



AGENCY: City Council
MEETING DATE: April 25, 2016
DEPARTMENT: Public Works
PRESENTED BY: T. Varga

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT AND CONSIDER REJECTION OF WYLATTI RESOURCE MANAGEMENT'S BID PROTEST AND CONSIDER ADOPTION OF CITY COUNCIL RESOLUTION ACCEPTING THE BID OF REGE CONSTRUCTION AS THE LOWEST RESPONSIVE BID, AWARDING THE CONTRACT FOR THE SUMMERS LANE RESERVOIR PROJECT, CITY PROJECT 2016-01 TO REGE CONSTRUCTION, AND AUTHORIZING CITY MANAGER TO EXECUTE CONTRACT (AMOUNT NOT TO EXCEED \$1,241,779.00; ACCOUNT NO. 651-6001-0731)

ISSUE:

Following the bid opening for construction of Summers Lane Reservoir, the bid of the apparent low bidder (Rege Construction) was protested by the apparent second lowest bidder (Wylatti Resource Management). The protest was based on irregularities that appeared in the Rege Construction bid.

RECOMMENDED ACTION:

Reject the bid protest by Wylatti Resource Management and adopt Resolution awarding the contract for the Summers Lane Reservoir project to Rege Construction.

ALTERNATIVE ACTION(S):

1. Council may choose to award the contract to another contractor and make the appropriate findings describing the reason(s) for its choice.
2. Council can choose to reject all bids and re-bid the project.

ANALYSIS:

On March 31, 2016, six bids were received for the construction of the Summers Lane Reservoir. The lowest three bids received are as follows:

| Bidder | Total Base Bid Amount | Dollar Increase Over Low Bid | Percentage Increase Over Low Bid |
|-----------------------------|-----------------------|------------------------------|----------------------------------|
| Rege Construction | \$1,241,779.00 | -- | -- |
| Wylatti Resource Management | \$1,328,314.50 | \$86,535.50 | 7.0% |
| Akeff Construction | \$1,359,837.00 | \$118,058.00 | 8.9% |

Based on the above, Rege Construction (Rege) was determined to be the apparent low bidder.

The second low bidder, Wylatti Resource Management (Wylatti), timely protested Rege's bid. Wylatti claimed that:

1. Rege failed to provide the dollar amount for work to be performed by one listed subcontractor (Barber-Webb).
2. The failure made the bid incomplete and non-responsive.
3. The defect was material and non-waivable.

Rege timely responded to Wylatti's protest, claiming that the failure was nothing more than simple human error, did not affect the amount of the bid, and was immaterial to the performance of the contract.

The following provisions of the Notice Inviting Bids and the accompanying Instructions to Bidders apply.

Item 6.7 of the Instructions states, *"The City reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed other bidders."*

Item 11 of the Notice states, *"The City reserves the right to reject any and all bids and/or waive any bid irregularities to the extent permitted by law. If the City elects to award a contract for performance of the project, the contract will be awarded in accordance with Public Contracting Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price for the base bid."*

The City's bid specifications require bidders to provide the information noted in Wylatti's protest, and Rege failed to do so. After reviewing this situation with the City Attorney's office, staff believes that the City may waive the defect and determine the Rege bid to be responsive, and that it is in the best interests of the public for the City to do so. Reasons include the following:

1. Rege's bid was 7% (\$86,535) lower than the second low bid and accepting Rege's bid clearly benefits the public's fiscal interest.
2. The defect was immaterial. It does not affect Rege's bid total, does not go to the cost of the work or performance of the contract, and does not give Rege any advantage or benefit over any other bidder.

In summary, staff recommends to the City Council that: (i) the bid protest submitted by Wylatti Resource Management not be sustained, (ii) irregularities contained in the Rege Construction bid are non-material and are hereby waived, and (iii) the City Council award the contract to Rege Construction as the lowest responsive bid.

IMPLEMENTATION/TIMEFRAMES:

Following Council action to award the contract, the contract can be executed immediately afterwards. The required supporting documents (e.g. insurance, bonds, etc.) will be completed within two weeks. Construction can begin the second week of May. The reservoir would be expected to be substantially complete and ready for filling by mid-July.

ATTACHMENTS:

1. Resolution
2. Summary of Bid Opening

NOTIFICATION:

1. Wylatti Resource Management
2. Rege Construction

City Clerk's Office Use Only

Agency Action ☐ Approved ☐ Denied ☐ Approved as Amended

Resolution No.: _____ Ordinance No.: _____

Moved by: _____ Seconded by: _____

Vote: _____

☐ Deferred/Continued to meeting of: _____

☐ Referred to: _____