

Department of Public Works

Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 1

June 29, 2009
CD No. 2

ADOPTED BY THE BOARD OF
PUBLIC WORKS OF THE CITY
of Los Angeles, California

JUN 29 2009


Secretary

174417

**NORTH OUTFALL SEWER (NOS) MAZE REHABILITATION - PHASE V - CONTRACT AWARD
(W.O. No. E2000844)**

RECOMMENDATIONS

1. Find that the small deviation in meeting the Mandatory Subcontracting Minimum (MSM) level on the face of Spiniello's bid to be inconsequential and waive it for the reason that the Bureau of Engineering (BOE) staff is unaware of any facts that would indicate that Spiniello received an unfair competitive advantage as discussed in the report.
2. Declare Spiniello Companies (Spiniello), first low bidder, to be the lowest responsive, responsible bidder and award them a contract for this project for \$12,481,374.
3. Authorize the President or two members of the Board to execute the contract after approval as-to-form by the City Attorney has been obtained.

TRANSMITTALS

1. Summary of bids received on April 8, 2009.
2. Copy of a letter dated May 8, 2009 from Mr. Michael Prlich of Mike Prlich & Sons, Inc. to the Office of Contract Compliance (OCC).

DISCUSSION

Background

The City's major sewer system that serves the communities of Baldwin Hills, Crenshaw District, and Leimert Park, called the MAZE, has been undergoing repairs since the mid 1990s to correct decades of pipeline deterioration. This project will rehabilitate approximately 8,000 linear feet of 60- to 75-inch diameter sewer lines, and construct approximately 3,000 linear feet of 8-inch diameter sewer lines. The entire stretch of the project is a part of the NOS, bounded between Rodeo Road on the North and Vernon Avenue on the south. The contract construction duration is 700 calendar days.

The project has been reviewed for environmental considerations. It was determined to be categorically exempt from the provisions of the California Environmental Quality Act of 1970, under Article III of the City's Environmental Quality Act Guidelines.

The three lowest of the six bids received (Transmittal No. 1) compared with the City Engineer's estimate of \$17,664,000 are:

Bid No.	Contractor's Name	Bid Amount	(%) High/Low	(%) Pledged		
				MBE	WBE	OBE
Low Bid	Spiniello Companies (Spiniello)	\$12,481,374	29.34% Low	2.84	0	2.93
2 nd Bid	Mike Prlich and Sons, Inc. (Prlich)	*\$12,592,766	28.71% Low	3.15	0.86	2.46
3 rd Bid	Mladen Buntich Construction Co., Inc. (Buntich)	*\$12,873,283	27.12% Low	3.85	0.84	2.18

* Corrected bid amount

Prlich and Buntich, second and third low bidders respectively, listed their Total Bid Amount incorrectly. Staff corrected their Total Bid Amount in accordance with the procedures set forth in the General Instructions and Information for Bidders. Both Prlich and Buntich were contacted and notified of the corrections. The corrections did not change the order of bids.

An evaluation of bids indicates that these three bids are reasonable and the unit prices submitted by the bidders are reasonably balanced. Staff recommends awarding the contract to Spiniello, first low bidder, subject to verification of all other bidding requirements.

Minority Business Enterprise/Women Business Enterprise/Other Business Enterprise (MBE/WBE/OBE) Subcontractor Outreach Program

This project mandated bidders to perform their Good Faith Effort (GFE) via the internet on the Business Assistance Virtual Network (BAVN), a service provided by the Mayor's Office of Economic Development. The subcontractor outreach via the internet is less paper-intensive for bidders.

The project was advertised with MBE and WBE anticipated participation levels of 3 percent and 1 percent, respectively, and with mandatory GFE documentation requirements. The GFE requires bidders to provide MBE, WBE and OBE firms an equal opportunity to participate in the performance of all City Contracts. The OCC, based on a review of the documents submitted by Spiniello, reported that the contractor pledged an MBE level of 2.84 percent, a WBE level of 0 percent, and an OBE level of 2.93 percent, and complied with the GFE Subcontractor Outreach Program requirements of the bid. The Mandatory Subcontracting Minimum (MSM) requirement for this project is 6 percent. The contractor has pledged a subcontractor participation level of 5.97 percent, 0.03 percent less than the required amount. This percentage was calculated after subtracting the fixed amount of \$435,000 for allowances from the total bid amount. Staff recommends finding this deviation to be inconsequential as discussed subsequently in this report. Spiniello submitted the following MBW/OBE subcontractor information:

Gender/Ethnicity Codes:

- | | |
|---------------------------------|----------------------------|
| AA=African American | HA=Hispanic American |
| SAA=Subcontinent Asian American | APA=Asian Pacific American |
| C=Caucasian | NA=Native American |
| M=Male | F=Female |

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Subcontractors	MBE/OBE	Gender/ Ethnicity	(%) of Bid	Dollar (\$) Amount
Deltech Engineering, Inc.	MBE	M/AA	0.99	\$123,300.00
Lucas Builders, Inc.	MBE	M/SAA	1.60	\$200,000.00
Pre-con Products, Ltd.	MBE	M/HA	0.25	\$ 30,711.12
August Construction, Inc.	OBE		0.60	\$ 75,000.00
FSC Sales & Service, Inc.	OBE		1.80	\$224,543.65
P.C.I.	OBE		0.53	\$ 65,850.00

It should be noted that Prlich submitted a letter to OCC dated May 8, 2009 (Transmittal No. 2) that requested an investigation of Spiniello's listing of subcontractor FSC Sales & Service, Inc. (FSC). Prlich claimed that Spiniello listed FSC for an amount "that does not seem to correspond to any of the pipe prices supplied by only two company's which submitted bids." OCC contacted Prlich on May 21, 2009 to discuss this issue and was told that Prlich believed that Spiniello bid-listed FSC for a random amount. However, Spiniello's GFE submittal included a subcontractor quote from FSC that broke down specific items of work that FSC will be brokering and performing on this project, and the amount listed on the quote corresponds to FSC's bid-listed amount. Additionally, Prlich did not provide copies of the two companies' subcontractor quotes referenced in their letter for OCC review. Therefore, based on the information and documentation provided by both contractors, OCC did not find Spiniello's bid-listing of FSC in their bid proposal documents to be problematic.

Compliance with the City's Non-Discrimination Policies

Spiniello has complied with Affirmative Action and Slavery Disclosure Ordinance requirements of the bid. The Contractor's Provisional Compliance status with the Equal Benefits Ordinance (EBO) will expire on June 30, 2009. If the contractor does not come into full compliance by that date, payments due the contractor may be withheld, and agreements with the contractor may be subject to termination. Agreements executed, renewed, or amended after this date must be accompanied by a new EBO determination form.

Previous Work Record

Spiniello has no record of having worked on any previous BOE contracts awarded by the Board of Public Works (BPW) in the past five years. The OCC has checked with various State agencies and none of these agencies reported any labor compliance problems on file concerning the contractor.

The Inspector of Public Works conducted an investigation of references provided by the contractor and did not find any evidence of violations of statutes, regulations, ordinances, or wrong doing by the contractor. The fitness of Spiniello to undertake the contract was verified and the report dated June 10, 2009 was submitted to the Board.

Informality Noted

The MSM requirement for this project is 6 percent. Based on Spiniello's bid-listed subcontractors, OCC staff calculated Spiniello's subcontracting level at 5.97 percent or 0.03 percent short of meeting the MSM level specified for the project.

To date, no bid protests from other bidders or third parties regarding Spiniello's pledged MSM level were received. BOE staff is unaware of any facts that would indicate that Spiniello received an unfair competitive advantage for failing to meet the MSM level by 0.03 percent on the face of their bid. Therefore, staff believes that this small deviation in meeting the MSM level on the face of Spiniello's bid is insignificant. The Board has the authority to exercise its discretion when evaluating specific and unique circumstances on a case-by-case basis. The Board in making its determination may consider the following court case:

The California Appellate Court Case entitled, Ghilotti Construction Co. v. City of Richmond (May 1996), involved deviation from a required prime contractor participation percentage level. In the Ghilotti case, the awarding authority had a requirement for the prime contractor to perform 50 percent of the contract work. The lowest bidder only demonstrated that it was going to perform approximately 44.5 percent or 5.5 percent short of the 50 percent requirement. The awarding authority, after a review of all the facts, found this to be an "inconsequential deviation" from meeting a required prime contractor participation percentage. The Appellate Court agreed with the awarding authority and further stated that "strict compliance with bidding requirements does not preclude the contracting entity (the Board of Public Works in this case) from waiving inconsequential deviations." The court ruling advised that to be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process. In the Ghilotti case, the court found 5.5 percent short of meeting the required 50 percent contractor participation level to be inconsequential. Here we have 0.03 percent short of meeting the 6 percent MSM level.

Based on the above, BOE staff recommends that the Board find the deviation in meeting the MSM level, on the face of Spiniello's bid, to be insignificant and waive it because BOE staff is unaware of any facts that would indicate that Spiniello received an unfair competitive advantage or benefit not allowed other bidders, and is therefore inconsequential.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10, of the City of Los Angeles Administrative Code (L.A.A.C.), the Project Manager and the City Inspector for this construction contract shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of this contract.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles' Contractor Responsibility Ordinance No. 173677 (Article 14, Chapter 1, Division 10, L.A.A.C.). Failure to comply with all requirements specified in the Ordinance will render this bidder's contract subject to termination pursuant to the conditions expressed therein.

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Peak Hour Construction and Right-of-Way Obstruction Regulations

All contractors must comply with the requirements specified in the Los Angeles Municipal Code (L.A.M.C.) Section 62.61 related to peak hour traffic restrictions, unless an exemption from the Peak Traffic Hours Prohibition is approved.

Conclusion

In view of the above findings, we recommend that the Board declare Spiniello, first low bidder, to be the lowest responsive, responsible bidder, and award them the contract for this project.

Program Review Committee (PRC) Approval

The PRC approved a total budget at \$19,950,000, including contingency, for this project on March 14, 2007.

STATUS OF FINANCING

Total funding for this project, including contingency, is \$13,729,511. No funding is required for FY 2008-09. Funds in the amount of \$3,300,057 have been requested in FY 2009-10 in an account titled "NOS Rehab Maze Phase 5." The remaining amount of \$10,429,454 will be requested in the Wastewater Capital Improvement Program (WCIP) budget for subsequent fiscal years. Funds may be drawn from the Sewer Capital Fund No. 761 the WW Syst Comm Paper A Const Fund No. 70W, or any future funds established as a result of commercial paper or bond sales, at the discretion of the Director of the Bureau of Sanitation or appointed designee. The contract contains a "Financial Liability Clause" which states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

The following funding has been verified and approved by the Director of the Office of Accounting, subject to conditions described above:

Account	Contract	Contingencies	Total
FY 2009-10 WCIP Budget	\$ 3,000,052	\$ 300,005	\$ 3,300,057
Future FY WCIP Budget	\$ 9,481,322	\$ 948,132	\$10,429,454
Total	\$12,481,374	\$1,248,137	\$13,729,511

(TSA RTH WFB)

Report reviewed by:


BOE (WCE) and BOS (FMD)

Report prepared by:


Contract Award Section

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Compliance Review Performed
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Hannah Choi, Program Manager
Office of Contract Compliance
Bureau of Contract Administration

Statement as to Funds Approved by:


Craig V. Bloomquist, Director
Office of Accounting
Board of Public Works
Date: 6/18/09


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Questions regarding this report
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Respectfully submitted,



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John L. Reamer, Jr.
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