
MONTGOMERY COUNTY DEP PROCUREMENT OF CONSTRUCTION CONTRACTORS

Two main procurement processes:

- Use of Task Order Contracts that utilize bidding between pre-qualified construction firms
- Use of a Unit-Price contract for LID projects

MCDEP Procurement of Construction Contractors

USE OF TASK ORDER CONTRACTS WITH BIDDING BETWEEN PRE-QUALIFIED CONSTRUCTION FIRMS

- In 2012, Montgomery County issued a RFP soliciting construction contractors with experience with storm water management projects (stream restoration, SWM Pond retrofits and LID facilities). Based on MCDEP reviews of written proposals and interviews, five construction contractors were selected. Task order contracts were then executed with these five firms in March 2013.

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- The task order contracts were drafted such that MCDEP (instead of the County's Office of Procurement) performs most of the procurement processes for each task order. The MCDEP Procurement Team and Construction Section work together to draft and issue each task order solicitation (including permitted drawings and project-specific specifications).

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- Each construction task order is offered to all five firms for bidding. The lowest responsive bidder is then selected for the task order. After approval of the low bidder's bonds and minority subcontracting commitments, the MC Office of Procurement issues a Purchase Order and MCDEP issues a NTP to the low bidder.
- Since the contracts were signed in March 2013, 21 task orders have been issued with 13 completed.

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Advantages of bidding between pre-qualified construction firms:

- Pre-qualified firms: Contractors are knowledgeable about SWM projects
- Costs: *With sufficient bidder participation*, there is adequate competition between the five firms to obtain fair and reasonable costs
- Small set of contractors: contractors become familiar with County's processes, specifications, bid forms, preferences, etc.

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- Bidding speed: Performing most of the bidding processes through MCDEP is generally quicker than bidding a project through the County's Office of Procurement; we average a little under 90 days to execute a task order after the project is given to us by our Design Section.
- Accommodates special conditions well; unique situations, products, design, etc. can be easily built into the solicitation.

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Disadvantages of bidding between pre-qualified construction firms

- Bidder interest: Frequently, some of the five bidders are choosing not to bid on the task orders. Recently, we have only been receiving 2 or 3 bids per construction task order solicitation. Per conversations with the contractors, we have been told that they are all busy. At the same time, bid costs have jumped significantly – as compared to engineer estimates. It is not clear whether the increase is due to lack of bidder competition or rising market conditions – or both.

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- Bidder/contractor capacity: MCDEP has issued 21 construction task orders over the last 4 years. In the next 3 years, we expect to issue ~50 construction task orders using these contracts. There is concern that the five selected firms will not have the capacity to perform such a large increase in workload. This concern is amplified by the fact that 17 of the 21 awarded task orders have been won by two firms.
- No cost control: Bid costs are based on “market conditions” which are expected to get worse over the upcoming years.

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MCDEP STEPS TO ADDRESS CHALLENGES WITH PRESENT 5 CONTRACTOR BIDDING PROCESS

- Earlier this year, MCDEP issued a new RFP, similar to the 201
- 2 RFP, soliciting construction contractors with experience with storm water management projects. The primary change is that MCDEP is going to pre-qualify 8 construction contractors to use in the bidding process.

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- The hope is that 8 contractors will be a sufficient number to address the issues of contractor interest and capacity.
- We added a clause to the solicitation/contract that a selected firm must bid more than half of the task orders.

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- MCDEP did an extensive outreach program to stir contractor interest in the new solicitation. Outreach included:
 - Outreach to consultant Engineers for names of SWM contractors
 - Outreach to local jurisdictions for name of SWM Contractors
 - Research of Industry literature (including the Blue Book) for SWM contractors; and
 - Conducting of a DEP Contractor Job Conference.
- Recently, we received written proposals for this new RFP. Unfortunately, County Procurement Regulations don't allow the number of proposals to be revealed.

MCDEP Procurement of Construction Contractors

USE OF A UNIT-PRICE CONTRACT FOR LID PROJECTS

- In January 2014, Montgomery County issued a IFB soliciting a unit-price task order construction contractor to perform LID work along roads and at schools and government facilities throughout the county. The IFB contained approximately 275 line items with estimated quantities for work commonly associated with LID facilities; the bidders had to provide a unit price for each line item. The resultant contract was executed in June 2014 with the bidder with the lowest extended bid.

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- Each new LID task order is issued to the LID contractor by MCDEP with permitted drawings and a price sheet indicating the MCDEP's estimated cost based on the pre-established unit prices and determined quantities.
- Non-Prepriced items: Each task order typically has some work which are not included in the 275 line items established in the contract. For each of these “Non-Prepriced items”, the LID contractor must develop a unit cost for the task order. Final unit costs for Non-Prepriced items are negotiated with the LID contractor and included in the task order (and the Contract).

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- MCDEP has completed 5 task orders under this contract and has 5 projects to be done this summer.

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Advantages of using a unit-price construction contractor to perform LID work:

- Cost control: Bid costs are generally based on low bid costs which do not change over the life of the contract (excepting CPI increases).
- One contractor: Contractor become familiar with County's processes.
- Bidding speed: Generally quicker than bidding a project through the County's Office of Procurement; we average a little under 95 days to execute a task order after the project is given to us by our Design Section.

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Disadvantages of using a unit-price construction contractor to perform LID work:

- Qualification of selected contractor: IFBs don't consider bidder qualifications to do SWM work.
- Cost control is limited by amount of Non-Prepriced items needed for any task order.
- Cost control is limited by “unbalanced bid” line item costs.

MCDEP Procurement of Construction Contractors

- Does not accommodate special conditions well: Unique situations, products, design, etc. must be added as Non-Prepriced items and then negotiated with the contractor.
- Bidder/contractor capacity: Having only one LID contractor has led to adjustments to plans by MCDEP.