



City of Chula Vista

Staff Report

File#: 14-0336, **Item#:** 21.

CONSIDERATION OF WAIVING IRREGULARITIES IN THE BID RECEIVED FOR THE "PAVEMENT MINOR REHABILITATION FY13/14 (RUBBERIZED PAVEMENT GRANT PROGRAM - CHIP SEAL)" PROJECT PER CITY CHARTER SECTION 1009

RESOLUTION NO. 2014-139 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ACCEPTING BIDS, DECLARING THE APPARENT LOW BIDDER, FRANK & SON PAVING, INC. TO BE NON-RESPONSIVE, WAIVING A MINOR DEFECT IN THE LOWEST RESPONSIVE BID RECEIVED, AWARDING THE CONTRACT FOR THE "PAVEMENT MINOR REHABILITATION FY13/14 (RUBBERIZED PAVEMENT GRANT PROGRAM - CHIP SEAL) (STL397)" PROJECT TO COPP CONTRACTING INCORPORATED IN THE AMOUNT OF \$1,812,572.00, REDUCING THE STL383 BUDGET BY \$434,098 AND APPROPRIATING THE EQUIVALENT AMOUNT TO STL397, WAIVING CITY COUNCIL POLICY 574-01 AND AUTHORIZING THE EXPENDITURE OF ALL AVAILABLE CONTINGENCY FUNDS NOT TO EXCEED \$271,885.80 (4/5 VOTE REQUIRED)

RECOMMENDED ACTION

Council conduct the public hearing and adopt the resolution.

SUMMARY

On May 7, 2014, the Director of Public Works received sealed bids for the "Pavement Minor Rehabilitation FY13/14 (Rubberized Pavement Grant Program - Chip Seal) (STL397)" project. The project consists of the removal and replacement of failed asphalt concrete pavement (dig-outs), and the application of rubberized chip seal on various streets in the City. Scope of work on this project also includes the replacement of damaged traffic signal loop detectors, traffic control, striping and markings, and other miscellaneous items of work necessary to complete the project.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that the project qualifies for a Class 1(c) categorical exemption pursuant to Section 15301, Existing Facilities, of the State CEQA Guidelines because the proposed project consists of minor rehabilitation/repair work to existing public streets involving negligible or no expansion of an existing use. Thus, no further environmental review is required.

BOARD/COMMISSION RECOMMENDATION

Not applicable.

DISCUSSION

The Public Works Department utilizes a Pavement Management System (PMS) and pavement

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preservation program to develop the priority list of streets to rehabilitate and preserve throughout the city. This preservation program is designed to extend the roadway life and serviceability through the removal and replacement of deteriorated sections of pavement (dig-outs) and the application of various types of surface treatments. The application of the asphalt rubber chip seal surface treatment on the street segments shown in Attachment 1 will complete the overall maintenance strategy on these street segments.

In September 2013, the City received a grant from the 2013/14 Rubberized Pavement Grant Program for this project. The approved grant administered by the California Department of Resources, Recycling and Recovery (CalRecycle) has a reimbursable amount of \$1.00 per square yard of rubberized seal up to a maximum of \$250,000. CalRecycle encourages the re-use of recyclable used tires to save valuable landfill space. Only crumb rubber derived from 100% California-generated waste tires can be used in the asphalt rubber mix.

In addition to applying the asphalt rubber chip seal, the scope of work also includes the removal and repair of asphalt pavement, weed removal and treatment with herbicide, crack filling, pavement striping and markings, replacement of damaged traffic signal loop detectors, traffic control, protection and restoration of existing improvements and other miscellaneous work necessary to successfully complete the project.

On May 7, 2014, the Director of Public Works received six (6) bids for the "Pavement Minor Rehabilitation FY13/14 (Rubberized Pavement Grant Program - Chip Seal) (STL397)" project. The following bids were received:

	CONTRACTOR	SUBMITTAL RESULT	BID TOTAL SUBMITTED
1	Frank & Son Paving, Inc. - Chula Vista, CA	Did not meet the required 40% of work to be performed by the prime contractor. \$0.40 math error. Actual bid total is \$1,652,576.90.	\$1,652,576.50
2	COPP Contracting, Inc. - Buena Park, CA	All requirements met but with mathematical error. Corrected bid total is \$16,972.50 lower than submitted. Actual bid total is \$1,812,572.00.	\$1,829,544.50
3	TC Construction Co., Inc. - Santee, CA	All requirements met	\$1,968,650.50
4	Pavement Coatings Co. - Jurupa Valley, CA	All requirements met	\$1,992,658.30
5	American Pavement System, Inc. - Modesto, CA	All requirements met	\$2,038,546.50

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6	VSS International - West Sacramento, CA	All requirements met	\$2,224,120.00
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Staff reviewed the low bid submitted by Frank & Son Paving Incorporated and determined their bid package did not meet the required 40% prime contractor participation. Under Section 9, Subcontracting, of the Project Specification entitled "Proposal Requirements and Conditions"; the prime contractor shall perform at least 40% of the contract work with their own organization. Frank & Son Paving Incorporated's participation is only 34.49% and therefore does not meet the requirement.

The 2006 Standard Specifications for Public Works Constructions, "Green Book", section 2-3.2; "Additional Responsibility" states the prime contractor shall perform at least 50% of the contract work with its own organization. Staff implemented a lowered requirement of 40% for this pavement rehabilitation project to attract additional bidders. Staff also, with the advice from the City Attorney's Office, revised the List of Sub-contractors Form (Attachment 2) to clearly disclose the percentages of each item of work to be performed by all sub-contractors. All of these criteria are bid requirements and as such cannot be revised after bid submittal.

On May 19 and 20, 2014, staff contacted and informed Frank & Son Paving (Attachment 3 and 4) that, based upon their bid submittal, they did not meet the 40% prime contractor work participation requirement and had until 5:00 p.m. on May 23, 2014 to respond appropriately. On May 20, 2014, an email response was received from Frank & Son Paving (Attachment 5) showing a participation of just over the 40% requirement. Close examination of the new breakdown data and the work requirements revealed that changes had been made to the original information (Attachment 6). Staff met with Frank & Son Paving to discuss the May 20, 2014 submittal, which contained some inconsistencies, and were presented with a second and different percentage breakdown between Frank & Son Paving and their subcontractors dated June 4, 2014 (Attachment 7). Staff conferred with the City Attorney's Office and concluded that these additional submittals were, in fact, changes to the bid-not corrections-and as such, in order to preserve the integrity of the sealed bid process, should not be considered; instead, Frank & Son's original bid submission needed to be used to evaluate bid responsiveness.

On this basis, it was determined that Frank & Son Paving's bid was non-responsive because it failed to meet the minimum 40% work participation requirement in the contract bid specifications.

Staff reviewed the second low bid submitted by Copp Contracting Inc. ("Copp") and determined that, with the exception of a mathematical error of \$16,972.50 favoring the City its bid package met all the submittal requirements. Staff contacted Copp representatives and informed them of the mathematical discrepancy. Copp agreed to honor the corrected bid price of \$1,812,572.00, which is \$16,972.50 less than their submitted bid price of \$1,829,544.50 (Attachment 8). The corrected bid submitted by Copp Contracting Incorporated is below the Engineer's estimate of \$2,023,740 by \$211,168 (or approximately 10.43%).Copp has performed construction projects of similar scope for

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the City in the past and staff has determined their work to be satisfactory. The Contractor's License No. 384209, as well as all listed sub-contractors' licenses, are current and active. Accordingly, because Copp is the lowest responsive and responsible bidder, with a bid below the Engineer's estimate for the work, Staff recommends awarding the "Pavement Minor Rehabilitation FY13/14 (Rubberized Pavement Grant Program - Chip Seal) (STL397)" contract in the amount of \$1,812,572.00 to Copp. Although not a bid award consideration, it is also worth noting that two of the subcontractors proposed to be used by Copp are local Chula Vista firms (ATP and Payco Specialties).

In order to award the contract to Copp, because Copp's bid had a defect, the City Council would need to waive the defect at a public hearing. This is a requirement of the City Charter. The City Charter Section 1009 states "The City Council may waive any defects in any bid to the extent it finds at a public hearing held for that purpose that it is necessary to do so for the benefit of the public." Consistent with good purchasing practices, and applicable case law, Staff's long-standing pattern and practice in this area has been only to recommend this type of waiver when a bid defect is minor, and of a type that does not give the subject bidder an unfair advantage over other bidders. Copp's defect qualifies in this regard.

An additional Staff recommendation is for the City Council to waive the staff level contract change order/contingency limits contained in City Council Policy No. 574-01. By its terms, this policy allows the Director of Public Works to authorize a maximum cumulative change order(s) amount of \$73,000 plus 5% of the original contract over \$1,000,000 without City Council approval. Based on the contract amount, the maximum aggregate contract increase that may be approved by the Director of Public Works under Policy No. 574-01 is \$113,628.60. The proposed resolution would increase the Director of Public Works' cumulative change order authority to approve change orders, as necessary, up to the 15% contingency amount of \$271,885.80, which is an increase of \$158,257.20 over Policy No. 574-01.

Increasing the contingency funds will allow staff to continue the project without delay should unforeseen circumstances resulting in increased project costs arise during the course of construction, as well as make adjustments to bid item quantities. Unforeseen conditions include such items as utility conflicts, hazardous materials, unexpected underground conflicts, etc. Any remaining unused contingency funds will be returned to the project fund balance.

Disclosure Statement

Attachment 9 is a copy of the Contractor's Disclosure Statement.

Wage Statement

The source of funding for this project is CalRecycle Grant funds and Gas Tax. Contractors bidding this project are not required to pay prevailing wages to persons employed by them for the work under this project. Disadvantaged

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businesses were encouraged to bid in the Notice Contractors for various trade publications.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council and has found no property holdings within 500 feet of the boundaries of the properties which are the subject of this action. Staff is not independently aware, nor has staff been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The goal of the "Pavement Minor Rehabilitation FY13/14 (Rubberized Pavement Grant Program - Chip Seal) (STL397)" project is to support the Strong and Secure Neighborhood strategy identified in the City's Strategic Plan. The maintenance and rehabilitation of public infrastructure is a key City function in providing a safe and efficient roadway system for residents, businesses and visitors alike.

CURRENT YEAR FISCAL IMPACT

The following is a summary of anticipated project costs:

FUNDS REQUIRED FOR CONSTRUCTION	
A. Contract Amount	\$1,812,572.00
B. Contingencies (Approx. 15%)	\$ 271,885.80
C. Staff Time, Materials Testing, etc. (App	\$ 271,885.80
CONSTRUCTION TOTAL	\$2,356,343.60

FUNDING SOURCES (ROUNDED)	
A. CalRecycle Grant	\$250,000
B. STL397 (Gas Tax Funds)	\$1,672,245
C. STL383 (Gas Tax Funds)	\$ 434,098
TOTAL	\$2,356,343

The City will be reimbursed approximately \$250,000 from the CalRecycle grant after construction of this project. There is no additional impact to the Gas Tax fund as sufficient funding, a total of \$434,098, is being transferred from STL383 (Prop 42 Pavement Rehabilitation FY2011-12) to STL397 (Pavement Minor Rehabilitation FY13/14) to cover construction and staff costs associated with STL397 within the Gas Tax Fund. There is no direct impact to the General Fund for this project.

ONGOING FISCAL IMPACT

Upon completion of the project, the improvements will require only routine City street maintenance. Since the improvements are anticipated to increase the life of the streets included, there should be a positive long term fiscal impact.

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