

## **Guidelines for Special District Acquisition Projects**

### **City of Sacramento**

#### **Departments of Utilities and Public Works**

### **Introduction**

The City of Sacramento Policies and Procedures Manual for Special Assessment and Community Facilities Districts provides for the use of acquisition districts. Listed in this exhibit are guidelines that must be followed to qualify improvement project costs for reimbursement by the contemplated community facilities district (the “**District**”). Reimbursement is dependent upon the City’s actual receipt of special-tax proceeds or proceeds from special-tax bonds (the “**Bonds**”) if the Bonds are issued and upon the legality of reimbursement for individual expense items under applicable law.

### **1.0 Definitions**

- 1.1 **Acquisition Agreement.** An agreement between the Developer and the City allowing the District to acquire certain public facilities from the Developer.
- 1.2 **Acquisition Facility or Acquisition Facilities.** Those public-facility improvements described in Acquisition Agreements or a Hearing Report, as applicable, filed in the District proceedings.
- 1.3 **Acquisition Price.** The amount the District is to pay for the Acquisition Facilities in accordance with the Acquisition Agreement.
- 1.4 **Advertisement.** A published public notice that solicits bids for a project in accordance with these guidelines and applicable law.
- 1.5 **Bid Documents.** Plans, Specifications, and proposal documents that are prepared by, or under the supervision of, the Design Engineer; conform with policies, rules, regulations, and laws applicable to the City; and are suitable for the solicitation and submittal of bids by contractors for construction of an Acquisition Facility.
- 1.6 **City Engineer.** The Engineering Division Manager of the City’s Department of Public Works or his or her designee.
- 1.7 **Construction Security.** Performance bonds and labor-and-material payment bonds or other security, provided by the Contractor to the Developer in a form assignable to the City, which guarantee that the Contractor will meet all contractual obligations.

- 1.8 **Contractor.** A person or entity that is under contract to construct the Acquisition Facility and who possesses the appropriate California contractor's license or licenses for the work.
- 1.9 **Design Engineer.** A California-licensed professional civil engineer the Developer has retained for the purpose of designing and supervising construction of the Acquisition Facilities.
- 1.10 **The Developer.** The person or entity identified as the "Developer" in the Acquisition Agreement to which these guidelines are attached as an exhibit.
- 1.11 **District Administrator.** The Public Improvement Financing Unit of the City's Department of Finance, or its successor.
- 1.12 **Engineer's Estimate.** A cost estimate for the Acquisition Facilities prepared by the Design Engineer and approved by the City Engineer.
- 1.13 **Facility.** An element or increment of an entire Acquisition Facility. A Facility is eligible for acquisition when it is complete and available for public benefit (i.e., when it is a functional, usable unit of infrastructure capable of being incorporated into the City's infrastructure system).
- 1.14 **Hearing Report.** The report required by the Mello-Roos Act of 1982 that identifies the boundaries of the District, the specific improvements to be financed by the District and the maximum special tax rate each property owner will be responsible for paying in any given tax year.
- 1.15 **Plans.** Final bid drawings prepared by the Design Engineer and its consultants and approved by the City for construction of the Acquisition Facilities.
- 1.16 **Specifications.** Documents prepared by the Design Engineer or its consultants that describe in detail for construction-contract purposes the material and workmanship required to complete an Acquisition Facility.

## **2.0 Pre-Advertisement Procedures**

- 2.1 The Developer shall submit project schedules to the City Engineer.
- 2.2 As and if required, the City shall endeavor to obtain necessary interests in real property, but only if the Developer has provided full and complete funding and has signed a funding agreement for this purpose in a form acceptable to the City Attorney. The Developer shall negotiate all utility relocations.

- 2.3 The Design Engineer shall prepare and submit Plans and Specifications to the City Engineer for review and approval. The Plans must indicate those portions of the Improvements that are Acquisition Facilities qualified for reimbursement from the District. These indications are not to be construed as the City's approval or disapproval of eligibility for cost reimbursement. The City Engineer and the District Administrator will jointly determine, independently of the Plans and the City Engineer's approval of the Plans, whether an Acquisition Facility qualifies for reimbursement through the District.
- 2.4 The Developer shall pay City plan-check fees and inspection fees (normal and specific) in accordance with normal City procedures.
- 2.5 The Developer shall provide Construction Security in the same manner as is provided for normal City public-works projects.
- 2.6 The Design Engineer shall prepare the Bid Documents for the Acquisition Facilities and shall submit the documents to the City Engineer for review, and the City Engineer shall, in writing, either approve or disapprove the Bid Documents. The Bid Documents must be in conformance with all ordinances, laws, policies, rules, and regulations applicable to the City, including but not limited to the following:
  - (a) Compliance with all applicable City and State of California requirements for public-works contracts, including but not limited to Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
  - (b) The invitation to bidders must be publicly advertised.
  - (c) The Developer must submit to the City Engineer, in a form acceptable to the City, a non-collusion affidavit signed by an officer or manager of Developer.
  - (d) The Bid Documents must comply with all other applicable City requirements.
  - (e) The Developer must sign a certificate affirming compliance with all of the requirements set forth in this section 2.6.
- 2.7 The City Engineer shall review the Bid Documents to determine whether they meet the following requirements:
  - (a) The Engineer's Estimate is reasonable and has been approved by the City Engineer.
  - (b) The bidding procedures are consistent with advertising and bid-opening procedures for public contracts, and the bid forms clearly describe each bid item and are in a format that is substantially similar to the format of the cost breakdown in the Acquisition Agreements or Hearing Report, as applicable.

- (c) The construction contract requires the Contractor and its subcontractors to comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
- (d) The Bid Documents include a non-collusion affidavit in a form acceptable to the City.
- (e) The number of allotted working days specified in the contract documents is reasonable for the proposed work.
- (f) Any liquidated-damage clauses are consistent with City policy.

2.8 The Developer may be excused from complying with some or all of this section 2.0, other than sections 2.6(a) and 2.7(c), if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

### **3.0 Advertisement and Bid-Opening Procedures**

- 3.1 The Developer shall provide the City Engineer with complete copy of all final Bid Documents, including any addenda, and may advertise the project only after the City has approved the Plans and the City Engineer has approved the final Bid Documents.
- 3.2 The Developer must advertise the project in a newspaper of general circulation published within the County of Sacramento, as follows: for a daily newspaper, the Advertisement must be published at least 10 consecutive times; and for a weekly newspaper, the Advertisement must be published at least two consecutive times. The Developer may use other advertising procedures in addition to the procedures specified in this section 3.2.
- 3.3 The Developer shall conduct a bid opening at a location open to the public. The bids must be sealed, must be submitted on or before the specified date and time, and must be publicly opened with each bidder's name and total bid announced at the opening in the presence of all interested parties.
- 3.4 The Developer shall notify the City Engineer at least 10 days before the bid-opening date and location and shall provide the City Engineer with a copy of the Advertisement or Advertisements.
- 3.5 The City Engineer or the City Engineer's representative shall attend each pre-bid meeting (if any) and the public bid opening. The Developer shall have a sign-in sheet for attendees if a pre-bid meeting is held and shall provide a copy of the sheet to the City.

- 3.6 If the Developer requests, the City may, in the City Engineer's sole discretion, advertise the project on the Developer's behalf using the City's procedures for advertising contracts for public projects.
- 3.7 The Developer may be excused from complying with this section 3.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

#### **4.0 Construction Contract Award**

- 4.1 The Developer shall provide the City Engineer with a summary of all bids and a copy of the lowest bid proposal submitted, together with a written evaluation of the bids and a recommendation for award. The Developer shall provide the following information with the evaluation and recommendation, in the form of a certificate stating the following:
  - (a) That there are no pending disputes over the bidding procedures.
  - (b) That all bidders received the same set of Bid Documents and all of the addenda issued.
  - (c) That all applicable City approvals required for the work have been obtained.
  - (d) That the bid proposal has not been conditioned in any way.

The Developer shall retain the original of all bids received for a minimum of four years after the date of the acceptance of the Acquisition Facility by the City.

- 4.2 Within five working days after receipt of the bid material specified in section 4.1, the City Engineer shall review the bid summary and a copy of the lowest bid and shall determine whether (a) to concur in the Developer's recommendation or (b) to notify the Developer that additional review time will be required, specifying the date by which review will be complete.
- 4.3 The City Engineer shall give the Developer written notification of the determination under section 4.2 within the time stated in that section.
- 4.4 If the lowest bidder is not recommended, if the City Engineer does not concur with the Developer's recommendation, or if the City Engineer is aware of any irregularities or possible disputes over the bidding procedure, then the Developer or the City Engineer shall notify the City Manager. This notice must be in writing and must be submitted to the City within five working days after the determination required by section 4.2 has been made. Within ten days after receiving the notice, the City Manager shall review the Bid Documents and procedures and advise the Developer of the City's decision regarding the award of the contract.

- 4.5 The Developer may reject all bids received and re-advertise for bids in accordance with these guidelines or, with the City Engineer's concurrence, may dispense with further competitive bidding. The Developer may not reject individual bids without the City Engineer's concurrence.
- 4.6 The Developer must obtain the City Engineer's formal written concurrence before awarding the construction contract.
- 4.7 The Developer shall award the contract, with the City Engineer's concurrence in the form of a letter or memorandum on City letterhead, within 60 days after the bid opening and shall authorize the Contractor to proceed with the work within 60 days after award.
- 4.8 The Developer shall provide the following items to the City Engineer within 30 days after the Developer has authorized the Contractor to proceed:
  - (a) A copy of the signed contract with the Contractor, specifying the award date.
  - (b) A written statement (1) that the contract award amount is within the Engineer's Estimate and does not exceed the overall funds available from the District; or (2) that the contract award amount exceeds the Engineer's Estimate or the overall funds available from the District, and the Developer will pay all amounts by which the contract exceeds the estimate and funds available.
- 4.9 The Developer may be excused from complying with this section 4.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

## **5.0 Construction**

- 5.1 Either the Developer or the Design Engineer shall schedule and conduct a pre-construction meeting before work on the Acquisition Facilities begins. The pre-construction meeting must be attended by the Developer, the Design Engineer, the City Engineer, the Contractor, representatives of each agency issuing permits, representatives of affected utilities, and other interested parties. The City Engineer and the City must receive written notice of the pre-construction meeting at least five days before the meeting, and the meeting date must be scheduled for a time, place, and date acceptable to the City Engineer and the City.
- 5.2 The Contractor shall coordinate all inspections of Acquisition Facilities in accordance with City policy and the improvement agreement applicable to the Acquisition Facilities.
- 5.3 The Developer shall hire a labor-compliance consultant to certify to the City that all requirements of Sacramento City Code sections 3.60.180 (concerning prevailing wages,

hours of work, etc.) and 3.60.190 (concerning apprentices) have been satisfied. The consultant's certification must be submitted to the City Engineer when the Developer submits a request for reimbursement in accordance with section 7.0.

- 5.4 If the Developer desires to be reimbursed for any contract change-order work, then before allowing the Contractor to undertake the work the Developer must obtain from the City Representative overseeing the work (as designated in the drainage or other improvement agreement) the representative's written acknowledgment of the need to perform the change-order work in order to complete the project satisfactorily. The City Engineer shall subsequently determine if any adjustments are to be made to the Acquisition Price as a result of the change order.
- 5.5 The City Engineer must review and approve in advance any revisions to the Plans, and each change order must be submitted to, and approved by, the City Engineer as a condition for reimbursement of costs associated with the change order.
- 5.6 For the purposes of these guidelines, the construction will be considered complete when the Acquisition Facility is fully completed and available for public benefit, when the City has accepted the Acquisition Facility in accordance with the applicable drainage or other improvement agreement, and when the Developer has obtained the following, as applicable:
  - (a) Approval of the City if a grading permit is required.
  - (b) Approval of all facilities shown on the Plans or included in the Acquisition Facilities by the affected utility companies or other affected departments of the City or the County of Sacramento.
  - (c) Approval of the City of all erosion-control improvements required by the Plans or the grading permit.
  - (d) Approval by the City's Licensed Land Surveyor of all monumentation.
  - (e) Approval of the City of all street improvements (e.g., storm drains, street lighting, traffic signals) shown on the Plans through issuance of an inspection-completion report.

## **6.0 Prevailing Wages and Apprentices**

- 6.1 The Contractor and all subcontractors shall comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices) for all work performed on the Acquisition Facilities. The Developer shall certify to the City Engineer, in writing, that the Contractor and all subcontractors have

complied with the requirements of Sacramento City Code sections 3.60.180 and 3.60.190. Upon request, the Developer shall provide copies of certified payrolls to the City Engineer.

- 6.2 Consistent with California Labor Code section 1720, subdivision (c)(2), work performed on the Acquisition Facilities will be eligible for reimbursement from the District's special-tax proceeds or the District's bond proceeds only if all public-improvement work that is within the District and required as a condition of regulatory approval for the Developer's project, including work not funded through the District, has been performed in compliance with Sacramento City Code sections 3.60.180 and 3.60.190.

## **7.0 Reimbursement**

- 7.1 The Developer shall submit to the City Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and a copy of any recorded tract map or maps. In addition, after completion of a Facility, the Developer shall submit a request for reimbursement to the District Administrator that follows the format provided in Schedule A to this exhibit (titled "Developer Reimbursement Request Format") and includes the following:

- (a) Final quantities and final costs on each contract item, certified by the Design Engineer, and the total of all construction costs for the particular Facility accompanied by any other supporting documentation necessary to justify reimbursement.
- (b) Approved contract change orders with final quantities and final costs.
- (c) Certification that the Contractor and all subcontractors have complied on the project with all applicable City and State of California public-works provisions, including Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
- (d) Itemized breakdown of other reimbursable costs as delineated in the applicable Acquisition Agreement.
- (e) Copies of invoices, vouchers, canceled checks, and other available materials to support all of the Developer's expenditures claimed for reimbursement.
- (f) Copies of all recorded notices of completion.
- (g) Certification or proof of Advertisement as required by these guidelines.
- (h) Copies of final mechanics-lien releases for the Facility. If the Facility is an increment of a larger Acquisition Facility, the lien releases may be unconditional lien releases upon receipt of the progress payments applicable to the Facility.

- (i) Documentation that all required easements have been transferred to the City or that other arrangements for such transfer, as required by the City, have been made.
- (j) Documentation that all fee interests required for the Acquisition Facilities have been transferred to City or that other arrangements for such transfer, as required by the City, have been made.
- (k) Submission of written certifications from other agencies or utilities involved in the reimbursement request, confirming that the Facility was inspected and completed according to approved Plans and Specifications and that any utilities or agency cost reimbursements are disclosed in the District reimbursement requests.
- (l) Where applicable, all equipment manuals for the Acquisition Facilities.
- (m) All warranties relating to the Acquisition Facilities.

In addition, the Developer shall submit to the City Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and copies of all recorded tract maps.

- 7.2 The District Administrator shall have the request for reimbursement and all supporting data reviewed by a professional engineer licensed in California, who may rely on the authenticity of all supporting data, documents, representations, and certifications provided by the Developer and each Design Engineer. The Developer shall sign a certification on all submitted data. If additional information is required during the review process to comply with section 7.1, then the District Administrator may request in writing that the Developer supply the supplemental data, and the Developer shall promptly comply with such a request.
- 7.3 Upon review of the submitted information, if complete, the District Administrator shall determine whether and to what extent the costs and expenses claimed are reimbursable, and shall provide a written recommendation to the City Manager, who shall make a final determination of reimbursement eligibility.