Department of Public Works
Bureau of Engineering
Bureau of Contract Administration
Joint Report No. 2

April 15, 2019
CD No. 11

REQUEST TO AWARD A CONTRACT FOR THE CAPITAL IMPROVEMENT PROGRAM (CIP) CIP 2445 - HYPERION WATER RECLAMATION PROJECT (HWRP) PRIMARY TANKS B0, B5, AND C0 UPGRADES, CIP 2446 - HWRP PRIMARY TANKS SKIMMER IMPROVEMENTS, CIP 2477 - HWRP PRIMARY INFLUENT SLUICE GATES - WORK ORDER NOS. SZH11783, SZH11829, and SZH11924

RECOMMENDATIONS

1. Declare Myers & Sons Construction, LLC (Myers), apparent first low bidder, to be non-responsive, as discussed in this report.

2. Declare Murray Plumbing and Heating Corporation dba Murray Company (Murray), the apparent second low bidder that became the first low bidder for bid evaluation purposes after the Local Business Preference (LBP) was applied, to be the lowest responsive, responsible bidder, and award Murray the contract for this project for $18,356,566.

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 January 16, 2019.


3. Copy of the email dated January 29, 2019, from Myers to the OCC.

4. Copy of Myers’ Los Angeles Business Assistance Virtual Network (LABAVN) Business Inclusion Program (BIP) Summary Sheet submitted as part of its BIP Outreach documentation.

DISCUSSION

Background
The project’s scope of work includes:

CIP 2445 - HWRP Primary Tanks Upgrade - B0, B5, and C0 will improve the sludge conveyance systems in Primary Battery B (PBB), Tank B0 and B5, and Primary Battery C (PBC), Tank C0. CIP 2445 will remove existing sludge pumps and procure and install new sludge pumps with new valves, piping, and associated motor control centers.
Additionally, slide gates will be removed and replaced. This project will also remove and replace influent scum trough slide gate. The scope of work will also include removal and replacement of long sludge collectors and cross sludge collectors located within the three above listed tanks, shown in Figure No. 1. PBC Tank C0’s concrete flooring will also be repaired as part of this project.

CIP 2446 - HWRP Primary Tanks Skimmer Improvements will update the scum collection system in Primary Battery A (PBA), PBB, and PBC by removing existing helical skimmers with new loop chain and flight skimmers with all associated assemblies. CIP 2446 will also remove and replace the long and cross sludge collectors within PBA.

CIP 2477 - HWRP Primary Influent Sluice Gates will demolish existing sluice gates and associated assemblies in PBA and replace them with bulkheads. Additionally, existing corroded bulkheads and associated guides will be removed and replaced. PVC liner along the edges of PBA will be repaired as well.

The contract duration is 1,080 calendar days.

Figure 1: Sludge conveyance equipment in the HWRP primary batteries.

CIP 2445, CIP 2446, and CIP 2477 have been reviewed for environmental considerations. This project was determined to be categorically exempt pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970 under Article III of the City of Los Angeles’ (City) CEQA Guidelines.
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Bid Review

The two lowest of the six bids received (Transmittal No. 1) compared with the City Engineer’s estimate of $19,560,529 are:

Business Codes:

| MBE  = Minority Business Enterprise | EBE  = Emerging Business Enterprise |
| WBE  = Women Business Enterprise   | DVBE = Disabled Veteran Business Enterprise |
| SBE  = Small Business Enterprise  | OBE  = Other Business Enterprise   |
| LBE  = Local Business Enterprise  |                                      |

<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>Myers (OBE)</td>
<td>$18,057,000.00</td>
<td>7.69% Low</td>
<td>MBE 0.00% WBE 0.00% SBE 6.50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EBE 0.00% DVBE 0.00% OBE 0.00%</td>
</tr>
<tr>
<td>2nd Bid</td>
<td>Murray (LBE, OBE)</td>
<td>$18,356,566.00</td>
<td>6.16% Low</td>
<td>MBE 2.43% WBE 4.48% SBE 6.91%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EBE 6.45% DVBE 0.00% OBE 11.07%</td>
</tr>
</tbody>
</table>

Murray, apparent second low bidder, listed their Total Bid Amount incorrectly. Staff corrected Murray’s Total Bid Amount in accordance with the procedures set forth in the General Instructions and Information for Bidders. Murray was contacted and notified of corrections. The corrections did not change the order of the bids.

Based on the range of bids submitted for this project, staff believes these bids are reasonable. The contract may be awarded to either of the above bidders, subject to verification of all other bidding requirements.

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.

For this project, the Bureau of Contract Administration (BCA) verified that the apparent first low bidder, Myers, is not a certified LBE, and that the apparent second low bidder, Murray, is a certified LBE.
Staff calculated the bids as follows:

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Certification</th>
<th>Bid Amount</th>
<th>LBP Percentage</th>
<th>LBP Adjusted Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Myers</td>
<td>Non-LBE</td>
<td>$18,057,000.00</td>
<td>0%¹</td>
<td>$18,057,000.00</td>
</tr>
<tr>
<td>Murray</td>
<td>LBE</td>
<td>$18,356,566.00</td>
<td>8%</td>
<td>$17,356,566.00²</td>
</tr>
</tbody>
</table>

¹This bidder listed two certified LBE Subcontractors; however, their bid-listed amounts equated to 6.50% which was insufficient to qualify for the LBP percentage.
²The LBP Program Ordinance No. 181910 Sec. 10.48.8 (3) states that the maximum bid or proposal preference shall not exceed one million dollars for any bid or proposal.

Based on these findings, Murray becomes the first low bidder, and Myers becomes the second low bidder, for bid evaluation purposes, after the LBP Percentage is applied.

**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 LABAVN service.

This project was advertised with anticipated participation levels of 3 percent MBE, 1 percent WBE, 25 percent SBE, 8 percent EBE, and 3 percent DVBE, and with mandatory BIP documentation requirements. This project was also advertised with the Board’s Mandatory Subcontracting Minimum (MSM) requirement of 15 percent. The bidders’ MSM percentages were calculated after subtracting the fixed cost items of $10,015,614 from their total bid amounts.

The OCC, based on a review of the documents submitted, reported the following:

1. Myers, the apparent first low bidder, failed to meet the required MSM percentage set for this project. Myers pledged a MSM of 14.59 percent which did not meet the MSM requirement of 15 percent. Since Myers did not meet the MSM requirement, staff did not complete its evaluation of Myers’ BIP Outreach documentation.

In a letter dated, January 25, 2019 (Transmittal No. 2), the OCC notified Myers that the OCC would be recommending that Myers' bid be deemed non-responsive for failing to meet the MSM requirement.

**Communication Received**

In an email dated January 29, 2019 (Transmittal No. 3), Myers responded to the OCC’s notification, stating that unfortunately it neglected to list its vendor, Capital Flow, on page 1-8 of its bid proposal. However, as proof of Capital Flow's selection, Myers submitted an undated “printed Vendor Selection report from our estimating system” and a letter dated January 29, 2019 from Capital Flow verifying their planned participation for this project. Therefore, Myers asserted that its bid did exceed the minimum subcontractor participation of 15 percent for this project.
Additionally, Myers stated that “even if [the] OCC determines Myers’ bid to be non-responsive due to Myers’ inadvertence, [the] OCC has the right to waive inconsequential deviations and irregularities in the bid.” Myers cited a court case involving a similar deviation, Ghilotti Construction Co. (Ghilotti) v. City of Richmond, and stated that while Myers firmly believes that the lack of listing Capital Flow on page 1-8 of the bid was not an irregularity or deviation at all, “it clearly does not rise to the seriousness that would preclude the OCC from waiving it.”

Therefore, Myers requested that the OCC reverse its decision and determine that Myers’ bid is responsive.

Staff Response
The OCC calculated Myer’s pledged MSM per the bid specifications which state: “Failure to list subcontractors and subcontracting amounts on pages 1-6 through 1-8 with the bid sufficient to meet or exceed the MSM may cause the bid to be rejected by the Board as non-responsive”. Additionally, “…the bidder must list any additional subcontractor and dollar value to the subcontract, regardless of amount, if the bidder wishes to have the subcontract amount credited toward meeting the MSM level of participation for this project”. Therefore, the OCC staff calculated Myers’ pledged MSM based on the subcontractors and subcontract amounts listed on pages 1-6 through 1-8 of the bid.

Additionally, the OCC noted that although Myers provided the Vendor Selection report and the Capital Flow letter with its protest to substantiate its selection of Capital Flow, Myers had previously clearly indicated that Capital Flow was “not selected” in its BIP Summary Sheet, submitted prior to the January 17, 2019 deadline, as part of the LABAVN BIP Outreach documentation (Transmittal No. 4).

Finally, Myers referenced the California Appellate Court Case, Ghilotti Construction Co. v. City of Richmond (May 1996) and asserted that the OCC “has the right to waive [similar] inconsequential deviations and irregularities in the bid”. However, the OCC staff must evaluate the MSM participation level based purely on the specific MSM requirements in the bid documents. It is the Bureau of Engineering that determines whether or not Myers received an unfair competitive advantage, and the Board has sole authority to declare Myers’ deviation to be inconsequential and waive it for this contract based on staff determinations. Since Myers is not being considered for award based on the application of the LBP, staff determined that there was no reason to apply the Ghilotti ruling for this contract award.

In view of the above findings, the OCC recommends that Myers be found to be non-responsive for failure to meet the MSM requirement for this project.
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2. Murray, the first low bidder after the LBP is applied, complied with the BIP Outreach requirements of the bid. Murray pledged participation levels of 2.43 percent MBE, 4.48 percent WBE, 6.91 percent SBE, 6.45 percent EBE, 0 percent DVBE, and 11.07 percent OBE and complied with the MSM requirement by pledging a subcontractor participation level of 39.57 percent.

In view of the above findings, Murray, first low bidder after the LBP was applied, is the lowest responsive, responsible bidder.

Murray pledged the following subcontractor utilization:

Gender/Ethnicity Codes:

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

<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>All in One Electric¹</td>
<td>MBE, SBE, EBE</td>
<td>M/APA</td>
<td>1.97%</td>
<td>$361,756.00</td>
</tr>
<tr>
<td>Carter Industrial Automation</td>
<td>MBE, SBE</td>
<td>M/AA</td>
<td>0.46%</td>
<td>$84,687.00</td>
</tr>
<tr>
<td>MURRICO Construction¹</td>
<td>WBE, SBE, EBE</td>
<td>F/C</td>
<td>4.48%</td>
<td>$822,730.00</td>
</tr>
<tr>
<td>CL Industrial Coatings, Inc.</td>
<td>OBE</td>
<td></td>
<td>3.38%</td>
<td>$620,000.00</td>
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<tr>
<td>Halbert Brothers, Inc.</td>
<td>OBE</td>
<td></td>
<td>7.11%</td>
<td>$1,305,000.00</td>
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<tr>
<td>Innovative Mechanical Services, Inc.</td>
<td>OBE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JC Consulting Service²</td>
<td>OBE</td>
<td></td>
<td>0.58%</td>
<td>$106,730.00</td>
</tr>
</tbody>
</table>

¹Certified LBE.
²This firm was bid-listed for $72,000; however, staff determined their subcontract amount would be considered a cost of doing business and thus is not a commercially useful function. Therefore, the contractor did not receive subcontractor participation or MSM credit for this firm’s subcontract amount. 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.

Compliance with the City’s Non-Discrimination Policies

Murray 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

Murray has been awarded numerous contracts issued by the Board within the last five years. Murray has compiled the following record of violations while performing construction contracts for the City:
Other than the aforementioned, no significant or unresolved problems in inspection or contract compliance have been experienced by the BCA.

The following table summarizes the previous MBE/WBE/SBE/EBE/DVBE/OBE participation levels pledged by Murray in the past five years under the BIP, exclusive of CisCo contracts:

<table>
<thead>
<tr>
<th>Pledged MBE ($) Amount</th>
<th>Pledged WBE ($) Amount</th>
<th>Pledged SBE ($) Amount</th>
<th>Pledged EBE ($) Amount</th>
<th>Pledged DVBE ($) Amount</th>
<th>Pledged OBE ($) Amount</th>
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</thead>
<tbody>
<tr>
<td>$1,838,572.00</td>
<td>$366,800.00</td>
<td>$3,712,649.00</td>
<td>$1,838,572.00</td>
<td>$160,000.00</td>
<td>$7,943,187.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total MBE (%)</th>
<th>Total WBE (%)</th>
<th>Total SBE (%)</th>
<th>Total EBE (%)</th>
<th>Total DVBE (%)</th>
<th>Total OBE (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.03%</td>
<td>1.20%</td>
<td>12.18%</td>
<td>6.03%</td>
<td>0.52%</td>
<td>26.06%</td>
</tr>
</tbody>
</table>

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10, of the City 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 of Los Angeles’ 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.

Conclusion
In view of the above findings, staff recommends that the Board find Myers, apparent first low bidder, to be non-responsive; declare Murray, apparent second low bidder that became the first low bidder after the LBP was applied, to be the lowest responsive, responsible bidder; and award Murray the contract for this project.

Program Review Committee (PRC) Approval
The PRC approved a total budget of $19,560,529, including contingency, for this project on September 12, 2018.

Status of Financing
There is no impact to the General Fund. The total funding for this project is not-to-exceed $19,339,442. No funding is required in the current Fiscal Year. Funding will be provided within the Sewer Construction and Maintenance Fund.

<table>
<thead>
<tr>
<th>Work Order Number</th>
<th>Fund No.</th>
<th>AUN**</th>
<th>Budget Fiscal Year</th>
<th>Contract</th>
<th>Contingency</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SZH11783</td>
<td>TBD</td>
<td>TBD</td>
<td>Future</td>
<td>$ 8,609,637.67</td>
<td>$430,481.88</td>
<td>$ 9,040,119.55</td>
</tr>
<tr>
<td>SZH11829</td>
<td>TBD</td>
<td>TBD</td>
<td>Future</td>
<td>$ 8,445,993.67</td>
<td>$422,299.68</td>
<td>$ 8,868,293.35</td>
</tr>
<tr>
<td>SZH11924</td>
<td>TBD</td>
<td>TBD</td>
<td>Future</td>
<td>$ 1,300,934.66</td>
<td>$130,093.47</td>
<td>$ 1,431,028.13</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td>$18,356,566.00</td>
<td>$982,875.03</td>
<td>$19,339,441.03</td>
</tr>
</tbody>
</table>

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

**AUN = Appropriation Unit No.

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.”
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(MJS EO RMK KRR CLS)

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Bureau of Contract Administration

Respectfully submitted,

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Gary Lee Moore, PE, ENV SP
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Bureau of Engineering

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John L. Reamer, Jr.
Inspector of Public Works
Bureau of Contract Administration

EO/IH/03-2019-0044.PAC.gva

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