



- **Board of Directors**
Legislation and Communications Committee

11/19/2024 Board Meeting

7-6

Subject

Authorize the General Manager to seek legislation for Metropolitan to increase the local agency dollar threshold for public works construction contracts from \$25,000 to \$75,000; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

Under the Public Contract Code as amended in 1984, Metropolitan is required to competitively bid all public works construction contracts exceeding twenty-five thousand dollars (\$25,000). Over the past 40 years, the \$25,000 threshold has proved to be increasingly limiting when there is a need to execute minor public works construction contracts for maintenance and repairs. As the infrastructure has aged, the number of these minor projects has been increasing annually for Metropolitan.

Board approval is requested to authorize the General Manager to seek legislation that would increase the minimum threshold for competitive sealed bidding on public works construction contracts from \$25,000 to \$75,000 in Article 121 of the Public Contract Code (Chapter 1128, Statutes of 1984). Increasing the minimum bidding threshold would allow Metropolitan to address the inflationary impacts over the last 40 years for minor public works construction contracts. If successful, an increased threshold would allow for more time- and cost-effective public works contracting for small contracts under \$75,000, with an estimated savings of up to \$50,000 in staff time and other expenditures currently required to prepare and solicit bids per construction contract. These cost savings would be realized by avoidance of staff and consultant time needed for preparation of minor public works solicitations, as well as administrative fees associated with electronic bidding.

Proposed Action(s)/Recommendation(s) and Options

Staff Recommendation: Option #1

Option #1

Authorize the General Manager to sponsor legislation for Metropolitan to increase the minimum threshold for competitive bidding on public works construction contracts from \$25,000 to \$75,000.

Fiscal Impact: The costs associated with sponsoring this bill in the state legislature will be absorbed within existing staffing and program budgets. However, if the proposed legislation is enacted into law, project delivery on minor public works construction contracts will lead to cost savings of up to \$50,000 per contract due to reductions in staff and consultant time needed for preparation of public works solicitations (i.e., contract specifications), inclusive of administrative fees associated with posting and awarding of electronic bids.

Business Analysis: If successful, legislation authorizing the bidding threshold increase would address inflationary impacts not otherwise accounted for in the 1984 statute and would increase staff efficiencies associated with delivery of minor public works construction contracts.

Option #2

Do not authorize the General Manager to sponsor legislation for Metropolitan to increase the minimum threshold for competitive bidding on public works construction contracts from \$25,000 to \$75,000.

Fiscal Impact: By not authorizing the General Manager to sponsor this legislation, Metropolitan would forego an estimated savings of up to \$50,000 per minor public works construction contract.

Business Analysis: Absent legislation, Metropolitan would continue to comply with the existing 1984 requirements to prepare contract specifications and competitively bid all minor public works construction contracts exceeding \$25,000.

Alternatives Considered

The California Uniform Public Construction Cost Accounting Act (CUPCCA) provides for alternative bidding procedures when an agency adopts alternative cost accounting procedures as defined by the state. Metropolitan has investigated use of CUPCCA and has deemed the use of it as administratively burdensome due to increased accounting requirements, complexity in implementation, and appearances of preferential treatment for certain prime contractors.

Staff also considered higher dollar amounts for an amended threshold but recommends the \$75,000 threshold because it is consistent with the results of an inflationary analysis and Metropolitan's administrative threshold for goods and services (Administrative Code 8140).

Applicable Policy

Metropolitan Water District Administrative Code Section 8140. Competitive Procurement

Metropolitan Water District Administrative Code Section 8141: Competitive Sealed Bidding

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

Related Board Action(s)/Future Action(s)

1984 action, if any.

If the Public Contract Code is amended to increase the bidding threshold, a board action would be required to amend Metropolitan's administrative code to conform to this change.

Summary of Outreach Completed

Over the last two years, staff has been actively engaging in discussions with local agencies (cities, counties, flood control districts, transit agencies, conservation, and water districts, etc.) to determine appropriate minimum bidding thresholds for public works construction and to gain a better understanding of the thresholds that apply to different agencies. To date, staff have received 30 responses indicating both similar concerns and challenges, as well as support for an increase, where appropriate, in the Public Contract Code.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves proposals for legislation to be enacted by the state legislature. (State CEQA Guidelines Section 15378(b)(1).) Additionally, the proposed action is not defined as a project under CEQA because it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. (State CEQA Guidelines Section 15378(b)(4)).

CEQA determination for Option #2:

None required

Details and Background

Background

Public works are defined as construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Additionally, the Labor Code has expanded the definition of public works over the years to include activities that previously were considered maintenance and/or inspection.

Article 121 of the Public Contract Code was added in 1984, which established competitive bidding requirements, setting the minimum threshold at \$25,000. Under Section 21565 of the Public Contract Code, Metropolitan is required to competitively bid all public works solicitations exceeding twenty-five thousand dollars (\$25,000). Metropolitan's Administrative Code Section 8141 - Competitive Sealed Bidding codifies the statute and states that all contracts for public works estimated to cost \$25,000 or more shall be made upon competitive sealed bidding.

The bidding threshold for public works construction varies across California, from as little as \$2,000 for various smaller conservation districts to as high as \$150,000 for certain transportation and transit districts. Moreover, staff have contacted over 30 local agencies across California and the majority have indicated that their threshold is outdated, and they would consider supporting a legislative effort to increase their respective thresholds.

Over the past 40 years, the \$25,000 threshold has proved increasingly insufficient to carry out minor public works construction contracts in an efficient and cost-effective manner. As Metropolitan's infrastructure continues to age, the volume and cost of these minor public works contracts are expected to increase. The \$25,000 limit also hampers the ability of Metropolitan's construction forces to obtain specialized support needed to address urgently needed repairs expeditiously.

Proposed Legislation

Staff proposes legislation to amend the Public Contract Code to increase the minimum threshold for competitive bidding on public works construction contracts from \$25,000 to \$75,000 for Metropolitan.

Justification

Inflationary trends over the past 40 years demonstrate clearly that the threshold should be revised. Both the Consumer Price Index (CPI) and Engineering News Record's (ENR) Construction Cost Index reflect a three-fold increase to the \$25,000 threshold. The CPI increase over the last four decades for the Los Angeles region is approximately 310 percent, while ENR's Construction Cost Index is 329 percent, both calculated using 1984 base dollars.

Over the past five years, staff has prepared, solicited, and awarded nearly 25 minor public works contract documents below the proposed \$75,000 threshold. Reviewing cost data and staff time for these projects, each solicitation costs Metropolitan approximately \$50,000 for preparation of the contract specifications, inclusive of administrative fees associated with posting and awarding of electronic bids. If the threshold were increased, Metropolitan's savings are estimated at up to \$50,000 per solicitation.

An increase in this bidding threshold would provide the following benefits to Metropolitan:

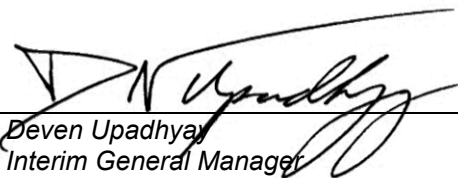
- Adjust the Metropolitan bidding threshold to better reflect inflationary impacts over the past 40 years on the cost of public works construction.
- For small construction contracts less than \$75,000, staff could administratively hire public works contractors and mobilize work immediately avoiding costly delays.
- Minor public works construction contracts under \$75,000 would be delivered more efficiently, with time and cost savings to Metropolitan.
- The substantial cost savings per solicitation would be realized by avoidance of staff and consultant time needed for preparation of minor public works solicitations and administrative fees associated with electronic bidding.

It is important to note that if the bidding threshold increase proposal is authorized and ultimately successful, the procedures in Metropolitan’s administrative code for public works contracting would need conforming changes to be consistent with the amended Public Contract Code.

Additionally, the passage of an increased threshold for competitive bidding does not preclude competitive bidding for any level contract if warranted or at the discretion of the General Manager.



Sue Sims 10/29/2024
External Affairs – Group Manager *Date*



Deven Upadhyay 11/4/2024
Interim General Manager *Date*

Ref# EA12696360