



REVISED **Board Agenda Item 11**

DATE: November 5, 2024
TO: Board of Supervisors
SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning
SUBJECT: Award Contract 24-03-C Elkhorn Recharge Facility

RECOMMENDED ACTION(S):

- 1. Adopt plans and specifications for Contract 24-03-C Elkhorn Recharge Facility (Contract 24-03-C);**
- 2. Reject incomplete bid from West Coast Metalsmiths, LLC as non-responsive;**
- 3. Hear and consider bid protest from apparent second low bidder, Wood Bros, Inc. 14147 18th Avenue, Lemoore, CA 93245, regarding the proposed award of Contract 24-03-C to the apparent low bidder, G & J Heavy Haul, 10810 Avenue 184, Tulare, CA 93274, in the total amount of \$4,694,440.77;**
- 4. Award Contract 24-03-C to the bidder with the lowest responsible bid as determined by the Board after consideration of the bid protest in the total amount to include the base bid and some or all additive bids; and**
- 5. Authorize the Chairman to execute contract change orders for Contract 24-03-C, in excess of the Director's allowance of \$210,000 pursuant to Public Contract Code 20142 for contract change orders, to a total change order limit of ~~\$328,610~~ or 7% of the total compensation payable under Contract 24-03-C.**

Approval of the first recommended action will result in your Board's adoption of plans and specifications for an American Rescue Plan Act (ARPA) - Coronavirus State and Local Fiscal Recovery Funds (SLFRF)-funded Drinking Water Storage project.

Approval of the second recommended action will reject the bid from West Coast Metalsmiths, LLC, which was mistakenly submitted and intended as a subcontractor bid to the prime contractors. Approval of this item will reject their bid as nonresponsive, as the subcontractor is not licensed to do the full project, and pursuant to PCC § 20483 due to its failure to complete its bid, including failure to provide pricing for all the bid items and failure to submit a bid security (10% of the bid) with its bid.

Approval of the third item will permit your Board to hear and consider the bid protest from apparent second low bidder, Wood Bros, Inc., regarding the proposed award of Contract 24-03-C to the apparent low bidder, G & J Heavy Haul, in the total amount of \$4,694,440.77.

Approval of the fourth recommended action will authorize the award of an ARPA funded excavation project.

The award of the additives would depend on the resolution of the bid protest.

Approval of the fifth recommended action will authorize the Chairman to execute contract change orders in excess of the Director's allowance of \$210,000 for contract change orders to of ~~\$328,610 or~~ 7% of the total compensation payable under Contract 24-03-C. The amount authorized would depend on the resolution of the fourth recommended action.

This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved, the project will be delayed or will not be constructed.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The anticipated construction cost for the project, ~~based on the low bid of \$4,694,440.77 and the Chairman's authorization to execute contract change orders in the amount of \$118,610, in excess of the Director's allowance of \$210,000 for contract change orders pursuant to PCC 20142 will depend on the bid award amount.~~ The Department seeks authorization for a proposed total change order limit of \$328,610, or 7% of the total compensation (base bid and Additives 1 through 3) payable under Contract 24-03-C due to the scale of the project.

~~The funds needed for this project, including design, construction engineering, and materials testing costs of \$950,000, are estimated to total \$5,973,051.~~—This project is Federally funded ARPA-SLFRF, up to \$6,000,000, as approved by your Board on December 13, 2022.

Sufficient appropriations and estimated revenues are included in the Department of Public Works and Planning - Capital Projects Division Org 8870 FY 2024-25 Adopted Budget.

DISCUSSION:

Background:

On June 6, 2023, your Board approved the demolition of the abandoned structures and clearing of surrounding debris at the former Elkhorn Correctional Facility at 500 Elkhorn Avenue in Caruthers. This project will construct a new 60-acre groundwater recharge basin at that location.

The County is working with the North Fork Kings Groundwater Sustainability Agency (NFKGSA) to offset groundwater overdraft within the unincorporated land within the NFKGSA boundaries. Water will be delivered to the recharge facility through a new on-site conveyance system, which will transfer surface water from the Liberty Canal, increasing the reliability of clean drinking water for member agencies of the NFKGSA.

The Department of Public Works and Planning (Department) anticipates that this recharge facility will also benefit the water supplies of several disadvantaged communities in the County.

The work to be done consists, in general, of the construction of an approximately 60-acre recharge basin and stockpile area at the site, including basin excavation, compacted stockpile placement, placement of excess basin material, conveyance channel excavation, cast-in-place and precast concrete structures, and furnishing and installing of all other miscellaneous items to complete the work described in the Plans and Specifications to provide for a fully functioning recharge basin.

Bid History:

The project was advertised on September 19, 2024, and a bid opening was held on October 8, 2024. Six

electronic and two hardcopy bids were received.

A list of bidders and their respective bid amounts is shown below:

<u>Bidder</u>	<u>Total Bid Amount</u>	<u>Base Bid</u>	
<u>Additives 1-3</u>			
G & J Heavy Haul \$1,055,566.51	\$4,694,440.77	\$3,638,874.26	
Wood Bros, Inc. \$1,326,103.20	\$5,426,946.86	\$4,100,843.66	
Jim Crawford Construction Co. Inc.	\$6,417,287.00	\$4,902,851.00	\$1,614,436.00
Cal Valley Construction, Inc.	\$6,473,648.50	\$5,351,293.50	\$1,122,355.00
Yarbs Grading and Paving, Inc.	\$6,884,740.60	\$4,696,317.50	\$2,188,423.10
JT2 Inc dba Todd Companies	\$8,170,976.25	\$5,621,153.95	\$2,549,822.30
Granite Construction Company	\$9,363,577.90	\$7,231,798.50	\$2,131,779.40
West Coast (Non-responsive)	No bid amount listed	No bid amount	No bid amount

West Coast Metalsmiths, LLC (“West Coast”) mistakenly submitted a bid which is non-responsive because it did not include bid amounts, bidder’s security, and West Coast is not licensed to perform the work of a prime contractor. West Coast informed staff that they submitted the bid in error, and that their intention was to inform prime contractors of their availability to perform some items of work.

Summary of Protest by Second Lowest Bidder

A Bid Protest (Attachment A) for this project was received on October 15, 2024 from Wood Bros., Inc. (“Wood Bros”), the second lowest bidder claiming that the lowest bidder, G & J Heavy Haul (“G&J”), failed to list subcontractors to perform work for which G&J is neither licensed nor qualified.

Wood Bros. contends that because G&J neglected to list any subcontractor in its bid it, in effect, represented to the County that it intends to perform that work itself. Wood Bros further argues that the pipe and concrete structure work would require a Class A license and the removal and disposal of the asbestos cement pipe would require hazardous materials certification, which G&J (or its subcontractors) do not possess.

Wood Bros. also contends that under Public Contract Code section 6100(a), prior to awarding a contract for work to be performed by a contractor, a state entity must verify with the Contractor’s State License Board that the person seeking the contract is licensed in a classification appropriate to the work to be undertaken. Under Public Contract Code Section 6100(b) the state entity in lieu of verification, may require the person seeking the contract to present his or her certificate of licensure and provide a signed statement that swears, under penalty of perjury, that the license or certificate of licensure presented belongs to the person seeking the contract, and is in a classification appropriate to the work to be undertaken.

Wood Bros. requests that the County investigate G&J’s qualifications to perform the removal of and disposal of the asbestos cement pipe. If G&J is not licensed to perform the specialty pipe and concrete structure work, it cannot self-perform this portion of the Project. As such, the Project can in no way be awarded to G&J without violating California law. Furthermore, if G&J is awarded the contract and then subcontracts this work to a qualified and licensed subcontractor, it violates Public Contract Code section 4106 and is subject to the penalties provide for in that section.

Wood Bros also contends that the bid was not complete because the Subcontractor List form did not provide the percentage of the work to be performed in an amount in excess of one-half of 1 percent of the prime contractor’s total bid. Specifically, Wood Bros. argues that G&J has failed to include a percentage of the work to be performed by either of its listed subcontractors, leaving those sections blank. Wood Bros bases this argument on Section 2-1.33A of the Specifications which states, “Failure to submit the forms and

information as specified results in a nonresponsive bid.”

Wood Bros further contends that G&J's bid is nonresponsive because it hires drivers as independent contractors not listed in their bid. Thus, they are required to also be registered with the DIR should they provide work on the Project. Wood Bros. references Section 2-1-.03 of the Specifications which states, “no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations.”

Wood Bros requests that the County find G&J's bid non-responsive and award Contract 24-03-C to Wood Bros.

Summary of Response by Lowest Bidder

A letter (Attachment B) was received from the lowest bidder, G&J, on October 18, 2024 requesting the dismissal of the claims made by Wood Bros.

G&J claims the pipe and concrete structure work licensing requirements in the bid documents are ambiguous and therefore deemed incidental and allowed to be self-performed under their C-12 license. G& J also claims that the pipework and minor concrete structures involved in the Project are incidental to its primary scope, and G&J is fully qualified to perform the work under its C- 12 license. Further, the removal of asbestos cement pipe will be handled by a licensed subcontractor, and since the value of this work is less than 0.5% of the total contract value, G&J was not required to list this subcontractor in the bid documents per Public Contract Code Section 4104.

Furthermore, G&J asserts that it listed a complete Subcontractor List form for all those subcontractors for work exceeding 0.5% of the total contract value, in accordance with PCC Section 4104. Moreover, G&J argues that Wood Bros.' argument is speculative and irrelevant to the current bid evaluation process. Failure to list subcontractors does not automatically render a bid non-responsive. According to Proposal 8(a), Subcontractor Listing, in the bid documents, "Failure to List Subcontractors as directed may render the bid non-responsive or may result in a penalty...". It is G&J's contention that this provision clearly leaves room for discretion, allowing the County to assess the situation. Furthermore, Section 2-1.46 of the Specifications states that the Department retains full authority to determine whether a bid is non-responsive.

G&J contends that the bid by Wood Bros. was incomplete because accurate license numbers and Department of Relations (DIR) numbers for the subcontractors on the form from Wood Bros were not provided. G&J also contends that the claim regarding drivers is speculative and irrelevant.

G&J requests that the County find the bid from Wood Bros unresponsive and award Contract 24-03-C to G&J.

Department's Recommendation

The Department no longer recommends awarding Contract 24-03-C to the apparent lowest bidder, G & J Heavy Haul, and will make a verbal presentation regarding a recommendation for award during the Board's discussion of this item.

~~The Department recommends awarding Contract 24-03-C to the lowest bidder, G&J.~~

~~Each bidder was required by statute to submit with its bid a list of those subcontractors who would perform work on the project in excess of 0.5% of the total amount of the contractor's bid.~~

~~PCC Section 4106 provides that when a contractor fails to specify a subcontractor, it is deemed a representation by the contractor that it is fully qualified to self-perform that work, and that it intends to do so. The County historically has relied upon Section 4106 in accepting that statutorily implied representation when awarding public construction contracts.~~

~~Section 4106 further provides that, "if after award of contract, the prime contractor subcontracts any such portion of the work" then it is generally subject to imposition of penalties.—This may include assessment, in the Board's discretion, of a penalty not to exceed 10% of the amount of the subcontract involved.—~~

Low Bid by G & J Heavy Haul

The apparent low bid of \$4,694,440.77, from G & J Heavy Haul was \$2,613,954.23, or 35.77% lower than the engineer's estimate of \$7,308,395. The bid of \$4,694,440.77, includes Additive 1 in the amount of \$516,595.28, Additive 2 in the amount of \$250,488.56, and Additive 3 in the amount of \$538,971.23. The bid received from G & J Heavy Haul came under the Board-approved ARPA-SLFRF budget for the project.

The Department recommends awarding the base bid and all three additives in the total contract amount of \$4,694,440.77. The first additive and second additives are for excavating additional areas of the site and constructing stockpile areas, along with any necessary access roads to the stockpile areas, for excess excavated material. The first additive is along the East Avenue side of the site, and the second additive is along Elkhorn Avenue, by the Liberty Canal side of the project site. The third additive is to excavate the recharge basin to its desired finished depth and place excess excavated materials on the western side of the project site. These items were advertised as additives due to the limitations on funding and would have been delayed until another method of completing these tasks could be determined. ~~Since all the additives are under the approved project budget, the Department recommends awarding all three additives. In this case, the authorization for the fifth recommended action would be in the amount of \$118,610 by the Chairman with the Director's limit for change orders of \$210,000 for a combined total for change orders of \$328,610.~~

Plans and Specifications were prepared by the Department's on-call engineering consultant Provost and Pritchard Consulting Group and are on file with the Department.

California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA):

The Department has determined that the project is categorically exempt from the provisions of the CEQA under Executive Order N-7-22 (EO 13), which suspends CEQA for groundwater recharge projects that capture available water for the purposes of recharging groundwater basins through the application on open and working lands to help mitigate drought impacts on groundwater conditions. This will not result in serious or major disturbance to an environmental resource. This project was specifically confirmed by the State Department of Water Resources as consistent with the Executive Order N-7-22. The Notice of Exemption has been filed with the County Clerk.

ARPA-SLFRF-funded projects are not subject to NEPA review.

It is anticipated that construction will commence in December 2024/January 2025 and will be completed in fall of 2025.

REFERENCE MATERIAL:

BAI #44, June 6, 2023
BAI #66, December 13, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
Bid Summary
Attachment A
Attachment B

CAO ANALYST:

George Uc