



Board Report

File #: 2024-0355, **File Type:** Ordinance / Administrative Code

Agenda Number: 17.

FINANCE, BUDGET AND AUDIT COMMITTEE SEPTEMBER 19, 2024

SUBJECT: PRE-QUALIFICATION PROGRAM

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATION

CONSIDER:

- A. ADOPTING an amendment to Metro's Administrative Code Chapter 4-05 to replace the existing contractor pre-qualification language with Attachment A of this Board Report; effective January 1, 2025; and
- B. RECEIVING AND FILING streamlining initiatives, including electronic signature deployment for procurement contracts and purchase orders.

ISSUE

On average, Vendor/Contract Management (V/CM) manages over 22,000 procurement requisitions per year. Staff has received feedback across the Agency that the cycle time to complete some procurement transactions poses a challenge to meeting schedule deadlines. In addition, the small business and disadvantaged business community have expressed frustration with the burdensome amount of paperwork required in Metro's procurement and contracting process.

Staff identified opportunities to reduce cycle times for procurements, as well as post-award contract administration. By increasing the pre-qualification contract value threshold for certain contracts, an immediate benefit can be realized in reducing the administrative burden on small businesses, V/CM, and obstructions to faster procurement processing. The pre-qualification process timing can be just as effectively monitored by moving specifics of the Program to an Agency procurement policy for controls.

After adoption of the simplified ordinance, specifics beyond the ordinance of the Program shall instead be provided for in Metro's Procurement Policy & Procedures (ACQ 2). This modernization not only brings it in line with other procurement policies but improves the pre-qualification process efficiency by facilitating future updates to the Program more readily.

BACKGROUND

California Public Utilities Code section 130051.22 requires Metro to have a program to pre-qualify contractors seeking to do business with Metro. Metro Administrative Code Chapter 4-05 was adopted by the Board in 2004 and details the pre-qualification program and process ("Program") for all vendors seeking to do business with Metro.

In order to minimize Metro's risk in awarding contracts, pre-qualifying vendors is recognized as an effective method of ensuring that Metro does business only with responsible entities. As such, Pre-Qualification Department staff verifies the information provided by vendors on the Program application by reviewing financial records, searching public records and US Treasury sanctions lists, and evaluating the business entity's credit history. Maintaining this best practice, reduces the risk to Metro of doing business with companies that are not financially solvent, are sanctioned, debarred, or engaged in unlawful activity. Once an application is reviewed and approved, companies are pre-qualified for two years.

Currently, Metro Administrative Code Chapter 4-05 details the Program process for all vendors seeking to do business with Metro. Contracts, other than for public works construction contracts, in which the awarded contract, or first-tier subcontract, is reasonably expected to exceed \$100,000 in value are subject to a prequalification review. This \$100,000 threshold adopted by the Board in 2004 is outdated. It fails to reflect inflation, cost increases, market fluctuations, and similar changed economic conditions that have occurred in the economy in the last 20 years. The threshold amount also does not present the same level of risk for the agency at this time.

DISCUSSION

Currently, the Program applies to all contractors, consultants, first-tier subcontractors, and direct suppliers to Metro in which the awarded contract, or first-tier subcontract, is reasonably expected to exceed \$100,000 in value. This threshold has not been updated for 20 years. There are no exceptions for small businesses, minority-owned businesses, or any other categories of businesses with whom Metro has actively sought to increase participation. Pre-qualification reviews adds an average of 3days to the timeline for a procurement. Increasing the threshold would yield an immediate benefit to our vendor and small business community since it would eliminate the pre-qualification review for contracts under \$500,000 for small dollar procurements where the risk to Metro is minimal. In the past two fiscal years, an average of 35% of all procurement contract reviews conducted by Program staff fell within the \$100,000 to \$499,999 range. This represented a total of 507 pre-qualification reviews within the threshold - with 15% of those attributed to small businesses. Furthermore, a higher threshold will enable existing Program staff to prioritize required reviews to address higher award risk procurements to Metro, such as those supporting rolling stock and other time-sensitive requests - including bench task order contract awards, with an objective of improving processing time in procurement processes.

Therefore, increasing the Program threshold from \$100,000 to \$500,000 for the eligible contract types is prudent, and aligns this Program with other areas of Metro's Procurement Policy by

incorporating the detailed procedures of the Pre-Qualification process into Procurement Policy & Procedures (ACQ-2). This will also reduce the administrative workload for the small business and disadvantaged business community who are awarded contracts under \$500,000.

In addition to increasing Program thresholds, incorporating the Pre-Qualification Program specifics within Metro Procurement Policy will ensure that the Program can evolve and be updated based on Metro's and the vendor community's needs and business best practices more nimbly.

Other Streamlining Initiatives

V/CM's e-Signature processes went live on March 1st, 2024, and was formally announced to the Transportation Business Advisory Council (TBAC) with a training demonstration on Thursday, March 7th, 2024 at the monthly TBAC Board meeting. An announcement was posted to Metro's Vendor Portal on Friday, February 23rd, 2024, in advance of the launch date. Additionally, Metro Contract Administrator, Buyer, and Procurement Clerk training was conducted during the week of February 26th, 2024. For Metro staff, training consisted of an overview of new contract, purchase order and solicitation language, legal requirements, and workflow modifications including loading documents to a digital repository.

The benefit of the new e-Signature processes is multi-faceted, encompassing environmental sustainability, faster contract execution for Vendors, multi-platform delivery across computers, tablets, and smartphones, as well as consistency and security rooted in Vendor registered email. Over the past two months since implementation, V/CM has issued over 3100 inventory e-purchase orders (e-POs) with over 26% awarded to Small Business Enterprises (SBE) and Disadvantaged Business Enterprises (DBE).

The e-Signature project delivery marks the beginning of a V/CM transformational effort to shift from paper-based processes to full electronic workflow, creating efficiencies for our staff and Vendor community. With the rollout, Metro V/CM anticipates a reduction in paper output of approximately 500,000 sheets annually, contributing significantly to Metro's environmental sustainability efforts. Additionally, we anticipate contract execution cycle times to collapse from days or weeks to minutes or hours which will be a significant benefit to both Metro and its Vendors. Furthermore, through email notification, the Vendor e-Signature process can be performed securely on any computer, tablet or cellphone through the embedded email link. Secure email addresses are captured during the Vendor Registration and Solicitation processes and will be used to complete the Vendor contract execution process.

In addition to this Prequalification change and e-Signature implementation, over the past 12 months V/CM has also implemented a number of other Business Process Improvements such as, Change Order Cycle Time process reductions, Increased Escrow Thresholds, Removal of Prequalification Notarization requirement, and Set-Aside goal waivers for all ITS Maintenance and License renewals. V/CM staff continues to pursue new ways to create process efficiencies in areas like the RFP Award process, Option Terms, Contract Mods within CMA, Procurement Milestone Scheduling, and Reference Checks to name a few.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no direct impact on the physical safety of Metro's employees, patrons, or customers.

FINANCIAL IMPACT

As this is a policy update only, there is no financial impact to Metro.
There is no financial impact.

EQUITY PLATFORM

The lack of prequalification exceptions for small businesses, minority-owned businesses, or any other categories of businesses with whom Metro actively seeks to increase participation has created contracting inequities and barriers. The small business community has expressed concerns regarding burdensome administrative procurement processes. By raising the threshold to \$500,000, the burden on the small, disadvantaged, and minority owned business community will be lessened since smaller contracts under the threshold will not have to go through Pre-Qualification during the procurement process. Staff anticipates that this improvement will not only facilitate the process for small businesses, but will increase participation since the administrative burden is lessened and a higher threshold expands contracting opportunities.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

Raising the Pre-Qualification threshold amount and expressing the details and specifics of the Program in ACQ-2 supports Strategic Goal 5: Provide responsive, accountable, and trustworthy governance within the Metro organization. This modernization shows Metro's commitment to responsive, accountable, and trustworthy governance to continue building credibility with decision-makers, public and private sector partners, customers, and employees. By improving its business practices, Metro can perform more effectively and adapt more nimbly to the changing needs of its customers.

ALTERNATIVES CONSIDERED

The Board may not approve staff's recommendations. This alternative is not recommended because proceeding with the recommendations presents an opportunity to streamline the procurement process to enable staff to reduce cycle times on procurements and reduce the amount of administration for the vendor community.

NEXT STEPS

Subject to the Board of Directors' approval to adopt these recommendations, the amended ordinance shall be effective January 1, 2025, and staff will update the ACQ-2 Policy & Procedure to increase the contract value threshold in the Program as indicated herein, and update the ACQ-2 to incorporate the changes approved in this report and specifics of the Program substantially consistent with ordinance into the policy.

ATTACHMENTS

Attachment A - Revised Metro Administrative Code - Chapter 4-05

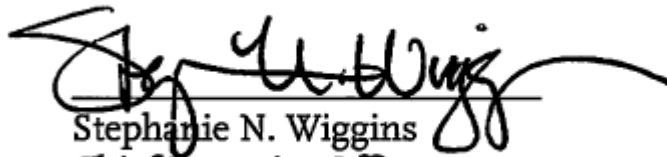
Attachment B - Revised Metro Administrative Code - Chapter 4-05 (Redlined)

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Stephanie N. Wiggins
Chief Executive Officer

ATTACHMENT A

AN ORDINANCE AMENDING TITLE 4, CONTRACTING, OF THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ADMINISTRATIVE CODE RELATING TO THE PRE-QUALIFICATION OF PROSPECTIVE CONTRACTORS.

**Be it ordained by the Board of Directors of the Los Angeles County
Metropolitan Transportation Authority (“LA Metro”):**

SECTION 1: Chapter 4-05 of the LA Metro Administrative Code is replaced to read as follows:

4-05-010 Purpose. The purpose of this chapter is to establish that LA Metro shall have rules and procedures for a contractor pre-qualification program (“Program”) as authorized by Public Utilities Code section 130051.22.

4-05-020 Objective and Scope of Pre-Qualification Program. The objective of the Program is to make a preliminary assessment of the integrity and responsibility of business entities seeking to do business with the LA Metro. A determination of pre-qualification allows the business entity that has been pre-qualified to proceed with the procurement process in seeking a contract with the LA Metro. The pre-qualification of a business entity does not preclude the LA Metro from making a further responsibility determination as a part of the procurement process. During any period for which pre-qualification has been denied, the business entity may not compete for or otherwise seek a contract with the LA Metro. The terms of the Program shall be set forth in an internal policy and procedure of LA Metro determined by the Chief Executive Officer of LA Metro in consultation with the Inspector General and Legal Counsel of LA Metro.

4-05-030 Administrative Oversight of Pre-Qualification Program.

- A. The Chief Executive Officer, in consultation with the Inspector General, is responsible for the administrative oversight of the Program.
- B. The Chief Executive Officer shall prepare policies and procedures consistent with this Chapter and applicable law to implement the Program.
- C. The Program authorized by the Chief Executive Officer shall include the adoption of procedures for establishing an adjudication panel or judge to adjudicate appeals of a denial of certification for pre-qualification that provides reasonable due process to entities denied certification.

4-05-040 Pre-Qualification Questionnaire.

The Pre-Qualification Administrator, in consultation with the Inspector General, shall prepare Pre-Qualification questionnaires to be used in the LA Metro pre-qualification program. Different forms of the questionnaire, each tailored to the type of contract being sought, may be developed. The Procurement Department in consultation with the Inspector General shall review the questionnaire and related policy periodically to ensure adequate and relevant information is being requested. The questionnaires shall be formulated to obtain information relevant to determining whether the entity has the requisite integrity and can shoulder the responsibilities to timely and satisfactorily perform services and deliver products to LA Metro

and is not otherwise in violation of any of the criteria on which an entity may be denied certification. The questionnaires shall be included in the Program policies and procedures established by the Chief Executive Officer pursuant to subdivision (a) of Section 20101 of the Public Contract Code as amended from time to time.

4-05-060 Completion of Pre-Qualification Questionnaire. Except as otherwise exempted by this Chapter, each business entity seeking a contract with the LA Metro which, at the time of initial award, is reasonably expected to exceed the assigned contract value threshold, shall complete a pre-qualification questionnaire as outlined in the Program policy. No threshold value shall apply for any public project construction contract as defined from time to time by subdivision (c) of Section 22002 of the Public Contract Code. All such contracts shall be subject to the Program requirements. All other contracts shall have a threshold value of \$500,000 or greater for application of the requirements of the Program.

4-05-070 Issuance or Denial of Pre-Qualification. A business entity shall be notified in writing of certification or denial of pre-qualification certification if the evidence supports a finding as to any of the circumstances or violations set forth in the Program policy and procedures.

4-05-100 Investigations, Determinations and Referrals.

A. The Pre-Qualification Administrator shall review the available information related to each business entity seeking pre-qualification and may conduct such further investigation as he or she deems necessary. LA Metro officials having information regarding a business entity they know to be seeking pre-qualification where such information is reasonably likely to bear on the pre-qualification determination shall promptly provide such information to the Pre-Qualification Administrator for consideration.

B. If information obtained during the pre-qualification process is of a sufficiently serious nature to warrant further investigation and possible action beyond the denial of Pre-Qualification, the Pre-Qualification Administrator shall refer the matter to the Inspector General, the General Counsel and other appropriate officials for possible debarment or suspension under chapter 4-10.

C. The Office of the General Counsel shall advise and assist the Pre-Qualification Administrator in reviewing for legal sufficiency any prospective denial of Prequalification and the notice of denial, and for providing any necessary coordination with LA Metro staff regarding legal issues that may arise during the pre-qualification review process.

D. All actions of the Pre-Qualification Administrator or other participants in the performance of their government duties pursuant to this chapter shall be considered to be actions within the course and scope of their employment with LA Metro and shall be subject to the protections for public employees set forth in Division 3.6 as amended from time to time of the Government Code.

4-05-140 Appeal of Pre-Qualification Denial.

Any business entity that has been issued a notice of denial of pre-qualification may appeal that decision to LA Metro pursuant to the policies and procedures of the Program.

SECTION 2:

Publication of Ordinance. Upon adoption, this Ordinance shall be signed by the Chair of the Board of Directors of the Los Angeles County Metropolitan Transportation Authority. The Board Clerk shall cause the publication of this Ordinance once, within fifteen days of its adoption, in a newspaper of general circulation printed and published within the area served by the Los Angeles County Metropolitan Transportation Authority and the Board Clerk shall attest to such adoption and publication of this Ordinance.

Dated:

Chair, Board of Directors

Date Adopted by Board of Directors:

Date Published:

Attested to:

Dated:

Board Clerk

Title 4

Procurement

Chapter 4-05

Pre-Qualification of Bidders

ATTACHMENT A

AN ORDINANCE AMENDING TITLE 4, CONTRACTING, OF THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ADMINISTRATIVE CODE RELATING TO THE PRE-QUALIFICATION OF PROSPECTIVE CONTRACTORS.

Be it ordained by the Board of Directors of the Los Angeles County
Metropolitan Transportation Authority ("LA Metro"):

SECTION 1: Chapter 4-05 of the LA Metro Administrative Code is replaced to read
as follows:

4-05-010 Purpose. The purpose of this chapter is to establish that LA Metro shall have rules and procedures for ~~the~~ contractor pre-qualification program ~~of the MTA~~ ("Program") as authorized by Public Utilities Code ~~§section~~ 130051.2122.

4-05-020 Objective and Scope of Pre-Qualification Program. The objective of the ~~pre-qualification program~~ Program is to make a preliminary assessment of the integrity and responsibility of business entities seeking to do business with the ~~MTA~~ LA Metro. A determination of pre-qualification allows the business entity ~~which~~ that has been pre-qualified to proceed with the procurement process in seeking a contract with the ~~MTA~~ LA Metro. The pre-qualification of a business entity does not preclude the ~~MTA~~ LA Metro from making a further responsibility determination as a part of the procurement process. During any period for which pre-qualification has been denied, the business entity may not compete for or otherwise seek a contract with the ~~MTA~~ LA Metro. The terms of the Program shall be set forth in an internal policy and procedure of LA Metro determined by the Chief Executive Officer of LA Metro in consultation with the Inspector General and Legal Counsel of LA Metro.

4-05-030 ~~Definitions.~~

~~The following terms, whenever used in this chapter, shall be construed as defined in this section:~~

~~A. "Business Entity" means a construction company, engineering firm, consultant, legal firm, product vendor, and any other business entity seeking a contract with the MTA for the furnishing of goods or services.~~

~~—B. "Certificate of Pre-Qualification" refers to the written notification granting pre-qualification to a business entity which has applied to the MTA for such status.~~

~~—C. "Contract Value Threshold" means in excess of one hundred thousand dollars (\$100,000) in total expenditures by the MTA under one contract and any amendments thereto.~~

~~—D. "Executive Review Committee" or "ERC" means a panel of at least three MTA employees serving in management positions appointed by the Chief Executive Officer as a committee to adjudicate an appeal of a denial of pre-qualification made by the Pre-Qualification Manager. Executive Review Committee or ERC also means any retired Superior Court Judge appointed by the Chief Executive Officer in lieu of a panel of MTA employees as authorized by paragraph D. of section 4-05-040.~~

~~—E. "Notice of Denial of Pre-Qualification" refers to the written notification issued to a business entity which has applied to the MTA for pre-qualification that the business entity has been denied pre-qualification.~~

~~—F. "Pre-Qualification" refers to a determination made by the MTA that a business entity has demonstrated sufficient integrity and responsibility to be permitted to be considered for a contract with the MTA. It also includes any validation process whereby a previously pre-qualified business entity updates its pre-qualification file for a specific contracting opportunity.~~

~~—G. "Pre-Qualification Manager" means the MTA employee who has been designated by the Chief Executive Officer as the administrative manager of the MTA contractor pre-qualification program.~~

~~4-05-040~~ Administrative Oversight of Pre-Qualification Program.

A. ~~—A.—~~ The Chief Executive Officer, in consultation with the Inspector General, is responsible for the administrative oversight of the ~~pre-qualification program~~ Program.

B. ~~—B.—~~ The Chief Executive Officer ~~is authorized to~~ shall prepare policies and procedures consistent with this ~~chapter as needed~~ Chapter and applicable law to implement the ~~pre-qualification program~~ Program.

~~—C. The Chief Executive Officer shall assign responsibility for The Program authorized by the day to day administrative management of the pre-qualification program to an MTA management employee who will serve as Pre-Qualification Manager.~~

C. ~~—D.—~~ The Chief Executive Officer shall ~~appoint~~ include the adoption of procedures for establishing an adjudication panel ~~of at least three management level employees of the MTA to serve as the Executive Review Committee or judge to adjudicate appeals by business entities from denials of pre-qualification. The Chief Executive Officer may appoint a separate ERC for each appeal or may appoint one ERC to serve for a specified period of time to~~

hear appeals filed during that period. If the Chief Executive Officer determines for any reason that it would not be efficient to have a panel of MTA employees serve as the Executive Review Committee for any particular appeal, the Chief Executive Officer may appoint a retired Superior Court Judge to serve in lieu of the panel of MTA employees. Any reference in this chapter to an Executive Review Committee or to an ERC shall also be a reference to a Superior Court Judge appointed pursuant to this paragraph.

of a denial of certification for pre-qualification that provides reasonable due process to entities denied certification.

4-05-050-040 Pre-Qualification Questionnaire.

~~A. The MTA~~ The Pre-Qualification Administrator, in consultation with the Inspector General, in consultation with the ~~shall prepare~~ Pre-Qualification Manager, shall prepare pre-qualification questionnaires to be used in the MTALA Metro pre-qualification program. Different forms of the questionnaire, each tailored to the type of contract being sought, may be developed. The Procurement Department in consultation with the Inspector General shall review the questionnaire and related policy periodically to ensure adequate and relevant information is being requested. The questionnaires shall be formulated to obtain information relevant to determining whether the entity has the requisite integrity and can shoulder the responsibilities to timely and satisfactorily perform services and deliver products to LA Metro and is not otherwise in violation of any of the criteria on which an entity may be denied certification. The questionnaires shall be included in the Program policies and procedures established by the Chief Executive Officer pursuant to subdivision (a) of Section 20101 of the Public Contract Code as amended from time to time.

~~B. At a minimum, each pre-qualification questionnaire shall seek information from the business entity regarding the following:~~

- ~~1. The experience of the business entity;~~
- ~~2. The quality and timeliness of the past performance of the business entity when contracting with the MTA or other agencies for similar work;~~
- ~~3. The reliability and responsibility of the business entity;~~
- ~~4. The business entity's compliance with equal employment requirements;~~
- ~~5. The business entity's compliance with wage, hours, and other fair labor standards;~~
- ~~6. The subcontractors to be used by the business entity;~~
- ~~7. The integrity of the key personnel of the business entity; and~~
- ~~8. Any gifts given, or contributions made, by or on behalf of the business entity to members of the MTA Board of Directors or to MTA employees.~~

~~C. The questionnaire used in the pre-qualification program may seek information in addition to that described in paragraph B. However, in order to ensure that the pre-qualification program operates in as efficient a manner as possible consistent with the~~

~~program objectives, information in addition to that required under paragraph B may be sought only if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the business entity is likely to provide to the MTA if awarded a contract. The questionnaire used for the pre-qualification of a business entity whose services to the MTA will be as a subcontractor to another entity contracting directly with the MTA shall be in an abbreviated format which supports an expedited pre-qualification process, but which still provides the MTA with the information necessary to make a reasonable assessment regarding the integrity and responsibility of the business entity. Provided, however, any business entity may be required to complete any form of pre-qualification questionnaire if the MTA, in its sole discretion based upon the available information, determines that a more intensive than normal pre-qualification review is necessary for any particular business entity or any particular contract.~~

4-05-060 Completion of Pre-Qualification Questionnaire. Except as otherwise exempted by this ~~chapter~~Chapter, each business entity seeking a contract with the ~~MTA~~MTA LA Metro which, at the time of initial award, is reasonably expected to exceed the assigned contract value threshold, shall complete a pre-qualification questionnaire ~~prepared as set forth in section 4-05-050~~as outlined in the Program policy. No threshold value shall apply for any public project construction contract as defined from time to time by subdivision (c) of Section 22002 of the Public Contract Code. All such contracts shall be subject to the Program requirements. All other contracts shall have a threshold value of \$500,000 or greater for application of the requirements of the Program.

4-05-070~~Exceptions to Pre-Qualification Program.~~

~~For certain solicitations, because of the nature of the goods or services to be obtained, the nature of the business relationship between the MTA and the business entity, or because of exigent circumstances, there is insufficient advantage to the MTA to justify the expenditure of the resources necessary to conduct a pre-qualification. The types of procurements or types of business entities described in paragraphs A through J of this section are found to be procurements of this nature and pre-qualification is not required:~~

- ~~—A. Media or advertising contracts, including artists hired on a one-time basis to provide pictorial representation of MTA property;~~
- ~~—B. The purchase of goods from a department store or a home improvement store where:~~
 - ~~—1. The store make the same goods available to the general public; and~~

~~—2. The terms and prices for the MTA are no less favorable than the terms and prices available to the general public;~~

~~—C. The purchase of goods from a business entity if that business entity will:~~

~~—1. Have no legal obligation to warrant the goods sold, other than to pass on the manufacturer's warranty; and~~

~~—2. Have no obligation after the sale to provide any maintenance or repairs for the goods sold;~~

~~—D. Licensing and multiple-user agreements with software companies for existing software;~~

~~—E. Purchases of off the shelf computer software provided the seller does not enter into a contract for continuing maintenance or enhancements of the software program;~~

~~—F. Real estate purchase contracts, leases, licenses or other similar kinds of agreements;~~

~~—G. Goods or services for which there is only one known source if not obtaining such goods or services is not a reasonable option for the MTA;~~

~~—H. Emergency expenditures in case of public calamity pursuant to Public Utilities Code § 130234; and~~

~~—I. Expenditures for immediate remedial measures pursuant to Public Utilities Code § 130235.~~

~~—J. A business entity whose relationship with the MTA will be as a subcontractor at the second tier or below. Nothing herein prevents the MTA from requiring any subcontractor at any level to obtain pre-qualification if the MTA, in its sole discretion based upon the available information, determines that pre-qualification of that subcontractor is in the best interest of the MTA.~~

~~4-05-080 Mandatory~~ **Issuance or Denial of Pre-Qualification.** A business entity shall be ~~denied~~ notified in writing of certification or denial of pre-qualification certification if the evidence supports a finding as to any of the ~~following circumstances or violations set forth in the Program policy and procedures.~~

~~—A. The business entity, or any of its officers or principal owners, are currently debarred by a federal, state or local public authority;~~

~~—B. The business entity has knowingly submitted false information on the pre-qualification questionnaire or in response to any follow-up inquiries from the MTA; or~~

~~—C. The business entity has declined to submit to the MTA information requested by the Pre-Qualification Manager as part of the pre-qualification process.~~

~~4-05-090 Permissive Denial of Pre-Qualification.~~

~~The MTA may, in its sole discretion, deny pre-qualification to a business entity or any of its planned subcontractors, if the evidence supports a finding as to the business entity or as to a subcontractor, or their principals or officers, of any of the following:~~

~~—A. Commission of civil or criminal fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction;~~

~~—B. Violation of federal or state antitrust statutes, including, but not limited to, those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;~~

~~—C. Commission of embezzlement, theft, forgery, bribery, making false statements, submitting false information, attempting to commit a fraud against the MTA or other public entity, receiving stolen property, making false claims to any public entity, obstructing justice or fraudulently obtaining public funds;~~

~~—D. Violation of federal guidelines for disadvantaged business entity status including, but not limited to, a violation of 49 CFR part 26 et seq., or misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors;~~

~~—E. Conviction for non-compliance with the prevailing wage requirements of the California labor law, or similar laws of any other state;~~

~~—F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement;~~

~~—G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction;~~

~~—H. Commission of any act or omission, or engaging in a pattern or practice, which tends to demonstrate that the business entity lacks the quality, fitness or capacity to perform a contract with the MTA, including, but not limited to, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing, or the lack of the financial resources necessary to perform contractual obligations;~~

- ~~—I. Indictment or conviction for an offense which indicates a lack of business integrity or business honesty;~~
- ~~—J. Willful failure to perform in accordance with the terms of one or more contracts;~~
- ~~—K. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction;~~
- ~~—L. Performance or conduct on one or more private or public agreements or transactions in a manner which negatively impacts or threatens the health or safety of the business entity's employees, the employees of any other entity involved with the transaction, the general public or any real property;~~
- ~~—M. Knowingly has entered into a business relationship with a business entity while that entity was debarred by the MTA;~~
- ~~—N. Violation of MTA policy regarding a drug-free workplace;~~
- ~~—O. Violation of any non-discrimination laws or provisions included in any public agreement or transaction;~~
- ~~—P. Violation of any labor laws, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies;~~
- ~~—Q. Violation of a licensing, sub-letting or subcontractor listing law;~~
- ~~—R. Failure to comply with California corporate registration, federal, state and local licensing requirements;~~
- ~~—S. Violation of a material provision of any settlement or a denial of pre-qualification or validation action;~~
- ~~—T. A history of failure to perform, or of unsatisfactory performance of one or more contracts including, without limitation, default on contracts with the MTA or another public agency;~~
- ~~—U. Has had its corporate status, business entity's license or any professional certification, suspended, revoked, or has otherwise been prohibited from doing business in the State of California in the past three years;~~
- ~~—V. Has undisputed or finally adjudicated and unresolved tax liens with federal, state or local taxing authorities; or~~
- ~~—W. Any other cause so serious or compelling in nature that it affects the present responsibility of the business entity, the quality of its work, and/or its fitness or capacity to perform on a contract with the MTA.~~

4-05-100 Investigations, Determinations and Referrals.

A. ~~—A.—~~ The Pre-Qualification ~~Manager~~Administrator shall review the available information related to each business entity seeking pre-qualification and may conduct such further investigation as he or she deems necessary. ~~MTA~~LA Metro officials having information regarding a business entity they know to be seeking pre-qualification where such information is reasonably likely to bear on the pre-qualification determination shall promptly provide such information to the Pre-Qualification ~~Manager~~Administrator for consideration.

~~—B.— Based upon all of the information obtained by the Pre-Qualification Manager, the Pre-Qualification Manager shall make a determination consistent with this chapter and any procedures adopted pursuant to section 4-05-040 as to whether a business entity seeking pre-qualification shall be granted pre-qualification.~~

B. ~~—C.—~~ If information obtained during the pre-qualification process is of a sufficiently serious nature to warrant further investigation and possible action beyond the denial of ~~pre-qualification~~Pre-Qualification, the Pre-Qualification ~~Manager~~Administrator shall refer the matter to the Inspector General, the General Counsel and ~~or~~ other appropriate ~~official~~officials for possible debarment or suspension under chapter 4-10.

C. ~~—D.—~~ The Office of the General Counsel shall advise and assist the Pre-Qualification ~~Manager~~Administrator in reviewing for legal sufficiency any prospective denial of ~~Pre-qualification~~Prequalification and the notice of denial, and for providing any necessary coordination with ~~MTA~~LA Metro staff regarding legal issues that may arise during the pre-qualification review process.

~~—E.—~~

D. All actions of the Pre-Qualification ~~Manager~~Administrator or other participants in the performance of their government duties pursuant to this chapter shall be considered to be actions with~~within~~ the course and scope of the ~~Pre-Qualifications Manager's~~their employment with ~~the MTA~~LA Metro and shall be subject to the protections for public employees set forth in Division 3.6 as amended from time to time of the Government Code.

~~4-05-110 Certificate of Pre-Qualification.~~

~~Upon a finding that a business entity is approved for pre-qualification, the Pre-Qualification Manager shall promptly provide that business entity with a certificate of pre-qualification.~~

~~4-05-120 Notice of Denial of Pre-qualification.~~

~~—A.— If the Pre-Qualification Manager denies pre-qualification a notice shall be promptly given by letter to the business entity.~~

~~—B. Such notice, or any other notice authorized or required by this chapter, shall be deemed sufficient notice if served personally or by mail by any of the means authorized by California Code of Civil Procedure §§ 1012 and 1013. Any attempt by a business entity to avoid service shall not prevent the denial of pre-qualification from becoming effective as of the date the MTA attempts notice as set forth in this paragraph.~~

~~4-05-130 Effect of Pre-Qualification Denial.~~

~~—A. A denial of pre-qualification for a business entity shall constitute a denial of the right to obtain or compete for a contract with the MTA, including contracts below the contract value threshold, until such time as the business entity is granted pre-qualification. Whether a denial of pre-qualification will extend to every division or other organizational element of the business entity will depend upon the structure of the business entity. However, if the application for pre-qualification is not limited to specific divisions or organizational elements of the business entity, a denial of pre-qualification shall apply to all affiliates, divisions, organizational elements.~~

~~—B. A denial of pre-qualification to a particular business entity for a particular solicitation shall not necessarily result in the suspension or deferral of the solicitation schedule, regardless of whether an appeal from a denial of pre-qualification has been filed. Any suspension or deferral of the solicitation schedule will be within the sole discretion of the MTA's procurement management.~~

~~—C. A denial of pre-qualification for a business entity then under contract with the MTA, where the denial of pre-qualification is based upon evidence which could support a cause for debarment under section 4-10-070, shall result in an immediate review of the status of that business entity's existing contracts with the MTA to determine whether action under chapter 4-10 is appropriate.~~

~~—D. A denial of pre-qualification shall extend for an indefinite period of time unless the denial is overturned through an appeal under this chapter. A business entity subject to a denial of pre-qualification may again apply for pre-qualification after six months have elapsed from the date of notice of denial of pre-qualification, or at any time upon a showing of changed circumstances.~~

4-05-140 Appeal of Pre-Qualification Denial.

~~—A. Any business entity that has been issued a notice of denial of pre-qualification may appeal that decision to the ERC. The appeal letter, together with all supporting documentation shall be submitted to the Pre-Qualification Manager within ten (10) working days of receipt of the notice of denial of pre-qualification~~LA Metro pursuant to the policies and procedures of the Program.

~~—B. If a business entity which has been served with a notice of denial of pre-qualification fails to file a timely written appeal as described in this section, the denial of pre-qualification shall become final.~~

~~4-05-150 Executive Review Committee.~~

~~The ERC hears appeals of denials of pre-qualification. Each person serving as a member of the ERC pursuant to this chapter shall be considered to be acting within the course and scope of employment with the MTA for such service and shall be subject to the protections for public employees set forth in Division 3.6 of the Government Code.~~

~~4-05-160 Hearing Procedures.~~

~~—A. The ERC shall have the power to review and/or hold a hearing on any appeal received from a business entity that has been denied pre-qualification. The ERC may only affirm or reverse the denial decision of the Pre-Qualification Manager.~~

~~—B. For a denial of pre-qualification for a reason set forth in section 4-05-080, the decision of the ERC shall be limited to a determination as to whether there is factual support for the finding of at least one of the mandatory causes for denial of pre-qualification. For a denial of pre-qualification under section 4-05-090 the decision of the ERC shall be based upon its independent judgment as to whether one or more of the permissive bases for denial of pre-qualification has been established and, if so, whether it constitutes sufficient reason for the MTA to decline to do business with the business entity.~~

~~—C. The Business Entity may elect to waive its right to a hearing and rely solely on a written response. If the Business Entity elects in its appeal to waive a hearing, such a waiver must be clearly stated in its appeal. The ERC will set the dates for the submission of written materials and, if a hearing is requested, will set the time and date for the hearing.~~

~~—D. In each appeal, the Pre-Qualification Manager shall present the reasons for denial of pre-qualification and the evidence supporting that determination. The business entity will then be provided an opportunity to submit relevant evidence challenging the determination of the Pre-Qualification Manager. If there is a hearing on the appeal, the hearing will be conducted in an informal manner, but may be recorded for the sole use of the ERC in preparation of its decision.~~

~~—E. The ERC shall perform no independent collection of evidence and shall render a decision based solely on the evidence submitted by the Pre-Qualification Manager and~~

~~the business entity. In conducting the hearing the ERC shall follow evidence rules similar to those described in section 4-10-170. The ERC may take judicial notice of common, uncontroverted facts.~~

~~—F. The decision of the ERC is the final decision of the MTA. The business entity may seek judicial review of an ERC decision in Los Angeles County Superior Court. The appropriate party respondent in any such action shall be the MTA and not the individual members of the ERC, the Pre-Qualification Manager or any other MTA officer or employee.~~

~~—G. If the ERC reverses the denial of pre-qualification, the Pre-Qualification Manager shall issue a pre-qualification certificate within fifteen (15) business days from the date of the reversal. If the ERC affirms the denial decision and has notified all interested parties, the Pre-Qualification Manager will take no further action.~~

~~—H. An appeal from a decision of the ERC which upholds a denial of pre-qualification shall be filed with the time limits set forth in Code of Civil Procedure §§ 1094.5 and 1094.6.~~

~~—I. Each notice of final denial of pre-qualification after an appeal to the ERC shall include the following statement:~~

~~THE MTA HAS REACHED A FINAL DECISION IN THE ADMINISTRATIVE MATTER PENDING BEFORE THE MTA. IF YOU CHOOSE TO SEEK JUDICIAL REVIEW OF MTA'S FINAL DECISION, SUCH ACTION MUST BE INITIATED IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE §§1094.5 AND 1094.6. IT IS YOUR SOLE RESPONSIBILITY TO TAKE WHATEVER ACTION AND TO OBTAIN WHATEVER ADVICE YOU DEEM APPROPRIATE IN RESPONSE TO THIS NOTICE.~~

SECTION 2:

Publication of Ordinance. Upon adoption, this Ordinance shall be signed by the Chair of the Board of Directors of the Los Angeles County Metropolitan Transportation Authority. The Board Clerk shall cause the publication of this Ordinance once, within fifteen days of its adoption, in a newspaper of general circulation printed and published within the area served by the Los Angeles County Metropolitan Transportation Authority and the Board Clerk shall attest to such adoption and publication of this Ordinance.

Dated:

Chair, Board of Directors

Date Adopted by Board of Directors:

Date Published:

Attested to:

Dated:

|

Board Clerk



Pre-Qualification Program

Finance, Budget & Audit Committee
September 19, 2024



Metro

Recommendation

Staff is requesting the following:

- A. ADOPT an amendment to Metro's Administrative Code Chapter 4-05 to replace the existing contractor pre-qualification language with Attachment A of this Board Report; effective January 1, 2025.
- B. RECEIVE AND FILE streamlining initiatives including electronic signature deployment for procurement contracts and purchase orders.

Background

- California Public Utilities Code 130051.21 requires Metro to have a program to pre-qualify contractors seeking to do business with Metro. Metro Administrative Code Chapter 4-05 was adopted by the Board in 2004 and details the Pre-Qualification process for all vendors in which the awarded contract, or first tier subcontract, is reasonably expected to exceed \$100,000 in value.
- The update to the Metro Administrative Code Chapter 4-05 is needed as well as an increase to the \$100,000 threshold. The \$100,000 threshold is not consistent with the levels of inflation, cost increases, market fluctuations, etc. that have been seen in the economy in the last 20 years. It is also not consistent with the current level of risk for the agency. Raising the threshold to \$500,000 will better align with Metro contracting.
- This update will immediately benefit our vendor and small business community since it will eliminate the pre-qualification review for contracts under \$500,000, where Metro's risk is minimal.
- Additionally, the vendor and small business community, including the Southern California Contractors Association (SCCA), have expressed concerns about cumbersome elements of the procurement process.