CITY OF OAKLAND

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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Brooke A. Levin
Interim Director, PWA

SUBJECT: Supplemental Report:
Pedestrian Safety Improvement Project

DATE: November 13, 2013

City Administrator Approval Deanna Santana Date 11-13-13

COUNCIL DISTRICT: 1, 3, 5 and 6

RECOMMENDATION

Staff recommends that the City Council approve a resolution authorizing the award of a construction contract to McGuire & Hester, the lowest responsive and responsible bidder, for the construction of the Pedestrian Safety Improvement Project (C371810) in the amount of Five Hundred Forty-Three Thousand, Eighty-Six Dollars and Zero Cents ($543,086.00) in accordance with the project plans, specifications and contractor's bid and rejecting all other bids.

REASON FOR SUPPLEMENTAL

At the November 12, 2013 Public Works Committee (PWC) staff was directed to provide additional information and clarification regarding the past performance evaluation of the recommended contractor, McGuire & Hester. The following responses is provided below:

Question: What are the reasons the contractor, McGuire & Hester scored marginally in the evaluation completed in July 28, 2008?

Answer: McGuire & Hester scored marginally under "Work Performance" and Financial" areas for the following reasons:

a) When requested to provide signature on the attachments to submittals, the contractor failed to do so responsiveiy.
b) During some holidays and furlough days, the contractor left the site without cleaning the work site.
c) The foreman initially refused to remove big rocks from subgrade when requested to do so.
d) At some locations, the spacing of score lines on the sidewalk does not follow the specifications in the plan and no scour lines on some of the sidewalks.
e) In one occasion, the contractor's invoice submitted was for an incorrect amount.
f) On another occasion the contractor performed work that was different in scope than that which was agreed to.

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Question: What are the steps being taken so that McGuire & Hester would not score marginally if this contract is approved?

Answer: The purpose of the contractor evaluation form is to give the contractor feedback on their performance, and to improve in those areas that are marginal or unacceptable. Per the evaluation form:

> ***Contractors who receive an Unsatisfactory Overall Rating will be allowed the option of voluntarily refraining from bidding on any City of Oakland projects within one year...or of being categorized as non-responsible for any project the Contractor bids on for a period of one year...***

McGuire & Hester received a marginal rating in 3 out of 28 categories, but received an overall "Satisfactory" evaluation. Since that evaluation, performed in October 2010, McGuire & Hester was evaluated more recently for work performed in 2012/2013 ***(see Attachment A)***. They received an overall "Satisfactory" rating, with no "Marginal" or "Unsatisfactory" ratings, and two "Outstanding" ratings.

For questions regarding this report, please contact Ade Oluwasogo, Supervising Transportation Engineer, at (510) 238-6103.

Respectfully submitted,

BROOKE A. LEVIN
Interim Director, Public Work Agency

Reviewed by:
Wladimir Wlassowsky, P.E.
Transportation Services Division Manager

Prepared by:
Ade Oluwasogo, P.E.
Supervising Transportation Engineer
Transportation Services Division

Attachments

Attachment A – Schedule L-2

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Attachment A

Schedule L-2
City of Oakland
Public Works Agency
CONTRACTOR PERFORMANCE EVALUATION

Project Number/Title: P130191/Uptown Art Park Improvement Project

Work Order Number (if applicable): _____
Contractor: McGuire & Hester
Date of Notice to Proceed: 9/11/12

Date of Notice of Completion: 4/12/13

Date of Notice of Final Completion: _____

Contract Amount: $369,319.00

Evaluator Name and Title: Mario Milian, Civil Engineer

The City's Resident Engineer most familiar with the Contractor's performance must complete this evaluation and submit it to Manager, PWA Project Delivery Division, within 30 calendar days of the issuance of the Final Payment.

Whenever the Resident Engineer finds the Contractor is performing below Satisfactory for any category of the Evaluation, the Resident Engineer shall discuss the perceived performance shortfall at the periodic site meetings with the Contractor. An Interim Evaluation will be performed if at any time the Resident Engineer finds that the overall performance of a Contractor is Marginal or Unsatisfactory. An Interim Evaluation is required prior to issuance of a Final Evaluation Rating of Unsatisfactory. The Final Evaluation upon Final Completion of the project will supersede interim ratings.

The following list provides a basic set of evaluation criteria that will be applicable to all construction projects awarded by the City of Oakland that are greater than $50,000. Narrative responses are required to support any evaluation criteria that are rated as Marginal or Unsatisfactory, and must be attached to this evaluation. If a narrative response is required, indicate before each narrative the number of the question for which the response is being provided. Any available supporting documentation to justify any Marginal or Unsatisfactory ratings must also be attached.

If a criterion is rated Marginal or Unsatisfactory and the rating is caused by the performance of a subcontractor, the narrative will note this. The narrative will also note the General Contractor's effort to improve the subcontractor's performance.

ASSESSMENT GUIDELINES:

Outstanding (3 points)	Performance among the best level of achievement the City has experienced.
Satisfactory (2 points)	Performance met contractual requirements.
Marginal (1 point)	Performance barely met the lower range of the contractual requirements or performance only met contractual requirements after extensive corrective action was taken.
Unsatisfactory (0 points)	Performance did hot meet contractual requirements. The contractual performance being assessed reflected serious problems for which corrective actions were ineffective.

WORK PERFORMANCE

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
1	Did the Contractor perform all of the work with acceptable Quality and Workmanship?	☐	☐	☒	☐	☐
1a	If problems arose, did the Contractor provide solutions/coordinate with the designers and work proactively with the City to minimize impacts? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	☐	☐	☒	☐	☐
2	Was the work performed by the Contractor accurate and complete? If "Marginal or Unsatisfactory", explain on the attachment and provide documentation. Complete (2a) and (2b) below.	☐	☐	☒	☐	☐
2a	Were corrections requested? If "Yes", specify the date(s) and reason(s) for the correction(s). Provide documentation.			Yes ☒	No ☐	N/A ☐
2b	If corrections were requested, did the Contractor make the corrections requested? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	☐	☐	☒	☐	☐
3	Was the Contractor responsive to City staff s comments and concerns regarding the work performed or the work product delivered? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	☐	☐	☒	☐	☐
4	Were there other significant issues related to "Work Performance"? If Yes, explain on the attachment. Provide documentation.				Yes ☐	No ☒
5	Did the Contractor cooperate with on-site or adjacent tenants, business owners and residents and work in such a manner as to minimize disruptions to the public. If "Marginal or Unsatisfactory", explain on the attachment.	☐	☐	☐	☒	☐
6	Did the personnel assigned by the Contractor have the expertise and skills required to satisfactorily perform under the contract? If "Marginal or Unsatisfactory", explain on the attachment.	☐	☐	☐	☒	☐
7	**Overall, how did the Contractor rate on work performance?** **The score for this category must be consistent with the responses to the questions given above regarding work performance and the assessment guidelines.** **Check 0, 1, 2, or 3.**	0 ☐	1 ☐	2 ☒	3 ☐	

TIMELINESS

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
8	Did the Contractor complete the work within the time required by the contract (including time extensions or amendments)? If "Marginal or Unsatisfactory", explain on the attachment why the work was not completed according to schedule. Provide documentation.	☐	☐	☒	☐	☐
9	Was the Contractor required to provide a service in accordance with an established schedule (such as for security, maintenance, custodial, etc.)? If "No", or "N/A", go to Question #10. If "Yes", complete (9a) below.			Yes ☐	No ☐	N/A ☒
9a	Were the services provided within the days and times scheduled? If "Marginal or Unsatisfactory", explain on the attachment and specify the dates the Contractor failed to comply with this requirement (such as tardiness, failure to report, etc.). Provide documentation.	☐	☐	☒	☐	☐
10	Did the Contractor provide timely baseline schedules and revisions to its construction schedule when changes occurred? If "Marginal or Unsatisfactory", explain on the attachment Provide documentation.	☐	☐	☒	☐	☐
11	Did the Contractor furnish submittals in a timely manner to allow review by the City so as to not delay the work? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	☐	☐	☒	☐	☐
12	Were there other significant issues related to timeliness? If yes, explain on the attachment. Provide documentation.				Yes ☐	No ☒
13	Overall, how did the Contractor rate on timeliness? The score for this category must be consistent with the responses to the questions given above regarding timeliness and the assessment guidelines. Check **0, 1, 2, or 3.**	0 ☐	1 ☐	2 ☒	3 ☐	

FINANCIAL

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
14	Were the Contractor's billings accurate and reflective of the contract payment terms? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation of occurrences and amounts (such as corrected invoices).	☐	☐	☒	☐	☐
15	Were there any claims to increase the contract amount? If "Yes", list the claim amount. Were the Contractor's claims resolved in a manner reasonable to the City? Number of Claims: _____ Claim amounts: $_____ Settlement amount:$_____				Yes ☐	No ☒
16	Were the Contractor's price quotes for changed or additional work reasonable? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation of occurrences and amounts (such as corrected price quotes).	☐	☐	☒	☐	☐
17	Were there any other significant issues related to financial issues? If Yes, explain on the attachment and provide documentation.				Yes ☐	No ☒
18	**Overall, how did the Contractor rate on financial issues?** **The score for this category must be consistent with the responses to the questions given above regarding financial issues and the assessment guidelines.** **Check 0, 1, 2, or 3.**	0 ☐	1 ☐	2 ☒	3 ☐	

COMMUNICATION

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
19	Was the Contractor responsive to the City's questions, requests for proposal, etc.? If "Marginal or Unsatisfactory", explain on the attachment	☐	☐	☒	☐	☐
20	Did the Contractor communicate with City staff clearly and in a timely manner regarding:					
20a	Notification of any significant issues that arose? If "Marginal or Unsatisfactory", explain on the attachment.	☐	☐	☒	☐	☐
20b	Staffing issues (changes, replacements, additions, etc.)? If "Marginal or Unsatisfactory", explain on the attachment.	☐	☐	☒	☐	☐
20c	Periodic progress reports as required by the contract (both verbal and written)? If "Marginal or Unsatisfactory", explain on the attachment.	☐	☐	☒	☐	☐
20d	Were there any billing disputes? If "Yes", explain on the attachment.				Yes ☐	No ☒
21	Were there any other significant issues related to communication issues? Explain on the attachment. Provide documentation.				Yes ☐	No ☒
22	**Overall, how did the Contractor rate on communication Issues?** The score for this category must be consistent with the responses to the questions given above regarding communication Issues and the assessment guidelines. Check 0, 1, 2, or 3.	0 ☐	1 ☐	2 ☒	3 ☐	

SAFETY

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
23	Did the Contractor's staff consistently wear personal protective equipment as appropriate? If "No", explain on the attachment.				Yes ☒	No ☐
24	Did the Contractor follow City and OSHA safety standards? If "Marginal or Unsatisfactory", explain on the attachment	☐	☐	☒	☐	☐
25	Was the Contractor warned or cited by OSHA for violations? If Yes, explain on the attachment.				Yes ☐	No ☒
26	Was there an inordinate number or severity of injuries? Explain on the attachment. If Yes, explain on the attachment.				Yes ☐	No ☒
27	Was the Contractor officially warned or cited for breach of U.S. Transportation Security Administration's standards or regulations? If "Yes", explain on the attachment.				Yes ☐	No ☒
28	Overall, how did the Contractor rate on safety issues? The score for this category must be consistent with the responses to the questions given abovo regarding safety issues and the assessment guidelines. Check 0, 1, 2, or 3.	0 ☐	1 ☐	2 ☒	3 ☐	

OVERALL RATING

Based on the weighting factors below, calculate the Contractor's overall score using the scores from the four categories above.

1. Enter Overall score from Question 7	2	X 0.25 =	0.5
2. Enter Overall score from Question 13	2	X 0.25 =	0.5
3. Enter Overall score from Question 18	2	X 0.20 =	0.4
4. Enter Overall score from Question 22	2	X 0.15 =	0.3
5. Enter Overall score from Question 28	2	X 0.15 =	0.3

TOTAL SCORE (Sum of 1 through 5): 2

OVERALL RATING: 2

Outstanding:	Greater than 2.5
Satisfactory	Greater than 1.5 & less than or equal to 2.5
Marginal:	Between 1.0 & 1.5
Unsatisfactory:	Less than 1.0

PROCEDURE:

The Resident Engineer will prepare the Contractor Performance Evaluation and submit it to the Supervising Civil Engineer. The Supervising Civil Engineer will review the Contractor Performance Evaluation to ensure adequate documentation is included, the Resident Engineer has followed the process correctly, the Contractor Performance Evaluation has been prepared in a fair and unbiased manner, and the ratings assigned by the Resident Engineer are consistent with ail other Resident Engineers using consistent performance expectations and similar rating scales.

The Resident Engineer will transmit a copy of the Contractor Performance Evaluation to the Contractor. Overall Ratings of Outstanding or Satisfactory are final and cannot be protested or appealed. If the Overall Rating is Marginal or Unsatisfactory, the Contractor will have 10 calendar days in which they may file a protest of the rating. The Public Works Agency Assistant Director, Design & Construction Services Department, will consider a Contractor's protest and render his/her determination of the validity of the Contractor's protest. If the Overall Rating is Marginal, the Assistant Director's determination will be final and not subject to further appeal. If the Overall Rating is Unsatisfactory and the protest is denied (in whole or in part) by the Assistant Director, the Contractor may appeal the Evaluation to the City Administrator, or his/her designee. The appeal must be filed within 14 calendar days of the Assistant Director's ruling on the protest. The City Administrator, or his/her designee, will hold a hearing with the Contractor within 21 calendar days of the filing of the appeal. The decision of the City Administrator regarding the appeal will be final.

Contractors who receive an Unsatisfactory Overall Rating (i.e., Total Score less than 1.0) will be allowed the option of voluntarily refraining from bidding on any City of Oakland projects within one year from the date of the Unsatisfactory Overall Rating, or of being categorized as non-responsible for any projects the Contractor bids on for a period of one year from the date of the Unsatisfactory Overall Rating. Two Unsatisfactory Overall Ratings within any five year period will result in the Contractor being categorized by the City Administrator as non-

responsible for any bids they submit for future City of Oakland projects within three years of the dale of the last Unsatisfactory overall rating.

Any Contractor that receives an Unsatisfactory Overall Rating is required to attend a meeting with the City Administrator, or his/her designee, prior to returning to bidding on City projects. The Contractor is required to demonstrate improvements made in areas deemed Unsatisfactory in prior City of Oakland contracts.

The Pubiic Works Agency Contract Administration Section will retain the final evaluation and any response from the Contractor for a period of five years. The City shall treat the evaluation as confidential, to the extent permitted by law.

COMMUNICATING THE EVALUATION: *The Contractor's Performance Evaluation has been communicated to the Contractor. Signature does not signify consent or agreement.*

8/26/13
Contractor / Date

8/16/13
Resident Engineer / Dale

08/29/13
Supervising Civil Engineer / Date

ATTACHMENT TO CONTRACTOR PERFORMANCE EVALUATION:
Use this sheet to provide any substantiating comments to support the ratings in the Performance Evaluation. Indicate before each narrative the number of the question for which the response is being provided. Attach additional sheets if necessary.

2a. Punch list items were issued on 4/2/13. Punch list items were completed on 4/5/13 and Art Park was opened to the public.