



# staff report

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TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Len Gorecki, Director of Public Works  
Bernardo Iniguez, Public Works Manager

SUBJECT: Consideration and possible action to adopt Resolution No. 16-XX –  
A Resolution adopting procedures for challenging awards of public  
works contracts to low bidders.

DATE: March 28, 2016

## **EXECUTIVE SUMMARY**

This action would approve formal procedures for challenging awards of public works contracts to low bidders.

## **RECOMMENDATION TO CITY COUNCIL**

- 1) Adopt Resolution No. 16-XX; or
- 2) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

None.

## **DISCUSSION**

Bid protests typically come to the City Council for resolution. There is currently no clear and formal process for submitting and resolving such protests. In the past two years, Public Works staff has received two bid protests. In these instances, protests have been coordinated by Public Works staff, with review by the City Attorney, and then submitted for City Council consideration during the award of contract. Adoption of this resolution would establish that clear process for filing a protest and set procedures to be followed by both the protester and the City.

## **ATTACHMENTS**

Resolution No. 16-XX..... 2

**CITY OF BELLFLOWER**

**RESOLUTION NO. 16-XX**

**A RESOLUTION ADOPTING PROCEDURES FOR  
CHALLENGING AWARDS OF PUBLIC WORKS  
CONTRACTS TO LOW BIDDERS**

**THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**SECTION 1.** To ensure the timely and efficient consideration of challenges to awards of public works contracts, the City Council adopts the “Procedures for Challenging Award of Public Works Contract to Low Bidder” attached as Exhibit “A,” and incorporated by reference (the “Protest Procedures”).

**SECTION 2.** The City Manager is authorized to promulgate appropriate administrative policies and procedures to implement the Protest Procedures.

**SECTION 3.** The City Manager, or designee, is authorized to administer the Protest Procedures in accordance with this Resolution.

**SECTION 4.** The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Bellflower and the City Clerk, or her duly appointed deputy, may attest thereto.

**SECTION 5.** This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

**PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE  
CITY OF BELLFLOWER ON THIS \_\_\_\_ DAY OF \_\_\_\_ 2016.**

\_\_\_\_\_  
, Mayor

**ATTEST:**

\_\_\_\_\_  
**Mayra Ochiqui, City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Karl H. Berger, Interim City Attorney**

**Attachment:** Exhibit A

## EXHIBIT A

### CITY OF BELLFLOWER PROCEDURES FOR CHALLENGING AWARD OF PUBLIC WORKS CONTRACT TO LOW BIDDER

Section 1: Procedure to be followed by protester and City Clerk.

- A. Persons may challenge (the "Protester") an award of a City of Bellflower Public Works contract (the "Project") based upon whether the apparent lowest responsible bidder (the "Low Bidder") is a "responsible bidder" as defined by applicable law.
- B. The Protester must file a written statement with the City Clerk (the "Protest") that sets forth the reasons for the objection. The Protest must be filed with the City Clerk not later than seven (7) days after the bids were received and opened, or as soon as the Protester becomes aware of the grounds for the Protest, whichever date occurs first. Any documents which support the objection must be filed together with the Protest.
- C. Upon receiving the Protest, the City Clerk must mail a copy of the Protest to the Low Bidder, together with any supporting documents filed with the Protest. The City Clerk must include a letter of transmittal with the Protest which contains substantially the following information:
  1. Notice that the Protest (and supporting documents, if any) was filed with the City Clerk;
  2. Notice regarding the date, time, and place when and where the City Council will consider the bids received in connection with the Project; and
  3. Notice that the Low Bidder may appear at the meeting and rebut the Protest including, without limitation, the ability to present evidence that the Low Bidder is qualified to perform the work and is the "lowest responsible bidder" on the Project.
- D. In addition to the notice provided to the Low Bidder, the City Clerk must attempt to contact the Low Bidder by phone regarding the Protest. If the City Clerk is able to contact the Low Bidder, the City Clerk must provide, if the Low Bidder requests it, a facsimile copy of the Protest.
- E. The City Clerk must also provide the Protester with notice regarding the date, time, and place when and where the City Council will meet to consider bids for the Project.

**Resolution No. 16-XX**  
**Exhibit A – Bid Protest Procedures**  
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Section 2: Procedure to be followed at the Hearing.

- A. At the time set for consideration of the bids received in connection with the Project, the City Council must allow City staff to proceed with its presentation first.
- B. Following the staff presentation, the City Council will allow the Protester to make his/her presentation. The Protester has the right to introduce any testimony or other evidence which could not, by the exercise of reasonable diligence, have been submitted at the time the Protest was filed.
- C. Following the Protester's presentation, the Low Bidder has the right to cross-examine any witnesses who testified on behalf of the Protester and to rebut any other evidence introduced or produced by the Protester or City staff.
- D. The City Council may, in its discretion, permit rebuttals and surrebuttals by the Protester and/or the Low Bidder.
- E. At the conclusion of the hearing on the Protest, the City Council must decide whether, based on the evidence produced at the hearing, the Low Bidder is or is not the lowest responsible bidder.
- F. In deciding whether the Low Bidder is "responsible," the City Council must consider the Low Bidder's trustworthiness, and the quality, fitness and capacity of the Low Bidder to satisfactorily perform the work required to be performed for the Project. Evidence of pervasive and significant violations of the prevailing wage laws of the State of California by the Low Bidder on a City Public Works project or on public works projects involving other public agencies warrants a finding by the City Council that the Low Bidder is not the lowest responsible bidder.
- G. If the Low Bidder is found to be "responsible" under the criteria referred to above, the City Council must award the contract for the Project to the Low Bidder, unless the City Council rejects all bids for the Project.
- H. If the Low Bidder is found not to be "responsible" under the criteria referred to above, the City Council must make a finding to that effect and must then award the contract to the second lowest responsible bidder, unless the City Council rejects all bids for the Project.