

**REPORT TO THE
CITY COUNCIL**
City of Salinas, California

DATE: February 7, 2017

FROM: Gary E. Petersen, C.A.E.
Public Works Director

THRU: Francisco A. Aguayo, P.E.
Interim City Engineer

BY: Phavana Aramkul, Junior Engineer

SUBJECT: **JOB ORDER CONTRACTING FOR MISCELLANEOUS TYPE B BUILDING
/ BUILDING MAINTENANCE WORK; REJECTION OF BID PROTESTS**

RECOMMENDATION:

It is recommended that City Council:

- 1) Reject the protests submitted by William A. Thayer Construction Inc.; and
- 2) Approve a Resolution awarding three (3) annual contracts for Job Order Contracting (JOC) for Miscellaneous Type B Building/Building Maintenance Work for a minimum amount of \$50,000 (life of contract) and up to \$1,000,000 per year per contract to: 1) Staples Construction Co. Inc. 2) Newton Construction & Management Inc. and 3) Ausonio Inc.; and
- 3) Authorize the Public Works Director, in consultation with the City Attorney, to execute amendments, including extensions, to these contracts, and to execute individual Job Order contracts, as determined necessary.

DISCUSSION:

On October 26, 2016, the City began to procure bids for the JOC for miscellaneous building construction and other related building maintenance work, within the City's right-of-way and on City properties. This project is a continuation of the City's effort to maintain/improve/rehabilitate/upgrade city buildings to current building codes, including demolition work, and have a vehicle in place to address City's ADA transition plan related to buildings.

The JOC system allows the City to expeditiously issue individual work orders. With this method of contracting, job orders are issued to contractors on a sequential selection process for the first round. Selection of the contractor for the second cycle is dependent on contractor availability, JOC program evaluation of contractor, and the contractors' prior job order performance. The Public Works Department anticipates a five-year project term with contracts issued to three contractors for one-year terms, with renewal options.

On December 8, 2016, five bids were received from contractors with the following results (see attached Bid Tabulation sheet for details).

BID RESULTS:

Contractor	Adjustment Factor (Item No. 3)	* -5% Local discount	Award Criteria Rank
Staples Construction Co. Inc.	1.1208		1
Newton Construction & Management Inc.	1.1310		2
Ausonio Inc.	1.2915	1.2269	3
Federal Solutions Group	0.9573		Incomplete / Disqualified
William A. Thayer Construction Inc.	1.1568	1.0989	Incomplete / Disqualified

* 5% Adjustment Factor per section 12-28.050 of the local purchasing preference–Public works Contracts of City Municipal Code

The three lowest responsive bidders are Staples Construction Co. Inc., with a total Adjustment Factor rate of *1.1208*; Newton Construction & Management Inc., with a total Adjustment Factor rate of *1.1310*; and Ausonio Inc., with a total Adjustment Factor rate (adjusted to include local discount) of *1.2269*. There were two disqualified bidders: Federal Solutions Group and William A. Thayer Construction Inc.

The Adjustment Factor is a competitively bid adjustment applied to the Unit Prices listed in the Construction Task Catalog® by each contractor for their overhead and profit.

On December 8, 2016, 30 minutes prior and 30 minutes post bid opening, City staff opened the project on PlanetBIDs website, and noted that only three (3) prime contractors had registered for the project: Staples Construction Co. Inc., Ausonio Inc., and Newton Construction & Management Inc. (See Attachment A “PlanetBIDs Prospective bidders.”)

Bidder Disqualification for Nonresponsive Bids

Federal Solutions Group was disqualified because its bid package was incomplete and therefore not responsive: the bid package did not include Addendum No. 1. Page 11 and page 12 of the bid specifications, Note (2) ^[2], provides that “*the Bidder shall submit all completely executed and signed City of Salinas forms*” and “*Failure to comply with these requirements may result in the forfeiture of the Bidder’s rank in the Bid process*”. Additionally, Federal Solutions Group did not register with PlanetBIDs, as required, prior to bid opening. Page 7 of the bid specifications ^[1] provides that “*If the Bidder is not registered on the PlanetBIDs website when submitting a Bid, they shall be disqualified.*” City Public Works staff contacted and notified Federal Solutions Group on December 9, 2016 of its incomplete bid and disqualification. Federal Solutions Group has not protested its disqualification.

On December 9, 2016, City staff received a bid protest from William A. Thayer Construction Inc. (attached) regarding Federal Solutions Group’s bid on the ground that it failed to include a signed addendum in its bid package.

William A. Thayer Construction Inc. (“Thayer”) was also disqualified because it did not register with PlanetBIDs as required by the bid specifications. Its bid was therefore not responsive. As a result, on December 9, 2016, City staff also informed Thayer of its disqualification for not registering with PlanetBIDs website for this project. On December 12, 2016, City staff received a letter of appeal from Thayer (see attached letter dated Dec. 12, 2016) requesting the City to reconsider its disqualification, assuming it was already registered on PlanetBIDs website.

In this instance, in the normal course of procedure, Public Works staff notified bidders failing to meet the mandates of the bid specification of their disqualifications and now staff has queued up this hearing to afford bidders the opportunity to publicly address the bid protest. City Public Works staff notified all contractors who bid on the project that a public hearing respecting the Bid Protest will be held at the February 7, 2017, council meeting via letters dated January 17, 2017 (see attached letter(s) – Notice to Bidders of Bid Protest).

Legal Considerations Regarding the Bid Protests

Salinas City Code section 12-39 ^[3] provides the bases upon which a contractor may file a protest and also provides the procedures by which the protest is considered. “Any contractor who has submitted a bid but is not the apparent lowest responsible bidder on a city contract may file a protest.” (Section 12-39) A contractor which meets that initial requirement may protest the bid award only on limited grounds: “for the city’s or successful bidder’s failure to comply with the requirements of [Article IV of Chapter 12 of the Salinas City Code], the bid documents or any applicable provision of the [City] Code.” (Section 12-39) And, if those additional requirements are met, the City Council “shall sustain a bid protest only if it finds evidence that award of the bid would violate the Code or other applicable law.” (Section 12-39)

Thayer’s protest with respect to Federal Solutions Group is a valid protest, but should be rejected given that Federal Solutions Group has been determined a nonresponsive bidder and is not being recommended for award of a contract.

While framed as a request for reconsideration of the determination that its bid was nonresponsive, Thayer’s request should be treated as a protest made pursuant to Salinas City Code section 12-39 to the extent that it protests its *own* failure to comply with the bid documents. Thayer did not register with PlanetBIDs as required by the bid specifications because, as it indicates, it was under the assumption that it had previously registered with PlanetBIDs. Under Section 12-39, Thayer’s protest can only be sustained if the City Council finds that evidence that award of the bid to the other three companies would violate the City Code or other applicable law. The City Council’s concurrence with Staff’s recommendation and its award of the proposed contracts to the three companies identified in the recommendation would not violate the City Code or other applicable law. Thayer’s protest should, therefore, be rejected.

LOCAL PREFERENCE:

The City’s Local Purchasing Preference Ordinance did apply to one of the five contractors. Ausonio Inc. qualified as a local contractor in the determination of the lowest responsible bidders and received the local purchasing preference.

ISSUE:

Shall the City Council approve a Resolution (1) rejecting the bid protests of William A. Thayer Construction, Inc., (2) approving award of three (3) contracts for JOC for Miscellaneous Type B Building/Building Maintenance Work to: 1) Staples Construction Co. Inc. 2) Newton Construction & Management Inc. and 3) Ausonio Inc.; and, (3) authorizing the Public Works Director, in consultation with the City Attorney, to execute amendments to the contracts, including extensions, and to execute individual Job Order contracts as determined necessary, subject to the availability of sufficient funding?

FISCAL IMPACT:

The current budget for building upgrade and maintenance projects is \$469,537. The amount of \$36,837 has been encumbered for design, leaving an unencumbered amount of \$395,894. Based on the Engineer’s estimate, sufficient funds are available to proceed and begin issuing Job Orders.

TIME CONSIDERATIONS:

If approved, project quote requests and subsequent construction work is tentatively expected to begin in April 2017.

ALTERNATIVES/IMPLICATIONS:

Council may elect to reject all bids and postpone the project. This is not recommended because Measure G Funds are available for the project, and building renovation is needed to begin the Women’s Club building improvements and funds need to be spent in a timely manner.

Council may otherwise direct staff how to proceed.

CITY COUNCIL GOALS:

This project addresses the current City Council’s Goals of “Safe, Livable Community,” “Excellent Infrastructure,” and enhances “Quality of Life.” The project can create a safer community, addresses homelessness, infrastructure needs for and within neighborhoods.

Back up Pages:
City Council District Map
Resolution
Bid Tabulation Sheet
Bid Protest

Letter dated Dec. 12, 2016
Attachment A -PlanetBIDs Prospective Bidders
Letter-Notice to Bidder of Bid Protest

References and notes:

- [1] Notice to Bidders; beginning on Pg. 5 of the City of Salinas Specification for Job Order Contracting for Miscellaneous “Type B” Building/Building Maintenance Work Contract No. 2016-JOB03 Type B.
- [2] Proposal; beginning on Pg. 10 of the City of Salinas Specification for Job Order Contracting for Miscellaneous “Type B” Building/Building Maintenance Work Contract No. 2016-JOB03 Type B.
- [3] Sec. 12-39.-Bid Protest.
Any contractor who has submitted a bid but is not the apparent lowest responsible bidder on a city contract may file a protest. The bid protest shall be filed with the city clerk within three working days of the bid opening. The city council shall hear the bid protest prior to adopting a resolution authorizing the bid award and execution of the contract. In cases where the contract is not executed by the city pursuant to city council resolution, the bid protest shall be heard by the city council prior to the time the city issues a notice to proceed or the appropriate city official executes the contract on behalf of the city. The protesting

party may protest the bid award for the city's or successful bidder's failure to comply with the requirements of this article, the bid documents or any other applicable provision of this Code. The city council shall sustain a bid protest only if it finds evidence that award of the bid would violate the Code or other applicable law. The decision of the council shall be final.

(Ord. No. 2330 (NCS), § 1.)