City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR AND CITY COUNCIL

DATE: June 15, 2010

SUBJECT: 2010 ADA Improvement Project, Project No. 09-17; Public Hearing for Bid Protest

Report in Brief

On March 30, 2010, the City Council approved the plans and specifications for the 2010 ADA Improvement Project – CIP No. 09-17 (Project) and authorized the City Manager to award the construction contract to the lowest, responsive, responsible bidder if bids are within 120% of the engineer's estimate.

On May 12, 2010, City staff received and opened bids for the Project. The apparent low bidder for the Project was B&M Builders ("B&M") with a bid price of $109,681.60. Following bid opening, it was determined that the second low bidder, Ameca General Engineering ("Ameca") had a miscalculation in their bid lowering their bid price from $113,908.50 to $108,980.50 and thus making them the low bidder on the Project. Both bids are within the authority of the City Manager to award since they are considerably lower than the engineer's estimate of $155,209.

B&M submitted a bid protest on June 1, 2010, 13 days after bid opening, protesting the recalculation of Ameca's bid and alleging that Ameca is not a responsible bidder. City staff, working with the City Attorney, concluded that the protest was both late and substantively invalid and denied the protest in writing on June 2, 2010. Then on June 3, 2010, B&M submitted an appeal and request for hearing pursuant to the bid documents.

Staff recommends that the City Council conduct a hearing on B&M's appeal and, pending the outcome of the City Council's consideration of the appeal, provide direction to staff.

Background

Pursuant to section B-14 of the Invitation to Bidders for the Project, a party submitting a bid protest who disagrees with the decision of City staff may submit an appeal and request a hearing before the City Council. B&M's June 4, 2010, appeal of City staff's rejection of B&M's bid protest prompted this hearing before the City Council. The hearing provides B&M with the opportunity to address this matter further and to present any and all additional facts they would like the City Council to

consider prior to consideration of B&M's protest. After B&M has the opportunity to present its appeal, City staff may then rebut B&M's presentation as necessary and/or appropriate.

B&M's protest letter, City staff's rejection letter and B&M's appeal are attached hereto for the City Council's review.

As stated previously, the City Council had authorized the City Manager on March 30 to award the bid for the Project as long as the lowest responsible and responsive bidder was within 120% of the engineer's estimate. Both bids are well below the engineer's estimate; therefore, the City Manager has the authority to award the bid pending the outcome of the City Council's consideration of the appeal submitted by B&M.

Discussion

City staff is very thorough when reviewing project bid submissions so that all bids are correctly processed and evaluated. This is very important to maintain this consistency and ensure the integrity of the bidding process. Staff understands that the process of compiling a bid can be an expensive undertaking for contractors. Providing a consistent process for bidding avoids the need to reject bids and rebid projects.

The process of accepting bids includes the public reading of all bids received by the City Clerk's office by the bid opening time and date. At this public reading, City staff calculates and announces the "apparent" low bidder for the project. After bids are evaluated and any miscalculations are adjusted per section B-11 of the Contract Documents, final determination is made on the low bidder and bid results are made available on the City website or by calling the Community Development Department.

In many cases contractors make minor discrepancies between unit prices and total prices in their bid schedules. This may occur when contractors use the incorrect unit cost to calculate their total cost. As a result, the bid is recalculated using the correct unit prices to calculate the correct total price. This is expressly provided for by section B-11 of the Instructions to Bidders which states that "In the case of discrepancy between unit prices and totals, unit prices will prevail." This process sometimes, as in this case, has the result of changing the resulting low bidder.

City staff has reviewed B&M's initial bid protest, its appeal and the relevant facts and circumstances surrounding the Project bid. Based upon this review, City staff remains convinced that B&M's bid protest is without merit, and that to the extent that there may have been minor irregularities in Ameca's bid, the City may waive such irregularities subject to California law, based on the following facts:

1. Pursuant to Section B-14 of the Instructions to Bidders of the Contract Documents for the Project, a protest must be filed in writing with the City Engineer within five (5) business days of bid opening. Any protest not so submitted "will be rejected as invalid and incomplete". The bid protest letter was received 13 business days after bid opening.

2. Pursuant to Section B-11 of the Instructions to Bidders of the Contract Documents for the Project, "In the case of discrepancy between unit prices and totals, unit prices will prevail". Upon review of the bids, all bids with discrepancies of this type were recalculated. B&M's bid is second low bidder among the recalculated bids; Ameca is the low bidder for the project.

3. It is within the City's authority and in accordance with standard practice to resolve the discrepancy between unit and extended prices by calculating the total price based on unit prices and to award to the low bidder as determined on this basis.

4. According to California law, a responsible bidder is one who is able to perform the contract if awarded. To be considered responsible, the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity and experience to satisfactorily perform the public works contract (Pub. Cont. Code §1103). The price at which work will be performed does not bear on a bidder's responsibility.

5. Ameca confirmed in writing on May 14, 2010 that it will perform the work at the unit price as written in its bid.

Accordingly, to the extent that there was a discrepancy in the bids received relating to the calculation of the extended prices on the bid schedule, these discrepancies may be waived by the City. Therefore, City staff continues to recommend that the City Council reject B&M's bid protest and allow the City Manager to award the Project contract to Ameca as authorized by the City Council on March 30, 2010, or else reject all bids.

Fiscal Impact

It is difficult to estimate the fiscal impact of granting B&M's appeal. The City would have the option of awarding the contract to B&M at an additional cost, and likely a further appeal from Ameca, or rejecting all bids and re-bidding the project. There is no way to know what bid prices the City might receive if the project is rebid.

Public Contact

Posting of the City Council agenda

Recommendation for Action

Staff recommends that the City Council conduct a hearing on B&M's appeal and, pending the outcome of the City Council's consideration of the appeal, provide direction to staff.

Prepared by: Katie Wurzel
Transportation Engineer

Review by: Andrew Morris
City Attorney

Reviewed by: Brent Meyer
City Engineer

Reviewed by: Paul Siegel
Deputy Director of CDD

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Mark G. Deven
City Manager

B & M Builders

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www.bm-builders.com
Lic. #861848 A, B, C-54, C-8

To Katie Wurzel:

I am writing this as a formal protest to the award of contract CIP #09-17 to Ameca General Engineering. B & M Builders, Inc. was the apparent low bidder on this project. The totals that Ameca came up with line item A2 is written as a total price of $6650, with a unit price of $10/lft. They had the opportunity to check their own math before turning in the bid to be opened. If you look at the unit price of every other bid they range from $55.65 to $100/lft and Ameca has theirs set at $10. It seems to me that they forgot to add a "0" to the end. $10/lft is not enough to cover the time or materials, let alone any profit. This line item is for removal and replacement of sidewalks. The number is set as $10/lft in the base bid price, and again, look at the other numbers from the other bidders. $10/lft is not enough to even cover the materials for 5 lft of sidewalk. You had written me in an email that unit price prevails over extended totals, but it also says that words prevail over written numbers in the same clause of your contract. This is where our protest comes in. In your bid information package line A-7, Award states that the job will go to the lowest responsive, responsible bidder. It is not responsible to bid the tear out and replacement of concrete sidewalks at $10/ lft. This cannot be done while paying the prevailing wages. They had every chance to do their math, check it and write in the number that they wanted to bid the project at. It was written below on both bid sheets the numbers that they wanted to receive for the project. The unit prices are not high enough to cover the removal and replacement of concrete sidewalks and are used for changes to the contract and the final billing, not so that the City can check our math for us per section B4.A.i. This job needs to be awarded to B & M Builders, Inc. At the bid opening I spoke with Jair about the fact that we left the addendums out of our bid package. They were signed and left on my desk. Jair asked that we fax them in, so we did. As soon as I realized this fact I had my office fax them over and Jair said, in front of Lister's company representative, that it would be "ok" and they wouldn't disqualify us. Legally this is a verbal agreement with a third party witness. The addendums only had to do with wage determinations. If necessary the next correspondence will be from The Law Office of Dosh and Dosh. We will be suing the City of Woodland if necessary. Thank you for your timely consideration. Please reply with your decision within 48 hours.

Patrick Mullen
Vice President/ Secretary

City of Woodland

Community Development Engineering 520 Court Street, Woodland, CA 95695 (530) 661-5961 www.cityofwoodland.org

June 2, 2010

B&M Builders
11355 B Suite 11 Pyrites Way
Gold River, CA 95670
Attn: Mr. Patrick Mullen

Mr. Mullen,

The City has received your protest to the award of the ADA Improvement Project, CIP#09-17 to Ameca General Engineering ("Ameca"). After careful review, the City hereby denies your protest.

As a preliminary matter, it appears your protest is untimely. Bids were received and opened on Wednesday, May 12, 2010 at 2:00 pm. and bid results were available on the City's website or by calling as of 8:00 am Thursday May 13. Your protest letter is undated but was received by fax and email on June 1, 2010, 13 business days after bid opening. In accordance with Section B-14 of the Instructions to Bidders, a protest must be filed in writing with the City Engineer within five (5) business days of bid opening. Any protest not so submitted "will be rejected as invalid and incomplete."

Your protest states that you are protesting the City's recalculation of Ameca's bid pursuant to Section B-11 of the Instructions to Bidders. Your protest further contends that Ameca is not a responsible bidder, on the basis that the work included in line item A2 - 5' Sidewalk Remove and Replace cannot be performed at the unit price provided in Ameca's bid.

With respect to the first matter, the Contract Documents, in Section B-11 of the Instructions to Bidders, expressly provides that: "In the case of discrepancy between unit prices and totals, unit prices will prevail." Upon review of the submitted bids, Staff determined that Ameca's bid did include a discrepancy between the unit price listed for line item A2 and the extended/total price for that item. As required by the Section B-11, Ameca's bid was recalculated using the correctly extended unit price for line item A2 and was then determined to be the low bid. As recalculation was completed in accordance with the Contract Documents, it is within the City's authority to waive the discrepancy and award the contract to the low bidder as determined on the basis of unit prices.

With respect to the second matter, under California law, a responsible bidder is one who is able to perform the contract if awarded. To be considered responsible, the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the public works contract. (Pub. Cont. Code § 1103.) A range of factors may be used to determine bidder responsibility including performance history, reliable financial information,

bonding and insurance capacity, public works experience, personnel, litigation history and others; however, the price at which work will be performed does not bear on a bidder's responsibility. Ameca has confirmed in writing dated May 13, 2010 that it will perform the work at the unit price as written on their bid. Moreover, the Contract Documents, including Section B-23 of the Instructions to Bidders, as well as California law, require Ameca to comply with the law governing payment of prevailing wages. As such, the City is satisfied that Ameca is both responsive and responsible and is able to perform the contract if awarded.

As a final note, with respect to your statement regarding late submission of addenda to your bid, although the late submission of addenda is an irregularity in your bid, pursuant to Section B-15, the City has reserved the right to waive such an irregularity, subject to the limitations of law. However, as your bid is not the lowest responsive, responsible bid, it is not necessary for the duly authorized representative of the City empowered by the City Council to waive such a discrepancy to make such a determination. Any prior statements by Staff do not bind the City to any action.

As such, your protest is both invalid and incomplete, and is hereby denied. We thank you for your participation in this bid and encourage your future participation in City bids. Further questions regarding this matter can be directed to me at 530-661-5947 or brent.meyer@cityofwoodland.org.

Pursuant to Section B-14 of the Instructions to Bidders, you may appeal this decision to the City Council. Please notify the City Clerk, Sue Vannucci no later than 12:00 pm on Friday, June 4, 2010 in order to ensure your appeal can be scheduled at the City Council's next regular meeting.

Respectfully,

Brent Meyer, P.E.
City Engineer

CC: Paul Siegel - Deputy Director CDD
Sue Vannucci - City Clerk
Katie Wurzel - Transportation Engineer
Jair Camacho - Associate Engineer

B & M Builders

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To Sue Vannucci,

I am writing this in reference to the denial of our protest for the ADA Improvements project. We would like to appeal the decision that was placed on the protest. We would like the opportunity to put this up to the City Council at the next meeting. Thanks.

Patrick Mullen
Vice President/Secretary