



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Award of Bid No. PW16-28 for the Primary Treatment Facility Package 2 for the Reconstruction of the Water Pollution Control Plant, Make a Finding of Bid Non-responsiveness, Amend an Existing Design/Construction Support Contract, Authorize the City Manager to Procure Insurance Coverage, and Approve Budget Modification No. 45 in the amount of \$4,810,137

REPORT IN BRIEF

Approval is requested to award a construction contract in the amount of \$100,188,000, including the base bid of \$99,438,000 and a bid alternate in the amount of \$750,000, to C. Overaa & Co. (Overaa) of Richmond for the Primary Treatment Facility Package 2 project (Public Works Project No. UY-16/01-20), and for a 7% construction contingency in the amount of \$7,013,160.

Approval is also requested for the following items to:

- Amend an existing design/construction support contract with Carollo Engineers, increasing the not to exceed value by \$1,210,137, from \$12,946,801 to \$14,156,938.
- Authorize the City Manager to finalize insurance policy documents and make payment in the amount of \$514,684 with Alliant Insurance Services Inc. for Builder's Risk and related insurance coverage.
- Make a finding of bid non-responsiveness for the bid submitted by Flatiron West Inc. (Flatiron)
- Approve Budget Modification No. 45 in the amount of \$4,810,137 to provide additional project funding.

Overaa and Flatiron were two of the three bidders on the project. Kiewit Infrastructure West Co. (Kiewit) also provided a bid. The Flatiron bid was determined by staff to be non-responsive because it did not meet the City's mandatory minimum requirements. Overaa, the lowest responsible and responsive bidder, filed a bid protest against Flatiron, while Flatiron also contested staff's determination of non-responsiveness. On May 2, 2017, Flatiron rescinded its bid protest in writing. 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.

Pursuant to Sunnyvale Charter Section 1305, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by affirmative votes of at least four members so as to authorize the transfer of unused balances appropriated for one purpose to another, or to appropriate available revenue not included in the budget.

ENVIRONMENTAL REVIEW

Pursuant to Sections 15070 to 15075 of the California Environmental Quality Act (CEQA) Guidelines, a Mitigated Negative Declaration was circulated, considered and adopted by Council on May 5, 2015 (RTC No. 15-0245).

BACKGROUND

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 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 as well as develop a Master Plan for the entire WPCP reconstruction (RTC No. 13-108). The primary treatment facility has been designed in three separate phases, or "bid packages". This is the second bid package of the Primary Treatment Facility which will consist of replacing the existing headworks and primary treatment facilities with new facilities including site work, new building construction, existing facility modification/demolition, installation of major process equipment, electrical/instrumentation/control system improvements, and related systems and facilities.

DISCUSSION

Design and Construction Support Contract

Both the Master Plan and the Primary Treatment Facility Design were prepared simultaneously to streamline the Primary Treatment Facility project. As a result, at the time of scope of work negotiation there was not enough information to define all the needs for engineering services during construction. The consultant and City agreed to some basic parameters and a budget of approximately \$1.8 million was set aside in the contract. Since the design is now complete, more information is known on the extent of the engineering services during construction effort and the original cost estimates were refined. The City and consultant reviewed this information and ultimately came to an agreement that it is necessary to increase the original estimate for those services by \$1.2 million from \$1.8 million to approximately \$3 million. Staff is requesting a budget increase for this additional cost. The \$3 million for the consultant contract equates to approximately 3% of the construction costs which falls within the industry standards for this type of work and staff feels it is reasonable considering the magnitude of the project.

Builder's Risk and other Insurance Coverage

Due to the elevation and proximity of the Water Pollution Control Plant to the San Francisco Bay, it is

recommended that additional insurance coverage be purchased for the new facilities being built prior to the flood protection work being completed. The City received pricing to purchase Builder's Risk insurance, "Acts of God" coverage as defined in Public Contract Code Section 7105, and Earth Movement and Flood coverage directly from an insurance carrier rather than through the Contractor's Bid Alternates D and E as listed in the bid summary. Staff found that there are significant cost savings associated with purchasing the insurance coverage directly (approximately \$390,000) rather than purchase this additional insurance coverage through the Contractor; therefore, staff is requesting to authorize the City Manager to finalize the insurance policy documents and make payment in the amount of \$514,684.

Award of Contract for the Primary Treatment Facility Package 2

The construction project was advertised for competitive bidding on December 16, 2016. Thirty contractors requested bid documents. Sealed bids were opened on March 1, 2017, with three bids received from Flatiron, Overaa, and Kiewit, with base bids in the amounts of \$99,056,900, \$99,438,000 and \$104,493,000, respectively. The Bid Summary is contained in Attachment 1. With the staff recommended award to Overaa, staff requests the approval of a budget increase to the project of approximately \$3.6 million.

Following the public bid opening, the City received a bid protest from Overaa on March 8, 2017, alleging that Flatiron's bid could not be considered because it did not meet the minimum experience requirements (Attachment 4). In the meantime, staff had been evaluating the bids independently and concluded that the Flatiron bid was non-responsive due to the fact they did not meet the experience components established in the bid documents. These included completed projects for water/wastewater treatment facilities where the electrical, mechanical and instrumentation systems were part of the Contractor's work scope totaling at least \$250 million project volume within the past five years with no less than three and no more than five projects listed on the bid sheet. As a result, the Purchasing Officer issued an initial determination of non-responsiveness on March 15 (Attachment 5).

Subsequently, Flatiron responded to the City's initial determination of non-responsiveness on March 22 to request reconsideration and provide additional information (Attachment 6). Overaa also submitted additional correspondence in support of their position (Attachment 7). After reviewing the additional information provided, staff concluded that Flatiron still did not meet the requirements as stated in the bid documents, and issued a final determination on April 5 to affirm that the Flatiron bid was non-responsive (Attachment 8). After the City issued the Notice of Intent to Award the project to Overaa on April 6, Flatiron then submitted its own bid protest on April 11 (Attachment 9). The City then issued a denial of the bid protest on April 28 (Attachment 10). Flatiron then contacted the City on May 2 to formally withdraw their bid protest (Attachment 11).

Options for Council Consideration

Staff recommends that Council make a finding that the Flatiron West Inc. bid is non-responsive and award the construction contract to C. Overaa & Co. Alternatively, Council could reject all bids, and the project could be re-bid. However, this would negatively impact the entire reconstruction program by delaying this 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.

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. Supplemental funding in the amount of \$4,810,137 is requested to be transferred from 827090, Construction of a New Water Pollution Control Plant to 824771 as part of this RTC. The bids received are approximately 10% higher than the Engineer's Estimate for the base bid of \$90.6 million. Staff believes that the difference in pricing is associated with a shift in the bid market climate for the Bay Area and more specifically for the wastewater industry and South Bay that favors contractors due to the limited local labor force availability. Skilled construction labor is in high demand due to the number of projects under construction while the cost of housing limits the availability of the local labor force. With the amount of larger wastewater treatment agencies upgrading their facilities as well, the impacts to the available pool of qualified contractors and labor force availability is reflected in the prices received.

Due to the overall size of this project, staff is requesting a reduced 7% construction contingency rather than the standard 10%, so as not to unnecessarily commit additional funds to this project. Although it is not planned, it is possible that staff may need to return to Council for additional contingency funding should the 7% contingency not be sufficient.

Budget Modification No.45 has been prepared to re-appropriate funds from Project 827090 to 824771 in the amount of \$4,810,137 to provide sufficient funds for the construction contract award of the Primary Process Design and Construction project. Elements of Project 827090 New Water Pollution Control Plant are included in separate projects in the upcoming FY 2017/18 Recommended Budget; thus, funding is available to be transferred to Project 824771 - Primary Process Design and Construction project. In addition to the available funding displayed below for Project 824771, additional funding in the out-years of the project are budgeted in the FY 2016/17 Adopted Budget, for a total of \$120,899,541. The re-appropriation of funds will allow for sufficient total funding for this project based on the recommendations included in this memorandum.

**Budget Modification No. 45
FY 2016/17**

	Current	Increase/ (Decrease)	Revised
Wastewater Management Fund			
<u>Expenditures</u>			
824771 - Primary Process Design and Construction	\$45,429,278	\$4,810,137	\$50,239,415
827090 - Construction of a New Water Pollution Control Plant	\$6,308,278	(\$4,810,137)	\$1,498,141

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 submitted by Flatiron West Inc.
2. Award a construction contract, in substantially the same form as Attachment 2 and in the amount of \$100,188,000 to C. Overaa & Co., and authorize the City Manager to execute the contract when all necessary conditions have been met.
3. Approve a 7% construction contingency in the amount of \$7,013,160.
4. Authorize the City Manager to execute an amendment to an existing contract with Carollo Engineers, in substantially the same format as Attachment 3, adding \$1,210,137 and increasing the not-to-exceed value from \$12,946,801 to \$14,156,938.
5. Authorize the City Manager to finalize insurance policy documents and make payment in the amount of \$514,684 to Alliant Insurance Services Inc. for Builders Risk, "Acts of God", and Earth Movement and Flood coverages.
6. Approve Budget Modification No. 45 in the amount of \$4,810,137 to provide additional project funding.
7. Reject the three bids received in response to Invitation for Bids No. PW16-28 for the Primary Treatment Facility Package 2 for the Reconstruction of the Water Pollution Control Plant.
8. Take other action as determined by Council.

STAFF RECOMMENDATION

Alternatives 1 through 6:

1. Make a finding of non-responsiveness for the bid submitted by Flatiron West Inc.
2. Award a construction contract, in substantially the same form as Attachment 2 and in the amount of \$100,188,000 to C. Overaa & Co., and authorize the City Manager to execute the contract when all necessary conditions have been met.
3. Approve a 7% construction contingency in the amount of \$7,013,160.
4. Authorize the City Manager to execute an amendment to an existing contract with Carollo Engineers, in substantially the same format as Attachment 3, adding \$1,210,137 and increasing the not-to-exceed value from \$12,946,801 to \$14,156,938.

5. Authorize the City Manager to finalize insurance policy documents and make payment in the amount of \$514,684 to Alliant Insurance Services Inc. for Builders Risk, "Acts of God", and Earth Movement and Flood coverages.
6. Approve Budget Modification No. 45 in the amount of \$4,810,137 to provide additional project funding.

Prepared by: Pete Gonda, Purchasing Officer

Prepared by: Allie Hood, Senior Engineer

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: Manuel Pineda, Director of Public Works

Reviewed by: Kent Steffens, Assistant City Manager

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. Draft Amendment to Consultant Services Agreement
4. Overaa Bid Protest of Flatiron, dated March 8, 2017
5. City Initial Determination of Non-Responsiveness of Flatiron, dated March 15, 2017
6. Flatiron Response to City's Initial Determination, dated March 22, 2017
7. Overaa Response to Flatiron's Response to City's Initial Determination, dated March 27, 2017
8. City Final Determination of Non-Responsiveness of Flatiron, dated April 5, 2017
9. Flatiron Protest to Notice of Intent to Award to Overaa, dated April 11, 2017
10. City Denial of Flatiron Bid Protest dated April 28, 2017
11. Flatiron Withdrawal of Bid Protest