

CITY OF SANTA ROSA  
BOARD OF PUBLIC UTILITIES

TO: BOARD OF PUBLIC UTILITIES  
FROM: BRYAN HEINZELMAN, ASSOCIATE CIVIL ENGINEER  
CAPITAL PROJECTS ENGINEERING

SUBJECT: CONTRACT AWARD; REJECTION OF BID PROTEST –  
ALVARADO AVE AND VALLEJO ST WATER AND SEWER  
IMPROVEMENTS

AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended by the Transportation and Public Works Department and the Water Department that the Board of Public Utilities (Board), by resolution, 1) reject the bid protest by Argonaut Constructors, and 2) waive any minor irregularities in the lowest bid and award Construction Contract No. C02004 in the amount of \$1,489,199.00 to the apparent lowest responsive bidder, Michael O'Shaughnessy Construction, Inc., of San Francisco, California, for Alvarado Ave and Vallejo St Water and Sewer Improvements, approve a 15% construction contingency, and authorize a total contract amount of \$1,712,578.85.

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EXECUTIVE SUMMARY

This action will reject a bid protest by Argonaut Constructors and waiver minor irregularities in the lowest bid and award the contract in the amount of \$1,489,199.00 to the lowest responsive bidder, Michael O'Shaughnessy Construction, Inc., of San Francisco, California, approve a 15% contract contingency, and authorize a total contract amount of \$1,712,578.85, to Contract No. C02004, Alvarado Ave and Vallejo St Water and Sewer Improvements.

BACKGROUND:

This project will relocate and replace aged sanitary sewer and water mains on Alvarado Avenue and Vallejo Street with new 8-inch mains, as well as replace the sewer laterals and water services. The project will also include a full street reconstruction of Alvarado Avenue. These system improvements will improve fire flow and water system reliability and reduce inflow and infiltration into the sewer system while reducing maintenance costs to the Alvarado and Mount Olive neighborhoods. The project will also include

modifications to the sewer trunk junction structure located on Vallejo Street in the effort of improving efficiency and safety protocols during maintenance operations. Since the junction structure spans most of the street width, a full road closure and traffic detour will be required for Vallejo Street during construction hours. Additionally, to mitigate traffic impacts, construction and completion of improvements to the junction structure will be scheduled while Brook Hill Elementary School is out for summer recess given its close proximity to the project limits.

#### PRIOR BOARD OF PUBLIC UTILITIES REVIEW

Not applicable.

#### ANALYSIS

This project was advertised on June 15, 2018, and bids were received on June 28, 2018. A total of four (4) bids were received, ranging from \$1,489,199.00 to \$1,685,372.00. The low bid was approximately 9.72% above the Engineer's Estimate of \$1,357,288.00.

Construction is anticipated to begin in September 2018 and be complete in July 2019.

The Public Participation Plan is required and has been approved by the Transportation and Public Works Marketing and Outreach Coordinator.

The lowest bidder, Michael O'Shaughnessy Construction, Inc. (hereinafter referred to as O'Shaughnessy), 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).

The bid opening occurred on June 28, 2018. O'Shaughnessy's bid did not include pages 125 and 129 of the bid package. O'Shaughnessy submitted and signed both the bid bond affidavit, in which O'Shaughnessy agreed that if it did not execute the contract it would forfeit its bid bond to City, and the required bid bond. The bid bond was also signed, sealed and notarized by the bonding company. The City's Invitation for Bids does not require the inclusion of pages 125 and 129 with bid package submissions, as nothing in these pages contain essential bid information.

On July 5, 2018, the City received a bid protest on behalf of Argonaut Constructors (hereinafter referred to as Argonaut), the second lowest bidder. Argonaut's bid was complete, and Argonaut possesses a valid contractor's license of the required class, as verified by the Contractor's State License Board. Argonaut claims that the bid received by the City from O'Shaughnessy, was "non-responsive" and should not be considered for award by the City (see, Attachment 3, Bid Protest).

Argonaut claims in its bid protest, that O'Shaughnessy's bid is non-responsive in that it failed to include the entire bid package, and the bid bond does not include the corporate seal.

On July 13, 2018, the City received a response to the bid protest on behalf of O'Shaughnessy. O'Shaughnessy argues that the irregularities are minor and they should still be considered for award by the City (see, Attachment 4, Bid Protest Response).

O'Shaughnessy contends that the two pages missing from the bid submittal were not required at the time of the bid. They reference Section 2-1.33A of the bid specifications that lists the following required submissions:

1. Unit Price Schedule
2. List of Subcontractors
3. List of Previous Similar Jobs
4. Noncollusion Declaration
5. Bid Guaranty Information and Bidder's Information and Signature
6. Bid Guaranty (Bid Bond or alternate security)

O'Shaughnessy also responded to the argument that the bid bond was not properly sealed. O'Shaughnessy correctly states that corporate seals are not necessary to bind a corporation in California, citing California Corporations Code section 207, which states in part: "Failure to affix a seal does not affect the validity of any instrument." (see, Attachment 4, Bid Protest Response).

Permissible minor omissions or informalities in bids include: 1) the bidder has failed to return all the documents required by the IFB; and 2) The bidder has failed to furnish a corporate seal with its bid. (3 Gov. Contract Awards: Negotiation and Seal Bidding § 27:20 (Nov. 2017).)

Staff and the City Attorney's Office have reviewed O'Shaughnessy's bid and researched the current law regarding when a bid omission or irregularity is minor and may be waived. Both have concluded that the omissions are clearly minor and therefore may be waived.

### PROCEDURAL STATUS

- I. The Board may decide, pursuant to 3-44.100 of the Santa Rosa City Code, to reject all bids and re-advertise the project.
- II. Alternatively, the Board may decide to award the contract through the current bidding process. If the Board decides to award the contract through the current bidding process, it must either:
  - A. Waive any irregularities in O'Shaughnessy's bid, reject the bid protest, and award the contract to O'Shaughnessy; or
  - B. Grant the protest and award the contract to Argonaut Constructors as the lowest responsive bidder.

### FISCAL IMPACT

Approval of this contract has no additional impact on the budget. Funds for this project were appropriated in the fiscal year 2017-18, Capital Improvement Program budget.

### ENVIRONMENTAL IMPACT

This action is statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15282, because it consists of the installation of a new publicly owned pipeline of less than one mile in length within the existing right-of-way.

### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

### ATTACHMENTS

- Attachment 1 – Summary of Bids
- Attachment 2 – Location Map
- Attachment 3 – Bid Protest
- Attachment 4 – Bid Protest Response

### CONTACT

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