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County of El Dorado

Legislation Details (With Text)

File #:	18-0760 **Version:** 1		
Type:	Agenda Item	**Status:**	Approved
File created:	5/3/2018	**In control:**	Board of Supervisors
On agenda:	6/12/2018	**Final action:**	6/12/2018

Title: Community Development Services, Department of Transportation, recommending the Board take the following actions pertaining to the Francisco Drive Americans with Disabilities Act Improvements Project, PW 18-31218, CIP 71363, Contract 2773:
1) Reject the bid submitted by the lowest bidder, B&M Builders, Inc., as being non-responsive for failure to meet the Disadvantaged Business Enterprise goal and failure to demonstrate a Good Faith Effort to meet the goal;
2) Reject the bid submitted by the 2nd lowest bidder, Central Valley Engineering & Asphalt, Inc., as being non-responsive for failure to meet the Disadvantaged Business Enterprise goal and failure to demonstrate a Good Faith Effort to meet the goal;
3) Award the Construction Contract to the 3rd lowest responsive, responsible bidder, MKD Construction, Inc., who submitted the lowest responsive, responsible bid of $288,888.00;
4) Approve the increase in cost to the project from the previously approved CIP amount to the bid amount;
5) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management; and
6) 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.

FUNDING: Regional Surface Transportation Program - Urban Surface Transportation Block Grant Program (83%) and Regional Surface Transportation Program Exchange Funds - Caltrans (17%). (Federal Funds)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Addendum #1, 2. B - Bid Summary, 3. Executed Agreement 2773

Date	Ver.	Action By	Action	Result
6/12/2018	1	Board of Supervisors	Approved	Pass

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amount;
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DEPARTMENT RECOMMENDATION

On May 22, 2018, Community Development Services (CDS), Department of Transportation (Transportation) opened bids for the Francisco Drive Americans with Disabilities Act Improvements Project (Project), Capital Improvement Program (CIP) 71363. Three bids were received ranging from $225,204.10 to $288,888.00.

B&M Builders, Inc. (B&M) submitted the lowest bid, but failed to meet the Disadvantaged Business Enterprise (DBE) goal and failed to demonstrate an adequate Good Faith Effort (GFE) toward meeting the goal. Central Valley Engineering & Asphalt, Inc. (Central Valley) submitted the lowest bid, but failed to meet the Disadvantaged Business Enterprise (DBE) goal and failed to demonstrate an adequate Good Faith Effort (GFE) toward meeting the goal. Due to the first and second bids being non-responsive, Transportation recommends rejecting the bids submitted by B&M and Central Valley and awarding the Contract to the third lowest bidder, MKD Construction, Inc. (MKD), who submitted the lowest responsive, responsible bid.

Award and Sign Construction Contract with Lowest Responsive, Responsible Bidder:
The DBE goal for the Project is 10%. Per the Contract Documents, if the top three (3) bidders did not submit their DBE information with their bid, they were required to submit this information by 4:00 P.M. on the fifth business day after the bid opening, which for this Project was May 30, 2018. DBE information was requested from all bidders at the bid opening.

The low bidder, B&M, submitted a DBE Commitment form and GFE with their bid. Their DBE Commitment form shows they committed to a DBE goal of 4.13%. Transportation reviewed B&M's DBE Commitment form and GFE submittal based on the DBE regulations in 49 CFR 26 and Appendix A to 49 CFR 26 and found that B&M failed to both meet the goal and demonstrate an adequate GFE toward meeting the goal for the following reasons:

- B&M did not determine with certainty if solicited firms were interested in bidding.
- B&M did not solicit an adequate number of potential DBE firms.
- B&M did not make it clear which items of work they were soliciting for.
- B&M could have made additional reasonable efforts to meet the goal.
- The third low bidder exceeded the goal.

On June 6, 2018, in conformance with 49 CFR 26.53, B&M was provided the opportunity to file for an administrative reconsideration meeting, where another party not involved in the initial review evaluates the GFEs. B&M did not exercise this right.

The second low bidder, Central Valley, submitted a DBE Commitment form and GFE on May 30, 2018. Their DBE Commitment form shows they committed to a DBE goal of 2.43%. Transportation

reviewed Central Valley's DBE Commitment form and GFE submittal based on the DBE regulations in 49 CFR 26 and Appendix A to 49 CFR 26 and found that Central Valley failed to both meet the goal and demonstrate an adequate GFE toward meeting the goal for the following reasons:

- Central Valley did not determine with certainty if several solicited firms were interested in bidding.
- Central Valley did not solicit an adequate number of potential DBE firms.
- Central Valley could have made additional reasonable efforts to meet the goal.
- The third low bidder exceeded the goal.

On June 7, 2018, in conformance with 49 CFR 26.53, Central Valley was provided the opportunity to file for an administrative reconsideration meeting, where another party not involved in the initial review evaluates the GFEs. Central Valley did not exercise this right.

MKD submitted a DBE Commitment form with their bid. The DBE Commitment form shows that MKD committed to a DBE goal of 25.8%. Transportation has reviewed MKD's DBE Commitment form submittal and finds that the firms listed are certified DBEs under the California Unified Certification Program and meet the criteria for a DBE; that MKD provided sufficient written confirmation from each DBE firm that each is participating in the Contract; and, that MKD has committed to exceeding the Contract DBE goal.

Transportation issued the All Bidders Letter on Thursday, June 7, 2018, notifying bidders of the recommendation to the Board for award of the contract to MKD and initiating the two-day bid protest period. The bid protest period ended at 12:00 P.M. on Monday, June 11, 2018, with no protests filed.

MKD submitted the lowest responsive, responsible bid in the amount of $288,888.00. Transportation recommends award of the Construction Contract to MKD who submitted the lowest responsive, responsible bid.

Approve Cost Increase to CIP:
Transportation proposes the following budget changes to the 2018 CIP:

1) Move $45,000 from the Right of Way phase to Direct Construction Costs.

2) Add $59,776 Regional Surface Transportation Program (RSTP) Exchange Funds - Caltrans to Direct Construction Costs.

3) Add $10,224 RSTP Exchange Funds - Caltrans to Construction Management - Staff.

The increased costs are due to needing to reject the first and second low bids.

Authorize the Director of Transportation (Transportation Director) to Sign Escrow Agreement:
Pursuant to Special Provisions Section 9-1.16F, "Retentions," Transportation will retain 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 (PCC) 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 to execute the Escrow Agreement. Upon satisfactory completion of portions of the Contract and upon written notification from the Director, the Contractor will receive incremental releases from the Escrow Agent paid into the Escrow Account and any interest earned thereon. A portion of the retention and interest will be retained in the Escrow Account until 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 budget for contingencies on this Contract is $28,888.00. PCC Section 20142 and County Resolution 102-2012 authorize the Director to execute individual CCOs, the maximum value of which is based on the original contract amount with a not-to-exceed limit of $26,944.40 for this Contract. This authority is also for a cumulative total of Contingency CCOs not to exceed 10% of the original Contract value.

DISCUSSION / BACKGROUND
The purpose of this Project is to add ADA ramps and revised cross walk layouts at the intersections of Francisco Drive and Schooner Drive and Francisco Drive and Kensington Drive. The Project consists of constructing new ADA ramps, concrete removal, hot mix asphalt paving, striping, and sign relocation at the intersections previously listed. Other items or details not mentioned above, that are required by the plans, Standard Plans, Standard Specifications, or the Special Provisions must be performed, constructed or installed.

Transportation has received several requests to complete the proposed improvements that are located directly in front of Marina Village Middle School and are used by a large volume of school children and other pedestrians. This item requests approval and authorization and is an urgent matter in order for Transportation to have adequate time to advertise and award a construction contract. Construction work is scheduled to begin when the school closes for summer break and be completed prior to the beginning of the next school year.

In order to construct the improvements, Transportation anticipates the need to close Francisco Drive between Kensington Drive and Templeton Drive. This road closure will be for the purpose of cold planing, placing hot mix asphalt, striping and pavement markings at the intersection of Francisco Drive and Schooner Drive. The closure periods will be one (1) 24 hour closure for the cold planing and hot mix asphalt work and four (4) hours for striping and pavement marking.

Detour notifications will be posted a minimum of one (1) week in advance of the closure. Access for local residents and visitors, as well as emergency personnel and law enforcement, will be through a detour utilizing Sheffield Drive, Lakehills Drive, and Green Valley Road. Transportation will notify the public of this road closure via the County website, a press release and changeable message signs at the site. A Road Closure Authorization was signed by the Director of Transportation on March 26, 2018 under Resolution 021-2018, which was passed and adopted by the Board on March 6, 2018 (Item 23).

A Notice of Exemption, in accordance with the California Environmental Quality Act, was filed on December 12, 2017. A California Department of Transportation (Caltrans) National Environmental Policy Act Categorical Exemption/Categorical Exclusion Determination was issued on February 13, 2018.

No environmental permits or right of way were required for the Project. The right of way certification was accepted by Caltrans on March 6, 2018.

As a federally funded Project, the Contract Documents incorporate the current Caltrans Disadvantaged Business Enterprise (DBE) requirements. The DBE goal is 10%.

This Project was approved for advertisement on April 24, 2018 (Item 21).

ALTERNATIVES
1) The Board could choose to not award the contract and direct Transportation to re-advertise for construction bids.
2) The Board could choose to cancel the Project. Note: The Board has previously approved the Project and the County would not be reimbursed for the Project work completed to date.

OTHER DEPARTMENT / AGENCY INVOLVEMENT
County Counsel and Risk Management have reviewed and approved the Plans and Contract Documents.

CAO RECOMMENDATION / COMMENTS
It is recommended that the Board approve this item.

FINANCIAL IMPACT
The Estimate for the construction phase of the Project is $360,000.00 which includes a bid of $288,888.00; construction management, survey, materials testing and design support during construction totaling $42,224.00; and contingency of $28,888.00.

CLERK OF THE BOARD FOLLOW UP ACTIONS
1) Upon approval by County Counsel and Risk Management, Transportation will forward the Construction Contract, together with the required bonds and insurance, and the approved Contract Routing Sheet, to the Clerk for securing the Chair's signature.
2) Clerk will forward the fully executed Construction Contract to CDS Transportation, attention of Brian Franklin, Office Engineer, for further processing.

STRATEGIC PLAN COMPONENT
Infrastructure

CONTACT
Rafael Martinez, Director
Community Development Services, Department of Transportation