



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 09-29-08

Approved *Deanna Santana*

Date *9/29/08*

**COUNCIL DISTRICT:** City-Wide

**SUBJECT; REPORT ON BIDS AND AWARD OF CONTRACT FOR INSTALLATION OF POTABLE AND NON-POTABLE WATER SERVICES AND MAINS: 2008-2009**

## RECOMMENDATION

Report on bids and award of contract for Installation of Potable and Non-Potable Water Services and Mains: 2008-2009 to the lowest responsive bidder, West Valley Construction, for the estimated term of January 2009 to February 2010, in an amount not to exceed \$663,220.

## OUTCOME

The award of the Installation of Potable and Non-Potable Water Services and Mains: 2008-2009 project will enable the construction of new services and provide a reliable source of water to new and existing customers.

## BACKGROUND

The Municipal Water System (Muni Water) bids an annual contract for miscellaneous new water service installations for commercial, industrial and residential developments within the Muni Water and South Bay Water Recycling (SBWR) systems. This contract allows all new installations to be made by one contractor for the approximate one-year duration of the contract, instead of processing a separate contract for each installation.

The installation work consists of such items as installing water mains, service laterals, and furnishing and installing pipes, valves, fittings, and all appurtenances necessary to install service laterals and other minor improvements. The Contractor is required to effect permanent

installations within a 30 calendar day period from the date they are given a design drawing for a particular installation.

**ANALYSIS**

Bids were received by the City on the project bid date of August 14, 2008. Upon review of all bidding documents, City staff found errors in several of the bids. The bid totals as submitted by all bidders are as follows:

<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>
Sanco Pipelines	Campbell	\$688,306.50
Pacific Underground Construction	San José	\$684,264.82
West Valley Construction	Campbell	\$663,220.00
San Jose Water Company	San José	\$642,040.28
(Engineer's Estimate)		(\$621,000.00)

Analysis of the bids revealed that the apparent low bidder, San Jose Water Company, and the highest bidder, Sanco Pipelines did not conform to the requirements of the project specifications in that both bids included unit prices for labor below prevailing wage rates for the labor classifications listed. Per City Standard Specification Section 2-1.06, proposals which are not submitted in strict compliance with the directions in the Notice to Contractors may be deemed non-responsive and rejected on that basis. As a result, the bids from San Jose Water Company and Sanco Pipelines were deemed non-responsive. A letter was sent to all bidders informing them of the official bid results (Attachment A).

A letter from San Jose Water Company has been received protesting the non-responsive determination. A copy of the letter is attached (Attachment B). The protest centers on an assertion that while the contract specifications require the contractor to pay prevailing wages, they do not require the contractor to charge the City prevailing wage rates. Staff has determined that bid prices for each of the unit costs contained in the schedule of quantities must reflect the full cost of providing that item of work. Additionally, the project specifications state very clearly in several areas throughout the documents that prevailing wage rates must be paid on this contract. The bid from San Jose Water Company contains unit prices for labor that are less than prevailing wage which is contrary to what the specifications require. As a result, the bid is non-responsive. The City sent a letter to San Jose Water Company setting forth the City's position. A copy of the letter is attached (Attachment C).

The corrected bid totals by all bidders are as follows:

<u>Contractor</u>	<u>City</u>	<u>Corrected Bid Amount</u>	<u>Variance Over / (Under)</u>	
			<u>Amount</u>	<u>Percent</u>
Sanco Pipelines	Campbell	Non-responsive	--	--
San Jose Water Company	San José	Non-responsive	--	--
Pacific Underground Construction	San José	\$684,264.82	\$63,264.82	10%
West Valley Construction	Campbell	\$663,220.00	\$42,220.00	7%
<b>Engineer's Estimate</b>		<b>\$621,000.00</b>		

Based on the above-mentioned revisions, staff is recommending that Council award the contract to the lowest responsive bidder, West Valley Construction, whose bid has been reviewed, analyzed, and found acceptable.

**EVALUATION AND FOLLOW-UP**

The project is currently within budget and on schedule with a projected completion date of February 2010. No additional follow up actions with the Council are expected at this time.

**POLICY ALTERNATIVES**

*Alternative #1: Reject all bids and re-bid the project.*

**Pros:** None.

**Cons:** Delaying the project will result in a delay of the contract for an indeterminate amount of time, during which the City may not be able to construct new services.

**Reason for not recommending:** Muni Water needs to construct new services for both the potable and recycled water systems when the customer needs the service. Although the City has the option to reject all bids and re-bid the project, the City received bids that were responsive and there is no reason why the contract should not be awarded to the lowest responsive bidder. The lowest responsive bidder is a qualified company whose total bid price is within approximately 3% of the initial lowest bidder whose bid was determined to be non-responsive.

**PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet any of the above criteria. To solicit contractors, this project was advertised in the *San José Post Record*, as well as on the Public Works Bid Hotline and Environmental Services RFP/Bids list.

### COORDINATION

This project has been coordinated with Risk Management, Equality Assurance, the City Manager's Budget Office and the City Attorney's Office. This item is scheduled to be heard at the October 9, 2008 meeting of the Treatment Plant Advisory Committee (TPAC).

### COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: \$663,220
2. COST OF PROJECT:

Project Delivery	\$90,000
Construction	<u>\$663,220</u>
TOTAL/REMAINING PROJECT COSTS	\$753,220
3. SOURCE OF FUNDING: 500 - Water Utility Capital Fund  
512 - San José/Santa Clara Treatment Plant Capital Fund
4. FISCAL IMPACT: There are no cost implications to the General Fund as a result of this action. This recommendation meets the general principles of the City's FY 2008-09 Budget Message of providing essential public services while valuing financial sustainability and cost recovery.

### BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

HONORABLE MAYOR AND CITY COUNCIL

09-29-08

Subject: Installation of Water Services and Mains: 2008-2009

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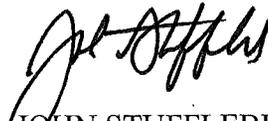
Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	2008-2009 Proposed Capital Budget Page*	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				<b>\$753,220</b>			
Current Funding Available							
500	4348	Service Installations	0179 08	\$410,000	\$332,220	V-171	6/24/08, Ord. No. 28349
512	6589	Revised SBAP-SBWR Extension	0628 73	\$343,220**	\$331,000	V-134	6/24/08, Ord. No. 28349
<b>Total Current Funding Available</b>				<b>\$753,220</b>	<b>\$663,220</b>		

\*The 2008-2009 Adopted Capital budget was approved by City Council on June 24, 2008.

\*\*Total Appropriation 6589 is \$11,878,000.

**CEQA**

Exempt, File No. PP05-130.



JOHN STUFFLEBEAN  
Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-4218.

Attachments



Environmental Services Department  
MUNICIPAL WATER SYSTEM DIVISION

September 2, 2008

SUBJECT: BID RESULTS FOR INSTALLATION OF POTABLE AND NON-POTABLE WATER SERVICES AND MAINS: 2008-2009

Attention Bidders,

Bids for the "Installation of Potable and Non-Potable Water Services and Mains: 2008-2009" were received by the City of San Jose on August 14, 2008. The bid totals are as follows:

<u>Contractor</u>	<u>Bid Amount</u>
Sanco Pipelines	\$688,306.50
Pacific Underground Construction	\$684,264.82
West Valley Construction	\$663,220.00
San Jose Water Company	\$642,040.28

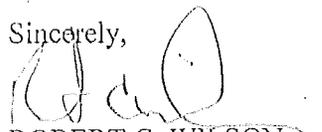
Upon review of all bidding documents, City staff determined that the bids from San Jose Water Company and Sanco Pipelines were non-responsive, as both bids included unit prices for labor (specifically, items 11, 12a, and 12b) at rates below prevailing wage. Per the project specifications and City of San Jose Standard Specifications, not less than the general prevailing rate of per diem wages and the general prevailing rates for holiday and overtime work must be paid on City projects.

The corrected bid totals by all bidders are as follows:

<u>Contractor</u>	<u>Corrected Bid Amount</u>
Sanco Pipelines	Non-responsive
San Jose Water Company	Non-responsive
Pacific Underground Construction	\$684,264.82
West Valley Construction	\$663,220.00

Based on the above-mentioned determination, staff will recommend to the City Council that the contract for the "Installation of Potable and Non-Potable Water Services and Mains: 2008-2009" be awarded to the lowest responsive bidder, West Valley Construction. The project is scheduled for Treatment Plant Advisory Committee approval on October 8, 2008, and award by City Council on October 21, 2008.

Should you have any questions or wish to discuss further, please call me at (408) 277-3288. We appreciate your interest in the project, and look forward to opportunities to work together in the future.

Sincerely,  
  
ROBERT C. WILSON  
Division Manager  
San Jose Municipal Water System

Attachment B



San Jose  
Water  
Company

374 West Santa Clara St.  
San Jose, CA 95196-0001

Operations, Maintenance and Water Quality Departments  
Writer's Direct Line: (408) 279-7815  
Fax No.: (408) 279-7868

September 2, 2008

Mr. Robert C. Wilson  
Division Manager  
San Jose Municipal Water System  
3025 Tuers Road  
San Jose, CA 95121

Dear Mr. Wilson:

I have received your September 2, 2008 letter and I am disappointed to learn that the San Jose Municipal Water System (City) has found San Jose Water Company's (SJWC's) bid for the Installation of Potable and Non-Potable Water Services and Mains 2008-2009 contract to be non-responsive. Specifically, the City disqualified SJWC's bid because unit bid prices for labor in the Plumber classification (items 11, 12a and 12b) were lower than the general prevailing rate of per diem wages, and the general prevailing rates for holiday and overtime work.

SJWC does not agree that the submitted bid is unresponsive, and respectfully requests that the determination be reconsidered. **The Specifications provided by the City require SJWC to pay prevailing wages, however they do not require SJWC to charge the City prevailing wage rates.** San Jose Water Company will pay prevailing wages for all work performed on the contract, and a rigorous procedure is in place to ensure to the City that SJWC complies with these requirements. SJWC has an impeccable record of compliance with the City prevailing wage requirements, and has met them without exception on the past three Installation Contracts awarded by the City. If it is the City's requirement to have all unit bid prices at or above Prevailing Wage, the city must specify this in the contract documents and bid specifications. Accordingly, the bid submitted by SJWC was improperly disqualified, and is in fact a responsive bid.

SJWC does not employ any staff in the plumber classification; and substitutes workers in a higher class (Laborer) and pays the appropriate prevailing wage at that class for work performed. SJWC will only invoice the city at the rate for the classification of work that is necessary. This practice has been in place and accepted by the City for the previous three Installation Contracts. SJWC is willing to substitute the prevailing wage for the highest class of plumber (\$32.80) in its bid in order to address the City's concerns. SJWC is confident that it will remain the lowest bidder with this adjustment made.

SJWC values the long standing business partnership with the City and believes it has performed at a high level on previous and existing contracts, delivering high quality services at the lowest

possible cost to San Jose Municipal Water System customers. In the spirit of this partnership, SJWC will pursue other remedies, including appealing the decision to the San Jose City Council if the City chooses not to reconsider SJWC's bid as responsive.

Please contact me at (408) 279-7815 if you have any questions or wish to discuss this matter further.

Sincerely,



Andrew R. Gere, P.E.  
Chief of Operations

Cc: George Belhumeur  
Vice President – Operations  
San Jose Water Company

Suzy Papazian  
Corporate Secretary and Attorney  
San Jose Water Company

Monsour Nasser  
Deputy Director  
City of San Jose Department of Environmental Services

San Jose City Council



Environmental Services Department  
MUNICIPAL WATER SYSTEM DIVISION

September 8, 2008

SUBJECT: CLARIFICATION OF STATEMENTS REGARDING INSTALLATION OF POTABLE AND NON-POTABLE WATER SERVICES AND MAINS: 2008-2009 PROJECT

Dear Mr. Gerb:

Thank you for your letter dated September 2, 2008 in response to our letter notifying you that San Jose Water Company's bid for the "Installation of Potable and Non-Potable Water Services and Mains: 2008-2009" contract was deemed non-responsive. Upon reading the letter, I noted several inaccurate statements that I would like to take this opportunity to clarify:

- o The letter states that "If it is the City's requirement to have all unit bid prices at or above Prevailing Wage, the City must specify this in the contract documents and bid specifications."
- o The City requires that prevailing rates must be paid on this project, as stated in the "PREVAILING WAGES" section of the NOTICE TO CONTRACTORS, ATTACHMENT 5 - CONTRACT PROVISIONS FOR PREVAILING WAGES, and Sections 7-1.01A(2) and 7-1.01A(3) of the City's Standard Specifications. Additionally, as stated on page II-21, Section 9-2(a) of the project specifications:

*"The bid price for labor shall include, but not be limited to, total actual wages paid, health costs, welfare, pension, vacation, and similar expenses taxes, insurance, overhead and profit."*
- o The letter also states "SJWC is willing to substitute the prevailing wage for the highest class of plumber (\$32.80) in its bid in order to address the City's concerns."
  - o The actual prevailing wage rate for the highest class of plumber in effect at the time of bid, August 14, 2008, was \$67.84. The prevailing rates for time and a half and double time (as of the bid date) were \$91.90 and \$115.96, respectively. Additionally, San Jose Water Company cannot correct or substitute its bid after the bids have been opened. San Jose Water Company is bound by the rates included in the bid documents and those rates are less than prevailing rates, thereby making the bid non-responsive.

San Jose Municipal Water System also values the long standing business partnership that has been established with San Jose Water Company over the years, and wishes to continue to work with you in a productive and mutually beneficial manner.

Please contact me at (408) 277-3288 if you have any questions or wish to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert C. Wilson', with a long horizontal flourish extending to the right.

ROBERT C. WILSON  
Division Manager  
San Jose Municipal Water System

Cc: George Belhumeur, San Jose Water Company  
Suzy Papazian, San Jose Water Company  
Mansour Nasser, City of San Jose  
San Jose City Council