REQUEST TO AWARD A CONTRACT FOR THE NORTH OUTFALL SEWER (NOS) REHABILITATION UNIT 4 - TRINITY STREET FROM 41ST PLACE TO THE ALLEY SOUTH OF 23RD STREET - WORK ORDER NO. SZC13443

RECOMMENDATIONS

1. Find Transmittal Nos. 2 and 3 to be unmerited, as discussed in this report.

2. Declare Spiniello Infrastructure West, Inc. (Spiniello), first low bidder, to be the lowest responsive, responsible bidder, and award Spiniello a contract for this project for $11,469,569.

3. Authorize the President or two members of the Board of Public Works (Board) to execute the contract after approval as-to-form has been obtained from the City Attorney.

TRANSMITTALS

1. Summary of bids received on November 14, 2018.

2. Copy of letter dated December 21, 2018, from Mr. Juan Renteria, President, J.R. Pipeline Co., Inc. (JR Pipeline), 1530 Nandina Avenue, Perris, California 92571, to the Board.

3. Copy of the letter dated January 10, 2019, from Muzi & Associates (Muzi), representing JR Pipeline, 111 Pacifica, Suite 220, Irvine, California 92618, to the Bureau of Engineering (BOE)’s Project Award and Control Division (PAC).

4. Copy of the letter dated January 14, 2019, from Mr. Abdou Seydi, Vice President of Operations, Spiniello, 2650 Pomona Boulevard, Pomona, CA 91768, to the Board.

5. Copy of the letter dated February 1, 2019, from Mr. Abdou Seydi to PAC.

6. Copy of email dated February 15, 2019, from Mr. Abdou Seydi to the Bureau of Contract Administration (BCA).
DISCUSSION

Background
The scope of this project consists of rehabilitating approximately 6,501 linear feet of the NOS starting at 41st Place and Trinity Street and extending to 23rd Street and Trinity Street. This section of the NOS consists of 3,099 linear feet of 72-inch and 3,402 linear feet of 63-inch tile lined semi-elliptical pipe. Existing maintenance holes will be removed and replaced to restore the integrity of the structure and new maintenance holes will be added to allow future operation and maintenance of this sewer. The contract duration is 715 calendar days.

The project has been reviewed for environmental considerations. The NOS Rehabilitation Unit 4 - Trinity Street from 41st Place to the alley south of 23rd Street is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City CEQA Guidelines Article III, Section 1, Class 1, Category 2 and Article III, Section 1, Class 2, Category 5.
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**Bid Review**
The lowest of the six bids received (Transmittal No. 1) compared with the City Engineer's estimate of $14,633,854 is:

Business Codes:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MBE</td>
<td>Minority Business Enterprise</td>
</tr>
<tr>
<td>WBE</td>
<td>Women Business Enterprise</td>
</tr>
<tr>
<td>SBE</td>
<td>Small Business Enterprise</td>
</tr>
<tr>
<td>LBE</td>
<td>Local Business Enterprise</td>
</tr>
<tr>
<td>EBE</td>
<td>Emerging Business Enterprise</td>
</tr>
<tr>
<td>DVBE</td>
<td>Disabled Veteran Business Enterprise</td>
</tr>
<tr>
<td>OBE</td>
<td>Other Business Enterprise</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bid No.</th>
<th>Contractor Name</th>
<th>Bid Amount</th>
<th>(% High/Low)</th>
<th>(% Pledged)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Bid</td>
<td>Spiniello (OBE, LBE)</td>
<td>$11,469,569</td>
<td>21.62% Low</td>
<td></td>
</tr>
</tbody>
</table>

Based on the range of bids submitted for this project, staff believes this bid is reasonable. The contract may be awarded to Spiniello, first low bidder, subject to verification of all other bidding requirements.

**Local Business Preference (LBP) Program**
City Ordinance No. 181910 adopted the LBP Program. This program is designed to increase local employment and expenditures in the local private sector. Bidders that qualify as a LBE may be granted an 8 percent reduction of their bid amount solely for bid evaluation purposes. Additionally, all non-LBE bidders may be granted a 1 percent reduction, up to a maximum of 5 percent, of their bid amount for bid evaluation purposes, for every 10 percent of their bid that is to be performed by a LBE subcontractor. The program also includes a provision which states that an Awarding Authority has the right to determine, at any time before the award of a contract, that it is not in the City of Los Angeles’ (City) best interest to grant a bid reduction to a qualifying LBE.

For this project, the BCA verified that the first low bidder, Spiniello, is a certified LBE.

**Business Inclusion Program (BIP)**
On January 12, 2011, the Mayor issued Executive Directive No. 14, which created the BIP. This program provides MBE, WBE, SBE, EBE, DVBE, and OBE firms an equal opportunity to compete for and participate in City contracts. Additionally, the BIP
requires bidders to perform and document a BIP Outreach via the internet utilizing the Los Angeles Business Assistance Virtual Network service.

This project was advertised with anticipated participation levels of 4 percent MBE, 2 percent WBE, 25 percent SBE, 8 percent EBE, 3 percent DVBE, and with mandatory BIP documentation requirements. The Office of Contract Compliance, based on a review of the documents submitted by Spiniello, reported that the contractor pledged participation levels of 6.61 percent MBE, 0 percent WBE, 4.21 percent SBE, 0 percent EBE, 0 percent DVBE, 21.75 percent OBE, and complied with the BIP outreach requirements of the bid. The Mandatory Subcontracting Minimum (MSM) requirement for this project is 25 percent and the contractor has complied by pledging a subcontractor participation level of 29.96 percent. This percentage was calculated after subtracting the fixed cost items of $608,300 from the total bid amount.

Spiniello pledged the following subcontractor utilization:

Gender/Ethnicity Codes:

<table>
<thead>
<tr>
<th>Code</th>
<th>Gender</th>
<th>Ethnicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>M</td>
<td>HA</td>
</tr>
<tr>
<td>APA</td>
<td>M</td>
<td>CAA</td>
</tr>
<tr>
<td>NA</td>
<td>M</td>
<td>NA</td>
</tr>
<tr>
<td>M</td>
<td>M</td>
<td>F</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subcontractors</th>
<th>MBE/WBE/ SBE/EBE/DVBE/OBE</th>
<th>Gender/ Ethnicity</th>
<th>(%) of Bid</th>
<th>($) Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>LNA Concrete Structures, Inc.</td>
<td>MBE/SBE</td>
<td>M/HA</td>
<td>4.21%</td>
<td>$ 483,364.00</td>
</tr>
<tr>
<td>United Pumping Service, Inc.¹</td>
<td>MBE</td>
<td>M/HA</td>
<td>2.40%</td>
<td>$ 275,325.00</td>
</tr>
<tr>
<td>Cell-Crete Corp.</td>
<td>OBE</td>
<td>M/HA</td>
<td>2.45%</td>
<td>$ 280,884.21</td>
</tr>
<tr>
<td>RedZone Robotics, Inc.</td>
<td>OBE</td>
<td>M/HA</td>
<td>0.74%</td>
<td>$  85,010.00</td>
</tr>
<tr>
<td>Barney’s Hole Digging Service, Inc.</td>
<td>OBE</td>
<td>M/HA</td>
<td>0.52%</td>
<td>$  60,000.00</td>
</tr>
<tr>
<td>Thompson Pipe Group (Thompson)²</td>
<td>OBE</td>
<td>M/HA</td>
<td>18.04%</td>
<td>$2,068,950.60</td>
</tr>
</tbody>
</table>

Note: Subcontractors may be certified in multiple certification categories; therefore, per the requirements of Executive Directive No. 14, the dollar amounts were credited toward multiple pledged participation categories.

¹Certified LBE.
²This firm is a material supplier, therefore, its bid-listed amount of $3,448,251 was credited at the supplier rate of 60 percent.

Communications Received - Bid Protest

In a letter dated December 21, 2018 (Transmittal No. 2), JR Pipeline, the second low bidder, protested Spiniello’s bid for this project. JR Pipeline stated that Spiniello did not meet the MSM requirement. JR Pipeline questions Thompson’s classification for mandatory subcontracting credit due to a possible brokerage relationship between
Thompson and Amitech Poland SP Z.o.o. (Amitech). Furthermore, JR Pipeline maintains that clarifying Thompson’s classification will greatly reduce Spiniello’s MSM pledge, resulting in Spiniello’s bid being deemed non-responsive. If Spiniello is not responsive, according to JR Pipeline, then JR Pipeline is the lowest responsible bidder.

In a follow-up letter dated January 10, 2019 (Transmittal No. 3), JR Pipeline’s legal counsel, Muzi, stated that JR Pipeline is seeking a determination and investigation that Thompson is neither a materials manufacturer nor a manufacturer’s representative, but is in fact a broker. Thus, any subcontracting credits should be limited to that of a broker only. Therefore, according to Muzi, Thompson is “not qualified for the MSM credit as a manufacturer’s representative”.

Additionally, Muzi’s letter adds that Thompson is represented by Spiniello’s bid as a trucking company, broker, and manufacturer’s representative for Amitech. However, Muzi states that Pipeline Carriers, Inc.—a firm not listed in Spiniello’s bid—appears to be the actual trucking company that will be used for the project. Muzi included documents as attachments to the letter to reflect that Pipeline Carriers, Inc. has a registered office at 18585 Samuels Road, Zachary, LA 70791, the same address as listed in Spiniello’s bid as being Thompson’s address, and that Pipeline Carriers, Inc. and Thompson appear to have the same owner.

Furthermore, Muzi adds that while JR Pipeline’s bid protest was presented after the “stated deadline”, the protest is based on information significant to the City which was not made available to or known by JR Pipeline until recently.

**Communications Received - Bid Protest Responses**

In a letter dated January 14, 2019 (Transmittal No. 4), Spiniello responds to JR Pipeline’s bid protest by reiterating that Spiniello is the “lowest monetary” bidder for this project. Spiniello adds that bid protests were required to be submitted within 14 days of the bid submittal date of November 14, 2018. Spiniello notes, however, that JR Pipeline’s bid protest was dated December 21, 2018—at least 23 days past the deadline—and therefore is “properly disregarded as not being timely filed”. Spiniello concludes the letter by stating that its bid has mathematically and otherwise met its MSM requirements, including the listing of Thompson as a supplier, and that Spiniello is a certified LBE.

In a letter dated February 1, 2019 (Transmittal No. 5), Spiniello further responds to Muzi’s letter by reiterating that both letters from Muzi and JR Pipeline are untimely submittals, and that the letters present no alleged “evidence” which would not have become known in time to meet the bid protest submission deadline had Muzi done its
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due diligence. Furthermore, Spiniello adds that Thompson meets the definition of a vendor and/or supplier cited in the bid proposal for this project, under Page Nos. 3-6 of the section titled “Part III - Board of Public Works Business Inclusion Program (BIP) Outreach.” Spiniello includes a recent letter testimony from Thompson, in which Thompson declares itself to be a “family of companies” which include a manufacturer and supplier of pipe and pipe products with manufacturing, storage/warehousing, and transportation operations in Rialto, California; Alvarado, Texas; and Zachary, Louisiana. The letter also states that the trucking firm, Pipeline Carriers, Inc., is a “captive entity” of Thompson and does not offer “for hire work” to other entities. These attributes of Thompson’s operations, Spiniello states, meet the BIP definition of a vendor and/or supplier as “a firm that owns, operates or maintains a store, warehouse, or other establishment in which materials [required for the project] are bought, kept in stock, and regularly sold to the public in the usual course of business”. Spiniello concludes its response to Muzi by noting that JR Pipeline’s bid was $1.321 million higher than Spiniello’s low bid and requests that City staff disregard Muzi’s and JR Pipeline’s protests of this project’s award to Spiniello, the lowest monetary, responsive, and responsible bidder.

Staff’s Response

JR Pipeline’s bid protest is dated December 21, 2018. However, the section of the bid specifications titled “Bid Protest Procedures” requires contractors to submit bid protests postmarked within 14 calendar days after the receipt of bids, which took place on November 14, 2018. However, due to the significance of the bid protest, the Assistant City Attorney, Mr. Edward Jordan, has recommended that staff review the protest and whether Spiniello has been awarded the appropriate subcontracting credits.

The BCA staff considers manufacturer’s representatives to be brokers because a manufacturer’s representative does not take possession of the product or own the delivery method. The BCA staff reviewed Transmittal Nos. 2, 3, and 4 and its initial findings indicated that Thompson was taking possession of the material quoted for this project and owned the delivery method to the job site. Therefore, the BCA staff credited Thompson as a supplier. Subsequently, the BCA reviewed the letter from Spiniello dated February 1, 2019 (Transmittal No. 5), which included the statement regarding Pipeline Carriers, Inc. being a “captive entity of the Thompson Pipe Group” and that Pipeline Carriers, Inc. is “only used for the transportation of Thompson Pipe Group”. Consequently, the BCA requested Spiniello to provide supporting documentation from Thompson which proved that Pipeline Carriers, Inc. is wholly-owned by Thompson, as alluded to in Transmittal No. 5, in order to confirm its determination of Thompson as a supplier. The BCA staff received confirmation under penalty of perjury (Transmittal No. 6) that for this project, Thompson is using its own trucks and not Pipeline Carriers, Inc. to transport the pipes for this project to the jobsite. The BCA staff will monitor to ensure that Thompson uses its own trucks and not Pipeline Carriers, Inc. as stated, and Spiniello is aware that penalties may be assessed if Thompson does not perform as stated.
Based on these findings, the BCA staff recommends that the Board find Transmittal Nos. 2 and 3 to be unmerited, and find Spiniello to be the lowest responsive, responsible bidder for this project.

The Assistant City Attorney, Mr. Edward Jordan, has concurred with the recommendations contained in this report.

Compliance with the City’s Non-Discrimination Policies
Spiniello shall continue to comply with the Affirmative Action, Non-Discrimination, and Equal Employment Practices Provisions, Equal Benefits Ordinance, Contractor’s Use of Criminal History for Consideration of Employment, Living Wage Ordinance, Worker Retention Ordinance, First Source Hiring, Slavery Disclosure Ordinance, and Disclosure of Border Wall Contracting Ordinance requirements of the bid.

Previous Work Record
Spiniello has not been awarded any contracts issued by the Board within the last five years.

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 BCA (Department of Public Works), upon completion of this contract.

Peak Hour Construction and Right-of-Way Obstruction Regulations
All contractors must comply with the requirements specified in the Los Angeles Municipal Code Section 62.61 related to peak hour traffic restrictions, unless an exemption from the Peak Traffic Hours Prohibition is approved.

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

Project Labor Agreement (PLA)
The project incorporates a PLA. The PLA will facilitate an orderly settlement of labor disputes and grievances without strikes, work stoppages, or lockouts to assure the timely and economical completion of the project. The PLA will also promote employment
opportunities for local residents and will provide apprenticeship training for the duration of the construction. The contractor will be bound on all the provisions of the PLA.

**Bid Bond Extension**
Spiniello and JR Pipeline were both requested to extend their bid bonds which expired on February 12, 2019. Both contractors have agreed to extend their bid bonds until March 29, 2019.

**Conclusion**
In view of the above findings, staff recommends that the Board find Transmittal Nos. 2 and 3 to be unmerited; declare Spiniello, first low bidder, to be the lowest responsive, responsible bidder; and award Spiniello the contract for this project.

**Program Review Committee (PRC) Approval**
The PRC approved a total budget of $15,897,185, including contingency, for this project on February 14, 2018.

**Status of Financing**
There is no impact to the General Fund. The total funding for this project is not-to-exceed $12,043,047. No funds are required in this fiscal year. Funds will be budgeted within the Sewer Construction and Maintenance Fund as shown in the table below:

<table>
<thead>
<tr>
<th>Fund No.</th>
<th>Appropriation Unit No.</th>
<th>Budget Fiscal Year</th>
<th>Contract</th>
<th>Contingencies</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>TBD</td>
<td>2019/20</td>
<td>$ 5,992,381.00</td>
<td>$299,619.00</td>
<td>$ 6,292,000.00</td>
</tr>
<tr>
<td>TBD</td>
<td>TBD</td>
<td>Future</td>
<td>$ 5,477,188.00</td>
<td>$273,859.00</td>
<td>$ 5,751,047.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$11,469,569.00</strong></td>
<td><strong>$573,478.00</strong></td>
<td><strong>$12,043,047.00</strong></td>
</tr>
</tbody>
</table>

*To be determined by the Director of the Bureau of Sanitation or appointed designee.

However, funds and appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, funds and appropriations will be determined by the Director of Sanitation or 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.”
Report reviewed by:

BOE (ADM and WCE) and BOS

Report prepared by:

Project Award and Control Division
Edick Ohanian, PE, ENV SP
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Phone No. (213) 847-0577

Compliance Review performed and approved by:

Hannah Choi, Assistant Director
Bureau of Contract Administration

Respectfully submitted,

Gary Lee Moore, PE, ENV SP
City Engineer
Bureau of Engineering

John L. Reamer, Jr.
Inspector of Public Works
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