



Administrative Code Revisions

Engineering and Operations Committee

Item 7-2

November 7, 2011

Current Action

- Amend Administrative Code for:
 - Contractor debarment (Proposed Sections 8170 to 8180)
 - Procurement of articles or services by a specific brand or trade name (Section 8140)
 - Pre-bid responsibility findings and Board review (Section 8142)

Contractor Debarment

Background

- Public works contracts > \$25k competitively bid
- Contracts awarded to lowest responsible bidder submitting a responsive bid
 - Responsive – relates to bid itself
 - Responsible – relates to bidder's ability to perform
- Verify references on past projects and seek clarification as needed
- No existing administrative process for debarring bidders

Contractor Debarment

- Observed increase in:
 - Frivolous and overstated contract claims
 - Attempts to flout laws and regulations
 - Contractors failing to meet contract deadlines
- Debarment policy could help deter some of the more egregious behavior
- Debarment policies relatively common among public agencies
- Engineering and Legal staff developed proposed debarment procedure

Contractor Debarment

Division VIII, Chapter 1, Article 5

PURPOSE

- Address contractor problems experienced by staff;
- Protect the District from financial, legal, and operational risks posed by unscrupulous, unethical, or otherwise irresponsible contractors;
- Eliminate need for project-by-project non-responsibility findings for such contractors; and
- Establish “rules of the road” for contracting with the District and deter violation of rules.

Contractor Debarment

BASES FOR DEBARMENT

13 identified bases, including:

- Criminal conviction related to obtaining, attempting to obtain, or performing under a public contract;
- Civil judgment for fraud or commission of a criminal offense related to obtaining, attempting to obtain, or performing under a public contract;

Contractor Debarment

BASES FOR DEBARMENT (continued)

13 identified bases, including:

- Violation of state or federal health or safety laws;
- Willful failure or gross negligence in performing under one or more District contracts; and
- Falsification of documents related to a bid, fraudulent billing, or a pattern or practice of submitting frivolous or overstated claims

Contractor Debarment

PROCEDURE

- General Manager initiates debarment action by providing contractor with detailed statement of why debarment is being considered.
- If the contractor requests a hearing, it is conducted by a panel of three Board members selected by the Chair.
- Following the hearing, the panel determines whether debarment is appropriate for a period of up to 10 years.
- After two years of debarment, contractor's debarment can be terminated upon a showing of corrective action.

Contractor Debarment

CONTRACTOR DUE PROCESS

More than minimum Due Process rights provided:

- Right to challenge General Manager's allegations in writing and obtain a hearing on the issues;
- Right to receive staff exhibits prior to hearing;
- Right, for good cause shown, to conduct limited discovery prior to the hearing;

Contractor Debarment

CONTRACTOR DUE PROCESS (continued)

More than minimum Due Process rights provided:

- Right to present testimonial and documentary evidence at the hearing, as well as right to cross-examine witnesses and submit rebuttal evidence; and
- Ability to petition for early termination of debarment if corrective action for conduct leading to debarment can be established

Procurement of Articles by Specific Brand or Trade Name (Section 8140)

- Existing Contract Code provides for limited exception to competitive procurement requirement if articles are patented, copyrighted, or otherwise unique.
- Amendment is designed to further clarify when the exception would apply:
 - An article is patented or copyrighted;
 - Sole-source procurement is necessary to maintain warranties; or
 - Specific articles are needed to replace parts for existing equipment or systems or to ensure compatibility with required upgrades or enhancements.

Responsibility Findings in the Pre-Qualification Process and Board Review (Section 8142)

Minor revisions proposed in order to

- Eliminate a restriction on pre-qualification responsibility findings that is overly narrow and not legally required;
- Clarify that a pre-qualification non-responsibility finding can be directly appealed to the Board; and
- Permit the Board to delegate its authority to review non-responsibility findings to a standing or ad hoc committee of the Board.

Options for Consideration

- Option #1
 - Approve the additions to the Contracting Rules (new Administrative Code Sections 8170-8180) and amendments to Administrative Code Sections 8140 and 8142
- Option #2
 - Take no action, thereby retaining the current Contracting Rules (Administrative Code Sections 8100 et seq.)

Staff Recommendation

- Option #1
 - Approve the additions to the Contracting Rules (new Administrative Code Sections 8170-8180) and amendments to Administrative Code Sections 8140 and 8142



Questions?