



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Award Bid No. PW16-19 for the Primary Treatment Facility Package 1 Site Preparation Project for the Reconstruction of the Water Pollution Control Plant, and Make a Finding of Bid Non-responsiveness

REPORT IN BRIEF

Approval is requested to award a construction contract in the amount of \$6,168,500 to Anderson Pacific Engineering Construction Inc. (Anderson Pacific) of Santa Clara for the Primary Treatment Facility Package 1 Site Preparation project (Public Works Project No. UY-15/01-19). Approval is also requested for a 10% construction contingency in the amount of \$616,850, and to make a finding of non-responsiveness with regard to the bid received from DeSilva Gates-Mountain, a Joint Venture of DeSilva Gates Construction and Mountain Cascade Inc. (DG-M JV).

Anderson Pacific and DG-M JV were the only two bidders on the project, with the DG-M JV bid approximately 1.2% or \$76,500 lower than Anderson Pacific with a bid of \$6,092,000. The DG-M JV bid was determined by staff to be non-responsive because it did not meet the City's mandatory minimum requirements. Both contractors filed bid protests against each other, with DG-M JV also contesting staff's determination of non-responsiveness. These actions are explained in more detail below.

EXISTING POLICY

Section 1309 of the City Charter requires construction contracts to be awarded to the lowest responsive and responsible bidder.

ENVIRONMENTAL REVIEW

Pursuant to Sections 15070 to 15075 of the California Environmental Quality Act (CEQA) Guidelines, a Mitigated Negative Declaration for this project was circulated, considered and adopted by Council on May 5, 2105 (RTC No. 15-0245).

BACKGROUND AND DISCUSSION

The City of Sunnyvale's Water Pollution Control Plant (WPCP) was initially built in the 1950s and with additions over the years it has grown to a tertiary treatment facility that receives an average dry weather flow of 14 million gallons per day. In 2007, due to the age of the facility, the City conducted an asset condition assessment which identified several plant structures as at-risk and in need of rehabilitation. As a result the City initiated several projects such as the rehabilitation of the WPCP's four digesters, sediment removal from the oxidation ponds, and improvements to the four air flotation tanks. The City also hired Brown and Caldwell to complete a Strategic Infrastructure Plan (SIP) aimed at deciding whether the City should renovate the existing plant processes or invest in new treatment processes to fulfill the plant's needs over the next 30 years. After completion of the SIP, a peer review was conducted by CH2M-Hill and the outcomes were reviewed by the City Council in

May 2011 and further discussed during a February 2012 Strategic Planning Workshop. At the conclusion of the workshop the direction was to forego the renovation option and proceed with developing a plan that includes reconstructing the plant with new treatment processes.

The first major project is the design and construction of a new primary treatment facility, which takes the raw sewage from the conveyance pipelines and removes solids and sediments before the secondary treatment process. In May 2013 the City hired Carollo Engineers to complete the design of this project. The primary treatment facility has been designed in three separate phases, or “bid packages.” The Site Preparation Project (the first bid package) will consist of demolition of the proposed site footprint, site preparation, installation of a storm water bypass system and site fill, and preloading to prepare the site for the next phase of the project, which will construct the new primary treatment facility.

Bidding Requirements for Contractor Safety, Experience and Federal Loan Funding

The project was advertised for competitive bidding in the Sunnyvale Sun on January 22, 2016, distributed to sixteen Bay Area Builder’s Exchanges, and published on the City’s website. Twenty contractors requested bid documents. Sealed bids were opened on March 9, 2016, with two bids received from DG-M JV and Anderson Pacific, in the amounts of \$6,092,000 and \$6,168,500, respectively.

Since the WPCP has a chlorine gas disinfection process that is heavily regulated, contractors bidding on the project had to meet mandatory minimum safety requirements for Experience Modification Rate (or EMR, used by the insurance industry to gauge both the past cost of work-related injuries and the chance of future risk), the Occupational Safety and Health Administration (“OSHA”) Recordable Incident Rate (RIR) and Lost Time Incident Rate (LTIR). The bid documents also included minimum experience requirements for earthwork, as well as requirements demonstrating good faith efforts to sub-contract work to minority and women-owned businesses due to the City’s application for US EPA State Revolving Funds (SRF) loaned through the California State Water Resources Control Board (SWRCB).

Bid Protests and Determination of Non-responsiveness

Following the public bid opening, the City received a bid protest from Anderson Pacific on March 19, 2016, alleging that the DG-M JV’s bid could not be considered because it did not meet the mandatory safety requirements or identify the minimum experience requirements for earthwork for one of the Joint Venture’s partners (Attachment 3). The DG-M JV submitted a letter to the City in response to the bid protest on March 21 (Attachment 4). In the meantime, staff fully evaluated the bids and initially concluded that the DG-M JV’s bid was non-responsive, and the Purchasing Officer issued an initial determination of non-responsiveness on March 29 (Attachment 5).

Subsequently, DG-M JV responded to the City’s initial determination of non-responsiveness on April 4 to request reconsideration and to file a bid protest against Anderson Pacific (Attachments 6 and 7). The bid protest alleged that Anderson Pacific did not meet the minimum experience requirements for earthwork, violated the subcontractor listing laws, and failed to submit documentation in support of good faith efforts to subcontract with minority and women owned businesses. Anderson Pacific then responded to both the bid protest and DG-M JV’s request for reconsideration on April 8 (Attachments 8 and 9).

In consultation with outside counsel, as well as the SWRCB, City staff concluded that DG-M JV's allegations were without merit, and issued a final determination on April 25 affirming that the DG-M JV bid was non-responsive, as well as a determination to deny DG-M JV's bid protest against Anderson Pacific (Attachments 10 and 11). Staff had contacted the SWRCB during the bidding process to clarify the good faith efforts requirements of the SRF program in response to questions received from potential bidders. The SWRCB provided written confirmation to the City of what documentation was required to be submitted with the bid, and Anderson Pacific met the requirements.

Options for Council Consideration

Staff recommends that Council make a finding that the DG-M JV bid is non-responsive and award the construction contract to Anderson Pacific Engineering Construction Inc. Alternatively, Council could reject all bids, and the project could be re-bid. However, this could negatively impact the entire reconstruction program by delaying the first critical path project, especially given the condition of the existing facility.

Specifically, the current influent pumping station does not meet certain emissions standards as set forth by the Bay Area Air Quality Management District (BAAQMD) and is thus operating under a settlement agreement reached between the City and BAAQMD to phase out the operation of the facility by June 1, 2020. Delayed construction would push the facility operations beyond this date, potentially leading to fines assessed against the City.

A complicating factor is that a number of larger wastewater treatment agencies in the Bay Area and Sacramento region are in the process of upgrading their facilities as well, which impacts the available pool of qualified contractors. Examples include, but are not limited to, Sacramento Regional Sanitation District; San Francisco Water, Power, Sewer; Silicon Valley Clean Water, Palo Alto Regional Water Quality Control Plant, City of San Mateo Wastewater Treatment Plant and the San Jose Regional Wastewater Facility.

FISCAL IMPACT

Budgeted funding is available in Capital Project 824771, Primary Process Design and Construction. The two bids received are substantially lower than the Engineer's Estimate of \$11.8 million. Staff believes that the difference in pricing is primarily associated with the requirement to import over 100,000 cubic yards of fill material in order to pre-load the existing site and prepare it for the new structures that will be constructed as part of the next bid package. There is significant variability in the price of fill depending on where it is coming from and if the contractors already have a source from another nearby project they are working on. The Engineer's Estimate was conservative and assumed the contractor would be purchasing fill and paying a moderate price to haul it to the site, but based on the bids received, the cost of the fill is likely much lower than originally estimated.

Funding Source

This project is funded by the Wastewater Management Fund.

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 Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of

the City Clerk and on the City's website.

ALTERNATIVES

1. Make a finding of non-responsiveness for the bid received from DeSilva Gates-Mountain Joint Venture.
2. Award the construction contract to Anderson Pacific Engineering Construction Inc. in substantially the same form as Attachment 2 to the report in the amount of \$6,168,500.
3. Approve a 10% construction contingency in the amount of \$616,850.
4. Reject the two bids received in response to Invitation for Bids so the project can be re-bid.
5. Take other action as determined by Council.

RECOMMENDATION

Alternatives 1, 2 and 3: 1) Make a finding of non-responsiveness for the bid received from DeSilva Gates-Mountain Joint Venture; 2) Award the construction contract to Anderson Pacific Engineering Construction Inc., in substantially the same form as Attachment 2 to the report in the amount of \$6,168,500; and 3) Approve a 10% construction contingency in the amount of \$616,850.

Prepared by: Pete Gonda, Purchasing Officer

Reviewed by: Timothy J. Kirby, Acting Director of Finance

Review by: John Stufflebean, Director of Environmental Services

Reviewed by: Manuel Pineda, Director of Public Works

Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Bid Summary
2. Draft General Construction Contract
3. Anderson Pacific Bid Protest of DG-M JV Bid, dated March 16
4. DG-M JV Response to Anderson Pacific Bid Protest, dated March 21
5. City Initial Determination of Non-responsiveness of DG-M JV Bid, dated March 29
6. DG-M JV Request for Reconsideration, dated April 4
7. DG-M JV Bid Protest of Anderson Pacific Bid, dated April 4
8. Anderson Pacific Reply to DG-M JV Bid Protest, dated April 8
9. Anderson Pacific Reply to DG-M JV Request for Reconsideration, dated April 8
10. City Final Determination of Non-responsiveness of DG-M JV Bid, dated April 25
11. City Denial of DG-M JV Bid Protest Against Anderson Pacific, dated April 25