

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 1/28/2014	(3) CONTACT/PHONE Jeff Werst, Design Division Manager (805) 781-4480	
(4) SUBJECT Submittal of bid opening report for the Los Osos Wastewater Project, Los Osos Water Recycling Facility, to award the subject contract to Auburn Constructors, the lowest responsive, responsible bidder, in the amount of \$48,180,299; a resolution approving the Construction Change Order Policy; a resolution approving a project Labor Compliance Program; and authorization of engineering services under the existing agreement with Carollo Engineers, in the amount of \$1,444,095. District 2.			
(5) RECOMMENDED ACTION In accordance with applicable State Law, it is recommended that the Board: <ol style="list-style-type: none"> 1. Award the subject contract to Auburn Constructors, Inc., the lowest responsive, responsible bidder, at \$48,180,299; and 2. Authorize a construction contingency amount up to \$2,421,515, for a total construction amount of \$50,601,814; and 3. Adopt the attached resolution Approving the Los Osos Water Recycling Facility Project Construction Change Order Policy; and 4. Adopt the attached resolution Adopting a Labor Compliance Program for Projects In Conformance with Public Resources Code 75075; and 5. Authorize Carollo Engineers to proceed with the Construction Phase and Post-Construction Phase services in the amount of \$1,444,095 pursuant to the existing agreement which was approved by your Board on November 6, 2012. 			
(6) FUNDING SOURCE(S) Fund Center 430	(7) CURRENT YEAR FINANCIAL IMPACT \$52,045,909.00	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ___) <input checked="" type="checkbox"/> Board Business (Time Est. 30 Min.)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) 19001369		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP	(15) BUSINESS IMPACT STATEMENT?	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: 10/8/13; #19	
(17) ADMINISTRATIVE OFFICE REVIEW Nikki J. Schmidt			
(18) SUPERVISOR DISTRICT(S) District 2 -			

14JAN28-BB-3

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Jeff Werst, Design Division Manager

John Waddell, Los Osos Wastewater Project Manager

VIA: Paavo Ogren, Director of Public Works

DATE: 1/28/2014

SUBJECT: Submittal of bid opening report for the Los Osos Wastewater Project, Los Osos Water Recycling Facility, to award the subject contract to Auburn Constructors, the lowest responsive, responsible bidder, in the amount of \$48,180,299; a resolution approving the Construction Change Order Policy; a resolution approving a project Labor Compliance Program; and authorization of engineering services under the existing agreement with Carollo Engineers, in the amount of \$1,444,095. District 2.

RECOMMENDATION

In accordance with applicable State Law, it is recommended that the Board:

1. Award the subject contract to Auburn Constructors, Inc., the lowest responsive, responsible bidder, at \$48,180,299; and
2. Authorize a construction contingency amount up to \$2,421,515, for a total construction amount of \$50,601,814; and
3. Adopt the attached Resolution Approving the Los Osos Water Recycling Facility Project Construction Change Order Policy; and
4. Adopt the attached Resolution Adopting a Labor Compliance Program for Projects In Conformance with Public Resources Code 75075; and
5. Authorize Carollo Engineers to proceed with the Construction Phase and Post-Construction Phase services in the amount of \$1,444,095 pursuant to the existing agreement which was approved by your Board on November 6, 2012.

In accordance with direction from your Board, bids for the subject contract were opened on Monday, November 25, 2013.

Five bids were received. They are as follows:

Engineer's Estimate	\$46,579,000.00
Balfour Beatty Infrastructure, Inc.	\$46,390,170.78
Anderson Pacific Eng. Const., Inc.	47,540,170.78
Auburn Constructors, Inc.	48,180,299.00
Archer Western Const., LLC.	52,839,250.00
PCL Construction, Inc.	55,519,806.78

Review of Low Bids

The Los Osos Water Recycling Facility design was completed by Carollo Engineers and the plans and specifications for the contract were released for bidding on October 8, 2013 based on your Board's approval. Bids on the contract were opened on November 25, 2013 and subsequently reviewed by the Public Works Department. Bids are evaluated by Public Works for compliance with contract requirements as described in Article 19 of Section 00200 of the bidding documents. The criteria for evaluation of the bids includes (a) checking the bid forms for errors, (b) determining whether or not the bids comply with the requirements for submitting bids, and (c) determining whether or not the bids are nonconforming, nonresponsive, unbalanced, or conditional.

Bid Protest

The contract also included the "Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts" ("Bid Protest Rules") that was approved by your Board on July 7, 2013 and was included with the Bid Documents as Appendix N. On December 3, 2013, a bid protest was submitted by the 2nd lowest bidder, Anderson Pacific Engineering, Inc. ("Anderson"). In their bid protest, Anderson contended that the bid of the apparent low bidder, Balfour Beatty Infrastructure, Inc. ("Balfour Beatty") was materially unbalanced due to their bid price of less than 2 percent of the Contract Price for Bid Item No. 8, and that Balfour Beatty's bid must be rejected as nonresponsive. On December 10, 2013, Balfour Beatty submitted a response to the bid protest. On December 13, 2013, Anderson submitted a response to Balfour Beatty's response letter, and on December 17, 2013, Balfour Beatty submitted a response to Anderson's letter of December 13, 2013.

In reviewing for compliance with contract requirements the bid submitted by the apparent low bidder, Balfour Beatty, Public Works reviewed the irregularity that was noted in the bid protest and is summarized below.

1. Bid Form, Section 00410. According to paragraph 1.07.A of Section 01201 "Payment Procedures" and the description for Bid Item No. 8: "Perform demobilization, commissioning, and training (not less than 2 percent of the Total Bid Price)" included on the Bid Form (Section 00410), the Total Price for demobilization, commissioning, and training shall not be less than 2 percent of Contract Price. Balfour Beatty bid \$200,000 for this item, which is about 0.43% of their total bid of \$46,390,170.78.

This irregularity has been found by the Department Head to be a material error, as described in the attached final decision on the bid protest challenging the bid of Balfour Beatty. The attachment also includes all correspondence with contractors related to the bid protest. Balfour Beatty has been noticed regarding the final decision. A copy of the notice is also included in the attachment.

In reviewing for compliance with contract requirements the bid submitted by the apparent 2nd low bidder, Anderson, Public Works identified the irregularity that is summarized below.

1. List of Subcontractors form (Section 00480). According to Section 00480, the List of Subcontractors form, "Electrical" work will be performed by "Electric Craft" (Electriccraft, Inc). The form indicates that Electriccraft will be performing 0.13% of the total contract, which is equivalent to approximately \$61,800, based on Anderson's total Bid price of \$47,540,170.78. The subcontractor lists of other Bidders had the electrical work listed to be approximately \$5.8 to \$7.8 million. Therefore, based on the face of the bid, Anderson is improperly proposing to self-perform almost all of the electrical and instrumentation work. Section 00100 "Advertisement for Bids," second paragraph at the top of page 00100-2 provides as follows: "If a pre-qualified general contractor has not also been separately pre-qualified to perform electrical specialty trade work, the general contractor can only select pre-qualified subcontractors for electrical specialty trade work." On August 12, 2013 the County released a Request for Statements of Qualification (RSOQ) PS-#1228 for Pre-Qualification of Electrical Sub-Contractors Seeking to Bid on the Construction Contract for the Los Osos Water Recycling Facility, with a submittal date for Statements of Qualification of September 5, 2013. Anderson did not seek to be prequalified, and is not pre-qualified to perform electrical subcontracting for the Project and would therefore be unable to self-perform this portion of the work.

This irregularity has been found by the Department Head to be a material error, as described in the attached final decision on the bid of Anderson. The attachment also includes all correspondence with contractors related to this decision. Anderson Pacific has been noticed of the final decision. A copy of the notice is also included in the attachment.

In accordance with the Bid Protest Rules pertaining to bid protests and bid responsiveness, these findings are final and cannot be appealed to your Board.

In accordance with the Bid Protest Rules and in consideration of the determinations described above, the bid proposal from Auburn Constructors, Inc. has been determined by the Department Head to be the lowest responsive bid and it is therefore recommended that your Board award the contract to Auburn Constructors, Inc. in an amount of \$48,180,299.00.

Change Order Policy

The resolution attached to this Board letter will establish a change order policy for the Water Recycling Facility contract. Public Works staff recommends this policy, given the size and scope of construction contract and contingency amounts. Authority to approve change orders has been delegated to the Public Works Director, pursuant to the Public Contract Code. The attached resolution and exhibit limits the delegation of authority by your Board for approval of contract change orders, and describes the parameters within which the authority may be exercised.

The resolution authorizes the Director of Public Works or his designee to approve individual Construction Contract Change Orders up to \$210,000, so long as any change or addition is deemed consistent with the proper completion of the Project under the sound discretion of the Director of Public Works or his designee, and so long as the change or addition does not exceed the maximum dollar amount allowed under Public Contracts Code Section 20142. Individual change orders of over \$210,000.00 require a written recommendation from the Project Construction Manager, a written recommendation from the Public Works Director or his designee and authorization from the Board of Supervisors.

Labor Compliance Program

A portion of the overall project funding includes Proposition 84 bond revenues. As part of the funding requirements, your Board will need to adopt a formal Labor Compliance Program which will be applicable to the awarded Los Osos Water Recycling Facility construction contract. Adoption of the resolution attached to this Board letter will allow for Public Works to submit the approved plan to the Department of Industrial Relations for registration as the County's labor compliance program for projects funded under Prop 84 and will provide for the Director of Public Works to hire consultants, as needed, to properly administer the program.

Water Recycling Facility Construction Services Authorization – Carollo Engineers

An engineering services agreement with Carollo Engineers for the design of the water recycling facility was approved by your Board on November 6, 2012. The agreement included scope and fee estimates for all aspects of the planned services, including final design, bidding, construction, and post-construction phases. However, the agreement and corresponding Board actions of November 2012 authorized the final design and bidding phases only in an amount of \$3,382,504. It is now required that your Board authorize the necessary work, proceeding with the construction services under the agreement, and the corresponding increase in the contract budget. This would bring the total contract amount to \$4,826,599 for authorized services.

The design engineer's role during the construction phase is critical to ensuring a quality product and the successful completion of the construction. It also protects the County from liability by keeping the designer involved in verifying that the design intent of their work is followed during construction and that they remain liable for any design errors. The scope of work primarily includes supporting the on-site construction management team in reviewing and answering requests for information from the contractor, reviewing material and equipment submittals to ensure they meet the specifications, preparing revisions to the plans and specs as needed for changes during construction, providing technical assistance with the facility start-up and completing warranty inspections of the facility to determine if corrections need to be made under the warranty.

The engineering services agreement with Carollo Engineers which was approved by your Board on November 6, 2012 is attached to this Board letter for reference. It should be noted that the form of the engineering services is from the Engineering Joint Contract Document Committee (EJCDC). The EJCDC is a national organization of engineering and construction organizations that has developed standard contract documents for both public and private infrastructure projects, and use of their forms for this agreement is a condition of USDA funding. A key provision of using the EJCDC documents is that, since they are copyrighted, any changes to the agreement must be clearly shown in the final, executed version. As a result, all edits to the agreement to provide the specifics of the planned scope are shown with additions as underlined and deletions as strikethrough text.

OTHER AGENCY INVOLVEMENT/IMPACT

The U.S. Department of Agriculture (USDA) and State Water Resources Control Board are jointly financing the Project. Numerous other federal, state and local agencies are involved in the Project. The Auditor-Controller-Treasurer-Tax Collector has provided guidance on recommendations related to budget and cash flow needs of the Project. County Counsel is providing legal guidance on all aspects of the Project and has approved the relevant attachments as to legal form and effect.

The Department of Water Resources has awarded and administers the Proposition 84 IRWM Grant funds under an agreement with the County. A Labor Compliance Program, required pursuant to Public Resources Code Section 75075, will be submitted to the Department of Industrial Relations for registration of the program to be in effect for the Water Recycling Facility construction.

FINANCIAL CONSIDERATIONS

The Project is financed with State and Federal loans and \$21.6 million in grants. Project funding for repayment of the loans is provided through special assessments of \$126.7 million (\$10 million prepaid) and sewer service charges of \$35.1 million. The estimated average cost to be billed by the County for a single family residence, assuming that all project contingencies are expended, is \$165 per month.

The result of these actions will authorize up to \$50,601,814 in payments to Auburn Constructors, Inc. and an additional \$1,444,095 to Carollo Engineers. These amounts are included in the \$183.4 million project budget.

Exhibit "A" provides a detailed break-out of the budget and project cost estimates.

RESULTS

Approval of the recommended actions will provide necessary administrative and contracting measures, which continue the progress toward a community wastewater project and recycling facilities for Los Osos. Completion of the Project will contribute to the County's goals of promoting safe, healthy and livable communities.

File: Los Osos WWP 300448.00.1.4

Reference: 14JAN28-BB-3

L:\DESIGN\JAN14\BOS\300448.08.02 LOWRP Bid Opening.docx.jw erst.taw

ATTACHMENTS

1. Vicinity Map
2. Exhibit A - Project Cost Estimates
3. Final Decision on Bid Protest of Anderson Pacific Challenging the Bid of Balfour Beatty
4. Final Decision on Responsiveness of Anderson Pacific's Bid
5. Resolution Approving the Los Osos Water Recycling Facility Project Construction Change Order Policy
6. Resolution Adopting a Labor Compliance Program for Projects in Conformance with Public Resources Code 75075
7. Agreement for Professional Engineering Services with Carollo Engineers, dated November 6, 2012