



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
David Sykes

SUBJECT: SEE BELOW

DATE: April 23, 2012

Approved

Date

5/1/12

SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR THE SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT, WPCP ADMINISTRATION BUILDING STANDBY GENERATOR

RECOMMENDATION

Report on bids and award of construction contract for the Water Pollution Control Plan (WPCP) Administration Building Standby Generator project to the low bidder, Guerra Construction, Inc., in the amount of \$147,620, and approval of a contingency in the amount of \$14,800.

OUTCOME

Award of this construction contract will enable installation of a permanent standby generator at the San José/Santa Clara Water Pollution Control Plant (Plant). Approval of the contingency will provide funding for any unanticipated work necessary for the proper completion of the project.

BACKGROUND

The Plant has purchased a standby diesel generator to provide emergency power to the Administration Building in the event of an electrical power failure. The building houses a distributed control system (DCS) and computer servers that work to control critical aspects of the Plant's operations. It is imperative to keep these systems running during a power failure to ensure continuous operations of the wastewater treatment processes.

The standby generator requires installation on a permanent concrete foundation. A site west of the Administration Building has been identified as a suitable location for the generator. The project will construct a reinforced concrete pad and electrical connectors and circuits along with installation of the City-furnished generator which was purchased in 2010 in the amount of \$46,200. Other incidental work includes site preparation, landscaping, and surface restoration.

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ANALYSIS

Bids were opened on February 23, 2012, with the following results:

<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>	<u>Variance</u> <u>Amount</u>	<u>Over/(Under)</u> <u>Percent</u>
Smith & Son Electric	Fremont	\$235,200.00	\$35,000.00	17.5%
Rodan Builders Inc.	Burlingame	\$211,000.00	\$10,800.00	5.4%
Ranis Construction	San Francisco	\$210,850.00	\$10,650.00	5.3%
Engineer's Estimate		\$200,200.00	--	--
Archway Construction	San Jose	\$194,787.00	(\$5,413.00)	(2.7%)
ADC Construction	San Jose	\$187,450.00	(\$12,750.00)	(6.4%)
Blocka Construction	Fremont	\$182,094.00	(\$18,106.00)	(9.0%)
Redwood Engineering	Redwood City	\$169,720.00	(\$30,480.00)	(15.2%)
Anderson Pacific Inc.	Santa Clara	\$162,800.00	(\$37,400.00)	(18.7%)
Guerra Construction Group	Santa Clara	\$147,619.69	(\$52,580.31)	(26.3%)

The apparent low bid submitted by Guerra Construction Group (Guerra) is 26 percent below the Engineer's Estimate. The bid is considered acceptable for the work involved in the project. The lower than estimated bid can be attributed to a competitive bidding environment.

The second low bidder, Anderson Pacific Inc., submitted a written protest of Guerra's bid. The protest is attached to this memorandum. Anderson Pacific alleged that Guerra's bid was non-responsive on the basis that Guerra's electrical subcontractor, Aaron Tovar Construction Inc., did not have a valid contractor's license at the time of bidding. City staff checked with the State Contractor's License Board and determined that Aaron Tovar Construction Inc.'s contractor's license is current and active thereby making the protest moot.

Moreover, with regard to Anderson Pacific's argument, the general contractor is responsible for ensuring that its subcontractor is properly licensed before the subcontractor performs any construction work. Accordingly, City staff defers to the contractor to ensure that its subcontractor's contractor's license is current and active at the time work on the project commences.

Based on the foregoing, City staff has determined that the apparent low bidder has complied with all bid proposal requirements and that Anderson Pacific's bid protest is without merit.

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Council Policy provides for a standard contingency of 10 percent on public works projects involving utilities. Staff considers the standard contingency appropriate for this project

EVALUATION AND FOLLOW-UP

The project is currently within budget with a projected completion date of October 2012. No additional follow up actions with the Council are 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: web 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. To solicit contractors, this project was advertised in the *San Jose Post Record*, as well as on BidSync. This memorandum will be posted to the City's website for the May 15, 2012 City Council agenda.

COORDINATION

This project and memorandum have been coordinated with the City Manager's Budget Office, City Attorney's Office, Office of Risk Management, and the Department of Planning, Building, and Code Enforcement. This item is scheduled to be heard at the May 10, 2012 Treatment Plant Advisory Committee (TPAC) meeting.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council approved Budget Strategy to focus on rehabilitating aging Plant infrastructure, improve efficiency, and reduce operating costs. This project is also consistent with the budget strategy principle of focusing on protecting our vital core services.

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COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$147,620
	Project Delivery	\$100,100
	Construction	147,620
	Contingency	<u>14,800</u>
	TOTAL PROJECT COSTS	\$ 262,520
	Prior Year Expenditures	\$35,393
	REMAINING PROJECT COSTS	\$ 227,127

2. COST ELEMENTS OF CONSTRUCTION CONTRACT: Lump sum contract.
3. SOURCE OF FUNDING: 512 – San José-Santa Clara Treatment Plant Capital Fund.
4. OPERATING COST: Existing funds are available for this project. No additional appropriation action is required. The proposed operating and maintenance costs of this project have been reviewed and it has been determined that the project will have no significant adverse impact on the General Fund operating budget.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract	Adopted CIP Budget Page	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				\$227,027	\$147,620		
Current Funding Available							
512	4341	Plant Electrical Reliability	165875	\$2,814,000	\$147,620	V-171	Ord. No. 28928. Dated 6/21/11
Total Current Funding Available				\$2,814,000			

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CEQA

CEQA: Exempt, PP11-019.

/s/

David Sykes

Director of Public Works

/s/

Kerrie Romanow

Acting Director, Environmental Services

For questions please contact Jon Newby, Deputy Director, Environmental Services Department,
at (408) 635-2000.

Attachment



ANDERSON PACIFIC
Engineering Construction, Inc.

February 28, 2012

Water Pollution Control Department
City of San Jose
700 Los Esteros Road
San Jose, CA 95134

Attn: Dave Montenegro,
Re: WPCP Administration Building Standby Generator
Project No. 6718
Anderson Pacific's Bid Protest

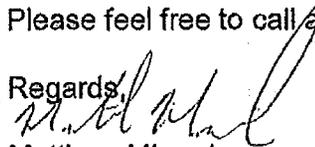
Mr. Montenegro:

In reviewing the proposals for Bid #6718, WPCP Administration Building Standby Generator, the apparent low bidder, Guerra Construction Group (Guerra) listed Aaron Tovar Construction, Inc. (Tovar), to perform "Electrical" work. According to the Contractors State License Board, Tovar's contractor's license has been suspended (attached). If giving the opportunity to proceed with the project, Guerra would be free to circumvent the California Public Contract Code's (PCC) subcontracting listing requirements. This affords Guerra an unfair competitive advantage over all other bidders. Without a qualified subcontractor, Guerra can solicit additional proposals from any and all electrical contractors. The advantage is increased as Guerra offers the only opportunity to award a subcontract for this project. In addition, if Guerra's bid was substantially low and wanted to withdraw pursuant to PCC Section 5103, it could claim clerical error in listing an unlicensed subcontractor.

The electrical work represents approximately 48% of the proposed contract value and is critical to the success of the project. Under California Public Contract Code, Section 4104, a public works contractor is required to list all subcontractors whose work exceeds more than 1/2% of the prime contractor's bid or \$10,000, whichever is greater. Guerra's decision to list an unlicensed subcontractor is a direct and material violation of the PCC, which can only be remedied by declaring the proposal nonresponsive. Therefore, Guerra's bid must be rejected and Anderson Pacific be awarded the contract as the lowest responsible bidder.

Please feel free to call at your earliest convenience to discuss this matter further.

Regards,


Matthew Miranda
Project Manager

cc. McInerney and Dillon

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