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APRIL 12, 2005

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AWARD CONTRACT TO UNDERGROUND CONSTRUCTION COMPANY, INC., IN AN AMOUNT NOT TO EXCEED \$9,282,964.45 FOR CONSTRUCTION OF UNDERGROUND UTILITY DISTRICT NO. 233, ON MACARTHUR BOULEVARD (FROM 73RD AVENUE TO THE SAN LEANDRO CITY LINE) (“DISTRICT”), \$1,673,000.00 TO BE PAID BY THE CITY OF OAKLAND AND THE REMAINDER (TOTALING \$7,609,942) TO BE PAID BY PG&E, SBC AND COMCAST); OR, ALTERNATIVELY, WAIVING FURTHER BIDDING REQUIREMENTS AND AUTHORIZING THE CITY ADMINISTRATOR TO REJECT ALL BIDS, AND NEGOTIATE, AWARD AND EXECUTE A CONTRACT TO CONSTRUCT THE DISTRICT FOR AN AMOUNT WITHIN EACH ENTITY’S BUDGET STARTING WITH THE LOWEST, RESPONSIBLE BIDDER, WITHOUT RETURN TO COUNCIL

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Proposed Resolution and Agenda Report. In making our analysis, we met with Agency staff and also obtained additional information and clarification.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only two (2) weeks for us to plan, perform and report on our analysis. Due to this time constraint, we did not verify data contained in the Proposed Resolution and Agenda Report.

SUMMARY

Underground Utility District No. 233 involves removing overhead and surface utility equipment such as telephone lines and electricity boxes. Replacement equipment will be put into underground trenches and covered. The scope of the work encompasses the length of Macarthur Boulevard between 73rd Avenue and the city line with San Leandro. Enhanced pedestrian street lights will also be installed along this corridor as part of the project. The project participants include the City, SBC, Comcast Corporation and PG&E Company. The City will be the lead coordinator. The Proposed Resolution addresses the authorization to award a contract for the construction portion of the project.

FISCAL IMPACT

The Proposed Resolution presents two separate alternatives. The first alternative is to award the project contract to Underground Construction Company, Inc. as the responsible low bidder in a competitive bid process. The second is to authorize staff to reject the competitive bids and negotiate a contract directly with construction firms.

Alternative A: Competitive bid award

The project was put out to bid in May 2004, and Underground Construction Company emerged as the responsible low bidder. Approval of the contract award to Underground Construction was delayed due to several contracting issues the City needed to resolve with SBC, Comcast and PG&E.

The following table shows a breakdown of the estimated construction costs based on the bid price submitted by Underground Construction in June 2004. SBC, Comcast and PG&E are collectively described as the Companies and their costs are added together.

Item	City Share	Companies Share	
Installation of utility boxes	\$730,400	\$2,632,525	
Trench work	667,398	3,829,893	
Surface work	224,388	705,922	
Installation of conduits	50,836	311,797	
Panel conversion	-	453,719	
Estimated Totals	\$1,673,022	\$7,933,856	\$9,606,878

The total contract amount in the Proposed Resolution is less than the bid price as follows:

Bid price submitted by Underground Construction	\$9,606,878.45
Total contract amount stated in Proposed Resolution	<u>(9,282,964.45)</u>
	<u>\$323,914.00</u>

According to staff, Comcast elected to install some of their own equipment in the trench. The corresponding reduction in the scope of the construction work amounted to \$323,914 for Underground Construction.

Alternative B: Reject bids and negotiate

Staff requests authorization to reject bids and negotiate if Underground Construction does not keep their original bid price to the total contract amount of \$9,282,964.45.

The Agenda Report states the reasons for not rebidding the contract:

“Current market conditions indicate that implementation of another bid competition is not likely to result in an overall bid within the collective project budget of the City, PG&E, SBC and Comcast. It would be administratively burdensome, and needlessly and substantially delay the project to conduct another bid competition...” (page 7)

If Alternative B is selected, then

1. Staff is authorized to reject all the bids.
2. Staff is authorized to negotiate a contract (instead of rebidding – formally or informally).
3. Staff is authorized to award the contract without return to Council.

The Proposed Resolution does not state the maximum not to exceed dollar figure that staff is authorized to negotiate with firms for the contract.

If the contract is awarded through competitive bid to Underground Construction, the Proposed Resolution provides a cost breakdown for each entity:

“...the City, PG&E, SBC and Comcast will independently and separately pay for joint trench and their separate construction costs as follows: City of Oakland: \$1,673,022.00; PG&E: \$4,330,430.00; SBC: \$1,908,754.00; Comcast: \$1,370,758.45...” (page 2)

By contrast, the Proposed Resolution does not state the amounts each entity will contribute to the construction project if the contract is negotiated. The intent for the construction project is to have the City and the Companies enter the construction contract jointly as opposed to each

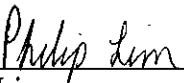
contracting with the construction firm separately. Accordingly, the City could pay a higher share of the construction costs through a negotiated contract than the cost breakdown provided in the preceding quote for the competitively bid contract. Staff responded that agreements are or will be in place such that construction costs in a negotiated contract will be shared among the City and the Companies roughly proportional to the cost breakdown for the competitively bid contract stated in the Proposed Resolution.

CONCLUSION


Before approving the Proposed Resolution, the Council should consider that the maximum not to exceed dollar amount staff can negotiate with firms for a contract is not stated.

Prepared by:

Issued by:



Philip Lim
Deputy City Auditor



Roland E. Smith, CPA, CFS
City Auditor

Report completion date:
April 5, 2005