



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: ALBANY-KIELY STORM DRAIN
IMPROVEMENT PHASE V-VI

DATE: 08-10-09

Approved

Date

8/17/09

COUNCIL DISTRICT: 1

RECOMMENDATION

Report on bids and award of contract for the Albany-Kiely Storm Drain Improvement, Phase V-VI Project to the lowest responsive bidder, Rodan Builders, Inc., in the amount of \$855,053.80 and approval of a contingency in the amount of \$ 85,000.

OUTCOME

Award of the construction contract to Rodan Builders, Inc. will enable the Albany-Kiely Storm Drain Improvement, Phase V-VI to proceed. Approval of the ten percent contingency will allow funding for any unanticipated work necessary for the proper completion or construction of the project. The improvement will increase storm drainage capacity along Stevens Creek Boulevard, between Albany Drive and Kiely Boulevard. Upon completion of the project, the neighborhood will have storm drainage protection from a 10-year-return storm, in conformance with the City storm sewer main design practice.

EXECUTIVE SUMMARY

These improvements will increase storm drainage capacity along Stevens Creek Boulevard, between Albany Drive and Kiely Boulevard. This final phase will provide the Albany-Kiely neighborhood with protection from the 10-year return storm, in conformance with the City storm sewer main design practice.

BACKGROUND

The Albany-Kiely Storm Drain Improvement Phase V-VI Project is located along La Honda Avenue, Casa View Drive, Miramar Avenue, and Capistrano Avenue, as depicted on the attached map. An analysis of this drainage shed identified the need to construct

improvements in the area to increase capacity and improve local neighborhood drainage by upsizing existing storm mains.

Due to funding constraints, a multi-phased approach has been taken to construct the improvements. The first phase was completed in September 1997 and consisted of improvements along Kiely Boulevard, between Norwalk Drive and San Tomas Expressway. The second phase was completed in March 2006 and included improvements along Palace Drive and portions of Kiely Boulevard and Albany Drive. Phase III-IV was completed in December 2008 which included improvements along Albany Drive, between Stevens Creek Boulevard and Auburn Way.

This final phase includes improvements along La Honda Avenue, Casa View Drive, Miramar Avenue, and Capistrano Avenue. In order to provide the Albany-Kiely neighborhood with protection from the 10-year return storm, the Phase V-VI project will replace approximately 2,545 feet of existing storm mains with larger pipes ranging in size from 15 to 36-inches, including associated storm drain inlets, manholes, and laterals.

Construction is scheduled to begin in November 2009 with completion in May 2010.

ANALYSIS

Bids opened on June 11, 2009 with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Preston Pipelines, Inc (Milpitas)	\$1,101,216	\$105,781	11
Pacific Underground Construction, Inc. (San José)	\$1,074,854	\$79,419	8
Engineer's Estimate	\$995,435	---	---
Ranger Pipelines, Inc. (San Francisco)	\$967,999	(\$27,436)	(3)
Stoloski & Gonzales, Inc (Half Moon Bay)	\$921,735	(\$73,700)	(7)
Peak Engineering, Inc. (Oakland)	\$889,960	(\$105,475)	(11)
Fermin Sierra Construction (Union City)	\$877,400	(\$118,035)	(12)
McGuire and Hester (Oakland)	\$857,695	(\$137,740)	(14)

Rodan Builders, Inc. (Burlingame)	\$855,054	(\$140,381)	(14)
California Trenchless, Inc. (Hayward)	\$707,775	(\$287,660)	(29)

1. Apparent Low Bidder California Trenchless, Inc.'s Proposal is Non-Responsive and Should Be Rejected

Staff reviewed the bid proposal for the apparent low bidder, California Trenchless, Inc., and determined that it is non-responsive. Bid Item No.1, "Street Clean-Up," as listed in the Schedule of Quantities and stated in Section 5-2 of the Project Specifications' Special Provisions, requires a minimum unit price of \$500 per day for street clean up. The purpose of having a minimum unit price for street clean up is to ensure that the requirements of Section 5-2 of the Project Specifications' Special Provisions will be achieved at the end of each construction day. California Trenchless, Inc.'s bid proposal listed a unit price of \$100 per day, which is less than the required minimum bid amount for street clean-up set forth in the Schedule of Quantities and Special Provisions. As a result, California Trenchless, Inc.'s bid proposal is non-responsive, and staff recommends that its proposal be rejected.

2. Staff Recommends Awarding the Construction Contract to the Second Low Bidder Rodan Builder's Inc.

Staff initially determined that the bid proposal submitted by Rodan Builders was complete and responsive. On June 24, 2009, the City issued its Notification of Intent to Award the project to Rodan.

On June 29, 2009, the City received a bid protest from the third low bidder, McGuire and Hester. A copy of McGuire and Hester's bid protest is included as Attachment A to this memorandum.

McGuire and Hester first claimed that Rodan's bid was non-responsive because it failed to list a subcontractor for Bid Item No. 9 "Stamped Asphalt." The Project Specifications state that "Contractor shall employ an experienced applicator of stamped asphalt" and that "Contractor must be certified to use the stamped asphalt concrete product." McGuire and Hester contend that Rodan's bid was not responsive because: (1) Rodan is not a licensed or certified installer of stamped asphalt; and (2) because Rodan failed to list any subcontractors to perform the stamped asphalt concrete work.

McGuire and Hester's second claim was that Rodan lacks the necessary experience to perform the project. Staff concludes that neither of these claims has merit and recommends awarding the construction contract to Rodan.

a. Rodan Was Not Required To List A Stamped Asphalt Subcontractor.

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Pursuant to Section 2-1.15 of the City's Standard Specifications, Rodan was only required to list subcontractors that would be performing work in excess of ½ of one percent of the contractor's total bid or \$10,000 whichever is greater. Rodan was not required to list subcontractors performing less than this amount of work. Moreover, pursuant to Section 2-1.15, if Rodan failed to list a subcontractor for work in excess of ½ of one percent of the contractor's total bid or \$10,000, whichever is greater, then Rodan was agreeing to self-perform the work.

Upon review of the bid protest, staff initially found there was merit to McGuire and Hester's first claim that Rodan's bid proposal was non-responsive for failing to list a certified subcontractor to perform the stamped asphalt work. Staff reached this conclusion by reasoning that Rodan's Schedule of Quantities included in its bid listed the cost of the stamped asphalt work to the City as \$6,793.80 – which is more than ½ of 1 percent of the total bid price of \$855,053.80.

On July 8, 2009, staff sent a letter to Rodan advising it that the City was rejecting its bid for failing to list a subcontractor for the reasons described above. A copy of the letter is included as Attachment B to this memorandum. On July 10, 2009, an email was sent to all bidders advising them that staff would be recommending award of this project to McGuire and Hester. A copy of the email is included as Attachment C to this memorandum.

On July 24, 2009, the City received a letter from Rodan asking the City to reconsider its decision to reject Rodan's bid. A copy of the letter is included as Attachment D to this memorandum. Rodan stated, among other things, that it had received a proposal from Cook Engineering, Inc., to perform the stamped asphalt for \$4,087.00, which is 0.47% of Rodan's total bid. A copy of Cook's proposal is included in Attachment D to this memorandum. Rodan also asserted that it was inappropriate for the City to rely solely on the amount listed on Rodan's Schedule of Quantities form for the stamped asphalt work because the City's form did not provide separate line items for bidders to list their own overhead, profit, or general conditions cost. Rodan added that there was nothing in the instructions to bidders stating that the amounts to be included in the Schedule of Quantities were limited to the amount the subcontractor is charging the bidder for the work. Rodan pointed to a provision in the City's Bid Documents, page 1, which states that the contractor "will take in *full payment* therefore the following price or unit prices shown in the Schedule of Quantities on the next page." (Emphasis added.)

Staff has reevaluated Rodan's bid and determined that its initial analysis was incorrect. The amount set forth in the Schedule of Quantities is the amount that the contractor is charging the City to perform work. For a number of reasons, this amount could be considerably more – or even considerably less – than the amount the contractor actually is paying a subcontractor performing the work. However, the relevant question for purposes of determining whether a subcontractor must be listed is how much the subcontractor is being paid – not how much the contractor is charging the City for the work. Here, Rodan has

submitted information indicating that a subcontractor is willing to perform the asphalt stamp work for an amount that is less than ½ of 1 percent. Moreover, even if the amount set forth in the Schedule of Quantities were relevant, it is less than \$10,000. Therefore, there is no basis to the claim that Rodan was required to list a subcontractor for the asphalt stamp work.

b. Rodan Has The Necessary Experience.

Contrary to McGuire and Hester's claim, Rodan has the experience to perform the project. Rodan submitted a Statement of Qualifications in its bid along with a described list of previous projects which enabled staff to determine that Rodan had the necessary experience and expertise to perform the project. Furthermore, staff through its own investigation, obtained additional information about previous projects Rodan had completed which are similar to this project's primary scope of work. A copy of the email including the additional information is included as Attachment E to this memorandum. Given this experience, staff determined that McGuire and Hester's second claim was also without merit.

In short, staff recommends rejecting the bid protest submitted by McGuire and Hester and awarding the contract to Rodan.

EVALUATION AND FOLLOW-UP

This project is currently within budget and on schedule. No additional follow up action with the Council is expected at this time.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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, however this memorandum will be posted on the City's website for the September 1, 2009 Council agenda. This project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for all Department of Public Works construction projects are routinely provided to a standard list of various contractor organizations and builder's exchanges.

COORDINATION

This project was coordinated with the City Attorney's Office and the Departments of Planning, Building, and Code Enforcement, Finance, and Transportation.

COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$855,054
	Project Delivery	\$362,775*
	Construction	855,055
	Contingency	85,000
	TOTAL PROJECT COSTS	\$1,302,829
	Prior Year Expenditures	148,844
	REMAINING PROJECT COSTS	\$1,153,985

* Project delivery includes \$117,520 for Design Services and \$245,255 for Construction Management and Inspection services.

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:
Lump Sum Contract: \$855,053.80

3. SOURCE OF FUNDING: 469 - Storm Sewer Capital Fund

4. OPERATING COSTS: The proposed operating and maintenance costs of this project have been reviewed; the project will have no significant adverse impact on the General Fund operating budget.

BUDGET REFERENCE

The following table identifies the fund and appropriation proposed to fund the construction contract recommended as part of this memorandum and remaining project costs, including project delivery, construction and contingency costs.

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Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amount for Contract	2009-2010 Proposed Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				\$1,153,985			
Current Funding Available							
469	4693	Albany – Kiely Storm Drainage Improvement Phase III/VI & V/VI	153455	\$1,501,000	\$855,054	Capital V-103	N/A
Total Current Funding Available				\$1,501,000	\$855,054		

CEQA

CEQA: Exempt, PP08-272, dated November 25, 2008

/s/

KATY ALLEN
Director, Public Works Department

For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, at 535-8300.