routine maintenance and repair, and to permit appropriate response in emergency situations. To obtain most efficient use of public funds, County forces shall be used to the maximum extent of their availability on selected, small construction projects.

D. Pursuant to the authority granted by Public Contract Code Sections 20100 through 20103.5, the County may require prospective bidders on a public works project to prequalify prior to submitting a bid for the public works project.

1) Departments may use the model created by the State Department of Industrial Relations entitled, "Prequalification of Contractors Seeking to Bid on Public Works Projects: The 1999 State Legislation and the Model Forms Created by the Department of Industrial Relations," or any State-approved successor. Any County changes to the model forms created by the State must be approved by County Counsel and the Director of the Department of Purchasing and Contracting before use.

2) The prequalification forms will provide for an appeal procedure that complies with Public Contract Code section 20101. The appeal procedure will be approved by County Counsel and will provide for an appeal to the County's Chief Administrative Officer.

3) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The disqualification of a subcontractor by the County does not disqualify an otherwise prequalified contractor.

4) The failure of a County employee or County department or program to comply with the prequalification process shall in no way affect the validity of any contract entered into by the County.

V. Partnering

It is the policy of the Board of Supervisors that all complex construction contracts, as determined by the Department directors, over $2 million shall contain a clause offering contractors the opportunity to enter into Partnering agreements.

VI. Mediation

It is the policy of the Board of Supervisors that all construction contracts employing the competitive bid process, except for minor projects described in Sections 20121, 20122, and 20123 of the Public Contract Code, shall contain a clause making mediation mandatory for any unresolved disputes prior to their being taken to formal arbitration or litigation by any party. Mediation shall be subject to the following conditions:

A. Mediation will be conducted at the completion of work, unless a claim exceeds $25,000 and the project has in excess of four months remaining until completion, or unless all parties agree that immediate mediation is required.

B. All claims must comply with the False Claims Act.

C. Mediation shall not be a condition of the County's right to terminate contracts for cause or convenience.

D. Mediation shall be non-binding and inadmissible in any subsequent legal proceedings.

VII. Other Applicable Policies

A. Board of Supervisors Policy B-39A, Disabled Veterans Business Enterprise (DVBE) Program.

B. Board of Supervisors Policy A-97, Protest Procedures for Award of Contracts.

VIII. Changes

In the event that the limitations or conditions contained in the codes applicable to this policy are changed or repealed by action of the legislature, the limitations or conditions contained in this policy shall likewise be changed or repealed.

CAO Reference

1. Department of Public Works
2. Department of Parks and Recreation
3. Department of General Services
4. Department of Purchasing and Contracting

Sunset Date

This policy will be reviewed for continuance by 12-31-2013.

Board Action
02-24-81 (18)
11-13-84 (15)
03-22-88 (37)
09-26-95 (20)
02-11-97 (13)
01-12-99 (4)
08-07-2002 (5)
02-27-2007 (9)