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File #: 22-0790, Version: 1

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Reject all Bids Received for the East Sunnyvale Area Sense of Place (PW22-15) and Make a Finding that the Action Does not Constitute a “project” with the Meaning of the California Environmental Quality Act Guidelines Section 15378(b)(4)

#### **REPORT IN BRIEF**

Approval is requested to reject all bids received in response to invitation for bids PW20-15 East Sunnyvale Area Sense of Place as the first two apparent low bidders are deemed non-responsive and all bids have exceeded 90 days for pricing hold.

#### **EXISTING POLICY**

Pursuant to Section 2.09.140(b) of the Sunnyvale Municipal Code, the City Council may reject bids or proposals received in response to formal competitive bid solicitations. This Code section also provides that if all bids are rejected, the City has the discretion to re-advertise.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” with the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

#### **BACKGROUND AND DISCUSSION**

The East Sunnyvale Area Sense of Place project (Project No. TR-18-04) was advertised on DemandStar on June 10, 2022. Twenty-Six (26) contractors requested bid documents and four (4) sealed bids were received and opened on July 6, 2022. Golden Bay Construction, Inc. (Golden Bay) submitted the apparent lowest bid in the amount of \$2,793,202.50 (Attachment 1, Bid Summary).

This project is federally funded and administered by Caltrans. As such, the project required all contractors to meet or, alternatively, demonstrate adequate Good Faith Efforts (GFE) towards meeting a Disadvantaged Business Enterprise (DBE) participation goal established at 21.0%. All bidders were required to submit documentation identifying the percentage of subcontracted work performed by a DBE or what GFE were completed in an attempt to solicit and contract with DBE subcontractors to meet the 21.0% goal. Achieving this requirement can occur either through a percentage of DBE subcontracted work that meets or exceeds this goal or in combination of the percentage of DBE subcontracted work and demonstration of adequate GFE. As a Caltrans-administered grant, low bids that exceed \$2 million and meet the goal through a combination of percentage of subcontracted work and GFE require a review by City staff and Caltrans.

Golden Bay submitted a bid that included a demonstration of GFE to meet the DBE goal of 21.0%. The bid was initially reviewed by staff and then provided to Caltrans for a determination. On August 23, 2022, Caltrans representatives completed a review of the GFE documentation submitted by Golden Bay to determine if they took the necessary and reasonable steps to achieve the DBE goal for the Project. Caltrans determined that Golden Bay did not demonstrate adequate GFE and therefore had not achieved the DBE goal for this project. The City adopted Caltrans' findings, and communicated its determination based on Caltrans' findings to Golden Bay.

Pursuant to 49 C.F.R. Section 26.53, a bidder that fails to meet the DBE requirement and demonstrate adequate GFE is provided an opportunity for administrative reconsideration. Using the Caltrans' Local Assistance Procedures Manual as a guide, the City conducted a reconsideration hearing with an independent panel to consider any additional information. On September 20, 2022, the panel made of high-level staff from the Department of Public Works held an administrative hearing, with Golden Bay in attendance, to reconsider the determination that Golden Bay failed to demonstrate GFE and meet the DBE goals for this project. The panel agreed with the Caltrans' findings and upheld the City's determination that Golden Bay failed to demonstrate GFE and therefore did not meet the DBE goal making their bid non-responsive.

The second lowest bidder, Redgwick Construction Co. (Redgwick) submitted a bid in the amount of \$2,919,205. Redgwick did meet the DBE goal through percentage of DBE subcontracted work. However, Redgwick did not meet the bid requirement demonstrating that at least 50% of the work would be self-performed by its company, and therefore its bid is non-responsive.

As stated in the bid documents and a standard practice in public works construction bidding, bidders are required to submit a bid bond that guarantees their bid pricing to be held for 90 calendar days. During the review and analysis of the apparent low bids for this project, the bids subsequently expired and could not be guaranteed to be held at the bid amount due to changes in prevailing wages and uncertainty due to the impact of inflation. As such, staff is recommending that the City Council reject all bids and allow staff to re-bid this project with minor changes to continue to take advantage of grant funding available and meet the Caltrans' bid requirements. As the Council is being asked to reject all bids no formal action needs to be taken regard the non-responsive of the two bidders as discussed above.

### **FISCAL IMPACT**

No fiscal impact results from rejecting the bids.

### **Funding Source**

Budgeted funds are available in Project 832920 East Sunnyvale Area Transportation Improvements. This project is additionally funded by Federal Grant No. CML-5213(060).

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Public Library, Senior Center, Community Center and in the Department of Public Safety Lobby. In addition, the agenda and report are available at the Sunnyvale Public Library, Office of the City Clerk, and on the City's website.

**RECOMMENDATION**

Reject all bids received in response to Invitation for Bids PW22-15 East Sunnyvale Area Sense of Place

Prepared by: Gregory S. Card, Purchasing Officer

Reviewed by: Tim Kirby, Director of Finance

Reviewed by: Chip Taylor, Director of Public Works

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Bid Summary