

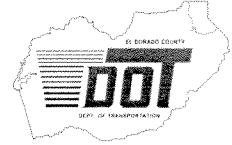


CONSTRUCTION DIVISION
2441 Headington Road
Placerville CA 95667
Phone: (530) 642-4987
Fax: (530) 295-2655

JAMES W. WARE, P.E.
Director of Transportation

Internet Web Site:
<http://edcgov.us/dot>

MAIN OFFICE
2850 Fairlane Court
Placerville CA 95667
Phone: (530) 621-5900
Fax: (530) 626-0387



December 6, 2011

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Agenda Title: DOT 12/13/11 Sawmill 2A Bike Path and Erosion Control Project Contract Award, Legistar # 10-1146

Meeting Date: December 13, 2011

Dear Members of the Board:

Department of Transportation recommending the Board take the following actions regarding the Sawmill 2A Bike Path and Erosion Control Project (Contract No. PW 10-30557, CIP No. 95165):

- 1) Find V&C Construction, Inc.'s (V&C) bid non-responsive for using correction fluid in its proposal, failing to submit an Underutilized Disadvantaged Business Enterprise (UDBE) Commitment form, and failing to demonstrate a good faith effort to meet the UDBE goal;
- 2) Find West Coast Asphalt Maintenance, Inc.'s (WCAM) bid non-responsive for failure to submit its Subcontractor Listing with its bid;
- 3) Find that in accordance with Public Contract Code Section 4106 that Don Garcia Excavating and Paving, Inc. must self-perform Bid Item #56 "Removable Bollard";
- 4) Award the Construction Contract to Don Garcia Excavating and Paving, Inc. who submitted the lowest responsive, responsible bid of \$842,260;
- 5) Authorize the Chair to sign the Construction Contract, subject to review and approval of the final Contract Documents by County Counsel and Risk Management;
- 6) Authorize the Director of Transportation to execute Contract Change Orders consistent with the Public Contract Code limits, provided the cumulative total of all Contract Change Orders is within the funding limits for the Project; and
- 7) Authorize the Director of Transportation to sign an Escrow Agreement, if requested by the Contractor and in accordance with Public Contract Code Section 22300, for the purpose of holding Contract retention funds. (Est. Time: 10 Min.)

Background:

On October 11, 2011 the Board adopted and approved the Plans and Specifications and authorized advertisement for construction bids for the Sawmill 2A Bike Path and Erosion Control Project (Project) with the bid opening scheduled for November 7, 2011. The advertisement period was extended to comply with the federal requirements for the 30 calendar day bid advertisement period which postponed the bid opening date to November 16, 2011.

Reason for Recommendation:

The Department of Transportation (Department) opened bids on November 16, 2011. Eight bids were received ranging from \$700,117.05 to \$1,172,914.75. The Engineer's Estimate is \$754,976.

Award and Sign Construction Contract with Lowest Responsive, Responsible Bidder:

Find V&C's bid non-responsive for using correction fluid in its proposal, failing to submit an UDBE Commitment form, and failing to demonstrate a good faith effort to meet the UDBE goal

V&C submitted a bid of \$700,117.05. V&C used correction fluid in its proposal pay items and bid price schedule as well as in its Subcontractor Listing. Page P-1 of the proposal states that bid proposals with pencil, erasures, overwrites, or use of correction fluid or tape will be rejected. In order to avoid question as to who made any changes to a bid, the Department includes in these instructions in the proposal section of the Contract Documents.

V&C also did not submit an UDBE Commitment form committing to meet the 5.89% UDBE goal, and V&C did not demonstrate a good faith effort to meet the goal. Therefore the Department recommends that the Board find V&C's bid non-responsive.

Find WCAM's bid non-responsive for failure to submit its Subcontractor Listing with its bid

On November 22, 2011 following the Department's review of the UDBE information, the Department issued the All Bidders Letter notifying bidders of the Department's intent to recommend award of the Project to the third lowest bidder Don Garcia Excavating and Paving, Inc. (Garcia) as having submitted the lowest responsive, responsible bid and explaining why the Department intended to recommend that the Board find the first and second lowest bidders' bids non-responsive.

On December 2, 2011 the Department received via fax and email a response to the All Bidders Letter from WCAM protesting the Department's contention that WCAM did not comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code 4100 et seq) because it did not submit its Subcontractor Listing with its bid and that all subsequent evidence submitted by WCAM indicated that WCAM intended to subcontract more than \$10,000. The Department responded on December 2, 2011 to WCAM's first protest letter. WCAM immediately submitted a second protest letter to which the Department immediately responded. A more thorough discussion of the bid protests can be found in the attached copies of WCAM's letters and the Department's responses. On December 6, 2011 WCAM sent an email withdrawing its protest. A copy of WCAM's email is attached.

In summary, Public Contract Code (PCC) 4104 requires submittal of the Subcontractor Listing form with the bidder's bid proposal for all work that will be subcontracted in excess of 0.5% of the total bid or \$10,000 whichever is greater. The information on the form submitted with the bidder's bid proposal must include the name and location of business of

each subcontractor and the portion of work that will be done by each subcontractor. WCAM did not comply with these requirements and submitted a Subcontractor Listing spreadsheet the day after the bid opening indicating that it intended to subcontract greater than \$10,000. WCAM's bid is \$840,450.25.

The Department recommends that the Board find WCAM's bid non-responsive for failure to submit its Subcontractor Listing with its bid.

Find that in accordance with PCC Section 4106 that Garcia must self-perform Bid Item #56 "Removable Bollard" and Recommend Award of the Construction Contract to Garcia

Garcia showed in its Subcontractor Listing form that 100% of Bid Item #56 "Removable Bollard" would be performed by two separate subcontractors. PCC Section 4106 states that if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid or \$10,000, whichever is greater, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself.

The Department recommends that the Board find that Garcia must self-perform Bid Item #56 or be subject to the penalties described in PCC 4110. Garcia bid \$1,200 for Bid Item #56, the work associated with this item is not specialty work, and can be performed by Garcia.

Garcia submitted the third lowest bid in the amount of \$842,260. Although Garcia's bid is \$87,284 or 11.5% greater than the Engineer's Estimate, there are sufficient funds available. The Project construction will likely span Fiscal Years 11-12 and 12-13 since the Department intends to issue a Notice to Proceed with construction in late spring or early summer of 2012. The Project's direct construction costs will not exceed the anticipated proportionate share of the Fiscal Years 11-12 and 12-13 appropriations for the direct construction cost line items.

Garcia submitted a UDBE Commitment form showing a UDBE commitment of 5.9%, which slightly exceeds the 5.89% goal. The Department has confirmed that the UDBE listed is certified and Garcia provided a quote from the UDBE as evidence that the UDBE intends to participate.

The Department recommends that the contract for the Project be awarded to Garcia as having been the lowest responsive, responsible bidder.

Request for Additional Contract Change Order (CCO) Authority:

PCC Section 20142 allows the Board of Supervisors to authorize the County Engineer or other County officer to order changes in the work of a public contract. The Department is requesting that the Director's authority be increased pursuant to the limits set in the PCC, which for this Contract amounts to \$54,613. This authority is requested provided the cumulative cost of all CCOs is maintained within the funding limits for the Project.

Authorize Director of Transportation to Sign Escrow Agreement:

Pursuant to Special Provisions Section 5-1.20, "Payment of Withheld Funds," of the Contract Documents, the Department will retain ten percent (10%) of the value of work done from each Contractor payment (excluding mobilization payments) as security for the fulfillment of the Contract. Alternatively, PCC Section 22300 provides that the Contractor may request that payment of retentions earned be made directly to an Escrow Agent. The Contractor will receive interest earned on the investment.

In accordance with these provisions, the Contractor may request in writing that the County make payment of retention funds directly into an escrow account, which would necessitate an Escrow Agreement. To help expedite this process if requested by the Contractor, the Department requests that the Board authorize the Director of Transportation to execute the Escrow Agreement. Upon satisfactory completion of portions of the Contract and upon written notification from the Director of Transportation, the Contractor will receive incremental releases from the Escrow Agent of retention paid into the account and any interest earned thereon. A portion of the retention and interest will be retained in the escrow account until thirty-five days after the recordation of the Notice of Acceptance of the Contract at which time these funds will be released to the Contractor.

Action to be taken following Board approval:

1. Upon approval by County Counsel and Risk Management, the Department will forward the Construction Contract, together with the required bonds and insurance, and the approved Contract Routing Sheet to the Clerk of the Board for the Board Chair's signature.
2. The Clerk of the Board will forward the fully executed Construction Contract to the Department for further processing.

Sincerely,



Robert S. Slater, P.E.
Assistant Director of Transportation

Attachments