



Legislation Text

File #: 18-0983, **Version:** 1

Community Development Services, Department of Transportation, recommending the Board consider the following pertaining to the New York Creek Trail East - Phase 2 Project, Contract PW 15-31108, CIP 72308/36109008:

- 1) Reject the bid protest filed by McCuen Construction, Inc.;
- 2) Award the Construction Contract to Pacific Infrastructure Construction, LLC who submitted the lowest responsive, responsible bid;
- 3) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management; and
- 4) Authorize the Community Development Services, Department of Transportation Director 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: 20 Min.)

FUNDING: Congestion Mitigation and Air Quality Program (99.79%) (Federal Funds), and Accumulative Capital Outlay (.21%) (ACO Funds).

DEPARTMENT RECOMMENDATION

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

On Wednesday, June 27, 2018, the Community Development Services, Department of Transportation (Transportation), opened bids for the New York Creek Trail East - Phase 2 Project (Project). Seven bids were received ranging from \$976,862.50 to \$1,684,557.00.

Transportation issued the All Bidders Letter on July 9, 2018, notifying the bidders of the recommendation to the Board for award and initiating the five-day bid protest period. The bid protest period ended at 5:30 p.m. on Tuesday, July 17, 2018 with one protest filed by McCuen Construction, Inc. (McCuen).

The protest filed by McCuen claimed the following:

- 1) The prefabricated Bridge Company (Big R Bridge) that Pacific Infrastructure Construction, Inc. (PCI) used does not have an AWS Certified Fabricator Certification as required by the Specs.
- 2) Pacific Infrastructure Construction, LLC. (PCI) may have falsely submitted its Public Contract Code Section 10162 Questionnaire with its bid because Jay Zoellner, as former President of Nehemiah Construction, Inc. and current President of Pacific Infrastructure was terminated from a Caltrans Project due to a violation of law and non-performance.

Transportation, along with County Counsel determined McCuen's protest had no merit because of the following reasons:

1. PCI met the requirements stated in the 3rd paragraph of section 55-4.01C and the Proposal. AWS Certification is not required until 10 days after the Notice of Award.
2. McCuen did not provide sufficient information to show that PCI, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, has ever been

disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation.

Pacific Infrastructure Construction, LLC submitted the lowest responsive, responsible bid in the amount of \$976,862.50. Transportation recommends award of the Construction Contract to Pacific Infrastructure Construction, LLC who submitted the lowest responsive, responsible bid.

Authorize the Transportation Director to Sign Escrow Agreement:

Pursuant to Special Provisions Section 9-1.16F, "Retentions", Transportation will retain five percent (5%) of the value of work done from each Contractor payment (excluding mobilization payments) as security for the fulfillment of the Contract. Alternatively, Public Contract Code Section 22300 provides that the Contractor may request that payment of retentions held be made directly to an Escrow Agent. The Contractor will receive the 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, Transportation 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 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 (35) days after the recordation of the Notice of Acceptance of the Contract at which time, upon written notification, these funds will be released to the Contractor.

Contract Change Orders (CCOs):

In any contract there is a need to be able to make changes and the CCO process facilitates the ability to make necessary changes when needed within a contract.

Contingency CCOs

With construction contracts, there is an expectation that unanticipated changes will be encountered once construction begins. To prepare for this, a 10% contingency budget is set aside. The contingency budget is \$97,686.25. PCC Section 20142 and Resolution 102-2012 authorize the Director of Transportation to execute individual CCOs, the maximum value of which is based on the original contract amount with a not-to-exceed limit of \$61,343.13. This authority is also for a cumulative total of contingency CCOs not to exceed 10% of the original Contract value.

DISCUSSION / BACKGROUND

The Project consists of construction of an 8-foot wide (concrete) Class I bike path with 2-foot (aggregate base) shoulders and a pre-fabricated bridge (approximately 12 feet wide and 110 feet long) over New York Creek. Construction also includes tree removal, clearing, grubbing, excavating, grading, material hauling, compacting, storm drainage improvements, signs, bridge abutments, wing walls, railings, curb replacement, asphalt replacement, pavement marking and fences.

Due to federal funding, both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance are required. A CEQA Notice of Determination / Mitigated Negative Declaration was filed on January 26, 2012 and the Initial Study Mitigated Negative Declaration was approved by the Board on January 24, 2012 (Item 28). A California Department of

Transportation (Caltrans) NEPA Categorical Exemption/Categorical Exclusion Determination was issued on February 1, 2012 and re-approved on July 13, 2015.

All required environmental permits have been obtained for the Project.

Federal CMAQ funds are approved for the construction phase of this Project. The Contract Documents include all required federal provisions and incorporate the current Caltrans Disadvantaged Business Enterprise (DBE) requirements. The DBE goal is 14%.

As a federally funded Project, the Contract Documents incorporate the current federal Disadvantaged Business Enterprise (DBE) requirements. The DBE goal is 14%.

The Board approved this Project for advertisement at the June 5, 2018 Board of Supervisors meeting (Legistar #18-0730).

ALTERNATIVES

- 1) Do not award contract and direct Transportation to re-advertise for construction bids.
- 2) Cancel the Project. Note: The Board has approved the Project previously and the County may not be reimbursed for funds expended to date.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel and Risk Management have reviewed and approved the Contract Documents.

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

The estimate for the construction phase of the Project is \$1,200,000.00 and includes an estimated bid of \$976,862.50; construction management, survey, materials testing and design support during construction totaling \$125,451.25; and contingency of \$97,686.25.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) Upon approval by County Counsel and Risk Management, Transportation will forward two (2) originals of the Construction Contract, with the required bonds and the approved Contract Routing Sheet, to the Clerk for securing the Chair's signature.
- 2) Clerk will forward one (1) fully executed Construction Contract to Transportation, attention of Brian Franklin, Office Engineer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

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