



## Agenda Report

19-287

Agenda Date: 4/23/2019

### REPORT TO COUNCIL

#### **SUBJECT**

Action on Award of Contract for the 2019 Pavement Rehabilitation Project (CE17-18-19) and Related Budget Amendment

#### **BACKGROUND**

The City's pavement network consists of 590 lane miles of arterial, collector, residential and local streets. Through the City's Annual Pavement Maintenance Program, staff prioritizes various street segments for rehabilitation based on condition, use and available funding.

The 2019 Pavement Rehabilitation Project (Project) proposes to rehabilitate approximately 18 lane miles of street pavement. A list of streets being rehabilitated under this Project is included in Attachment No. 1. The Project scope of work includes surface treatment consisting of slurry seal and rubber cape seal, as well as milling and replacing pavement on various streets. Ancillary work on all streets includes replacing failed asphalt areas, adjusting utility valves and covers, replacing traffic striping and pavement markings, and installing accessible curb ramps. These curb ramps will comply with the current Americans with Disabilities Act standards. The work also includes applying a seal coat and replacing small segments of concrete sidewalk and curb and gutter at the Santa Clara Convention Center and Franklin Square parking lots.

#### **DISCUSSION**

On February 20, 2019, bids were opened for construction of the Project. Five bids were received ranging from \$4,815,652 to \$5,971,210. The Bid Summary is included as Attachment No. 2.

The lowest bid submitted by MCK Services, Inc. (MCK) was in the amount of \$4,815,652, however, immediately following the bid opening MCK submitted a letter requesting relief of their bid for the Project. MCK sent a follow-up letter on February 27, 2019, which stated in that due to a clerical mistake in filling out the bid, MCK's bid was materially different (\$231,331) from what the company had intended to submit and that being required to perform as bid would cause MCK to incur a "substantial loss." MCK's request to withdraw (Attachment No. 3) was received within the required statutory period, and reviewed by the Department of Public Works and City Attorney's Office, which determined it met the necessary grounds for relief criteria stated in the California Public Contract Code section 5103.

To relieve MCK of its bid under Section 5103, the City Council must find that each of the following four (4) elements have been established:

- (a) A mistake was made.
- (b) He or she gave the public entity written notice within five working days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.

- (c) The mistake made the bid materially different than he or she intended it to be.
- (d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

After reviewing MCK's request and written explanation, staff recommends that MCK be relieved of their bid and recommends that the City Council make the following findings:

- (a) That MCK made a mistake in its bid for the Project;
- (b) That Bids on the Project were opened on February 20, 2019, and MCK submitted to City staff sufficient notice (Attachment No. 3) of its mistake on February 27, 2019, which was within five (5) working days of February 20, 2019 after factoring-in the weekend of February 23-24, and MCK's notice specified in detail how the mistake occurred;
- (c) That MCK's mistake made its bid materially different than MCK intended it to be, by an amount of approximately \$231,331; and
- (d) That MCK's mistake was made in filling out the bid, specifically by transcribing incorrect unit costs from MCK's internal forms to City's Bid Schedule form that was submitted with the bid, and MCK's mistake was not due to any error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

The second lowest bidder, G. Bortolotto & Co., Inc. (GBC), submitted a bid in the amount of \$5,510,556 which is approximately 6 percent above the Engineer's Estimate of \$5,205,879. Should MCK be relieved of its bid, GBC's bid would be the lowest bid on the Project. GBC's bid was reviewed for compliance with the terms and conditions of the Bid Documents and has been determined to be the lowest responsive and responsible bidder. Besides MCK, all the other bidders submitted bids that ranged from approximately 6 percent to 15 percent above the Engineer's Estimate. The variance between GBC's bid and the Engineer's Estimate can be attributed to the current economic climate with an abundant amount of pavement rehabilitation work throughout the Bay Area. While GBC's bid is higher than the Engineer's Estimate, staff recommends awarding the contract to GBC as there is no guarantee the re-bidding the project in the current economic climate will produce a substantially lower bid result. In addition, rebidding the pavement project will push construction to the winter season, which can cause further delays and costs due to the rainy season.

The anticipated construction completion is fall 2019.

### **ENVIRONMENTAL REVIEW**

This project being considered is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301, "Existing Facilities," as the activity consists of the repair, maintenance or minor alteration of existing facilities involving no or negligible expansion of the use beyond that presently existing.

### **FISCAL IMPACT**

The cost of the contract is \$5,510,556 plus an approximate 10 percent contingency, or \$551,044, for any potential change orders for a total not-to-exceed contract amount of \$6,061,600. There is sufficient funding in the FY 2018/19 Adopted Budget pending Council appropriation of the CalRecycle Grant (Attachment 4) in the amount of \$274,033 to support the contract from the following capital project and operating budget sources:

1. Annual Street Maintenance and Rehabilitation Program (CIP 1235)	\$5,682,188
with CalRecycle Grant (Recommended for Appropriation)	
2. Convention Center Maintenance District (Fund 026)	\$134,211
3. Downtown Parking Maintenance District, Franklin Square (Fund 025)	\$149,900
Complex	
4. Water Utility (Fund 092)	\$51,390
5. Sewer Utility (Fund 094)	\$43,911
Total	<u>\$6,061,600</u>
Funding:	

In addition to the funding sources detailed above, in 2019, a CalRecycle grant in the amount of \$274,033 was awarded to complete the 2019 Pavement Rehabilitation Project. The budget amendment recommended in this report includes appropriations in the amount of \$274,033 from CalRecycle Grant monies for the Annual Street Maintenance and Rehabilitation Program (CIP 1235). The City will receive reimbursement of up to the \$274,033 from CalRecycle based on the quantity of rubberized materials used in the Project.

### Budget Amendment FY 2018/19

	Current	Increase/ (Decrease)	Revised
<b>Fund 533 - Streets &amp; Highways</b>			
<u>Revenues</u>			
CalRecycle Grant (533-1235)	\$0	\$274,033	\$274,033
<u>Expenditures</u>			
Annual Street and Rehabilitation Program Project (533-1235)	\$8,800,000	\$274,033	\$9,074,033

This budget amendment is contingent on the approval of RTC 19-217 - Action on an Agreement with the Santa Clara Valley Transportation Authority for Funding from the 2016 Measure B Local Streets and Roads Program and Related Budget Amendment, scheduled to be heard on April 23, 2019.

### COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

### PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Adopt the following findings of Council, pursuant to California Public Contract Code section 5103, et seq., and relieve MCK Services, Inc., of its bid for the 2019 Pavement Rehabilitation Project (CE 17-18-19):
  - (a) That MCK made a mistake in its bid for the Project;
  - (b) That Bids on the Project were opened on February 20, 2019, and MCK submitted to City staff sufficient notice of its mistake on February 27, 2019, which was within five (5) working days of February 20, 2019, and MCK's notice specified in detail how the mistake occurred;
  - (c) That MCK's mistake made its bid materially different than MCK intended it to be, by an amount of approximately \$231,331; and
  - (d) That MCK's mistake was made in filling out the bid, specifically by transcribing incorrect unit costs from MCK's internal forms to City's Bid Schedule form that was submitted with the bid, and that MCK's mistake was not due to any error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.
2. Award the Public Works Contract for the 2019 Pavement Rehabilitation Project (CE 17-18-19) to the lowest responsive and responsible bidder, G. Bortolotto & Co., Inc., in the amount of \$5,510,556 and authorize the City Manager to execute any and all documents associated with, and necessary for the award, completion, and acceptance of this Project;
3. Authorize the City Manager to execute change orders up to approximately 10% of the original contract price, or \$551,044, for a total not to exceed amount of \$6,061,600; and
4. Accept the CalRecycle Grant award of \$274,033 into the Streets & Highways Fund and approve the FY 2018/19 budget amendment to appropriate the funds into the Annual Street Maintenance and Rehabilitation Program (CIP 533-1235).

Reviewed by: Craig Mobeck, Director of Public Works

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Rehabilitation Locations
2. Bid Summary
3. MCK's Request to Withdraw
4. CalRecycle Grant Agreement