

PRE-QUALIFICATION PROGRAMS

SUMMARY

In California, local governments have normally been required to select the “lowest responsible bidder” to perform public works contracts or to supply materials to public agencies. However, the critical term, “responsible,” has not been defined by statute, leaving individual agencies to determine standards on an ad hoc basis. The results of this often confusing arrangement have included disputes, litigation, and examples of disasterously poor performance by contractors. To provide a more systematic approach to the evaluation of “responsibility,” some local agencies began to implement pre-qualification programs—the application of consistent standards to potential contractors before bids could be submitted. As this practice became more widespread, concerns grew that pre-qualification programs, themselves, lacked standardization and uniform procedures assuring fairness to all parties. In consequence, the California legislature in 1999 adopted AB 574, the Responsible Contracting Act, formally authorizing cities, counties and special districts to implement pre-qualification program based on specific criteria. Model pre-qualification programs are available from the State Department of Labor Relations, however, local entities may produce their own plan consistent with statutory requirements. Most pre-qualification procedures include four components: a questionnaire which all contractors must complete; standardized interviews; a rating system which determines whether a contractor’s responses are sufficiently acceptable; and an appeals procedure for contractors who believe they have been inappropriately disqualified. Properly implemented, a pre-qualification program can improve performance on projects, reduce complications and lawsuits in the bidding process, and level the playing field for legitimate contractors. Pre-qualification of contractors can also help to ensure the success of construction projects by ensuring that the bidding contractors do not have a history of ineffectual performance or troublesome behavior, such as employing poor design, materials, or construction, causing substantial unnecessary delays, or contesting the terms of a contract after the fact. Concerns that pre-qualification requirements discourage bidders, increase costs to public agencies or causes unnecessary delays in projects are unsubstantiated based on evidence from numerous pilot programs throughout the state. At this time, pre-qualification is demonstrating a capacity to reduce the risks associated with public contracting. At the same time, it assists local governments to maintain even-handed standards administered in a predictable fashion.

Working Partnerships USA was formed in 1995 in response to the widening gap between Silicon Valley’s prosperous employers and the well being of much of the region’s workforce. Today, Working Partnerships is a unique collaboration among labor unions, religious groups, educators and other community-based organizations that crafts innovative solutions to the problems of the modern economy.



WHAT IS PRE-QUALIFICATION?

A Pre-Qualification program is a procedure for determining whether a contractor or a vendor is qualified to provide products or services to a government agency before bids for a specific construction project or a supply order are opened.

The concept of pre-qualification derives from the “responsible bidder” standard followed by public agencies. Most government agencies in California are required to award public works contracts and many vendor contracts to the lowest responsible bidder. A responsible bidder is considered to be a bidder who “has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.”

However, measurable and objective criteria for responsibility are not statutorily defined, leaving local agencies with the obligation to create such criteria and determine if bidders meet that standard. An agency that implements this standard unevenly or in ways that seem arbitrary or unfair may be subjected to bid protests and even lawsuits by spurned contractors, while an agency that fails to weed out nonresponsible and unqualified companies may face serious consequences, from delays and cost overruns to questionable environmental and labor practices, or even to the failure of the project. This places a heavy burden on the agency to ensure that its methods of determining bidder responsibility are both fair and effective.

To fulfill this charge, in recent years public agencies throughout California have begun to implement pre-qualification policies. These include the Los Angeles Metropolitan Transportation Agency in 1997, as well as the California State University system, the University of California system, and numerous K-12 school districts, community college districts, and municipalities. (See Attachment B for details of policies.) However, as each agency developed its own version of pre-qualification, companies who contract with multiple agencies were required to complete a different process for each pre-qualifying agency, sometimes with widely varying procedures, although each

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agency's process had similar goals. To resolve this issue, in 1999 the California legislature moved to establish a uniform standard for pre-qualification programs. AB 574, the Responsible Contracting Act, authorizes cities, counties, and special districts to establish a pre-qualification program, and sets forth the requirements that such programs must meet¹.

As the Responsible Contracting Act requires, the Department of Industrial Relations (DIR) has developed a set of model procedures and documents upon which agencies may base their pre-qual programs, including a standardized questionnaire, model rating criteria, and suggested procedures for reference interviews and the appeals process. Several agencies have begun to operate pre-qual programs based on the new law and on the DIR guidelines, including the Sacramento Regional Transit District (Attachment B) and the Santa Clara Valley Transit Agency (Attachment C).

¹ The University of California system, the California State University system, K-12 school districts, and community college districts are all separately authorized to implement pre-qualification programs under Public Contract Code Sections 10509, 10760, 20111.5, and 20651.5 respectively. K-12 school districts are exempted from the provisions of AB 574; community college districts are not specifically mentioned, and so may be covered by AB 574. The UC and CSU systems are not included in AB 574 since they are not local entities.

HOW DOES PRE-QUALIFICATION WORK?

Pre-qualification programs may either be linked to specific projects or allow open applications. Under the former, contractors who intend to bid on a particular project are required to first become prequalified, while the latter allows contractors to apply for pre-qualification at any time, with the qualification status valid for an extended time period, such as one year after being awarded. Under either procedure, contractors must be pre-qualified before submitting bids on a project requiring pre-qualification, and the agency is responsible for ensuring that all prospective bidders are aware of this requirement. A few agencies, such as the California State University system, also use the latter procedure to give qualified contractors a “prequalification rating” indicating the maximum dollar amount of projects on which they are allowed to bid

Pre-qualification is generally required only for projects over a certain dollar amount; for the L.A. MTA and the Sacramento Regional Transit Agency, prequal is applied to construction contracts with budgets equal to or greater than \$100,000. Rather than using such a predetermined criterion, some agencies, notably the University of California system, determine on a case-by-case basis whether a project requires pre-qualification, based on the complexity of the project and the need for contractors with particular skills and experience.

Though prequal programs generally focus on construction contractors, Sacramento RT applies its pre-qualification program to procurement contracts as well, and CSU has additional prequal requirements for telecommunications contractors. On projects requiring prequalification of the prime bidder, subcontractors are sometimes required to be prequalified as well; the Los Angeles MTA requires pre-qualification of all subcontractors where applicable, while the University of California’s policy includes the option of requiring prequalification of subcontractors for a particular project.

Disqualification of a contractor is not equivalent to disbarment; the disqualified contractor is free to reapply for prequalification, or to bid for contracts with other public entities. It is possible that

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circumstances may change which allow a firm's score to improve. For example, on some issues, a larger firm is allowed a greater number of incidents of poor performance before it loses points. Therefore, firms that experience a significant increase in gross revenues may qualify in future applications. If a subcontractor of a qualified general contractor is disqualified, the general contractor's qualification status is not affected; rather, the general contractor substitutes a qualified subcontractor, with the agency's approval. (Depending on the format of the process, general contractors may also be able to find out beforehand which subcontractors are prequalified, and so avoid the situation altogether.)

Most pre-qualification procedures include four components: a questionnaire which all contractors must complete; standardized interviews with the references that each contractor supplies; a rating system which determines, based on the questionnaire and reference check, whether a contractor is deemed responsible; and an appeals procedure for contractors who believe they have been inappropriately disqualified.

THE QUESTIONNAIRE

Before contractors prepare bids, they are required to complete a questionnaire. The questions are objective, and every contractor must respond to the identical set of queries.

Questions might include:

At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or a private owner?

If the answer is yes, explanatory information is required.

Or:

Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

If the answer is yes, explanatory information is required.

HOW DOES PRE-QUALIFICATION WORK?

THE RATING SYSTEM

After the completed questionnaires are received by the government agency, they are rated. The rating system is also objective. A minimum number of points is required to pass specified sections of the questionnaire.

For example, the first sample question above might be rated as follows:

No projects with liquidated damages of more than \$50,000, or one project with liquidated damages, *5 points*

Two projects with liquidated damages of more than \$50,000, *3 points*

Any other answer, *no points*

THE REFERENCE CHECK

Potential contractors are required to identify their most recent projects. As part of the pre-qualification process, staff from the government should interview the project managers of these past projects.

Although interviews are not as objective as questionnaires, they can be approached in a systematic way. Interviewers can be given a standard set of questions. The questions themselves can elicit quantitative responses.

For example, a project manager could be asked:

On a scale of 1-10, did the contractor provide adequate personnel?

Once the interviews are completed, scores can be compared against pre-established standards. For example, the State Department of Industrial Relations guidelines suggest a score of 72 or higher on each of two interviews would be sufficient for pre-qualification.

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THE APPEALS PROCESS

State law requires that a pre-qualification system must allow prospective bidders to dispute their pre-qualification rating prior to the closing time for the receipt of bids. In the Appeals process, the bidder must be informed of the reasons for their disqualification and the evidence on which that decision was based. They must then be given the opportunity to rebut that evidence and provide new information on their own behalf.

The law allows local agencies to adopt their own procedures for implementing these appeals processes, as long as the statutory requirements are satisfied.



WHY USE A PRE-QUALIFICATION SYSTEM?

As discussed above, determining contractor responsibility through a formal procedure before bids are submitted can be a highly effective way to fulfill the “responsible bidder” requirement in a manner that is both fair and effective. Properly implemented, pre-qual can improve performance on projects, reduce complications to the bidding process, and level the playing field for contractors.

PRE-QUALIFICATION AND CONTRACTOR PERFORMANCE ON PROJECTS

Performance of contractors is crucial to the success of any construction project. Pre-qualification of contractors can help to ensure a successful project by confirming that the bidding contractors do not have a history of taking actions which negatively impact projects, such as poor design, materials, or construction, substantial unnecessary delays, or contesting the terms of a contract after the fact. Though the large majority of contractors perform their work competently and in good faith, many public works projects in California and elsewhere have suffered delays or cost overruns or even not been completed due to contractor errors. While pre-qualification cannot be the solution to all difficulties with contractors, it has the potential to substantially decrease the risk of contracts with unreliable or unscrupulous companies.

If a bid is awarded to a sub-standard contractor, a number of serious problems may occur, including:

- Poor workmanship
- Timing problems
- Disputes and litigation
- Environmental problems
- Abuse of workers

Each of these is discussed below.

Poor workmanship may be one of the most common problems that public agencies encounter when dealing with construction contractors. For example, over the past decade, Santa Clara County

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has been plagued with a series of poorly built projects—often built by contractors who had previously been involved with projects having similar problems. If the contractors for these projects had been required to go through a pre-qualification process, including reference checks and a listing of similar public works projects performed by the contractor, the county might have been aware of these problems with workmanship and taken steps to prevent them from recurring.

Santa Clara County's \$7.3 million South County Justice Center in San Martin opened in 1995 and began to leak almost immediately. The problem intensified during El Niño, and a toxic mold was discovered by county officials in spring of 1998. Employees working in the building began to suffer from asthma attacks, headaches, bronchitis and pneumonia caused by the mold. Upon investigation, the county discovered multiple problems with the courthouse's construction that contributed to the mold infestation. The roof was filled with hairline cracks, as well as leaks caused by the holes cut into its surface for ventilation and heating ducts. The site had been graded so that water ran towards the building rather than properly draining away from it, creating a swamp beneath the structure. The windows were designed for indoor, not outdoor, use and had no weatherproofing. And the material used to cover the building's exterior, called EIFS, sealed the moisture inside the building with no way for it to escape; this material was installed despite being known to contribute to water damage and associated problems.

WHY USE A PRE-QUALIFICATION SYSTEM?

Santa Clara County initially paid for all tests and repairs, running up a tab of \$1.1 million by Feb. 1999, in addition to several million spent to relocate employees and offices as the building was shut down. The County eventually sued the project team, including the general contractor, the designer, the construction manager, and over 12 subcontractors and suppliers. After two years, the suit was settled in July 2001 for \$12 million. In addition, 22 people have filed workers' comp claims against Santa Clara County and twelve filed lawsuits against the contractors, architects and suppliers for personal injury. As of August 2001, the latter had not yet been resolved.²

The County's \$31.5 million Hall of Justice was built in 1991 and, like the South County Justice Center, is riddled with leaks which began as soon as the building was completed. The problem is thought to have been caused by cracks in the building's exterior panels, poorly sealed windows, and deteriorating exterior caulking. After years of problems, in March 1999 the County sued the contractors responsible for the project, including the general contractor, the architects and the window installer. The lawsuit, which is still being pursued, sought damages of \$10 million to repair the flawed construction and replace the exterior caulking.³

² Berton, Justin. "Slime and punishment." Metro, December 17, 1998.
<http://www.metroactive.com/papers/metro/12.17.98/sanmartinmold-9850.html>

Kaplan, Tracey, "Courthouse to close—mold." San Jose Mercury News, January 27, 1999.

Kaplan, Tracey. "Mold threatens courthouse." San Jose Mercury News, January 20, 1999.

Kaplan, Tracey. "Q&A: Moldy facts." San Jose Mercury News, January 28, 1999.

Kaplan, Tracey, "San Martin courthouse: Offices marred by mold."
San Jose Mercury News, May 23, 1998.

Kaplan, Tracey. "Sick building diagnosed." San Jose Mercury News, February 7, 1999.

Post, Nadine M., and Paul Rosta. "County and project team reach settlement in toxic mold case." Engineering News-Record, August 31, 2001,
http://www.enr.com/news/enrbld_813001.asp.

Rodebaugh, Dale. "New building would replace mold-plagued courthouse."
San Jose Mercury News, January 5, 2001.

³ Kaplan, Tracey. "Third flawed design turns up." San Jose Mercury News, April 19, 1999.

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Finally, immediately after the October 1998 opening of Santa Clara County's \$15 million, 180-bed juvenile hall, it was revealed that the hall suffered from "serious design and construction problems." Eight rooms supposed to be double-occupancy were too small, and all the beds were 3 inches too narrow, requiring a potential 13% capacity reduction. The lack of capacity in the new hall forced some youth to remain in the old facility, which the juvenile court judge described as a "dark, dingy dungeon." The county chose not to sue the contractors, but negotiated with the state to allow more youths to be housed in the center as built.⁴

Several contractors were involved in both the juvenile hall and the South County courthouse; the same contractor served as construction manager for both projects, and the designer for South County worked as a subcontractor to the prime architect for the juvenile hall. In addition, the City of Santa Cruz also encountered water intrusion problems, including deficiencies in the windows and the weatherproof coating, when it hired the same contractor responsible for the bulk of the South County work to construct its Police Facility. The problems were discovered after the facility was completed in November 1999, and the City entered into a Settlement Agreement and Limited Release with the contractor for remedial repairs, which cost a total of \$282,970.⁵

⁴ Kaplan, Tracey. "Flaws in new juvenile hall force reduction in capacity." San Jose Mercury News, February 26, 1999.

Kaplan, Tracey. "Juvenile hall wing wins praise." San Jose Mercury News, October 10, 1998.

⁵ City Council Agenda Report. "Santa Cruz Police Facility – Notice of Completion." November 9, 2000. Available at: <http://www.ci.santa-cruz.ca.us/cc/archives/00/11-14/11-14rpt/wt343.html>, Nov. 12, 2001.



WHY USE A PRE-QUALIFICATION SYSTEM?

Delays and improper timing of work are another frequent problem on public works projects. Not only do delays cause projects to be completed later than planned, they can also drive up a project's cost. For example, in Livermore, CA, the Livermore Area Parks and Recreation District hired Perma-Green Hydroseeding Inc. to develop a sports complex at the new Payne Park, including a BMX course, a soccer field, and two baseball fields. By July 2001, the park, originally scheduled to open in November, was seven months behind schedule, and numerous disputes had arisen with the contractor, including poor grading and low quality materials. Finally, the Park District was forced to fire the contractor—to whom it had already paid \$800,000—and put the contract out for another bid.⁶

Though many factors contribute to delays, some of them unavoidable, delays caused by unreliable contractors are avoidable, and contractor prequalification may help to reduce such delays.

Disputes and litigation between the contractor and the agency can arise over workmanship, delays, or any of the other problems discussed here, as well as over deliberately fraudulent activities. Litigation can delay a project by years and cost millions, even if the agency eventually wins the suit. A pre-qualification questionnaire can require companies to report litigation in which they have been involved, and interviews with a contractor's references can further investigate whether the company has a history of provoking disputes.

The Los Angeles MTA initiated its prequalification program partly due to the major disputes it had with contractors on its Red Line subway project. After a 6-year legal battle, on August 1, 2001 Tutor-Saliba, the primary contractor on the \$4.5 billion metro Red Line subway, was ordered to pay \$29.6 million in damages to MTA. The judge found Tutor-Saliba liable for 1,048 acts of unfair business practices, including submitting false claims for payment, using fraudulent minority subcontractors, shifting costs between projects to misrepresent the company's revenue, and stopping quality inspections

⁶ Long, Megan. "Livermore parks board fires contractor for sports complex." Valley Times (Pleasanton, CA), July 30, 2001.

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during a contract dispute. The company appealed the verdict, but on October 18, 2001, the judge upheld the decision and ordered Tutor-Saliba to pay MTA an additional \$2.4 million in interest penalties. MTA is now asking the judge to require Tutor-Saliba to pay \$34 million more to cover MTA's legal fees and costs. The contractor says it plans to ask the state Court of Appeal to review the case.⁷

The case began in 1995 when Tutor-Saliba sued MTA, alleging that the agency owed the contractor \$16 million. Four years later, MTA countersued, claiming that the firm was responsible for numerous unfair business practices. The judge terminated Tutor-Saliba's suit, ruling that the firm intentionally withheld and destroyed documents, and leaving only MTA's countersuit against the contractor.⁸

Tutor-Saliba has received more than \$5 billion worth of contracts for public works contracts in California⁹, including SFO's terminal expansion project and BART to SFO.¹⁰ The company has also been blamed for problems in the construction of the BART extension to San Francisco Airport. While working on this project, Tutor-Saliba has recently been sued both for cutting off telephone service to 32,000 lines in June 2000 and for damaging a building while drilling nearby. Tutor-Saliba ruptured an additional 5,000 phone lines in Sept. 2000, prompting BART to consider additional oversight of the company's work.¹¹

⁷ Streeter, Kurt. "MTA contractor loses appeal on damage award." The Los Angeles Times, October 17, 2001.

⁸ Anderson, Troy. "Jury: MTA taken for ride. Panel finds firm's bills fraudulent." Daily News of Los Angeles, August 2, 2001.

Gold, Matea, and Jeffrey L. Rabin. "MTA wins \$29 million from subway contractor." The Los Angeles Times, August 2, 2001.

⁹ Gold *ibid.*

¹⁰ Hoge, Patrick. "Contractor loses big suit in L.A." San Francisco Chronicle, August 3, 2001.

¹¹ Stannard, Matthew B. "3 Firms Sue Over Phone Losses." San Francisco Chronicle, December 8, 2000.

Stannard, Matthew B. "Parking garage damaged by BART project, suit says." San Francisco Chronicle, June 6, 2001.

Stannard, Matthew B., and Alan Gathright. "Second Accident Draws Ire Of BART." San Francisco Chronicle, September 2, 2000.

Stannard, Matthew B. "Third Fiasco In 3 Months At BART Site." San Francisco Chronicle, September 13, 2000.



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In addition, Tutor-Saliba and SFO had a dispute over the cost of the Airport's new international terminal when it opened in 2000, with SFO saying that some of the \$260 million-plus cost overrun should be borne by Tutor-Saliba due to delays and poor workmanship that it alleged the contractor caused. Meanwhile, Tutor-Saliba claimed that numerous project modifications were necessary that required change orders, but SFO had rejected numerous legitimate requests which it should have paid.¹² The company has had conflicts with several other public agencies over change orders, including Los Angeles. Tutor-Saliba has sued and received large payments from its employers several times, including a \$17 million settlement against the San Diego port commission in 1993 and a \$39 million settlement -- the largest ever -- from the state Dept. of Transportation in 1994.¹³

Environmental and labor law compliance can also suffer under non-responsible contractors. Especially common are health problems resulting from construction, though often responsibility for these problems is difficult to assign. For example, at Hillview Junior High School in Pittsburg, CA, students and teachers began to complain of sickness and asthma attacks from dust, paint fumes and tar after construction began in October 2000. Parents brought their complaints to the school district in March 2001; after a health and safety review, trustees attributed the problem to a lack of communication, and the contractor agreed to reschedule all painting and tarring to be performed on weekends only, with no additional charge to the school district.¹⁴

The city of Walnut Creek experienced another type of environmental problem in June 2000 when a subcontractor of a fiber optic cable company cut through the roots of a city landmark, a 250-year old oak tree. Dozens of residents crowded the City Council chambers

¹² Hoge, Patrick. "Dispute over cost of SFO terminal." San Francisco Chronicle, December 3, 2000.

¹³ Hoge *ibid.*

¹⁴ Krupp, Sarah. "Board gives good grade to Sierra Bay." Ledger Dispatch (CA), March 17, 2001.

Krupp, Sarah. "Students say fumes make them sick." Ledger Dispatch (CA), March 2, 2001.

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to speak for more than two hours against the contractor. The City temporarily suspended the company's work while investigating, and finally ordered the company to pay a fine for the damage to the tree, as well as posting a bond equal to the tree's total value, payable to the city if the tree died.¹⁵

Environmental compliance became an issue for the city of Long Beach after hiring Moffatt & Nichol Engineers as its main contractor for a proposed 50-acre sports complex on an industrial site. Because of heavy pollution on the site, an Environmental Impact Report was required. Moffatt & Nichol's subcontractor, Environmental Science & Engineering Inc., prepared the report and submitted it to the city in December 1999. However, the city questioned the completeness of the report and hired a consultant to review it. After almost two years of continuing disputes between the city, the contractor, and the subcontractor about what additional work is needed on the document and who is financially responsible, the consultant concluded in November 2001 that the report "remains the worst attempt at (an environmental impact report) I have ever seen" and recommended that the EIR be redrafted, which could take another year. The City has threatened to sue Moffatt & Nichol over the faulty report, but Moffatt & Nichol say that is it the subcontractor's responsibility. Since submitting the initial report in 1999, the subcontractor has been acquired to become Harding ESE, making assignment of responsibility for the faulty report still more difficult.¹⁶

Violation of labor laws by contractors can result in depriving workers of their deserved compensation, subjecting them to inappropriate working conditions, or even creating a risk of serious injury to construction personnel. On a single housing construction project in San Jose during 1999-2000, the city has charged contractors with committing labor violations affecting 190 workers, and is seeking

¹⁵ Pridgen, Andrew. "Council left out on a limb, thanks to Seren." Walnut Creek Journal, June 22, 2000.

Sebastian, Matt. "Seren will pay for oak damage." Contra Costa Times (Walnut Creek, CA), June 22, 2000.

¹⁶ Gerwitz, Jason. "EIR shocks consultant." Press-Telegram (Long Beach, CA), November 6, 2001.



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restitution payments to those workers totaling \$211,174. Even contractors who adhere to labor law may have poor track records on safety procedures, treatment of workers, or labor/management relations. Information on these issues, such as accident and injury rates, is collected on the pre-qualification questionnaire, as well as any violations of labor and environmental law.

PRE-QUALIFICATION AND THE BIDDING PROCESS

Even before work begins, disputes can arise over the bidding process. These disputes can cause delays and drive up costs, especially if they occur after a low bid has been submitted, as well as damaging the public images of both the agency and the contractors involved. Determining responsibility through an objective pre-qualification requirement at the beginning of a construction or procurement process has the potential to substantially reduce complications that arise during the bid process.

A pre-qualification process ensures that an agency's standards for a "responsible" firm will be stated clearly in advance and that all parties will be aware of the criteria on which they will be evaluated. This decreases the likelihood that any group or firm will raise a new criterion after bids have been submitted, questioning the low bidder's qualifications.

Since pre-qualification is completed prior to bidding, firms will be able to learn if they meet an agency's responsibility requirements before they prepare a bid. The pre-qualification process is relatively simple, especially compared to the difficult and expensive tasks associated with preparation of a bid on a large project, so the process would reduce expenses for firms which might otherwise complete the entire bid process only to have their bid disqualified. Consequently, firms should be less likely to challenge a determination that they are not qualified, since they have not expended significant resources on the project and have less at stake than if they had already submitted a bid.

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Even if firms do challenge a negative pre-qualification rating through the appeals process, that challenge will take place before bids are submitted, during the designated appeals period, and so will not delay the process. Moving the responsibility determination to the beginning of the process thus reduces the likelihood that challenges to a bid will take place at the last minute when the decision is placed before the governing board. In addition, the governing board is protected from situation in which a low bid is in hand but serious questions have been raised at the public hearing regarding the background and/or qualifications of that bidder.

A recent situation in which questions of qualification severely complicated the bidding process involved the contract for a “people-mover” light rail system at San Francisco Airport. Mitsubishi initially won the contract in December 1996 with the low bid of \$136.6 million, but after the bid was accepted, San Francisco’s Human Rights Commission claimed that Mitsubishi should not have won because the company used unqualified and illegitimate minority subcontractors. The airport, believing the Human Rights Commission’s report to be only advisory, awarded the contract to Mitsubishi anyway. A competing bidder, ADtranz, sued, and the court threw out Mitsubishi’s bid due to lack of qualifications. In the second round of bidding, ADtranz won with a bid of just \$116.6 million.

However, Mitsubishi said it would contest the bid, and on February 9, 1998 submitted a formal protest to the Airport Commission, saying that ADtranz’s design proposal was flawed. Despite Mitsubishi’s protest and threat of lawsuits, in March 1998 the Airport Commission awarded the bid to ADtranz. By this time, qualification issues and bid protests had delayed awarding of the contract by fifteen months.¹⁷

¹⁷ Wilson, Yumi. “Airport Selects Builder for People Mover.” San Francisco Chronicle, January 13, 1998.

Wilson, Yumi. “German Firm Wins Contract to Build S.F. Airport Light-Rail System,” San Francisco Chronicle. March 4, 1998.

Wilson, Yumi. “Winning Bid for SFO Rail Challenged.” San Francisco Chronicle, February 10, 1998.

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These advantages of pre-qualification combine to reduce the probability of litigation over the bidding process. Lawsuits are most likely to occur when several parties have already undergone the expense of preparing bids, the identity of the low bidder is known, standards regarding responsibility are subjective and ambiguous, and the evaluation of those standards has been accomplished in an ad hoc manner.

By contrast, when pre-qualification is part of the bidding process, parties have less reason or incentive to file a suit either over the determination of a firm's responsibility, or over selection of the low bidder. Under a properly implemented prequalification program, the agency's responsibility standards are clear and are applied consistently. In addition, at the time responsibility is determined, firms have not yet put significant resources into the project, and the low bidder has not yet been selected; firms and third parties thus have little incentive to sue at this stage. Finally, since companies determined to be non-responsible will not be bidding, the board will not be in the position of refusing a low bid because of lack of responsibility, then facing a dispute or lawsuit by the disqualified low bidder.¹⁸

¹⁸ Of course, nonresponsive bids may still be rejected; in addition, the board retains the right to find a bidder nonresponsive even after prequalification, but unless new information about the bidder arises, this is unlikely to occur.

WHAT QUESTIONS HAVE BEEN RAISED CONCERNING PRE-QUALIFICATION?

TIMING

Concern: A pre-qualification system will delay an agency as it works to design and build a project on a tight schedule.

Response: A pre-qualification system can and should be organized to specifically meet an agency's timelines. Agencies can administer the pre-qual process at an early enough date so that questionnaires, rating, and appeals will all be completed on time. Moreover, pre-qualification prevents delays caused by last minute challenges to a bidder's qualifications as well as massive delays resulting from use of poorly qualified contractors.

COMPETITION / NUMBER OF BIDDERS

Concern: A pre-qualification system will reduce the number of bidders on a project.

Response: First, it is important to recognize that eliminating certain bidders is precisely the reason to have a pre-qualification system. If unqualified contractors are driven off by a pre-qual system, that's an occasion to celebrate, not complain. Second, a pre-qual system will attract new highly qualified bidders who previously were reluctant to go through the expense of preparing a bid while knowing they would have to compete against unrealistically low bids submitted by poorly qualified firms. Pre-qualification creates a level playing field with high standards—an arrangement that encourages bidding by the best-qualified firms.

Concern: Small businesses will be unable to compete for bids if pre-qualification is required.

Response: Completing a pre-qualification questionnaire is much simpler than preparing bid documents, and companies able to do one should have little difficulty with the other. The questionnaire and rating process can and should be designed in a way that is not biased against qualified small businesses

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In the experience of the L.A. MTA, the pre-qualification procedure does not put small contractors at a disadvantage, though initially special outreach to small companies was needed to "allay their fears" about pre-qual and encourage them to apply. The only major problems and objections to the process have come from large companies, a small number of which have refused to provide the required information or to answer the questions as given.

IMPACT ON COSTS

Concern: Potentially low bidders will either fail to qualify or choose not to bid, driving up project costs.

Response: Government agencies are not exempt from the adage that you get what you pay for. Specifically, you can't get quality work at the cost of inadequately done work. The real threat to a public agency's budget isn't the legitimate costs of quality work, but the hidden costs of poor quality work—costs that later appear in litigation, repairs, and reconstruction.

Concern: Implementation of pre-qualification will be prohibitively expensive for the agency.

Response: While the administrative cost of prequalification may vary considerably by agency, those which have implemented it thus far have not incurred excessive administrative costs. The LA MTA Pre-Qualification Office has a staff of six and an annual budget of \$500,000, less than 1% of the agency's general and administrative budget and less than 0.02% of its total budget. Contra Costa Unified School District, which runs a much smaller-scale program, hires an outside contractor to review questionnaires at a cost of approximately \$250 per application.

In addition, an agency that is already expending resources to ensure responsibility of its contractors will in large part be shifting that cost, rather than incurring an entirely new expense. Staff can be reorganized to perform these tasks in the context of a prequalification framework.

WHAT CONCERNS HAVE BEEN RAISED CONCERNING PRE-QUALIFICATION?

CONTENT OF CRITERIA AND RATING SYSTEM

Concern: The criteria applied for pre-qualification will be unreasonable or will be applied in an unfair manner.

Response: State law allows local agencies to define their own criteria. You can use the DIR guidelines or you can designate your own requirements. No agency can be forced to use criteria with which it does not agree. State law DOES demand that the pre-qual system must use uniform standards and objective criteria. In other words, every firm must be asked the same questions. The questions themselves must be of an objective nature. The rating process must be applied to each firm in an identical manner. All of these statutory requirements insure that the pre-qual process must be conducted in a fair and objective manner. In general, the large majority of applicants to existing pre-qualification programs in California have been able to meet all the requirements; at the Los Angeles MTA, for instance, out of 2000 applications only about 35 have been denied. In many of these cases, failure to prequalify resulted from a firm's refusal to submit requested information.

ATTACHMENTS

ATTACHMENT A

REQUIREMENTS FOR PRE-QUALIFICATION IN CALIFORNIA

As discussed above, the 1999 Responsible Contracting Act authorizes (but does not require) cities, counties, and special districts in California to adopt a pre-qualification system, provided it adheres to state requirements created by the Act.

Two types of pre-qualification programs are permitted under the RCA; pre-qualification may either be linked to single projects, or valid for all projects for one year after initial pre-qualification. Both procedures must include the following elements:

- (1) “a standardized questionnaire and financial statement in a form specified by the public entity”;
- (2) “a uniform system of rating bidders on objective criteria, on the basis of the completed questionnaires and financial statements”;
- and
- (3) “an appeal procedure, by which a contractor that is denied pre-qualification may seek a reversal of that determination”.

The Responsible Contracting Act also charged the state Department of Industrial Relations (DIR) with creating model documents and procedures which public entities could use as a basis for their pre-qualification programs. Accordingly, the DIR has prepared the following documents:

- a standardized questionnaire,
- model questions and suggested procedures for reference interviews,
- a model scoring system for rating the information gathered from the questionnaire and references,
- model public announcements of pre-qualification procedures including the timeline for the appeal procedure,
- and a list of sources for verification of information given by contractors.

These documents can be obtained from the Department of Industrial Relations or on the Web at:
<http://www.dir.ca.gov/prequal.html>.

ATTACHMENTS

ATTACHMENT B

EXISTING PRE-QUALIFICATION PROGRAMS IN CALIFORNIA

This section describes key features of several pre-qualification programs. It is not an exhaustive list of existing programs.

Sacramento Regional Transit District

In 2001, the Sacramento Regional Transit District (RT) began using a project-by-project pre-qualification procedure based on the DIR model. The agency has separate procedures in place for construction and procurement contracts; construction projects require prequalification if the contract exceeds \$100,000, while procurement projects are evaluated by staff on a case-by-case basis to determine whether they are complex enough to need prequalification. Thus far the procedure has only been applied to three projects, none of which is completed, so few conclusions can be drawn concerning its effectiveness; however, staff at the District believe it will reduce the submittal of false claims by contractors.

The District implemented a project-by-project process rather than ongoing prequalification because it reduces staff workload, only requiring them to process applications from the four or five contractors who plan to bid on each project rather than the several thousand contractors in their database. However, there is a disadvantage to contractors, as they must go through the process again for each project on which they wish to bid.

Los Angeles Metropolitan Transportation Authority

The Los Angeles MTA has required pre-qualification of construction and procurement contractors and subcontractors since 1997, as required by a state law passed in 1996 (AB 1869, Sec. 4.3). The policy applies to all projects of \$100,000 or more. Staff at the MTA pre-qualification office believes that pre-qualification has been successful in reducing abuses by contractors, and assert that MTA has had to take far fewer contractors to court since initiating the policy. While less than 2% of applicants are actually denied pre-

POLICY BRIEF: PRE-QUALIFICATION PROGRAMS

qualification, the pre-qualification office believes the process may also act as a deterrent to firms which know they lack appropriate qualifications or a history of trustworthiness.

Although small companies were initially wary of the process, MTA pre-qual staff believe that pre-qualification does not put small companies at a disadvantage. Rather, most problems and objections to the process come from large companies which do not wish to provide the requested information. Occasionally large companies have refused to provide any information that is over a year old, including information on any past lawsuits or criminal records.

The Pre-Qualification office has a staff of 6 and an annual budget of about \$500,000, out of a total MTA budget of \$2.725 billion for FY 2002. MTA plans to modify their process for construction contractors to add a larger emphasis on past performance on projects, as is suggested in the DIR questionnaire; the process for procurement contractors will not change.

The California State University System

Prospective bidders on CSU construction projects with an estimated cost of more the \$400,000 are required to submit a prequalification form. The evaluation focuses on financial status, safety record, and experience with similar projects, including interviews with references; a firm must meet minimum requirements in each of these areas to be awarded prequalification. Once approved, a contractor remains prequalified for one year and can bid for projects at any of the twenty-three CSU campuses, although specific projects may require additional qualifications.

Bidders on telecom projects are required to undergo a separate prequalification process, with appropriate questionnaires for contractors and subcontractors. Prime bidders for telecom projects must complete both the telecom prequal and the standard prequal

CSU's prequalification program is authorized by Public Contract Code Section 10760. The process is managed by the Construction Management unit of the Capital Planning, Design, and Construction

ATTACHMENTS

department, and the questionnaire is available from Construction Management at <http://www.calstate.edu/CPDC/CM/>.

The University of California System

The University of California does not have a general pre-qualification program, but facilities may choose to require pre-qualification for any project. Generally pre-qualification is required when they are seeking a contractor who has previously completed similar projects. Subcontractors may be included, but need not be.

The UC Facilities Manual provides two sample Prequalification Questionnaires which facilities can use as models. The “Point System” questionnaire is structured so the bidder must score a predetermined point total and meet minimum standards for questions within different topics. The “Pass/Fail” questionnaire is a series of minimum standards; the inability to satisfy any one of these will cause a contractor to be denied prequalification. Procedure, requirements and sample questionnaires are provided in the UC Facilities Manual, Volume 5, Chapter 4 at <http://www.ucop.edu/facil/fmc/facilman/volume5/>.

K-12 School Districts, Community College Districts, and Municipalities

Several K-12 school districts, including Sacramento City Unified School District, Los Angeles USD, Pasadena USD, Vallejo City USD, West Contra Costa USD, Davis Joint USD, and several San Diego County districts, have chosen to adopt pre-qualification policies as authorized by Public Contract Code Section 20111.5. Details of the policies vary by district.

At one district, West Contra Costa, a formal pre-qualification policy was implemented in January 2000. Its primary purpose is to confirm a contractor’s financial responsibility and bonding capacity, and the secondary purpose is to obtain history and references from previous jobs. The policy is project-by-project and has only been applied to three projects thus far. An outside consultant reviews all application, at a cost of approximately \$250 per contractor that applies (with most

POLICY BRIEF: PRE-QUALIFICATION PROGRAMS

projects having between 4 and 20 bidders.) According to Purchasing staff, the district has never had major problems with contractors, so staff do not expect the policy to produce significant improvements.

Further information is available by contacting each school district. LAUSD's prequalification requirements and questionnaire can be found at <http://www.laschools.org/fss/fca/prequalf>, and Sacramento City USD's at http://www.scusd.edu/purchasing/serna_center.htm.

In addition, community college districts are authorized to require prequalification under Public Contract Code Chapter 20651.5, and several have implemented prequal programs, including San Mateo County Community College District. Some municipalities also make use of prequalification, including the cities of Fremont, Pacifica and Brentwood.

ATTACHMENTS

ATTACHMENT C

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) PILOT PRE-QUALIFICATION PROGRAM

Board Memorandum, Contractor Pre-qualification Pilot Program	33 - 35
Construction Contractor Pre-Qualification Pilot Program Implementation Plan	37 - 39
Exhibit A: Planned Bid Packages, 2002 - 2003	41 - 42



Date: November 13, 2001

Committee Meeting Date: November 15, 2001

Board Meeting Date: December 13, 2001

BOARD MEMORANDUM

ACTION X DISCUSSION _____ INFO _____

TO: Administration and Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Peter M. Cipolla
General Manager

FROM: Scott D. Buhner, Chief Financial Officer

SUBJECT: Contractor Pre-qualification Pilot Program

RECOMMENDATION:

Approve and adopt the recommended success criteria for the Contractor Pre-qualification Pilot Program, and approve the attached Program Implementation Plan.

BACKGROUND:

At the October 11, 2001 meeting of the VTA Board of Directors, staff was directed to implement a Pilot Construction Contractor and Subcontractor Pre-Qualification Program to apply to approximately half of all construction contracts for an 18-month period commencing January 1, 2002. The pre-qualification process (questionnaire, scoring/rating, and appeal procedure) is to utilize the model forms developed by the California Department of Industrial Relations in January of 2001 following adoption of Public Contract Code Section 20101 permitting pre-qualification of bidders on public works projects. The pre-qualification process will apply to subcontractors whose work will amount to 10% or more of the total contract value.

As part of the pilot program, the Board determined that it would establish criteria for measuring the success of the program before implementation.

In addition, the Board requested staff to consult with representatives from the South Bay Labor Council, Santa Clara County Building and Trades Council, Associated General Contractors of California, and Engineering and Utility Contractors Association in an advisory capacity during the pilot program, including in connection with developing recommended success criteria and implementation procedures.

DISCUSSION:

A. *The Consultation Process.* Staff initiated meetings with representatives from the South Bay Labor Council, Building and Trades Council (BTC), the Associated General Contractors of California (AGC), and the Engineering and Utility Contractors Association, to discuss implementation issues, program monitoring, and criteria for measuring success of the pilot program. We had productive meetings with representatives from BTC, including its attorney, and with a representative from AGC. Unfortunately, the representative from the South Bay Labor Council was unable to meet with us, and we did not receive a return call from anyone from the Engineering and Utility Contractors Association.

B. *Objectives of the Pilot Program and Criteria to Measure Success.* As a preliminary step to identifying success criteria, the meetings focused on articulating the objective or objectives of the pre-qualification pilot program. Drawing from the September 17, 2001 recommendation from Board Member Gonzales to the Board of Directors, we believe the objective of the pilot program is to assist in ensuring, to the extent feasible, the business responsibility of all entities dealing with VTA and the completion of VTA projects on time and within budget. After carefully considering suggestions received from both the AGC and BTC, as well as staff from the impacted departments, and assessing our ability to establish a baseline, accurately monitor and measure the criteria, and weed out variables that would skew results, the following criteria are recommended:

1. Reduction in Substitution of Subcontractors
2. Reduction in Prevailing Wage Violations
3. Reduction in Safety Violations
4. Reduction in receipt of Stop Notices

Additionally, VTA staff will be monitoring the program to determine if any of the contractors that have routinely been awarded bids through VTA's current responsibility review process are eliminated from the pool of qualified contractors through the pre-qualification process.

C. *Implementation Plan.* The plan for implementing the Pilot Program is attached. Major elements of the plan are as follows:

- The plan will apply to all contracts that are advertised for bid subsequent to January 1, 2002.
- Prospective bidders and contractors will be invited to submit applications for pre-qualification for half of the construction contracts awarded during the pilot program. It is anticipated that current 30-day advertisement period will be extended to a minimum of 65 days due to the time limits imposed by the DIR process.

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- The DIR questionnaire, reference interview questions, scoring model, and appeals process (time limits) will be followed.
- The Administration and Finance Committee will serve as the appeals panel.
- Forms and submittals currently requested, which are duplicative of the information submitted with the DIR questionnaire, will be eliminated (e.g., Bid Form No. 6, litigation Disclosure, Bid Form No. 5, References).
- Subcontractors will be subject to the same process and time limits for their first application for pre-qualification, but, once approved, shall not have to reapply for subsequent construction projects during the pilot program.
- Prime Contractors may request validation of a previously approved application for subsequent construction contracts of similar size and scope.

D. Resource Requirements. It is anticipated that four additional positions will be required to support the pilot program: one Senior Construction Contract Administrator to manage the program, two Construction Contract Administrator II's to conduct reference checks, site visits, and review scoring of applications, and one Assistant Contract Administrator to maintain files, databases and the VTA website as it relates to the program.

ALTERNATIVES:

The Board could adopt alternative or additional success criteria. In light of the extreme time limits imposed by the DIR process, which requires appeals hearings to be concluded within five days of contractor's filing of an appeal, the Administration and Finance Committee may wish to reconsider its decision to serve as the Appeals Panel and authorize an Appeals Panel comprised of staff members, such as Executive Managers, including the Purchasing & Materials Manager.

FISCAL IMPACT:

It is anticipated that the pilot program will result in additional annual staffing costs of approximately \$425,000. The positions required to support the pilot program have been requested in the mid-year budget adjustment. The cost of staffing this function until the mid-year budget adjustment is approved will come from the General Manager's contingency fund.

Prepared by: Suzanne B. Gifford, General Counsel
Frances McNichol, Contracts Manager



CONSTRUCTION CONTRACTOR PRE-QUALIFICATION PILOT PROGRAM IMPLEMENTATION PLAN

I. ACKNOWLEDEMENTS

This Contractor Pre-Qualification Pilot Program Implementation Plan was developed with the cooperation and participation of VTA staff and representatives from the Associated General Contractors of California and the Building Trades Council. Additionally, the Los Angeles County Metropolitan Transportation Authority was very generous in providing VTA with details of and insights into their program.

II. PROGRAM INITIATION

VTA will commence with a Construction Contractor Pre-Qualification Pilot Program effective January 1, 2002. It is anticipated that VTA will issue its first two Requests for Pre-Qualifications the week of January 7th for the Cerone Complex Improvements, Phase 1 project and the Consolidated Biological Mitigation Site - Phase 2 project, for which bids will open the week of March 11. A tentative advertisement schedule for 2002 is attached as Exhibit A.

III. PROGRAM CONTENT

VTA will use the California Department of Industrial Relations (DIR) process modified to permit VTA to qualify subcontractors for the entire pilot period, based on one approved application. Additionally, VTA will allow prime contractors to validate their qualification for projects of similar size and scope by signing a validation statement certifying that the information on their previously approved pre-qualification application is unchanged, or by submitting a validation statement with explanatory documentation for any changes that have occurred. The validation process is currently used successfully at LACMTA.

IV. APPEALS PROCESS

VTA will use the Appeals Process that is included in the DIR's Model Forms. VTA's Administration and Finance Committee will function as the appeals panel to hear appeals from all contractors and subcontractors who were denied qualification by VTA staff. The process requires that the panel conduct and conclude a hearing no later than five business days after VTA's receipt of a Notice of Appeal. The decision of the Appeals Panel must be issued no later than the day following conclusion of the hearing.



V. PROJECTS SUBJECT TO PROGRAM

VTA has determined that it will let approximately 62 construction contracts during the pilot program period, ranging in value from \$82,000 to \$68,300,000. The median value of these projects is \$1.3 million. A list of these projects is included in Exhibit A. The cumulative dollar value of these 31 projects accounts for 97% of the value of all projects due to be let during the pilot period. For the thirty-one projects falling above the median, prime contractors, and subcontractors, who have a 10 percent or greater interest in the contract, must have been pre-qualified to be eligible for award. A prime contractor who utilizes a subcontractor subject to the program but who has not been pre-qualified will be declared non-responsive and ineligible for award of the contract.

VI. CONTRACTOR OUTREACH

In an attempt to give contractors and subcontractors sufficient advance notice of the impending implementation of the pre-qualification pilot program at VTA, advertisements will be run in the San Jose Mercury News, and the Daily Pacific Builder; notices will be sent to the 16 major Builders Exchanges in our region, the Associated General Contractors of California and will be posted on VTA's website.

VII. LEVEL OF EFFORT AND REQUIRED SUPPORT

Based on recent bidding history, it is anticipated that each of these projects will involve processing pre-qualification requests from four to six prime contractors, and 16 to 20 subcontractors.

The applications must be processed and VTA's determination rendered to Contractor within 10 business days of receipt of the application. Staff has projected the need for the following additional positions to support the program: One Senior Construction Contracts Administrator to manage the program; two Construction Contract Administrator IIs to conduct the reference checks and site visits, and one Assistant Contract Administrator to maintain the contractor files, databases and VTA website supporting the program.

VIII. PROGRAM MONITORING

In order to ensure the active participation of all interested parties in the monitoring and problem resolution process, VTA will host bi-monthly program review meetings. The meetings will be attended by VTA's Pilot Program Steering Committee comprised of the following staff:

ATTACHMENTS

- Purchasing & Materials Manager
- Contracts Manager
- Deputy Director of Rail Design & Construction
- Deputy Director of Highway Engineering
- Facilities Design & Construction Manager
- Facilities Maintenance Manager
- Representatives of the South Bay Labor Council, Associated General Contractors of California, Building Trades Council and Engineering & Utility Contractors Association.

In addition, the latter group will be invited to attend and participate in a review of any Pre-Qualification Pilot Program Issues Reports that were initiated during the review period, and provide input for and review of the Semi-Annual Pilot Program Progress Reports.

IX. PROGRAM REPORTING

The comments and suggestions made by the participants at the review meetings will be incorporated into a Semi-Annual Progress Report that will be submitted to the Appeals Panel for review in July and January for submission to the full Board of Directors in February and August.

EXHIBIT A: PLANNED BID PACKAGES - JAN 2002 THROUGH JUN 30, 2003

PROJECT	ADV DATE	DEPT
C660 Systemwide Temporary Landings	01/01/02	RDC
(P0422) River Oaks Emergency Ops Center	01/19/02	FDC
(P0112) Line 22 Improvements	01/22/02	FDC
(P0220) Elevator Floor Replacement	01/29/02	FDC
C290 Site Restoration - Capitol	02/07/02	RDC
2002 Pavement Program - Ph 2, R.O.	02/07/02	FDC
C595 Completion Contract - TE & Capitol - PH 1	02/19/02	RDC
(P0274) Mitigation Site Irrigation, Planting & Maint	02/28/02	HDC
(P0258) Cerone Complex Improvements, Ph 1	03/03/02	FDC
(P0190) Route 237/880 Interchange - Stage C - Ph 2	03/07/02	HDC
(P0192) Lengthen Lane at SB17 Offramp to Hamilton	03/07/02	HDC
San Martin Parking Expansion - Ph 2	03/09/02	FDC
(C610) Transit Mall Platforms	04/01/02	RDC
ADA Access Improvements - PH 17	04/02/02	FDC
(P0273) Route 152A Improvements Ph 1	04/04/02	HDC
(P0192) R17 White Oak Reconfig & Aux Lane (B&E South)	04/18/02	HDC
Double Track Tamien to Lick Track & Civil	05/01/02	CRDC
Double Track Tamien to Lick Structures	05/01/02	CRDC
(C545) Stations PNR I880 - Hostetter	05/06/02	RDC
(C235) Capitol LRT Stations and PNR	05/15/02	RDC
(P0273) Rte 152 Landscaping	05/20/02	HDC
(P0189) Route 85/101 No. Interchange SC Widening	05/23/02	HDC
(P0127) LRV Operations Training Annex	06/27/02	FDC
(C630) North Line Platforms	07/01/02	RDC
(P0192) NB R17 to NB R85 & SB R17 to Lark (J North)	07/11/02	HDC
(P0273) Route 152A Improvements Ph 2	07/11/02	HDC
(P0273) Route 152B Install Traffic Signal & Widen	07/11/02	HDC
(P0288) Route 85 Noise Mitigation	07/25/02	HDC
(P3005) Santa Clara Parking Expansion	07/25/02	FDC
LRV Improvements - Parking Lot	08/07/02	FDC
(P0273) Route 152E Improve Intersection @ Furguson Rd	09/19/02	HDC
(P0273) Route 152D Improve Intersection @ Furlong Rd	09/19/02	HDC
(P0273) Rte 152C, Improve Intersection @ Frasier Lake	09/19/02	HDC
(P0258) Cerone Complex Improvements - Ph 2	10/01/02	FDC
C365 Completion Contract - Vasona	10/01/02	RDC
(P0403) De Anza College Transit Center	10/04/02	FDC
(P3003) Palo Alto Transit Center Interim Improvements	10/18/02	FDC
(C640) South Line Platforms	11/01/02	RDC



POLICY BRIEF: PRE-QUALIFICATION PROGRAMS

PROJECT	ADV DATE	DEPT
(C335) Civil Station Finishes - Grp 1 - Vasona	11/04/02	RDC
Palo Alto Depot Renovation	11/23/02	FDC
(P0372) Route 880/Coleman Ave Interchange	12/05/02	HDC
(C620) Greater Downtown Platforms	01/01/03	RDC
(C336) Civil, Station Finishes & PNR - Vasona	01/03/03	RDC
(P0191) Route 87 (N) HOV Lanes	01/09/03	HDC
(C580) Pavement Resurfacing - TE	01/13/03	RDC
C596 Completion Contract - TE & Capitol - Ph 2	02/06/03	RDC
(P0272) Route 87(S) HOV Lanes	02/20/03	HDC
(P0187) 85/87 IC Landscaping	05/22/03	HDC
(P0188) Rte 101 Widening Landscaping	05/22/03	HDC
(P0186) Rte 880 Widening Landscaping	05/24/03	HDC
(P0338) Rte 85 Noise Mitigation Landscaping	06/05/03	HDC
(P0258) Cerone Complex Improvements - Ph 3	08/01/03	FDC
C390 Site Restoration - Vasona	6/30/03	RDC
Paint Light Rail Stations, Guadalupe South	Spring 2002	FM
Reroof Cerone Division Central Energy Building	Spring 2002	FM
Slurry Seal and Restripe 14 ParkNRide Lots	Spring 2003	FM
(TBD) LRV Car Wash Modifications	TBD 02/03	FDC
Task 2 General Civil Construction	TBD 2003	CRDC
Task 2 Structures	TBD 2003	CRDC
Task 2 Track Construction	TBD 2003	CRDC
Chaboya & R.O. Bathroom Remodeling	TBD 2003	FDC
LRV Facility Pit Lowering for LFV	TBD 2003	FDC
Task 2 Civil Restoration	TBD 2003	CRDC
Bus Stop Pavement Restoration - Ph 16	TBD 2003	FDC
Bus Stop Pavement Restoration - Ph 17	TBD 2003	FDC
Bus Stop Pavement Restoration - Ph 18	TBD 2003	FDC
Bus Stop Pavement Restoration - Ph 19	TBD 2003	FDC
ADA Access Improvements - PH 18	TBD 2003	FDC
ADA Access Improvements - PH 19	TBD 2003	FDC
ADA Access Improvements - PH 20	TBD 2003	FDC
ADA Access Improvements - PH 21	TBD 2003	FDC
Chaboya Bus Parking Pavement Rehab	TBD 2003	FDC
LRV Facilities WP&S Storage Expansion	TBD 2003	FDC
LRV Facility Improvements CCTV System		FDC

TOTAL PROJECTS = 74 MEAN = 37



ATTACHMENTS

ATTACHMENT D

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) PILOT PRE-QUALIFICATION PROGRAM MONTHLY REPORT

TO: Administration and Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Peter M. Cipolla
General Manager

FROM: Scott Buhner
Chief Financial Officer

SUBJECT: Contractor Pre-qualification Pilot Program Monthly Report

FOR INFORMATION ONLY

BACKGROUND:

At the meeting on December 14, 2001 the VTA Board of Directors approved and adopted the recommended success criteria for the Contractor Pre Qualification Pilot Program and the proposed Program Implementation Plan with four amendments. Those amendments included: 1) the development of baseline information regarding the number of bid protests and safety violations, 2) an addition to the California Department of Industrial Relations (DIR) guidelines, of questions regarding violations of government rules or regulations, 3) an examination of the question of involving the public in policy making at the VTA Board level and 4) the requirement of a monthly reporting to the Administration and Finance Committee.

DISCUSSION:

Since the December Board meeting the following activities have taken place:

ASSOCIATED GENERAL CONTRACTORS (AGC) MEETING

On January 4, 2002 VTA outlined the Pilot Program for Michael Talia, Executive Director of the Associated General Contractors (AGC) and a working group consisting of representatives of FCI Constructors, R & L Brosamer, Inc. and Granite Construction Company. This meeting allowed VTA staff to present the program, answer questions and listen to concerns voiced by the prospective bidders.

The Implementation Plan requires prime contractors and subcontractors to prove bonding capability as a requisite for pre-qualification. In actual practice, many subcontractors do not maintain such bonding capacity. VTA's contractual relationship is with the Prime Contractors and they are required to have adequate bonding capability. For this reason, VTA is not harmed if a subcontractor does not have bonding capability. Without a change to our Implementation Plan, it is

likely that VTA would lose the availability of a number of quality subcontractors. We indicated that we would discuss this concern at the Pilot Program Steering Committee meeting.

STEERING COMMITTEE MEETING

On January 14, 2002 the Pilot Program Steering Committee convened a meeting attended by Jack Collins (Rail Program), Jeff Funk (Highway Program), Jim Pierson (Facilities Program), Michael Talia (AGC), Cristina Uribe (South Bay Labor Council), Frances McNichol (VTA Contracts Manager and Thomas B. Smith (VTA Purchasing & Materials Manager). Mark Breslin (Engineering & Utility Contractors Association) and Neil Struthers (Building Trades Association) were unable to attend the meeting but received the meeting notice and subsequently, the minutes of the meeting.

The following issues were discussed and resolved:

Because of work schedules, and the difficulty in getting members to all scheduled meetings, a list of alternates was agreed upon. An updated roster of members and alternates with phone numbers and e-mail addresses will be e-mailed to all members and alternates.

The committee reviewed and discussed the success criteria and staff will capture information on protests in addition of those items approved by the VTA Board.

Two issues were discussed:

The committee discussed a concern regarding how to handle new projects as they arise. Each time a new construction project is added to the existing list, it can have an affect on how many projects will undergo pre-qualification and may also effect the dollar value of the median. To avoid the possibility of having a project added to the pre-qualification list at the last minute due to other projects being added or deleted the Committee agreed on the establishment of a set dollar value (\$1,150,000), above which any new projects would require pre-qualification. This was agreed upon unanimously.

In response to the concern raised at January 4, 2002 meeting with the AGC, it was determined that VTA would not require subcontractors to demonstrate bonding ability in order to become pre-qualified. This was agreed upon unanimously.

OTHER

We are making progress in the establishment of the benchmarking data that will be used in the success criteria. This effort requires an in depth review of historical statistical data and staff is proceeding toward completion.

Finally, we are receiving a good response to the initial advertisements, which were placed last month announcing the Construction Pre-qualification Pilot Program. Based on that response, we anticipate an equally good response when we advertise our first project under the pre-qualification pilot program, which shall be in late February due to the delay of the Cerone Complex Improvements, Phase 1 project which was re-scheduled from January to March. The first project to undergo pre-qualification based on the current advertisement schedule will be a Highway Program "Mitigation Site Irrigation, Planning and Maintenance.

