

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: CHRIS CATBAGAN, ASSOCIATE CIVIL ENGINEER
TRANSPORTATION AND PUBLIC WORKS DEPARTMENT
SUBJECT: REJECTION OF BID PROTEST; CONTRACT AWARD - FULTON
RD FROM GUERNEVILLE RD TO PINER RD - WIDEN TO FOUR
LANES

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council, by resolution: 1) reject the bid protest by Argonaut Constructors, Inc.; 2) waive any minor irregularities in the lowest bid; 3) award Contract No. C01178, Fulton Road from Guerneville Road to Piner Road - Widen to Four Lanes, in the amount of \$15,578,565.00 to the lowest responsible bidder, Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc., of San Rafael, CA; and 4) approve a 10% contract contingency, and authorize a total contract amount of \$17,136,421.50.

EXECUTIVE SUMMARY

This item will reject a bid protest by Argonaut Constructors, Inc., waive minor irregularities in the lowest bid, Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc., of San Rafael, CA, approve a 10% contract contingency, and authorize a total contract amount of \$17,136,421.50 for the widening of Fulton Road from Guerneville Road to Piner Road.

This item supports City Council Goal #5 by investing in and sustaining infrastructure & Transportation. Widening Fulton Road to a four-lane regional/arterial road, from Guerneville Road to Piner Road, will improve the City's transportation network and promote multi-modal transportation.

BACKGROUND

The Fulton Road from Guerneville Road to Piner Road - Widen to Four Lanes will widen and reconstruct Fulton Road to a four-lane regional/arterial street as envisioned in the 2035 Santa Rosa General Plan. The Project includes roadway widening, new vehicle

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travel lanes, bicycle lanes, sidewalks, bus stops, stormwater treatment facilities, landscaping, traffic signals, utility relocations, retaining walls, property acquisitions and easement acquisitions. In preparation for this project, overhead utility lines were relocated underground by the Pacific Gas and Electric Company through their Rule 20A underground utility district (UUD) Program.

Project improvements include:

- Installing roller compacted concrete (RCC), rather than hot mix asphalt (HMA), for the length of the project limits.
- Removal of all overhead utility poles and utility lines.
- Reconstructing forty-two (42) directional curb ramps at intersections along Fulton Road.
- Installing four (4) separate retaining wall structures.
- Installing and replacing ~4,000 linear feet of storm drain.
- Installing ~5,300 linear feet of fiber optic cable for traffic signal coordination.
- Installing twenty-nine (29) streetlights.
- Installing a High-Intensity Activated Crosswalk (HAWK) fronting Piner High School.
- Installing ~2,700 square feet of low impact development (LID) planters and swales for stormwater treatment.
- Planting one-hundred and forty-two (142) trees.

PRIOR CITY COUNCIL REVIEW

On August 4, 2015, City Council, by Resolution No. 28674, approved Cooperative Funding Agreement No. M30406 between Sonoma County Transportation Authority (SCTA) and the City of Santa Rosa for Measure M funds for Fulton Road Widening Improvements.

On June 21, 2016, City Council, by motion, approved work order #A010070-2011-62, for Preliminary Design and Environmental Documentation for the Fulton Road Project from Guerneville Road to Piner Road – Widen to Four Lanes, with GHD Incorporated of Santa Rosa, Ca.

On February 14, 2017, City Council, by Resolution RES-2017-026, approved the establishment of an Underground Utility District (UUD) on Fulton Road between Guerneville Road and Piner Road.

On October 24, 2017, City Council, by Resolution RES-2017-213, adopted a Mitigated Negative Declaration (MND) for the Fulton Road Widening Improvement Project between Guerneville Road and Piner Road approved the project and adopted a Mitigation Monitoring Program (MMP) for the project.

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On January 9, 2018, City Council, by motion, approved and authorized the Mayor to execute project work order #A010145-2016-14, for the Plans, Specifications, and Estimate (PS&E) phase for the Fulton Road Project from Guerneville Road to Piner Road – Widen to Four Lanes, in the amount of \$1,398,903.00 with GHD Incorporated of Santa Rosa, California.

On May 25, 2021, City Council, by motion, approved Amendment No. 2 (A010145-2016-14B) and Amendment No. 3 (A010145-2016-14C) to Project Work Order A010145-2016-14, with GHD Inc. of Santa Rosa, California, to update the construction documents for the use of roller compacted concrete and to provide engineering support during construction for the Fulton Road Widening Project between Guerneville Road and Piner Road, increasing the contract amount by \$1,254,704.00 for a total amount not to exceed \$3,091,903.00.

On October 26, 2021, City Council, by resolution: 1) authorized the purchase of mitigation credits for the Fulton Road Widening Project from Guerneville Road to Piner Road; and 2) approved Agreements for Sale of California Tiger Salamander Mitigation Credits and/or Preservation Credits with: Davis Preserve, LLC, in an amount not to exceed \$420,750 to purchase required mitigation credits for California Tiger Salamander (CTS); Alton Preserve, LLC, in an amount not to exceed \$132,750 to purchase required mitigation credits for CTS, Burke's Goldfield, and Sonoma Sunshine; Margaret West Conservation Preserve, LLC, in an amount not to exceed \$25,500 to purchase required mitigation credits for CTS and Sebastopol Meadowfoam; and Davis Preserve, LLC, in an amount not to exceed \$17,000 to purchase required mitigation credits for CTS and Sebastopol Meadowfoam.

ANALYSIS

1. The Project was advertised on February 2, 2022, and bids were received on March 8, 2022. A total of five (5) bids were received, ranging from \$15,578,565.00 to \$19,823,672.80. The low bid was 9.56% over the Engineer's estimate.
2. The low bidder, Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc., possesses a valid contractor's license of the required class, as verified by the Contractor's State License Board, and is registered with the State Department of Industrial Relations (DIR).
3. The low bidder, Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc., was judged responsive by City staff.
4. On March 11, 2022, the City received a bid protest from Argonaut Constructors, Inc., the second lowest responsive bidder. Argonaut Constructors, Inc. referred to Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc.'s price for bid item #32

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Utility Clearances as being “not responsive”. Argonaut Constructors, Inc., claims that:

- a. Ghilotti/Vanguard JV’s bid price was \$125,000, which is 0.8% of the total bid price and exceeds the mandatory limit in § 15-7.01. All other bidders, including Argonaut, satisfied this requirement. In conclusion, Ghilotti/Vanguard JV’s bid should be rejected because it is non-responsive and the contract should be awarded to Argonaut, the lowest responsive bidder.*
5. On March 17, 2022, the City received a response to the bid protest from Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc. Their response to Argonaut Constructors, Inc.’s protest:
 - a. This specification cited by Argonaut as the basis of its bid protest does not specifically limit or otherwise restrict bidders from inserting a bid amount that exceeds the .5% limit. Ghilotti/Vanguard JV would simply not be entitled to bill for more than the provision in the contract documents allow, as during the performance of the contract, Ghilotti/Vanguard JV would still have to comply with the contract documents.*
 - b. Argonaut does not identify or demonstrate any actual competitive advantage that Ghilotti/Vanguard JV gained as a result of the technicality that is the basis for Argonaut’s protest. In fact, that technicality cited by Argonaut made Ghilotti/Vanguard JV’s bid higher and therefore less competitive.*
6. City staff and Attorney’s Office have concluded that the irregularity offered no competitive advantage by Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc. as a result of the technicality that is the basis for Argonaut Constructors, Inc.’s protest. The bid irregularity is minor and deemed immaterial. Therefore, the minor irregularity is recommended to be waived by Council.
7. Public Contract Code § 5103 establishes terms that allow relief of bidders. If a mistake was made, then the mistake would have made the bid materially different than it was intended to be. The mistake from Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc. was made in filling out the bid and was not due to an error in judgment in reading the plans or specifications.
8. The minor irregularity in the Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc. bid was not one that would allow Ghilotti Bros, Inc. / FBD Vanguard Construction, Inc. relief from the enforcement of its bid to Public Contracts Code § 5103.
9. The contract agreement has been reviewed and approved by the City Attorney.

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10. City staff and the engineering design consultant, GHD Group, have reviewed and evaluated the low bid and determined higher-than-expected bid costs are a result of COVID-19, supply chain issues, rising crude oil prices and the ongoing conflict in Europe. Given these considerations, City and consultant staff believe the low bid price is fair and reasonable.
11. Construction is anticipated to begin in May 2022. The length of the contract is 400 working days. Construction is expected to be completed by December 2023.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund.

Funding for the Project has been appropriated to Journal Ledger Account No.17444. Sufficient funding for this project was appropriated in a previous Capital Improvement Program budget from the following funding sources:

- SCTA Measure M - 46.8%
- Senate Bill 1 (SB-1) Funds - 38.3%
- Capital Facilities Fees (CFF) - 11.0%
- Utility Impact Fees (UIF) - 3.9%

ENVIRONMENTAL IMPACT

On October 24, 2017, the City Council certified a Mitigated Negative Declaration (MND) for Fulton Road Widening Improvement Project between Guerneville Road and Piner Road.

This project maintains the scope analyzed in the Mitigated Negative Declaration and does not require further environmental review or analysis under the California Environmental Quality Act (CEQA). However, a construction contract award is considered a discretionary action under CEQA guidelines, and a notice of determination will be filed with the State Clearinghouse – Office of Planning and Research and County Clerk within five (5) days of this contract award.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

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ATTACHMENTS

- Attachment 1 - Location Map
- Attachment 2 –Summary of Bids
- Resolution

CONTACT

Chris Catbagan, Associate Engineer, ccatbagan@srcity.org, (707) 543-4521
Grant Bailey, Supervising Engineer, gbailey@srcity.org, (707) 543-4508