

CITY OF SANTA ROSA
BOARD OF PUBLIC UTILITIES

TO: BOARD OF PUBLIC UTILITIES
FROM: TRACY DUENAS, SUPERVISING ENGINEER
CAPITAL PROJECTS ENGINEERING
SUBJECT: SUBCONTRACTOR ADDITION – LAGUNA TREATMENT PLANT
CHILLERS AND CLIMATE CONTROL UPGRADES AT
ADMINISTRATION AND ANNEX BUILDING

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Transportation and Public Works Department and the Water Department that the Board of Public Utilities, by resolution, 1) permit the addition of subcontractor Wunderlich-Malec Engineering of Pleasanton, California to the Laguna Treatment Plant Chillers and Climate Control Upgrades project (Contract No. C02105) due to public necessity; and 2) elect not to assess potential penalties against the prime contractor Matrix HG, Inc., of Novato, California.

EXECUTIVE SUMMARY

The Resolution will permit the addition, due to public necessity, of Wunderlich-Malec Engineering (WM), of Pleasanton, California as a subcontractor to prime contractor Matrix HG, Inc. (Matrix) for the Laguna Treatment Plant Chillers and Climate Control Upgrades at Administration and Annex Building, Contract No. C02105. The Resolution will also elect not to assess a \$12,500 penalty against Matrix.

BACKGROUND

A 2016 study by Costa Engineers Inc. identified that the chillers and boilers located at the Administration and Annex Buildings at the Laguna Treatment Plant (Plant) have reached the end of their effective service life. Climate control at the Administration Building is necessary to the Plant operations and staff as it houses a laboratory which must adhere to specific regulatory environmental protocols. The Laguna Treatment Plant Chillers and Climate Control Upgrades at Administration and Annex Buildings project (Project) will consist of the replacement of two 50-ton chillers and two condensing boilers in the Administration building, and one 15-ton chiller at the Annex building. The Project will also

provide upgrades of the climate control system at both buildings. The Plant exclusively uses Siemens S7 Series programmable logic controllers (PLC) that provide control of the various processes necessary for wastewater treatment. A portion of the PLC network will be replaced in conjunction with the climate control upgrades.

The construction phase began in November of 2019 and was suspended from March 17 to May 5, 2020 in response to the Sonoma County Health Order due to the COVID 19 public health emergency. Total expenditures to date for the project, including design and construction, is approximately \$376,000. The project is scheduled for completion by October 2020, with an estimated project completion cost of approximately \$1,009,500.

PRIOR BOARD OF PUBLIC UTILITIES REVIEW

On August 15, 2019, the Board of Public Utilities, by Resolution No. 1203, approved the sole source specification of Siemens S7 Series PLC for the climate control system for the Project.

On October 17, 2019, the Board of Public Utilities, by motion, approved construction Contract No. C02105 in the amount of \$1,004,198.40 to the lowest responsive bidder, Matrix HG, Inc., of Novato, CA for Laguna Treatment Plant Chillers and Climate Control Upgrades at Administration and Annex Building.

ANALYSIS

1. On November 25, 2019, a Notice to Proceed was issued to Matrix and they proceeded with acquiring the equipment necessary to complete the Project.
2. On March 24, 2020, Matrix submitted a request for Wunderlich-Malec Engineering (WM) to be added to the Contract as a subcontractor responsible for the PLC panel building, programming, testing and commissioning work.
3. Pursuant to California Public Contracts Code (PCC) Section 4104 and Section 2-1.33C of the Special Provisions of Contract No. C02105, all subcontracts in excess of one-half of one percent of the total amount of a bid are required to be listed in the bid. The value of WM's work is approximately \$125,000.00, is in excess of one-half of one percent of the total amount of the bid, and WM was not listed as a subcontractor in the Matrix bid.
4. PCC Section 4106 provides that if a prime contractor fails to specify a subcontractor for work under the contract in excess of one-half of one percent of the bid price, the prime contractor agrees that it is fully qualified to perform that portion itself and shall perform that portion itself.
5. On April 28, 2020, Matrix confirmed, however, that they are not qualified to perform the work.

6. PCC Section 4110 provides that violation of this section subjects the contractor to cancellation of the contract or assessment of a penalty of up to a 10 percent of the value of the subcontracted work. Where penalties are assessed, the owner must provide the contractor with notice and an opportunity for a hearing. The value of the subcontracted work is \$125,000, and the potential penalty amount is \$12,500.
7. PCC Section 4109 authorizes an owner to permit an unlisted subcontractor to perform work only “in cases of public emergency or necessity,” and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.
8. Contract cancellation would require additional expenditures of staff time and professional engineering services to assess the work completed to date and revisit the plans and specifications in order to reissue a construction contract. A contract cancellation at this point would also delay the City’s ability to complete this essential Project this year. Staff has estimated total additional expenditures required to cancel and re-advertise the Project ranges between \$30-50k, with an estimated completion date revised to April 2021.
9. Matrix has been forthright and proactive throughout the course of the Project. Matrix has displayed a commitment to complete the work within the allotted contract time. Maintaining Matrix as the prime contractor for the Project is in the City’s best interest as it is the most efficient course of action and necessary to complete the Project this year, based on the additional time and expense required to execute another contract and to eliminate additional expenditures.
10. Matrix omission of WM as a subcontractor appears to be an inadvertent error. The costs associated with collecting the potential penalty are likely to be equal to or exceed the costs of the penalty.

RECOMMENDATION; ALTERNATIVES

- I. For the reasons set forth above, staff recommends that the Board adopt a resolution, 1) pursuant to Public Contract Code (PCC) Section 4109, permitting the addition of the unlisted subcontractor, WM, to the Project due to public necessity, and 2) electing not to assess penalties against the prime contractor, Matrix in the amount of \$12,500.
- II. Alternately, the Board may decide to:
 - A. Permit the addition of WM to the Project, and assess a penalty of up to \$12,500 (10% of the subcontracted work) on the prime contractor, Matrix; or
 - B. Terminate the Contract and take the steps necessary to engage another contractor to complete the Project.

FISCAL IMPACT

Approval of this contract has no additional impact on the budget. Funds for this project were appropriated in FY 2019-2020, Capital Improvement Program budget.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

ATTACHMENTS

- Resolution

CONTACT

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