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**DATE:** August 13, 2019

**TO:** Board of Supervisors

**FROM:** Jeffrey D Draper, Director, Facilities and Fleet  
Miriam Singer, CPPO, FCCN, Chief Procurement Officer

**SUBJECT:** Response to Management Audit Report on Controls to Prevent Bid Rigging

**RECOMMENDED ACTION**

Under advisement from November 29, 2018 (Item No. 14): Receive report from the Office of the County Executive and the Facilities and Fleet Department relating to County controls to prevent bid rigging in public works contracts. (Facilities and Fleet Department)

**FISCAL IMPLICATIONS**

There is no impact to the General Fund as a result of receiving this report.

**REASONS FOR RECOMMENDATION**

At the November 29, 2018 (Item No. 14) Finance and Government Operations Committee (FGOC) meeting, the Administration was requested to provide recommendations for the Board of Supervisors' (Board) consideration relating to the suggested improvements identified in the Management Audit Division report, and further requested that the Management Audit Division provide a subsequent response to the recommendations proposed by Administration.

The following items were suggested by the Management Audit Division in their November report:

1. Adopting a policy to collect in a central repository comprehensive data such as bid lists, abstracts, awards, geographic locations, and subsidiaries/subcontractors, and amounts so that bid patterns can be analyzed across the County, including bids for work at the hospital. This might be facilitated by implementing a new database system with data fields that facilitate review of bids and bid partners. This would enable much better detection of patterns and other indicators of potential collusion. As a result of the potential for in-county bidders to collude with out-of-county bidders, there may be value in sharing information with other counties or with federal procurement managers in the Bay Area. Given the illustration above that suspicious patterns may emerge over

time, broad reviews of bidder and subcontractor activity across projects, utilizing this central repository, should occur on a regular schedule.

2. A policy could also require annual training for departments that have a high volume of bids for indicators of bid rigging, price fixing, and other types of collusion. The U.S. Attorney's Office in San Francisco is a potential candidate to provide this training.
3. Requesting amended language in Section 14.03, DOCUMENT 00200, Facilities and Fleet (FAF), Instructions to Bidders so as not to allow primary bidders to also be subcontractors to one or multiple primary bidders and adopting this restriction as County policy.
4. Requesting annual reports from departments on their focused outreach efforts to minority-owned businesses for contracting opportunities and any contact with the Valley Transportation Authority's (VTA) Regional Business Diversity Program.

#### Response and Actions taken by Administration

1. The Administration is in the process of researching a policy and information management tools that will collect comprehensive data as listed in the audit finding related to departments dealing with public works contracts.
2. The Office of Countywide Contracting Management (OCCM) will be establishing a policy requiring biennial training on bid rigging and collusion. Staff is currently performing market research to obtain the services of organizations which could train staff working on public works contracts to recognize and identify signs of bid rigging, price fixing, and other forms of collusion. The policy will require all County employees that are involved in public works bidding processes to attend a training every two years.
3. FAF is working with OCCM, County Counsel, Roads and Airports, the Parks and Recreation Department, and the Health and Hospital System as they engage in public works contracts, to implement amended language in section 14.03, Document 00200, to prohibit primary bidders from also being subcontractors to one or more primary bidders.
4. In Fall 2019, OCCM will issue a guidance document requiring County Agencies and Departments that manage public works projects to capture key information regarding their outreach efforts to underrepresented businesses.

OCCM and Procurement Department have presented several Semiannual Reports on Countywide Contracting at FGOC meetings in the past 18 months. Together, OCCM and the Procurement Department have worked as part of the County's procurement transformation to achieve key objectives that promise to further the County's efforts to enhance competition, and secure best value in our contracting processes. To date the County has hosted and participated in numerous educational workshops and outreach events for vendors throughout our community regarding upcoming business opportunities and how to participate in County solicitations. Multiple outreach efforts and community events have resulted in the growth of the County's registered vendor base by 80% from January 2018 to date. In addition, through a culmination of efforts

the Procurement Department has increased its competitively awarded contracts by 15% from July 2018 to May 2019, and Procurement efforts in market research and contract negotiations have resulted in negotiated savings of \$38.5 million in the last 17 months (January 2018 to June 2019).

Also, on December 18, 2018 (Item No. 34), the Board unanimously approved a report from Administration relating to a Pilot Project expanding the County's Underrepresented Business Communities Outreach Efforts in the area of goods and services. This report included the recommendation from Administration to follow Chapter 5 policies by engaging in a competitive solicitation process for outreach services, since there are multiple entities that have specific experience in engaging minority and other diverse businesses in contracting efforts. OCCM will be issuing a competitive solicitation to establish a contract for these services.

In addition, on January 15, 2019 (Item No.14), the Board considered recommendations relating to a proposed agreement with the Minority Business Consortium (MBC) for assessment, strategic plan development, and the implementation of disadvantaged, small and local business enterprise programs. The MBC proposed a pilot program, "to work with the Office of the County Executive, Santa Clara County Procurement...and designated persons in developing and implementing (1) a robust Disadvantaged, Local and Small Business Enterprise program and (2) a Strategic Diversity plan for construction procurement in Santa Clara County." The Administration recommended an initial one-year pilot program, based on the negotiation of a performance-based contract for the pilot to ensure that specific and measurable outcomes are included in the contract. This contract is now in place, and the Board will be presented with updates on the progress made regarding the contract deliverables.

### **CHILD IMPACT**

This action will have no/neutral impact on children and youth.

### **SENIOR IMPACT**

This action will have no/neutral impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

This action will have no/neutral sustainability implications.

### **BACKGROUND**

The request for this analysis by the Board to the Management Audit Division stemmed from the bidding results related to a construction project at the Elmwood Correctional Complex. The construction budget for this project was originally set at \$250,000 based on a preliminary rough-order-of-magnitude guesstimate. However, in August of 2017, FAF reported to the Board an updated Architect/Engineers estimate of \$628,000 based on a more refined scope plus considering for the scheduling and logistics challenges of performing construction work in a functional correctional food preparation environment. FAF put the project out for a "Job Order Contract" (JOC) proposal, a system by which contractors propose prices based on a third party-maintained pre-priced task list with certain modifications. In response to the JOC

listing, FAF received an initial proposal of \$768,907, which FAF management reported was rejected as too expensive compared to its original estimates.

FAF then put the project out to bid as a major public works project. Two bids were received. One bid came from the original JOC proposer mentioned above. However, this bid was received five minutes past the submission deadline and thus rejected and not opened. The other bid was submitted on-time and was in the amount of \$735,868. The contract was awarded to this bidder.

Non-responsive or late bids submitted by competitors may indicate “red flags” for potential collusive bidding as suggested by the International Anti-Corruption Resource Center, in that firms that submit faulty bids may do so intentionally to support another firm winning the contract. Considering that only one bid was submitted timely for the Elmwood project, the second firm’s late submission resulted in the only other bidder to be the lowest responsive bid, provided it was prepared correctly and reasonably.

FAF reported that the small number of bids might have been due to the specialized nature of construction work for correctional facilities and easier opportunities for the construction contract community in this economic climate. On note, since 2013, four different contractors have placed bids on Elmwood projects, and an additional three have bid on projects at Main Jail.

The Management Audit Division also found no evidence of the winning contractor previously submitting bids for public works projects to the County. This contractor did not have a website, and a firm by the same name on a contractor aggregator site did not have any County or correctional facility work listed in its project history. There also were no previous bids received by the County from this bidder in the dataset the Management Audit Division reviewed for their FGO report in November 2018.

### **CONSEQUENCES OF NEGATIVE ACTION**

The report would not be received at this time.