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Title: Department of Transportation recommending the Board take the following actions pertaining to the Henningsen Lotus Park & Latrobe Railroad Storm Damage Repairs Project, CIP 99455/36209026 & 99454/36209025, Contract 4025:

- 1) Award the Construction Contract for Base Bid Schedule A (Henningsen Lotus Park Storm Damage Repairs) to Steelhead Constructors, Inc. who was the lowest responsive, responsible bidder;
- 2) Approve and authorize the Chair to sign the Construction Contract, subject to review and approval by County Counsel and Risk Management;
- 3) 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; and
- 4) Direct that the funding for this project be included in the FY 2020-21 Adopted Budget.

FUNDING: HLP project : \$46,600 HLP Trust - Park Fees, \$263,507 FEMA/Cal OES. Latrobe project: \$25,000 SPTC JPA funds, \$29,745 Ponderosa Quimby Funds, ACO \$38,255, FEMA/Cal OES \$182,876 (still pending approval).

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Addendum No. 1, 2. B - Addendum No. 2, 3. C - Bid Summary, 4. D - Article 29, 5. Executed Agreement 4025

Date	Ver.	Action By	Action	Result
5/19/2020	1	Board of Supervisors	Approved	Pass

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DEPARTMENT RECOMMENDATION

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

On Friday, January 24, 2020 at 2:00 p.m., Department of Transportation (Transportation) opened bids

for Henningsen Lotus Park & Latrobe Railroad Storm Damage Repairs Project (Project). Eight bids were received ranging from \$468,786 to \$807,854 for the combination of Henningsen Lotus Park Base Bid (Schedule A) and Latrobe Railroad Additive Alternate (Schedule B).

Transportation issued the All Bidders Letter on Friday, January 31, 2020, notifying the bidders of the recommendation to the Board for award of the contract to Steelhead Constructors, Inc. (Steelhead) and initiating the bid protest period. The bid protest period ended at 4:00 P.M. on Friday, February 7, 2020, with no protests filed.

Authorize the Director of 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 (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 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. PCC Section 20142 and 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 \$24,809 for this Project. 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 two (2) projects that have been combined by Transportation into one (1) proposed construction contract due to similar scopes of work. The purpose of the Project is to repair erosion damages that were caused by above average storm durations and intensities in the winter of 2017 to two (2) locations managed by the Parks, Trails, and River Management. In January 2019, Transportation's Fairlane Engineering Unit took over the delivery of the two (2) projects due to approaching Federal Emergency Management Agency (FEMA) funding deadlines. Transportation was able to obtain FEMA approval for additional time extensions and reimbursement for eligible Project engineering costs. These are the last of the emergency projects from 2017.

The Henningsen Lotus Park Base Bid (Schedule A) portion of the Project includes streambank

restoration by placing rock slope protection (RSP) within storm damage areas located above the ordinary high water line/mark. Additionally, this restoration project involves shoulder backing and placing additional rock material adjacent to walkways in damaged areas above the RSP slope. The Latrobe Railroad Additive Alternate (Schedule B) portion of the Project consists of reconstruction and rock slope protection armoring of approximately 270 feet of railroad embankment, including placement of ballast and track reconstruction.

Due to the potential for federal funding, both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance are required. The CEQA Notice of Exemption was filed on May 20, 2019. FEMA has neither provided a Record of Environmental Consideration nor issued an email stating NEPA Categorical Exclusion is authorized. However, FEMA has advised that waiting for the written NEPA clearance is not required due to time constraints. FEMA has advised to make sure that permits and permit requirements are received and complied with as needed.

The Army Corps of Engineers has confirmed that both projects can be completed without any permits under Section 404 since neither project impacts Waters of the U.S.; therefore, Section 106 consultation is not required. A California Fish & Wildlife Streambed Alteration Agreement in accordance with Section 1600 of Fish & Game Code has been acquired for the Henningsen Lotus Park site. The Latrobe Railroad site exists within the Sacramento Placerville Transportation Corridor Joint Powers Authority of which the County has land rights. Acquisitions of Temporary Construction Easement and Slope/Drainage Easement from APNs 087-260-18, 087-260-21, and 087-260-19 have been completed.

As a federally funded Project, the Contract Documents have been federalized and incorporate the current Caltrans Disadvantaged Business Enterprise (DBE) requirements. The DBE goal is 7%.

No utility conflicts are known to exist within the limits of improvements at each site.

Transportation completed the environmental clearance, permits, plans, specifications, and estimates necessary to advertise the Project for construction bids. These documents, along with supporting engineering analysis, were submitted to the California Office of Emergency Services (CalOES) / FEMA with the request for approval to advertise for construction. FEMA directed Transportation to advertise Schedule A and Schedule B and then submit the Schedule B portion of the bid to FEMA for review and consideration of funding approval. The Project was advertised on December 11, 2019 and Transportation opened bids on January 24, 2020. Schedule B was then sent to FEMA for review and funding authorization. The Contract Documents allowed for 120 calendar days from bid opening to the Board's award of the Project. This time frame was increased 60 days from Transportation's standard 60 days specified to allow time for FEMA to review the bids and authorize funding. Due to COVID-19 efforts by FEMA, the review and authorization of funding was not completed within the 120 calendar days specified in the Contract Documents.

In an effort to extend the option to complete the Schedule B portion of work while FEMA completes their review and consideration for funding approval, Transportation discussed several non-standard options for recommending award of the Project. Subsequent to consultation and concurrence with County Counsel, Transportation proposes that the Board award both the Schedule A and Schedule B work at this time. Schedule B portion of the award was proposed to be tentative and could be cancelled via CCO with no associated costs if funding approval was not received from FEMA within twenty (20) working days from the date of the Notice to Proceed for the Schedule A work. County Counsel agreed with this non-standard method of award if it was agreeable to the Contractor.

Unfortunately, the Contractor was not willing to waive their rights to the costs of inefficiencies if Schedule B work was cancelled and preferred to be awarded Base Bid Schedule A work only in accordance with the Contract.

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. Canceling the Project may include the consequence of reimbursing all federal funding received to date.

PRIOR BOARD ACTION

The Project was approved for advertisement on December 10, 2019, Legistar 19-0998, Item 31.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel and Risk Management reviewed and approved the Plans and Contract Documents on July 5, 2019.

CAO RECOMMENDATION / COMMENTS

It is recommended that the Board approve this item.

FINANCIAL IMPACT

The total estimated cost for Schedule A and Schedule B construction is \$585,983, which includes a bid of \$468,786; construction management, survey, materials testing, and design support during construction totaling \$70,318; and contingencies of \$46,879.

The HLP project (Schedule A) is budgeted at \$310,107 and includes previously approved FEMA/Cal OES funding as well as a match from the HLP trust/park fees in the amount of \$46,600.

The Latrobe project (Schedule B) is budgeted at \$275,876 and includes SPTC JPA funding of \$25,000, Ponderosa Quimby fees of \$29,745, ACO funds of \$38,255 with the remainder being funded with FEMA/Cal OES funding which still has not been approved. Alternate funding has not been identified for this project is the project is not approved by FEMA.

If FEMA funding for Schedule B is not authorized, the Project duration will be reduced from sixty (60) working days to twenty (20) working days. The total estimated cost for Schedule A construction only is \$310,107, which includes Schedule A bid of \$248,085; construction management, survey, materials testing, and design support during construction totaling \$37,213; and contingencies of \$24,809.

Funding for these projects was not carried over into the FY 2020-21 budget. If approved, the department will include the necessary funding, appropriations, and transfers between departments in the recommendation presented with the FY 2020-21 Adopted Budget.

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, together with the required bonds and insurance, and the approved Contract Routing Sheet to the Clerk for the Chair's signature.
- 2) The Clerk will forward one (1) fully executed Construction Contract to Transportation, attention of Brian Franklin, Office Engineer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

Rafael Martinez, Director

Department of Transportation