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Title: REJECTION OF ALL BIDS FOR PROJECT NO. 1393-3: CITYWIDE ANNUAL OVERLAY PROGRAM AND PROJECT NO. 1411-3: CITYWIDE ANNUAL CONCRETE REPLACEMENT PROGRAM AND AUTHORIZATION FOR RE-ADVERTISEMENT FOR PROJECTS (CITY COUNCIL)

Sponsors:

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Attachments: 1. Exhibit No. 1 - Location Map

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, August 18, 2020

Consent

SUBJECT:

REJECTION OF ALL BIDS FOR PROJECT NO. 1393-3: CITYWIDE ANNUAL OVERLAY PROGRAM AND PROJECT NO. 1411-3: CITYWIDE ANNUAL CONCRETE REPLACEMENT PROGRAM AND AUTHORIZATION FOR RE-ADVERTISEMENT FOR PROJECTS (CITY COUNCIL)

I. SUMMARY

On April 21, 2020, the City Council approved the plans, specifications and estimates (“PS&E”) for Project No. 1393-3: Citywide Annual Overlay Program, and Project No. 1411-3: Citywide Annual Concrete Replacement Program (Exhibit Nos. 1 and 2). To maximize economies of scale, these two projects have been combined, with a total budget of \$1,500,000.00.

The Invitation for Bids (“IFB”) was advertised in the *Our Weekly* Publication, and through the PlanetBids portal from May 21, 2020 to June 9, 2020. The IFB required all contractors to submit two bids, one based on Schedule A and one based on Schedule B. The line items were identical between the two schedules; the only difference between the two was that Schedule A was to be used if by the time the contract was awarded, there was no executed Project Labor Agreement (“PLA”) in place, and Schedule B was to be used if there was an executed PLA by the time the contract was awarded.

Seven bids were received, and the lowest responsive and responsible bidder based on Schedule B was determined by staff, as the PLA had been executed. The lowest bidder under non-PLA bid but the highest bidder under PLA bid, filed a protest against City's proposed award of the projects.

Although staff and the City Attorney's office believe the bid was in fact proper, in light of some language ambiguity, staff is recommending that the City Council reject all bids and re-advertise the projects.

II. RECOMMENDATION

TAKE the following actions:

1. AUTHORIZE rejection of all bids for Project No. 1393-3: Citywide Annual Overlay Program, and Project No. 1411-3: Citywide Annual Concrete Replacement Program.
2. AUTHORIZE staff to re-advertise the projects and call for construction bids for Project No. 1393-3: Citywide Annual Overlay Program, and Project No. 1411-3: Citywide Annual Concrete Replacement Program.

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate consistent with the requirements of the law.

IV. BACKGROUND

On April 21, 2020, the City Council approved Agenda Item No.8, approving the PS&E, and authorizing staff to advertise the work and call for construction bids for Project No. 1393-3: Citywide Annual Overlay Program and Project No. 1411-3: Citywide Annual Concrete Replacement Program.

The Annual Overlay Program will improve Victoria Street from Figueroa Street to Avalon Boulevard and other various streets on adjacent zones. It consists of grinding two inches of existing asphalt pavement surface, removal and reconstruction of deteriorated roadway section, laying-down of AC leveling course and asphalt rubberized hot mix (ARHM), installation of pavement markings, re-striping, and other related work. Victoria Street will have a new bike lane striped spanning from Figueroa Street to Avalon Boulevard.

The Annual Concrete Replacement Program will improve the conditions of various types of concrete along Victoria Street from Figueroa Street to Tamcliff Avenue. The project consists of repair of damaged concrete pavement, sidewalks, driveway approaches, curbs and gutters, access curb ramps, and tree removals, restoration of concrete improvements to City standard, and compliance with Americans with Disabilities Act (“ADA”) requirements.

These projects are combined to maximize economies of scale while addressing sub-standard elements, maintenance issues, and ADA compliance. The locations were selected based on the 2017 Pavement Management Program (PMP), the 2017 Sidewalk Assessment Report (SAR), and the allocated budget.

The Purchasing Division advertised the projects for construction bids from May 21, 2020 to June 9, 2020; seven bids were received through PlanetBids and opened by the Purchasing Division Manager at the City Clerk’s office on June 9, 2020.

The IFB required all contractors to submit two bids, one based on Schedule A and one based on Schedule B. The line items were identical between the two schedules; the only difference between the two was that Schedule A was to be used if by the time the contract was awarded, there was no executed PLA in place, and Schedule B was to be used if there was an executed PLA by the time the contract was awarded.

Because there was an executed PLA at the time of the contract award, staff determined the lowest responsive and responsible bidder under Schedule B bids received and was prepared to recommend award of the projects to that bidder. However, the contractor with the low bid under Schedule A but with the highest bid under Schedule B, lodged a protest against City’s proposed award of the project to anyone other than that contractor, based on that contractor’s low bid under Schedule A, alleging the City’s use of Schedule B was improper and unauthorized under law. That contractor also claims the City is not permitted to utilize such an alternative bidding method due to the fact that the PLA was not yet final which caused that bidder and the other bidders to guess as to what the final terms of the PLA may be. While staff and the City Attorney’s office believe that use of Schedule B was in fact proper, because the IFB did not contain language stating that the PLA provided was only a sample but nonetheless represented the final terms of the PLA upon which bidders were able to rely, this opened the door for an argument that the directions were somewhat ambiguous. Accordingly, staff is recommending that the City Council reject all bids and re-advertise the projects as required under Section 2612(d) of the City’s Municipal Code, which requires that rejection of all bids for public works projects be issued by the Council.

V. FISCAL IMPACT

None. There will be no fiscal impact associated with Council’s rejection of all bids and re-advertising the projects.

VI. EXHIBITS

1. Project Location Map for Project Nos. 1393-3 &1411-3 (pg. 5)

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