



Board Agenda Item 67

DATE: September 25, 2018

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Conditional Award of Contract No. 18-07-C, Fresno County Westside Groundwater Project

RECOMMENDED ACTION(S):

1. **Adopt plans and specifications for Contract No. 18-07-C, Fresno County Westside Groundwater Project.**
2. **Determine that Nor-Cal Pump & Well Drilling, Inc. failed to make an adequate good faith effort to procure Disadvantaged Business Enterprise subcontracts, in accordance with grant funding requirements imposed pursuant to Title 40, Code of Federal Regulations, Part 33, for Contract No. 18-07-C, Fresno County Westside Groundwater Project, and, based on said determination, declare the bid to be non-responsive.**
3. **Waive as a minor irregularity an error on the California Public Contract Code, Section 10285.1 Statement Form submitted with the bid from Zim Industries, Inc., for Contract No. 18-07-C, Fresno County Westside Groundwater Project.**
4. **Award Contract No. 18-07-C, Fresno County Westside Groundwater Project to the lowest responsive bidder, Zim Industries, Inc., 4532 E. Jefferson Ave., Fresno, CA, in the amount of \$1,291,736, subject to and conditioned upon the approval of the State Water Resources Control Board.**
5. **Authorize the Director of the Department of Public Works and Planning, following the State Water Resources Control Board's approval of the Conditional Award, as confirmed by notification to the County of its issuance of the Amended Financial Agreement, to:**
 - a) **provide notice to the Chairman and Zim Industries, Inc. that County's receipt of such approval by the State Water Resources Control Board satisfies the condition of the Conditional Award, and**
 - b) **take any further actions and execute any and all notices, certificates and other documents as the Director may deem necessary or advisable in order to consummate the award of Contract No. 18-07-C, Fresno County Westside Groundwater Project, to Zim Industries, Inc.**
6. **Authorize the Chairman to:**
 - a) **execute Contract No. 18-07-C, Fresno County Westside Groundwater Project, on behalf of the County, conditioned upon and following receipt of such notice from the Director, and following receipt from Zim Industries, Inc. of the executed contract, and the related**

- documents as required by the project specifications, and
- b) **take any further actions and execute any such other documents as the Chairman may deem necessary or advisable in order to consummate the award of Contract No. 18-07-C, Fresno County Westside Groundwater Project, to Zim Industries, Inc.**
- 7. Authorize the Director of the Department of Public Works and Planning, or designee, to execute Contract Change Orders up to \$77,086, which is approximately 5.97% of the total contract construction cost, the limit allowable under California Public Contract Code, Section 20142(b) for Contract 18-07-C.**

Approval of the recommended actions will conditionally award a well drilling project for the potable water supplies for El Porvenir/County Service Area 30 (CSA 30) and Cantua Creek/County Service Area 32 (CSA 32). The first recommended action will adopt the project plans and specifications. The second recommended action is to determine that the apparent low bidder, Nor-Cal Pump & Well Drilling Inc. (Nor-Cal), did not adequately complete the good faith efforts required pursuant to Federal regulations that govern the project funding program, and to find its bid to be non-responsive on that basis. The third recommended action is for your Board to waive, as an immaterial bidding irregularity, a minor error on the Public Contract Code, Section 10285.1 Statement Form submitted by Zim Industries, Inc. (Zim) with its bid proposal. The fourth recommended action will authorize the conditional award of the project's construction contract to Zim, subject to and conditioned upon the approval of the State Water Resources Control Board (SWRCB). The fifth and sixth recommended actions would authorize the Director of the Department of Public Works and Planning and the Chairman, respectively, to carry out the County's Conditional Award to Zim, following notification to the County of the SWRCB's approval of the Conditional Award of Contract No. 18-07-C, Fresno County Westside Groundwater Project. The seventh recommended action would authorize the Director, or designee, to execute contract change orders up to the statutory maximum. If, for whatever reason, the SWRCB does not approve the conditional award, the Department will notify the Zim and your Board of the failure of the condition for the final award, in which case all bids will be deemed to have been rejected, the contract will not be executed, and the project will be re-advertised. This item pertains to locations in District 1.

ALTERNATIVE ACTION(S):

Your Board may choose to waive Nor-Cal's good faith effort deviation, accept its bid of \$1,260,522, and conditionally award the contract to Nor-Cal; however, doing so will risk having the conditional award rejected by the SWRCB, and place at risk the program funding for the total project in the amount of \$8,026,165.

Your Board may choose to reject all bids, requiring the project to be re-advertised, which will result in delays and additional expenditures.

If the seventh recommended action is not approved, the Director's, or designee's, authority to approve Contract Change Orders will be limited to \$35,417.36 and if exceeded would return to your Board for approval.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. All costs associated with the project are paid through a SWRCB grant, made available to the communities of CSAs 30 and 32. All costs, including those already incurred and those projected, are accounted for in the SWRCB financing package. Costs will be funded by CSA 32, and then reimbursed as funding is received from SWRCB. The anticipated construction activities have been budgeted in the Department of Public Works and Planning, CSA 32 Org 9172 FY 2018-19 Adopted Budget.

DISCUSSION:

This project is intended to provide a reliable supply of potable water to the communities of CSAs 30 and 32. The work to be done consists, in general, of drilling two initial pilot holes and final production wells in CSAs 30 and 32 on county-owned property, including drilling pilot holes for zone sampling and water quality testing; and then proceeding with construction of the final production wells after zone test results are obtained and final well design is completed.

The Department received two bids for this project on August 9, 2018. Each of the bidders subsequently submitted additional documentation, as required to substantiate their compliance with the specified "good faith efforts" in seeking procurement of subcontracts from Disadvantaged Business Enterprise (DBE) businesses. Upon review and evaluation of the proposals and DBE documentation, Department staff concluded that Nor-Cal failed to comply with the good faith efforts to offer subcontracts to DBE businesses, as required by the grant language pursuant to Federal regulations governing the SWRCB's funding program.

The good faith efforts requirement obliges prime contractors soliciting for DBE subcontractor proposals to post solicitations in a local newspaper for a minimum of 30 days before the bid opening date. However, on the page in its bid documents, where each bidder was to list the publications and dates of its placement of the requisite advertisements for DBE participation, Nor-Cal responded with "N/A." Since no advertising was placed 30 days before the bid opening, or at any time before the bid opening, this requirement simply was not met. Nor-Cal's direct solicitations were limited to a handful of chosen firms, beginning on July 27, 2018 (13 days prior to bid opening), with all but one of those firms having first been contacted no earlier than August 6, 2018, only three days prior to bid opening. The good faith efforts requirement was specifically listed and referenced in several places throughout the bid documents. Bidders were expressly advised that failure to comply with those requirements would be grounds to find their bid non-responsive. In addition, SWRCB staff has confirmed in writing that a bid that failed to meet the 30-day advertising requirement would be non-compliant, and that acceptance of such a bid could jeopardize SWRCB funding for the project.

With regard to the third recommended action, two separate forms in the Bid Book for the project contained boxes for the bidder to check that it "has" or "has not" been convicted during the preceding three years of various specified criminal offenses. Zim's responses were inconsistent; in that on one form it had checked the box indicating that it "has," while on the other form Zim had checked the "has not" box. After consultation with County Counsel, Department staff contacted Zim for clarification of this inconsistency. Zim's president responded via e-mail stating, in part, that "...'Has not' was the space that was intended to be checked and there are in fact, no convictions as described on the form." Because each of the two forms were submitted, and because that error did not affect the amount of the bid or give Zim an unfair competitive advantage over other bidders, this discrepancy may be waived by your Board as immaterial.

Zim's bid of \$1,291,736 is \$478,096 or 27.01% lower than the engineer's estimate of \$1,769,832. This is due to lower than anticipated costs for well casing, drilling and well development.

The bidders and their respective bid amounts are shown below:

	<u>Bidder</u>	<u>Total Bid</u>
1.	Nor-Cal Pump & Well Drilling, Inc.	\$1,260,522 (Non-Responsive)
2.	Zim Industries, Inc.	\$1,291,736

To calculate the preferred change order authorization, the Department requests that your Board rely upon the statutory limitation found in Public Contract Code, Section 20142(b). The section limits the extent to which the Director may be authorized to execute Contract Change Orders to 10% of the first \$250,000, plus 5% of the contract amount in excess of \$250,000, to a maximum authorization of \$210,000. Your Board's authorization for the Director, or designee, to approve Contract Change Orders up to this limit would reduce the time required to process changes, reduce paperwork, and help minimize costs and potential delays. This Contract Change Order authorization would not apply to, nor allow, changes to the scope of the work.

Plans and specifications were prepared by Provost and Pritchard Engineering Group, Inc. Construction is anticipated to commence in November 2018 and is expected to be completed by March 2019.

OTHER REVIEWING AGENCIES:

SWRCB is providing project oversight as the financing authority.

REFERENCE MATERIAL

BAI #41, November 15, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map

CAO ANALYST:

Sonia M. De La Rosa