



Legislation Text

File #: 2021-450, Version: 1

Report to Carson Reclamation Authority

Monday, June 07, 2021

Consent

SUBJECT:

CONSIDER A CONTRACT FOR OPERATION & MAINTENANCE OF THE FORMER COMPACT LANDFILL BY AND BETWEEN RE|SOLUTIONS, LLC AND WSP-GOLDER USA, INC. FOR A TERM OF THREE YEARS

I. SUMMARY

RE|Solutions, LLC ("RES") is the CRA's Master Horizontal Development Manager of the 157 Acre Site known as the former Cal Compact Landfill. They are responsible for managing most of the subcontracts on the site, as well as site management and operations and maintenance activities. They undertook the horizontal construction activity in the Cell 2 project and will have a role in the Cell 3, 4, 5 project in terms of overall site management and representing the CRA in design and technical matters with the Developer, contractors, and regulatory agencies.

RES has been the party in the contracts with the O&M contractors since 2018 under their agreement with the CRA. In February, 2021, they rebid the O&M work after the previous contractor had been under contract for three years. WSP-Golder USA, Inc. was the winning proposer and the contract work commenced on June 1. This report is a Receive and File of the new O&M contract, which is attached, along with a short history of the previous O&M issues on the site as an introduction.

The O&M is a separate activity from Remedial Construction or the development of the Site.

No action is required of the Board.

II. RECOMMENDATION

RECEIVE and FILE.

III. ALTERNATIVES

TAKE another action the Board deems appropriate.

IV. BACKGROUND

The former Cal Compact Landfill Site ("Site") was operated as a landfill prior to the incorporation of the City of Carson ("City") in 1968 and as a result, the Site has soil and groundwater contamination that requires substantial remediation in order to allow for any vertical development. Because the Site is a former landfill, on October 25, 1995, the California Department of Toxic Substances Control ("DTSC") approved a Remedial Action Plan ("RAP") for the upper Operable Unit portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, gas extraction and treatment system, a groundwater collection and treatment system on the Site, and a building protection system (collectively, the "Remedial Systems"). In addition to the RAP, certain Consent Decrees were issued for the Site by DTSC in December 1995, October 2000, and January 2004 in order to resolve claims made regarding the resolution of the contamination issues afflicting the Site (the "Consent Decrees"); the 1995 Consent Decree applies to the remedial obligations for the Upper Operable Unit of the Site.

In addition, DTSC entered into a Compliance Framework Agreement dated as of September 28, 2006, with the then-current property owner, Carson Marketplace LLC ("CM"), as amended by the First Amendment to Compliance Framework Agreement dated as of December 31, 2007 (as amended, the "CFA") for the purpose of setting forth a plan for addressing the environmental condition of the Site, and the CFA required CM to establish financial assurance for implementation of the RAP, including long-term operation, monitoring and maintenance obligations (as further defined and described herein, "O&M") of the Remedial Systems. The CRA acquired the Site from CM on May 20, 2015 and has taken over the responsibility for O&M of the Remedial Systems and the other obligations under the RAP, and has employed RES as its Master Development Manager to oversee the O&M obligations required for the Site as set forth in the RAP and CFA.

RE|Solutions, LLC

In RES' proposal dated August 25, 2016, submitted in response to the CRA's July 2016 Request for Qualifications for a Master Developer, RES proposed to serve as the CRA's Environmental Risk Manager for the development of the Site by undertaking the installation of remedial and geotechnical systems, e.g. landfill cap, structural piles, etc. (collectively, the "Remedial Work") to prepare the property for vertical development. RES jointly proposed with TRC Solutions, Inc., ("TRC") a national engineering, consulting and construction management firm providing integrated services to the power, oil and gas, environmental and infrastructure markets. TRC serves a broad range of clients in government and industry, implementing complex projects from initial concept to operations. The single design contractor, TRC, would be responsible for coordinating and overseeing all aspects of remedial design for RES and would work with RES on refining and developing real time budgets and cost estimates for the remedial construction work to be conducted.

The CRA and RES further refined RES' obligations in an Amended and Restated Environmental Remediation and Development Management Agreement, dated as of June 20, 2019.

When the CRA acquired the Site in May, 2015, Tetra Tech ("TT") was the environmental contractor with

responsibility for the design and installation of the Remedial Systems as well as the daily O&M. Their contract was tied to a complex Environmental Protection Policy ("EPP") issued by AIG and an Environmental Trust Account. It was also a "fixed price" and full "risk transfer" contract ("Fixed Price EAAs") in that TT assumed the environmental liability for the Site from the Developer for a fee, but the fixed price only applied to a specific approved site plan and development schedule; this, however, placed the environmental decision-making in their hands and not the Developer's (and ultimately, not the CRA's).

In early 2015, prior to the CRA's ownership, DTSC required the installation of a portion of the landfill gas system and liner, largely in Cells 3 and 4. One feature of the EPP with AIG was that AIG would cover the cost of operating the installed Remedial Systems until 2027 once a Health Risk Assessment ("HRA") was received for the Site. The EPP did not anticipate DTSC ordering a partial installation of Remedial Systems without the Site receiving an HRA. The refusal of AIG to consider a change in circumstances revealed a significant problem with the EPP, and ultimately with the TT Fixed Price EAAs: both the EPP and the EAAs were underwritten against a very specific project site plan, very specific regulatory process which did not factor in the necessity of a phased occupancy of the site, and a very specific project schedule and milestones. The contractual site plan was Carson Marketplace SP-33, which had been superseded a number of times (the working Boulevards site plan was SP-44) and the contractual project schedule anticipated completion in 39 months. Under the Compliance Framework Agreement, the HRA (necessary to trigger AIG's obligations) could not be obtained until all five cells were completed and signed off. TT had used the entire project's "Project Management" line item, for example, over the first 39 months, and was using change orders with Starwood and later with the CRA for routine site maintenance costs. The ability of the CRA to amend the TT scope of work to save money during that time was quite limited: since TT was the holder of the environmental liability, it was their decision whether to demobilize or, for example, to perform less dust, noise and air quality monitoring to save money.

This problem was exacerbated by the negotiations with CAM-Carson, LLC (Macerich and later Simon), since CAM only anticipated the development of a single cell (Cell 2), which would have not eligible to receive an HRA under the existing Compliance Framework and would have not been able to be open and be occupied until the other four cells developed. Since TT's Fixed Price EAAs did not underwrite the risk of a partial opening of the site, a change in these contracts was clearly necessary for the CRA to move forward on any project.

Starting in May, 2016, the CRA negotiated the voluntary termination and release of liability with TT in order to accommodate the Phased Development of the Site, not allowed under the TT contract, the DTSC approvals, or the AIG policy. On January 29, 2017, CRA and TT executed a Termination Agreement. One part of the Termination was the cancellation of the AIG EPP for operation and maintenance of the remedial systems and a return of money designated for future payments (a "commutation" of the policy).

Upon Termination, CRA became the owner of record of the Work Product, including (i) items which were required by the new O&M contractor to complete the Performance Report and to confirm that the Landfill Gas System and Groundwater System were operating properly; and (ii) CRA and/or its consultants would require in order to effectively continue the remedial activities on the Site immediately after the Termination Date, including as-built plans and drawings for the groundwater system and the landfill gas system and all related monitoring and extraction wells. Prior to Closing, TT transferred, assigned and delivered the Work Product. TT also provided to CRA a complete written inventory, including a description and location of all Physical Products.

The CRA placed SCS Engineers under contract effective at the termination of the TT Agreement. SCS was the O&M contractor for about a year, until 2018, when the O&M work was rebid again by RES and awarded

to TRC, the Environmental General Contractor. In both cases, going from TT to SCS and SCS to TRC, the CRA was able to save money without compromising regulatory compliance.

TRC has been the O&M contractor since early 2018 and was the Environmental General Contractor until they demobilized in mid-2020 after the Cell 2 work stopped. There are still open obligations related to that work. In early 2021, the CRA and RES decided to rebid the O&M work to determine that services are still being provided at competitive rates. On February 9, 2021, an RFP was released and four firms responded: Tetra Tech, SCS Engineers, TRC Solutions, LLC, and WSP-Golder. WSP-Golder was selected as the lowest responsible bidder. The contract will save the CRA and Carson Goose Owner, LLC (the Cell 3, 4, and 5 developer, who reimburses the CRA for 60% of the O&M costs) each several hundreds of thousands of dollars per year.

It is also important to note what this contract is not: it is not for overall site management and control, which is the responsibility of RES; it is not for design or construction of any of the Remedial Systems except that which is directly tied to O&M, as the Cell 2 environmental work may be rebid when work starts up again and Carson Goose Owner is responsible for their design on Cells 3, 4, and 5; and it is not managing the DTSC compliance except in the area of O&M. That generally is still an RES responsibility.

Since the contract is directly with RES under the Development Management Agreement, it has already been executed and was effective on June 1, 2021.

V. FISCAL IMPACT

The contract is for about \$1.3 million per year in fixed fees, plus \$3,000,000 over three years in time and materials.

This represents nearly \$00,000 per year in potential savings from the previous contract, though actual savings will be subject to allowances and other extraordinary costs which may arise during the term, as the Remedial Systems age and begin to wear out.

VI. EXHIBITS

1. Contract Between RES and WSP-Golder, USA (pgs. 6-44)

1.

Prepared by: John S. Raymond, Executive Director