



CONSTRUCTION

CONTRACTS

GUIDE

Disclaimer:

The information contained in this document is paraphrased from many legal documents that are lengthy. Therefore, for complete accuracy, one is referred to those documents in their entirety.

This discussion is an overview of the City of San Diego's (City) policies and procedures. You should procure a copy of the Standard Specifications for Public Works Construction, "Greenbook", if you are going to work on City and other public agency contracts.

Goal:

The Goal of this Guide is to provide an understanding of how the City manages its Construction Contracting Program to encourage bidding and to develop successful business relationships.

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INTRODUCTION

Departments within the City that implement the majority of the Capital Improvement Program are:

- Engineering & Capital Projects
- Utilities (Water & Metropolitan Wastewater)
- Transportation

Types of Capital Projects available to our construction community to bid are:

- Buildings: Police and Fire Stations, Libraries, Recreation Centers;
- Parks: Tot lots, trails, nature areas, ball fields, joint use fields;
- Sewer and Water infrastructure: Conveyance pipeline projects, pump stations; treatment plants, reservoirs;
- Bridges: Repairs, replacements, new;
- Roadways: Bike lanes, re-alignments, street signals and lights, enhancement projects, traffic planning, traffic control;
- Street and Sidewalk Maintenance: Slurries, overlays, (sidewalk replacement tree root related);
- Storm Drain installations, repairs, replacements.

A little about how City Projects come about:

Projects are determined by needs lists, traffic data, studies of future needs based upon anticipated growth in areas, repair and maintenance reviews, safety concerns, community involvement, etc.

Funding:

First, State and Federal funds are sought to implement projects. Examples of such funding sources are Transnet (State) and HBRRP (Federal/Local Highway Bridge Replacement and Rehabilitation Program) EPA grants, State Water Resources Control Board grants or loans. These projects require prevailing wages and may have mandatory minority and women owned business participation. Most State and Federal funding sources do require a wide outreach effort.

Second, if that funding does not become available, local funds are programmed. Examples of local funding sources are Transient Occupancy Tax (TOT), developer impact fees, Gas tax, water and sewer fees, etc.

Funding is coordinated between the Mayor's Office and the City Council to implement projects. This information is printed in the City's budget document, annually.

What bidding opportunities are there?

Option 1 Design/Bid/Build (low Bid):

The majority of City Capital Improvement Projects are advertised for award to the "lowest responsible/reliable bidder." The Minor Construction Participants List is included in this process.

Option 2 Design/Build:

Specialty projects, for example, Stadiums, Animal Shelters, Convention Centers, Pump Stations, are generally done using this method. In this case, the City hires a designer/contractor team to design and construct a project.

Bid Process:

- Projects are advertised in the San Diego Daily Transcript, the City's Newspaper of Record;
- Projects are advertised daily with each project advertised for one day.
- See also the City's website: <http://www.sandiego.gov/Department-Purchasing/bids-contracts/Website> ads run the life of the bidding period.
- The City also utilizes Construction Bidboard (E-Bidboard) to list its advertised projects. Interested parties may access the link at <http://www.sandiego.gov/bids-contracts/> and clicking on "Bidboard". E-bidboard may also be accessed via <http://www.sandiego.gov/engineering-cip/services/consultcontract/advertising.shtml> and clicking on "City projects on Ebidboard."

Expectations of Bidders:

Bidders must be pre-qualified to bid on City Projects:

As of February 1, 2003 Contractors who intend to bid on Public Works Projects over \$250,000 for the City of San Diego must be pre-qualified. Bids from Contractors who have not been pre-qualified, and bids that exceed the maximum dollar amount at which Contractors are pre-qualified, will be deemed non-responsive and ineligible for award

Contractors are encouraged to submit their pre-qualification questionnaire and financial statements to the City of San Diego Engineering and Capital Projects Department, Pre-Qualification Program, 1010 Second Avenue, Suite 1200, San Diego, CA 92101 or if you have any questions, or need additional information, please call 619.533.3125.

Contractor Standards – Pledge of Compliance:

City contracts, including public works construction projects, are now subject to City of San Diego Municipal Code § 22.3224 as amended 11/24/08 by ordinance O-19808. All bidders should be

aware that the requirements apply to Contractors and all Subcontractors whose contracts are greater than \$50,000.

Upon award, amendment, renewal, or extension of such contracts, Contractors shall complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section.

Contractors shall ensure that their Subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section. Subcontractors may access the Pledge of Compliance at: http://www.sandiego.gov/purchasing/pdf/contractor_standards_questionnaire.pdf

Contractors shall include in each subcontract agreement, language which requires Subcontractors to abide by the provisions of City of San Diego Municipal Code § 22.3224. A sample provision is as follows:

Compliance with San Diego Municipal Code § 22.3224 : Subcontractor acknowledges that it is familiar with the requirements of San Diego Municipal Code section 22.3224 (“Contractor Standards”), and agrees to comply with requirements of that section.

Prior to submitting a bid, ensure you have:

- The correct contractor license;
- Obtained the applicable bonds for the project;
- Obtained the proper insurances;
- Followed applicable wage rate criteria;
- Complied with all provisions of the Equal Opportunity Contracting Program (Refer to the EOCP section of the project specifications for specific requirements).

Verify the scope of the work thoroughly:

- Read the soils report for project implementation;
- Read terms/conditions of permits associated with the project;
- Read the monitoring and mitigation components;
- Others—READ YOUR BID DOCUMENTS!
- Fully understand the intent behind the project;
- Visit the site for logistics, reasonable interpretations of the documents, equipment and material staging;
- Bid the project as it is specified, do not make an assumption that changes will be granted afterwards.

Questions Prior to Bid Opening:

- For questions about the bidding process/procedures, call the Purchasing & Contracting Department, Senior Contract Specialist;
- For questions regarding scope of work, call the Project Manager;
- For questions regarding the City's Subcontractor Outreach Program (SCOP), call the Equal Opportunity Contracting Program, Program Manager;
- Contact information can be found in the project bid documents.

Bid Opening Day:

Bid openings are open to the public. All bids are read aloud on the date, place, and time noted in the bid documents, in a meeting that is open to the public. Bids must include all information requested.

Instructions to Bidders :

- Turn Bids in on time, no exceptions;
- Have the correct contractor license;
- Include all the addenda as issued;
- A City business license must be obtained;
- The bidding forms provided must be used;
- Signatures must be long hand;
- All pages contained in the "Bidding Documents" Section must be submitted with package;
- Prices must be in ink or typewritten;
- No erasures will be permitted;
- The use of white-out on bidding documents will not be permitted;
- Mistakes must be crossed out and initialed in ink by the designated signatory;
- Bids must be sealed;
- Bids with exceptions or recapitulations of the work will be rejected as non-responsive.

How is the Low Bidder Determined?

- The contract documents will describe how the low bidder is determined.
 - Option 1: Base bid alone.
 - Option 2: Base bid plus the sum of any combination of additive or deductive alternates where the order has been predetermined and stated by the City prior to bid opening.

What if I Make a Mistake in My Bid?

- Bidders may be released only upon receipt by the City from the bidder within three (3) working days, excluding Saturdays, Sundays, and state holidays, after the opening of bids, of written notice.

- Bidders may be released based only upon proof of honest, credible, clerical error of material nature, free from fraud or fraudulent intent, and of evidence that reasonable care was observed in the preparation of the bid.
- Errors in judgment are not adequate grounds for release.

What is the procedure for submitting product substitutions?

- Many contracts require a list of proposed substitutions for review. The protocols and timelines for substitutions will vary dependent on the project. **READ YOUR DOCUMENTS CAREFULLY!**
- All contracts require substitutions to be flagged for the owner.
- The contract documents require technical data that allows the City to review the material for compatibility with its intended purpose, and to be assured of product equality;
- Unless the contract specifically states ~~“sole source, no substitution allowed,”~~ the City will consider substitutions:
- Typically City policy is to mention at least two brand names for contractor use;
- However, if only one is known, then only one name will be listed;
- But, regardless of the number of named brands, ~~“or equals”~~ are accepted. If the documents specify ~~“sole source”~~, then no substitutions are allowed.

Can I make a substitution on my subcontractor list?

- It depends on the reason. The City follows the State of California Public Contract Code Sections 4100-4114.
- If it is a mutual agreement by both parties, the subcontractor may write a letter to the City stating they do not object to the substitution. The City may allow a substitution provided the subcontractor outreach is not affected.
- If it is not agreed upon by both parties, then the subcontractor may protest the substitution to the City and the work cannot commence in that area until the issue is resolved..
- In all cases, the prime contractor must submit a request to substitute in writing to the City. The City at its discretion, will make the final determination.
- The Contractor must maintain the level of subcontractor participation as listed at time of bid.

Bonding Requirements:

- Obtain and secure a City Business Tax Certificate at the City Operations Building;
- For bids of \$25,000 and more, a Bidders’ Guarantee of Good Faith Bond is required, at 10% of the contract price, as a guarantee that the bidder will execute the contract. This may not apply to Minor Construction contracts. Please contact your Minor Construction administrator.
- Payment Bond (Materials and Labor), 100% of the contract, to satisfy claims of material suppliers and of mechanics and laborers employed on the work (\$25,000 and up);
- Faithful Performance Bond, 100% of the contract, to ensure a satisfactory product, on time, and the project is free from original or developed defects (over \$100,000);

- Bonds must be executed by a responsible surety as follows:
 - If the Work is being funded with state or local money, consistent with California Code of Civil Procedure section 995.670, the Surety must be an —Admitted Surety” authorized by the State of California Department of Insurance to transact surety insurance in the State of California.
 - In the work is being funded with federal money, the Surety must be listed in the U.S. Treasury Department Circular 570 and in conformance with the Underwriting Limitations as expressed therein.

Insurance:

- The City requires the following insurance coverage (note: some contracts may require higher policy limits):
- Policy coverage must be in liability limits of not less than the following:

Limits of Liability	
General Annual Aggregate Limit	
(Other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000
Comprehensive Automobile Liability	\$1,000,000
Worker’s Compensation Liability	\$1,000,000
- Insurance requirements remain in full force during the life of the contract.
- Except for the State Compensation Insurance Fund, all insurance required by this Contract as described herein must be carried only by responsible insurance companies with a rating of, or equivalent to, at least —A, VI” by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.
- The following insurance requirements may apply depending upon the type of contract (carefully review the contract documents for specific requirements.):
 - Commercial Pollution Liability Insurance
 - Contractors Hazardous Transporters Pollution Liability Insurance
 - Contractors Builders Risk Property Insurance
 - Railroad Protective Liability Insurance
 - Workers’ Compensation Insurance for Work In, Over, or Alongside Navigable Waters
- In addition to providing insurance certificates for the aforementioned insurance requirements, Contract required endorsements shall be provided. Endorsements that do not comply with the Contract requirements will delay the award of the contract and may result in annulment of the award.

Will I be awarded the contract?

Yes, provided the following conditions are met:

- The bid was submitted on time and established as the low bid;
- Where applicable, you have met the stated provisions of the Equal Opportunity Contracting Program;
- You returned the signed contract along with insurance and bonds which are acceptable to the City and have obtained a City of San Diego Business License;
- You are able to hold the price for 90/120 (contracts vary) calendar days.

Once awarded the contract, when do I start?

- City staff will contact the contractor for a pre-construction meeting;
- At the pre-construction meeting, a Notice to Proceed date will be determined.
- If this is a Minor Construction contract, you will be contacted by the Minor Construction Contract Administrator and be informed of your next steps.

What is Expected during the Contract?

The City will assign an engineer to inspect and provide construction management of the project. This person will be the designated –single point of contact” for all contractual concerns.

- The City will enforce:
 - The contract documents;
 - Permits in the documents;
 - The Greenbook (Standard Specifications for Public Works);
 - The Uniform Building Code;
 - The City’s Storm Water Pollution Prevention Permit;
 - All applicable local ordinances & municipal documents.
- Other persons authorized to enter a project site as City representatives are:
 - Equal Opportunity Contract Compliance Officers for audits and interviews;
 - SD Regional Water Quality Control Board Staff for Storm Water Compliance Inspections;
 - City Storm Water Compliance Officers for Storm Water Compliance Inspections;
 - Safety agencies and staff from OSHA or the City;
 - Others as designated by the Project Manager.

You Must Comply with Equal Opportunity Contracting Requirements:

EQUAL OPPORTUNITY CONTRACTING PROGRAM(EOCP)

- EOCP requires the submission of regular reports including:
- Workforce Report, page EOCP-AA(1-3);
- Monthly Employment Report, page EOCP-BB;
- Monthly Invoicing Report, page EOCP-CC;
- Certified Wage reports, Federal/State for prevailing wage projects.

NOTE: Minor Construction Projects under \$50,000 may be exempt from these requirements.

Read your documents carefully; each contract will state specifics.

AMERICANS WITH DISABILITIES ACT:

- All City projects are subject to City of San Diego Resolution No. R-282153 adopted on June 14, 1993. All bidders should be aware of the provisions of Council Policy 100-04 which was established by the above numbered resolution. The policy applies equally to the Contractor and all Subcontractors.

Note: Contractor must make all lawful efforts necessary to direct citizens that are physically challenged who utilize the sidewalks, etc., in the right of way to safe access around the construction activities.

DRUG FREE WORKPLACE:

- All City projects are subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All bidders should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the Contractor and all Subcontractors.

WAGE RATES:

- Wage rates are determined based upon the funding source. Contract specifications will state if, and what type of wage rates are required.
 - No prevailing wages required.
 - State and/or Federal prevailing wages required (generally must pay the higher of two).

Commencement of Work:

- Commencement of contract work cannot start until such time as the City has issued a Notice to Proceed (NTP).

Contract Documents may state:

- Number of days, usually expressed in working days, allowed for projects completion;
- Interim milestones for completion of various site activities;
- Deadlines for commencement of site activities;
- Moratorium periods in which no construction activity may take place;
- Liquidated damages for failure to meet interim milestones and/or project completion.

Note: Some contracts may state contract durations expressed in calendar days.

READ YOUR CONTRACT DOCUMENTS CAREFULLY!

Construction Schedule:

- While a construction schedule is required for all projects, the deadline for submission may vary.

READ YOUR CONTRACT DOCUMENTS CAREFULLY!

Schedule Expectations:

- A well prepared contractor plans ahead by submitting thorough schedules that reflect input from subcontractors for effective project coordination.
- Schedules must show the project timeline from the Notice to Proceed to the end of the contract time. Typically, the contract will state that float time belongs to the project.
- The submittals and procurement are scheduled that reflect the proper order and procurement of materials and equipment.
- Schedules should reflect a critical path and all activities necessary to do the work broken down in to activities to fully ~~manage~~ a project.
- Schedules must reflect start-up, testing, walkthroughs, and final acceptance.
- Schedules must be updated monthly.

Work will not commence without a schedule.

Working Day Determination:

The City typically calculates contract time as follows:

- Non-working days are:
 - Saturdays and Sundays;
 - Any day designated as a holiday by the Agency;
 - Any day designated as a holiday in a Master Labor Agreement;
 - or as further defined by the SSPWC (Section 6-7.2 – Working Days).

Note: Some contracts may state contract durations expressed in calendar days. Read your contract documents carefully.

Order of Precedence of Contract Documents:

The order of precedence when conflicts in the contract documents occur is:

1. Permits from other Agencies as may be required by law
2. Change Orders and /or supplemental agreements; whichever occurs last
3. Contract Agreement
4. Addenda
5. Bid Forms
6. Notice Inviting Bids
7. Instructions to Bidders
8. Approved Shop Drawings and Working Drawings
9. Supplementary Special Provisions (SSP)
10. Technical Specifications
11. Plans
12. Standard Drawings
13. Standard Specifications Amendments and Supplements
14. Standard Specifications e.g., Greenbook and Caltrans Standard Specifications
15. Reference Specifications

The figured dimensions shown on the Drawings and in the Specifications may not, in every case, agree with scale dimensions. Figured dimensions take precedence over scaled dimensions, and large-scaled Drawings take precedence over small-scale Drawings.

For Design-Build Contracts items 5, 6, and 7 are replaced with RFP and RFQ documents respectively.

Extra Work Situations:

- Errors: A mistake in the contract documents.
- Omissions: Items not specified that are needed to complete the work.
- Unforeseen/changed condition:
- Subsurface or latent physical conditions materially differing from that represented in the contract;
- Unknown physical conditions.
- If the City agrees that scope has changed from or was not a part of the contract documents, a Change Order will be issued.

How does the Change Order Process Work?

- If the project is a unit price and the extra scope is a change in quantities, the City will issue a change order adjusting the quantities.
- If the project is lump sum or the extra scope is not incorporated into a unit price system, the City will negotiate ahead of time a price that is mutually agreed upon.
- If the project is a unit price and the extra scope is a change in quantities in excess of 25%, the Contractor and/or the City may negotiate a new price for the individual unit of work.

- If an item of work or an accumulation of items of work, whether lump sum or unit price, results in a 25% or more increase or decrease in the contract price, the Contractor and/or the City may negotiate a new price for the project as a whole .
- If the price cannot be agreed upon, the “Time and Material” (T&M) will be utilized.
- The work will be tracked by both parties and the actual costs accounted and paid for with the City’s added markup.

Disputed Work Procedure:

- If the work is not considered extra scope by the City, the Greenbook section titled, “Disputed Work” will be utilized.
- The work will be directed to continue and the work will be tracked like T&M by both parties.
- The issue will be either negotiated during or at the end of the project, or through mediation/litigation.

Expected Mark-Ups:

The allowance for overhead and profit will not exceed the following schedule and will apply to Change Orders which increase or decrease (credit) the contract price:

Prime performs the work:

	Overhead	Profit
• Labor =	10 percent	10 percent
• Materials =	10 percent	5 percent
• Equipment =	10 percent	5 percent

- No payment will be made for small tools and equipment valued at less than \$200
- To the sum of the costs and markups, actual increase in the Contractor’s bond premium caused by the Extra Work shall be added as compensation for bonds

Subcontractor(s) perform the work:

The Contractor may add 5 percent of the subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of subcontractors, the five percent (5%) which is the Contractor’s allowance for overhead (3.5%) and profit (1.5%) may be applied one time only to the performing subcontractor’s total cost.

Red-lines Drawings:

- Contractor must maintain accurate and complete red-lined plans for as-builts.
- The City must review and approve the on site red-lined plans on a monthly basis as a condition of payment of the progress billing.

- Prior to final billings being released, red-lines must be submitted Underground Service Alert of Southern California.
- At least two (2) working days prior to commencing any excavation, the contractor must contact DIG-ALERT.
- The contractor is responsible for locating all existing utilities and substructures as shown on the plans and/or marked out on the street to prevent damage to such facilities and to identify any conflicts with the proposed work.

Utility Mark-Outs:

- Markouts shall not be placed in the public right-of-way more than thirty (30) days prior to the commencement of excavation work perform in connection with an installation. If the excavation work is not commenced within thirty days of the placement of the Markout, the Markout shall be immediately removed.
- Per Muni Code (62.1106) - Markouts shall be removed from all surfaces in the public right-of-way, including decorative surfaces, within thirty (30) days of the completion of the excavation work, if the work is completed, but in any event no later than sixty (60) days from the date the Markout is placed in the public right-of-way..

Project Site Maintenance:

- The contractor must keep the work site clean and free from rubbish and debris.
- All construction debris and the like, must be disposed of in an approved City or County sanitary fill. This includes unused spoils, etc.
- Staging areas and material stockpile areas are to have controls to prevent untidy, messy and unacceptable trailing of material into the street.
- Cones, construction equipment and traffic control material, etc. should be consolidated when not used to keep the community and surrounding areas reasonably tidy.
- All people at the work site must observe all safety regulations such as traffic control vest, hard hat, safety shoes, safety glasses, etc.
- On site workers will not use offensive language or gestures.

Storm Water Pollution Prevention Instructions:

The City expects construction sites to be maintained and prepared to control the erosion and sedimentation from their activities.

Affidavit of Legal Disposal:

- As a condition of final payment, the contractor must submit a signed and notarized affidavit stating that brush, debris, trash, and surplus materials resulting from the project have been disposed of in a legal manner.

- The Affidavit of Legal Disposal will be provided by the City's Project Manager or Resident Engineer upon completion of the project. The City's contract documents will contain a sample Affidavit of Legal Disposal.

Sanitation:

- The contractor must provide and maintain enclosed toilets for the use of employees engaged in the work.

Temporary Light, Power and Water:

- The contractor must furnish the necessary light, water and power to complete the job unless noted otherwise.

Protection & Restoration of New/Existing Improvements:

- The contractor is responsible to adequately protect new and existing work.
- The contractor must be responsible for any public and private property adjacent to the work and must exercise due caution to avoid damage to such property.

Historic Stamps:

- Please be aware that the plans and specifications show where these items are in the curbs, sidewalks and ramps. Every effort must be made to preserve and/or relocate them.

Survey Monuments:

- The contractor must protect survey monuments that may exist in the sidewalks, ramps, streets, or center of streets. If requested, the City will tie-out monuments to protect their integrity as part of the project staking (City projects only). However, failure to call and obtain this service resulting in destroyed monuments will require the contractor to hire a private CA Licensed Surveyor to reinstall it at the contractor's expense.

Trench Work and Plates:

- For prefabricated pipe, the maximum length of pipe that can be laid at one time is 500 ft. or the distance necessary to accommodate the amount of pipe installed in a single day, whichever is greater.
- No open trenches must be allowed overnight or during nonworking hours unless prior written approval is received from the City.

Traffic Control/Permits:

- If traffic control drawings are not part of the plans:

- Contractor must design and submit traffic control shop drawings for approval
- If traffic control drawings are part of the plans:
- Contractor must submit these pre-approved drawings and obtain a permit.
- Permits for Capital Projects are done through Transportation and Drainage Design Division.

NOTE: Permit fees for City projects are waived.

Staging Area:

- Prior to the start of construction, the contractor must obtain permission by the owner for any area being considered for storing of materials, equipments, staging, etc.
- In addition, the contractor must obtain a permit from the Planning Department to ensure staging is a permitted use for the property.
- For the use of the street for any storage proposed, contractor must submit for approval detailed plans showing the location of any proposed temporary street storage.

Water Usage:

- The contractor must purchase all water required for construction, except water used for initial filling and final flushing of a new pipeline (and in the event of a fire).

Project Close-Out Definitions:

- Substantial Completion means the project can be used for its intended purpose with the exception of “minor” punchlist items.
- Punchlist is a list of items requiring corrective work in order to comply with the contract.
- Notice of Completion (NOC) is the document recorded by the City with the County Recorder to record the project as 100% complete and the contractor has completed their contractual obligations. Its recordation date stipulates the date the warranty and Stop Notice periods commence.

Project Close-out Procedure:

- The contractor notifies the City that work is complete and requests a walkthrough.
- The City evaluates requests and if agrees the work is substantially complete, organizes a walkthrough.

Walk-through attendees:

- Operations and maintenance staff
- Consultants, Project Managers, Designers
- Landscape advisor staff

- Client departments.
- The City will compile the remarks from the walkthrough attendees and provide an official list for the contractor.
- The City may add to the list if items are found that are not completed-we try to avoid this as much as possible, but must ensure compliance.

Note: If the list becomes so burdensome to compile due to an overwhelming number of items, the City may cancel the walkthrough.

- Timeframe to compile a punchlist is typically 13 days to complete and submit;
- Timeframe to complete a punchlist is typically 20 working days.

Liquidated Damages (LD's):

- LD's are \$500/calendar day per Greenbook or as stipulated in the contract documents.
- LD' will be assessed when the contractor does not complete work within the contract time.
- LD's may also apply to interim milestones.
- If the City utilizes all or part of the improvement, LDs may end.
- LD's can continue through substantial completion to final completion.

Warranty and Guarantee:

- All work must have a one year warrantee from the date of official acceptance from the City.
- Technical specifications may provide a warrantee period greater than one year.

Progress Payments:

- The contractor is paid on a monthly basis on a date and time that is mutually agreed upon.
- The contractor submits a draft estimate which is discussed and confirmed by the City:
- For unit prices, take offs are established as method of payment;
- For lump sum, a schedule of values is used and a percentage of work completed is agreed to.
- Upon agreement of the scope performed, the contractor submits a fresh copy of the billing to the City.

NOTE: Minor Construction Contracts under \$100,000 may receive weekly progress payments.

- "Payment to the contractor will be made only for the actual quantities of contract items constructed in accordance with the Plans and Specifications.—
- There are times when materials can be paid for in advance. This is on large projects and is outlined in the contract documents for that project.

- The City requires certain documents prior to payment :
 - proof of updates to the as-builts;
 - submittal of updated schedules;
 - submittal of EOCP paperwork.
 - Progress payments have 5% withheld as either:
 - a retention account by the City, or;
 - an escrow account held jointly by City and the contractor.

Final Payments:

- The contractor will be paid for the work, minus the retention, when the work is 100% complete provided all required paperwork is submitted.
 1. Once the work is 100% complete, the City will issue a Notice of Completion (NOC);
 2. The City will send the contractor a ~~“Release of Claims”~~ to return prior to retention release;
 3. After the elapse of 35 calendar days, and if no Stop Notices are filed, retention will be released.

Stop Notice Procedure:

How does the Stop Notice procedure work?

- At the time of bid, the City receives a list of subcontractors from the Prime whose value of work is more than one-half of one percent (0.5%).
- A Stop Notice form is to be filed with the City within 30 days after recording of the NOC or cessation of work , if such notice is recorded. A Stop Notice claimant is not limited to only a listed/non-listed subcontractor. Any subcontractor or materialmen of any tier may submit a Stop Notice.
- For non-listed subcontractors, proof of a direct contractual agreement between the prime and subcontractor must be submitted in the absence of a Preliminary Notice.
- A Preliminary 20-day Notice must be filed within 20 days of completion of the service. Any person that has no direct contractual relationship with the contractor, may file the Preliminary Notice, but no payment must be withheld from the contractor pursuant to that notice unless the person has caused written notice to be given to the contractor, and the public agency concerned, not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the jobsite. Preliminary 20-day Notice (public work)" means a written notice from a claimant that was given prior to the assertion of a claim against a payment bond, or the filing of a Stop Notice on public work.

Note: Pursuant to California Civil Code § 3181 an original contractor (prime contractor) is not an authorized claimant eligible to file a Stop Notice on public works. Therefore, a prime contractor is not eligible to file a Preliminary 20-day Notice.

What next?

- The subcontractor may either work out the matter with the prime and send to the City a ~~“Release the Stop Notice,”~~ or;
- File a suit in court to resolve the matter. This is termed, ~~“perfecting the Stop Notice.”~~ In this case, the City will hold the funds until the courts advise;
- Prime Contractor may file a ~~“Release Bond”~~ in an amount equal to 125% of the Stop Notice amount.
 - This Release Bond cannot be issued by the same Surety that issued the Payment Bond on the contract.
 - The City, upon receipt of an acceptable bond, will release the amount withheld for the Stop Notice.
- If neither of the two above is done, after 120 calendar days from the NOC recordation date/cessation of work, the Stop Notice becomes void.

What can hold up my payment?

- LDs may be withheld for delivering a project behind schedule.
- Retention withholdings (5%).
- Stop Notices that are in addition to those above and are 125% of the claimed amount.
- There are times, when retention funds are all that is left in a project towards the end of the contract and they are utilized to cover Stop Notices.

Contractor’s Performance Evaluation:

- All prime contractors are evaluated at the end of the project on factors such as those shown on next page.
- All contractors receive a copy for their files and have the right to appeal their rating.
- The City uses this form to track the performance of contractors over time.
- Information contained in the evaluations may be used to determine a contractor’s responsibility on future projects.

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The information contained in this publication is available in other formats upon request.