



## Legislation Details (With Text)

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<b>On agenda:</b>	7/5/2022	<b>Final action:</b>			
<b>Title:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-146, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DENYING BPR, INC.'S BID PROTEST AGAINST CITY OF CARSON'S PROPOSED AWARD OF CONTRACT FOR ON-CALL SERVICES FOR CONCRETE REMEDIATION SOLICITED THROUGH RFP 22-007" AND AWARD OF ON-CALL CONCRETE REMEDIATION SERVICES CONTRACT TO SOUTHERN CALIFORNIA PRECISION CONCRETE, INC. IN AN AMOUNT NOT TO EXCEED \$700,000 (CITY COUNCIL)				

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit 1-So. Cal Precision Concrete Contract (Final), 2. Exhibit 2-So. Cal. Precision Bid Package, 3. Exhibit 3-Bid Register-22-007 On-Call Services-Concrete Remediation, 4. Exhibit 4-Reso 22-146

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

Tuesday, July 05, 2022

Discussion

**SUBJECT:**

**CONSIDER ADOPTION OF RESOLUTION NO. 22-146, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DENYING BPR, INC.'S BID PROTEST AGAINST CITY OF CARSON'S PROPOSED AWARD OF CONTRACT FOR ON-CALL SERVICES FOR CONCRETE REMEDIATION SOLICITED THROUGH RFP 22-007" AND AWARD OF ON-CALL CONCRETE REMEDIATION SERVICES CONTRACT TO SOUTHERN CALIFORNIA PRECISION CONCRETE, INC. IN AN AMOUNT NOT TO EXCEED \$700,000 (CITY COUNCIL)**

### **I. SUMMARY**

A Request for Proposals, RFP No. 22-007 ("On-Call Services for Concrete Remediation") was released on March 24, 2022, seeking proposals from qualified contractors to provide on-call concrete remediation services for City-owned sidewalks and pavement. In response to the RFP, the City received two (2) proposals. After careful analysis and evaluation of the proposals, staff recommends that the City Council award a contract to Southern California Precision Concrete, Inc. for on-call concrete remediation services per RFP No. 22-007 for

an amount not to exceed \$700,000.00.

Staff also recommends City Council approval of Resolution No. 22-146 for denial of BPR Inc.'s bid protest submitted in opposition to the proposed award of contract to Southern California Precision Concrete, Inc.

## **II. RECOMMENDATION**

TAKE the following actions:

1. APPROVE Resolution No. 22-146, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DENYING BPR, INC.'S BID PROTEST AGAINST CITY OF CARSON'S PROPOSED AWARD OF CONTRACT FOR ON-CALL SERVICES FOR CONCRETE REMEDIATION SOLICITED THROUGH RFP 22-007"
2. APPROVE the proposed Public Works Agreement with Southern California Precision Concrete, Inc. for the provision of on-call concrete remediation services for a not-to-exceed contract sum of \$700,000.00 (Exhibit No. 1) (the "So. Cal. Precision Concrete Contract").
3. AUTHORIZE the Mayor to execute the So. Cal. Precision Concrete Contract following approval as to form by the City Attorney.

## **III. ALTERNATIVES**

1. DO NOT adopt Resolution No. 22-146.
2. DO NOT award the proposed contract to Southern California Precision Concrete, Inc., and REJECT all proposals for RFP No. 22-007 (Concrete).
3. TAKE another ACTION the City Council deems appropriate, consistent with the requirements of the law.

## **IV. BACKGROUND**

The City of Carson is responsible for the repair and maintenance of approximately 203.1 centerline miles of streets, of which 49.2 miles are arterials, 5.7 miles are secondary arterials, 18.1 miles are collectors, and 130.1 miles are residential streets. Roads and pavements are one of the City's most valuable assets. It is always the City's goal to keep this infrastructure in excellent and safe condition for its residents to enjoy.

The Department of Public Works is charged with providing the community with a safe, clean, and healthy environment through the design, construction, operation, maintenance, and management of the vital municipal infrastructure system.

The Right of Way Maintenance Division is responsible for maintaining and repairing the streets, sidewalks, signs, striping, environmental, and fleet. They perform their regular maintenance and repair based on the available staff and funds budgeted. There have been numerous requests for repairs from the residents and motorists based on existing conditions of city streets and sidewalks. For the past several years, work orders have been generated to address these requests. However, the Division has determined that there are too many work orders with the existing workforce to execute the outstanding repairs in a timely manner. To temporarily relieve the backlog, staff recommends retaining an on-call contractor to address the need for remediation work such as curb and gutters, sidewalk cutting/grinding, ramping, and driveway approaches.

From March 24, 2022 through April 7, 2022, the City conducted a Request for Proposal (RFP) process seeking a contractor to perform on-call services for remediation of sidewalks. RFP No. 22-007 was advertised through Planet Bids and the Daily Journal and resulted in a total of two (2) proposals.

Below is a brief outline of the bid results for RFP 22-007.

#### **RFP 22-007 (On Call Services for Concrete Remediation)**

<b><u>BID</u></b>	<b><u>VENDOR</u></b>	<b><u>PER INCH FOOT</u></b>
<b>1.</b>	BPR Inc.	\$34.69
<b>2.</b>	Southern California Precision Concrete Inc.	\$34.95

(Exhibit No. 3)

Staff reviewed and evaluated the proposals based on the criteria outlined in the RFP, the Municipal Code and Public Contract Code, which included price, experience, performance, and ability to perform in a legally permissible manner, and also conducted interviews with both bidders. In accordance with Carson Municipal Code (“CMC”) Section 2612 and the Public Contract Code, Southern California Precision Concrete, Inc. (“Precision Concrete”), was determined to be the sole responsive and responsible bidder, with a proposed pricing of \$34.95 per inch foot for concrete. (Exhibit No. 2). While BPR, Inc.’s proposal was slightly lower, staff believed that BPR, Inc. would be unable to perform the work without violating Cal-OSHA Regulations. Specifically, horizontal cutting of concrete will result in the release of large amounts of silica dust to the surrounding area. Per Cal-OSHA the permissible exposure limit is 50 micrograms per cubic meter (Cal-OSHA Section 1523.3. Occupational Exposure to Respirable Crystalline Silica). Failure to responsibly mitigate the silica dust while performing concrete cutting/grinding can result in silicosis occurring in workers, City officials inspecting the performance of the work, and/or community members within the vicinity of the work.

Staff reached out to BPR, Inc. regarding the silica dust issue and gave BPR, Inc. an opportunity to address the problem and in response, BPR Inc. confirmed that it does not possess the ability to incorporate the requisite mitigation measures (see Exhibit C of attached Resolution No. 22-146). As a result, staff deemed the bid to be non-responsive

and recommends awarding the on-call contract to Precision Concrete.

After City staff issued a Notice of Intent to Award contract on June 6, 2022, stating City's intent to award the contract to Precision Concrete, BPR Inc. submitted a bid protest (see Exhibit D of attached Resolution No. 22-146) as permitted under Section 2613 of the CMC. The protest letter claims the RFP specifications do "not allow for the OSHA health standard for eliminating silica dust" and that they do not "state that silica dust is limited to 50 micrograms per cubic meter, which is OSHA's maximum allowed amount." While City staff was unable to determine what specifically BPR Inc. meant by this statement, this assertion is presumably based on the allegation that the RFP did not specifically prohibit violation of OSHA regulations and as a result, contractor is not required to comply with such state laws. However, the RFP required any contractor awarded the contract to perform the work in accordance with all applicable laws which requirement is a material term of the RFP. A bid must conform to the material terms of the bid package. DeSilva Gates Constr. v. Department of Transp., 242 CA4th 1409 (2015). Here, BPR Inc. is unable to perform the work without violating Cal-OSHA Regulations. On the other hand, Precision Concrete has represented to City staff that it is able to perform the work making less than 50 microns per cubic meter of silica dust using a process patented by the United States Patent and Trademark Office.

BPR Inc. also claims that the scope and specifications used in the RFP which states "no water-cooling is allowed which creates slurry and contaminates storm drains and causes excessive environmental impact. Contractor must use a dust abatement system that limits the dust emitted from the cutting," is flawed, because storm drains are located within streets, not sidewalks, and as a result, the RFP scope for sidewalk remediation incorrectly proscribes contamination of storm drains within streets. However, it is widely known that water used on sidewalks commonly drains onto streets, especially given the change in grade of the sidewalks designed exactly for such purpose. Based on this, the RFP scope is not flawed and in fact, was written in accordance with industry specifications.

The protest letter was procedurally defective under Section 2613(e)(2) of the CMC which mandates that each protest "identify the procurement or project under protest by name, solicitation number, and submission date" because the letter did not include the submission date. The protest was also procedurally defective under Section 2613(d) of the CMC because the CMC requires that "protests shall be filed with the City Clerk in writing and hand delivered or sent by certified U.S. mail, return receipt requested," whereas City's records show that BPR Inc. did not comply with either of the requisite delivery methods.

Based on the reasons noted above, and because BPR Inc.'s bid was non-responsive, staff recommends that the City Council deny BPR Inc.'s bid protest by adopting Resolution No. 22-146 (Exhibit No. 4).

Throughout the entire evaluation and bid protest process, staff worked closely with the City Attorney's office for confirmation that the bid submitted by BPR, Inc. was non-responsive for the reasons stated above. The City Attorney confirmed that staff's finding is accurate and that the award should be made to the next lowest, responsive, responsible bidder, Southern California Precision Concrete, Inc.

## **V. FISCAL IMPACT**

Funds required to implement these contracts are included in the FY 2022-23 General Fund budget account no. 101-80-840-281-6004.

## **VI. EXHIBITS**

1. Southern California Precision Concrete Contract (pgs. 6-46)
2. Southern California Precision Bid (pgs. 47-96)
3. Bid Register (pg. 97)
4. Resolution No. 22-146 (pgs.98-175)

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