



CITY OF CARSON

Legislation Text

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Report to Mayor and City Council

Tuesday, August 04, 2020

Consent

SUBJECT:

MAKE CERTAIN EMERGENCY PROCUREMENT FINDINGS AND CONSIDER APPROVAL OF A MEMORANDUM OF UNDERSTANDING WITH TRANE TECHNOLOGIES TO DEVELOP A SCOPE OF WORK, 30% DESIGN PLANS, AND FIRM FIXED PRICE FOR THE IMPLEMENTATION OF A NEW AIR FILTRATION AND HVAC SYSTEMS AT CITY HALL AND AT THE COMMUNITY CENTER AND APPROVING RESOLUTION NO. 20-126 AMENDING THE SPECIAL REVENUES FUND FISCAL YEAR 2020-21 BUDGET IN THE AMOUNT OF \$100,000 (CITY COUNCIL)

I. SUMMARY

Caution has been expressed from the CDC and well as other credible medical sources that the Covid-19 virus may be transmitted via aerosols as well as droplet method. Although the role of potential aerosol spread of the virus is not clearly understood, the seriousness of the pandemic suggests that out of extreme caution, air handling and filtration systems should be improved to include the most up to date technology to address the potential for virus transmission.

On July 21, 2020, the City Council supported staff's use of emergency procedures to address the indoor air quality, specifically the heating, ventilation, and air conditioning (HVAC) systems within City facilities. As part of the prior staff report (Exhibit No. 1), staff identified Trane Technologies (Trane) as a potential vendor because of the prior role it played in analyzing our HVAC systems at City Hall and at the Community Center during the California Energy Commission (CEC) grant application process.

To proceed with Trane at this time, staff is requesting City Council approve a Memorandum of Understanding (MOU) that authorizes Trane to spend a considerable amount of resources to work with City staff to refine the scope of work at City Hall and at the Community Center, prepare 30% design plans for the scope that was not part of the prior CEC grant project and provide a fixed-fee price for construction (Exhibit No. 2).

If the City for any reason decides not to move forward to the construction phase of the project, the City will compensate Trane for its efforts at a cost of \$100,000. If, however, the City elects to go forward with the project construction then this fee would be deferred and

included in a fixed fee construction contract, which would be presented to the City Council at a future meeting for consideration.

The cost of \$100,000 to get to the 30% design is intended to bring the project to a point in which Trane can provide a firm fixed price estimate to the City for consideration for a construction contract. This price (which is typically 5% of the estimated preliminary construction cost) is reasonable as the preliminary estimated construction cost is \$4 - \$5 Million (+/- 30%). Trane valued the central plant design work that was prepared during the CEC grant period at \$85,000. Together, the total of the original work and the work under this MOU will be \$185,000 or approximately 3.7%-4.6% of the preliminary construction cost. If the City were to seek another vendor who would have to start over, it is likely that the total cost would be similar and the time to complete the design would be much longer. Trane is proposing a 60 day schedule to complete the engineering and to develop a proposed fixed cost.

Under either scenario, using Trane as proposed or seeking another vendor, if the construction phase of the contract does not proceed and the project is cancelled, the City would need to start from scratch in the future with another vendor. This is a very typical arrangement for a design/build type of contract.

As improving air filtration within City facilities is an immediate concern, Staff has begun discussions with Trane Technologies to investigate temporary solutions until such time as construction of the permanent system is complete. Staff is also seeking direction to continue those discussions and bring back options for temporary indoor air quality improvements to City Council for consideration. The investigation of these solutions is at no cost to the City and any cost of implementation, which may include renting temporary units, will be brought back to City Council for consideration.

In addition, as directed by the City Council at its July 21st meeting, Staff will be working with local vendors in an informal bid process to address air filtration at other City facilities which have smaller package or split unit systems. Recommendations for these will be brought to City Council for consideration at a future Council meeting.

II. RECOMMENDATION

1. MAKE the following findings: (1) that the emergency described in this report will not permit a delay resulting from a competitive solicitation for bids and (2) that dispensing with competitive solicitation for bids is necessary to respond to such emergency.
2. AUTHORIZE the Mayor to execute the Memorandum of Understanding by and between the City of Carson and Trane Technologies.
3. ADOPT Resolution No. 20-126, "A RESOLUTION OF THE CITY OF CARSON CITY COUNCIL AMENDING THE FISCAL YEAR 2020-21 BUDGET IN THE SPECIAL REVENUES FUND."
4. DIRECT staff to investigate temporary air filtration system solutions at City facilities and

bring recommendations back to City Council for consideration.

III. ALTERNATIVES

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

IV. BACKGROUND

Trane is familiar with the City's central plants at both City Hall and the Community Center facilities because of its prior work on the CEC grant application; however, additional scope was added to replace air handling units, exterior duct work, controls, roof, and to incorporate an air filtration system. Trane requested the City use Trane's standard MOU in place of the City's standard form contract to allow for more expedient negotiations of the final contract terms necessitated by the emergent need to address the City's air filtration and HVAC systems, and the City Attorney agreed to its use. Approval of this MOU allows Trane to enter the City's facilities to verify site conditions, prepare preliminary design plans, refine the scope of work, negotiate construction terms and conditions, and provide a fixed-fee for the construction work.

At the conclusion of this design phase, staff will present a comprehensive construction package that will include a detailed scope of work, design drawings, construction schedule, contract terms and conditions, project specifications, and a fixed-fee price for construction for the City Council's consideration.

Trane is required to adhere to the City's Project Labor Agreement and the Enhanced Electrical Safety Policy in formulating the comprehensive construction package.

Legal Considerations

The City Attorney's Office negotiated numerous changes to the MOU and as of the time of the writing of this staff report, two outstanding issues remain. One is that Trane is insisting on a reciprocal indemnity clause whereas the City is seeking a unilateral indemnity in favor of the City. The other pending item concerns Trane's unwillingness or inability to procure a waiver of subrogation from its insurance carrier, which, if obtained, would prohibit its carrier from recovering monies paid on a claim.

Emergency Contracting for Public Projects

The Public Contract Code ("PCC") permits the City to procure a public project without having to engage in the normal competitive bidding process in the event of an emergency. Section 1102 of the PCC defines "emergency" as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action. The onset of Covid-19 and the City's resultant declaration of emergency on March 17, 2020, the most recent scientific data that the coronavirus has aerial characteristics (not just droplets) suggesting that poor indoor circulation could contribute to transmission, the severity of the pandemic

and the City Manager's determination after Public Works staff reported the results of a study to her on July 20, 2020 that the replacement of the HVAC air filtration system would take several months to complete under normal processes, all combine to create an emergency under Section 1102 warranting a streamlined procurement process. Saving an estimated 60 days by not undergoing the competitive bidding process for design and with another 60 days saved by not undergoing a competitive process for construction, would enable the City to more expeditiously obtain the improvements in the workplace it desires to make out of extreme caution to combat the spread of the coronavirus.

Under Section 22035 of the PCC, in case of an emergency, the City Council is authorized to procure the project without soliciting competitive bids; however, if City elects to procure the project without soliciting competitive bids, the City must comply with Section 22050 of the PCC, which requires/permits City to follow certain procedures some of which are as follows:

- A 4/5 vote is needed before any action may be taken based on the emergency.
- Council must make a finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency.
- By a 4/5 vote, Council may delegate, by resolution or ordinance, the authority to order appropriate action (e.g. City Manager).
- If a person with delegated authority orders any action based on the emergency, that person shall report to the Council, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.
- If the Council orders any action based on the emergency, the Council shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a 4/5 vote, that there is a need to continue the action. If the Council meets weekly, it may review the emergency action in accordance with this paragraph every 14 days.

In accordance with PCC Section 22050, the Council is being asked to make the following findings:

- That the emergency described above will not permit a delay resulting from a competitive solicitation for bids; and
- That the action is necessary to respond to the emergency.

Under the PCC emergency procedures, the City Council is required to review the

emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action.

V. FISCAL IMPACT

The cost associated with the approval of the MOU that authorizes Trane to refine the scope of work, prepare 30% design plans, and provide a fixed-fee price for the agreed upon scope of work is \$100,000. If the City elects to continue with the project and executes a construction contract with Trane, this cost will be rolled into the final construction cost (part of the fixed-fee). If, however, the City elects not to continue with the implementation of the project, the City will be required to pay this fee to Trane within 90 calendar days after the completion of the preliminary design phase.

The \$100,000 for the preliminary design portion of the project was not budgeted in the adopted 2019-2020 FY Capital Improvement Program. Staff has included Resolution #20-126 amending the special revenue adopted budget by allocating additional funds from the load shed account no. 246-80-820-904-8008 (Exhibit No. 3). The load shed account is a fund that was created by the City to fund new projects that will reduce the energy load during hot weather events, which this project is expected to do.

VI. EXHIBITS

1. Urgency Staff Report Item no. 17A from the July 21, 2020 City Council Meeting. (pgs. 6-16)

2. Memorandum of Understanding between Trane Technologies and the City of Carson. UNDER SEPARATE COVER (TO BE PROVIDED AT THE MEETING)

3. Resolution No. 20-126. (pgs. 17-18)

Prepared by: Gilbert Marquez, Chief Engineer; Reata Kulcsar, Sustainability Admin. Utilities; and Terry Rodrigue, Consultant