

WEST SLOPE WATER DISTRICT

Special Board of Commissioners Meeting – Contract Review Board

September 6, 2022

Meeting Summary

CALL TO ORDER

Present on Virtual Meeting: Chair Paul Schuler, Commissioners Ramesh Krishnamurthy, Susan Meamber, Andy Smith, and Carol Wild

Management Staff: Michael Grimm, General Manager; Wendy Irwin, Finance & Customer Service Manager

Absent: None

Public: None

1.0 – CALL TO ORDER

Chair Schuler called to order the regular meeting of the West Slope Water District Board of Commissioners at 4:59 P.M., Tuesday, September 6, 2022. The meeting was held through Zoom remote teleconferencing technology. The public was made aware of the meeting through the District’s website (the meeting agenda and Zoom meeting link were posted on the website).

2.0 - PUBLIC COMMENTS/COMMUNICATIONS

Mr. Grimm stated the District had received no public comments by email, letter or telephone for the Board to consider.

3.0 – DISCUSSION OF BEAVERTON-HILLSDALE HWY WATER MAIN REPLACEMENT PROJECT

Mr. Grimm gave a brief summary of the bid opening process leading up to the meeting:

- The AKS Engineers estimate was established at \$2.66 million
- At bid opening on August 25, the apparent low bid was \$2.67 million by ICON Construction
- ICON Construction did not have their First Tier Subcontractors List with the rest of their bid package as the other three bidders did. Under public contracting rules, a contractor has 2 hours from the time of the bid opening to submit the List. ICON informed the District the List was inadvertently left in their office but would submit it to the District as soon as possible. However, ICON never sent their List to the District despite several calls to ICON to remind them of the deadline
- After two hours elapsed, the ICON bid was deemed non-responsive, and the new apparent low bid was \$3.61 million by Emery & Sons Construction

Mr. Grimm offered the Board three options at this point:

- Reject all four bids as being too far above the engineer's estimate: Mr. Grimm did not recommend this option because in his opinion rebidding this job again in early 2023 would probably have the same results.
- In the contract negotiations with Emery & Sons, shorten the scope of the project to a point where the work in the modified contract would be for \$2.66 million: Mr. Grimm did not recommend this option because it is best to replace as much pipe on the highway as possible as long as we have a permit from ODOT and there is no guarantee that Emery & Sons would be in agreement with this contract modification.
- Approve the Emery & Sons bid and move forward with the contract as presented: Mr. Grimm recommends this option because although the bid price is higher than the engineer's estimate by roughly \$1 million, the District's budget for the project including contingency funds is \$3.1 million in this fiscal year. The Board passed a water rate increase in June 2022 for the purpose of funding capital projects in future fiscal years. Due to supply chain issues, Emery & Sons will not be able to begin construction for this project until April 2023 at the very earliest and will most certainly be still working on this project into early Fall 2023. So, it is clear that the District will need to carry-over funds set aside for this project this fiscal year into the next fiscal as well as add to the carry-over amount to complete the project.

Commissioner Krishnamurthy pointed out the increase of the low bid over the engineer's estimate is over 30%. He questioned if AKS did not do their due diligence to create an accurate engineer's estimate and where will the money come from to cover the added expense of this bid from Emery. Mr. Grimm stated he believes the AKS estimate was an accurate representation of what the project would cost today based on today's cost of labor and materials costs assuming delivery on many items would be Spring 2023. One contractor bid very close to the engineer's estimate while three others were a \$1 million+ over the engineer's estimate. What AKS could not estimate was the cost of the construction contractor's perceived risk especially if it is related to the availability and cost of field labor 6-8 months from now. The greater the perceived risk to the contractor, the higher the bid price, and there is little the District can do about reducing a contractor's perceived risk about issues out of the District's control such as an available workforce for the contractor in 2023. Commissioner Krishnamurthy asked if the contractors perceived risks never materialize (that is, what if labor costs and availability in 2023 are unchanged from 2022?) is there a way to reduce the bid price or is the District obligated to pay the higher price and accept what the contractor has bid today? Mr. Grimm stated the District insulates itself against the risk of contractor bids over an engineer's estimate by adding a contingency to the estimate (a flat dollar amount or a % index). For the FYE2023 budget, the Board approved a \$0.5 million contingency on top of the \$2.6 million construction budget based on the engineer's estimate, but clearly that contingency was short by \$0.5 million. Public contracting laws are very clear that if a public entity accepts a bid, the amount of that bid (barring change orders) is what that entity will pay. Post award bid negotiations to reduce the cost to the entity are not legal.

Chair Schuler stated bid pricing on jobs his company is working with has increased roughly the same percentage as seen here between the engineer's estimate and the apparent low bid price and in his opinion is certainly not unreasonable to expect in this current economic climate.

Commissioner Meamber agreed with Chair Schuler based on projects she is managing at the Portland Water Bureau and added engineers are having a very difficult time creating sound estimates that compare to contractor bids because the market is so unpredictable, and she congratulated the District for having four bidders propose as some projects she has seen have

no proposers on bid opening day. Commissioner Meamber agreed that rebidding the project would be an unwise decision especially considering three bids were so close in price.

Commissioner Smith asked what the cost increase on this project means for the next series of CIP projects for the District such as does that set the District backward in funds and timing. Mr. Grimm replied that certainly the District will need to use more rate payer money in 2023 for this project rather than keep those funds in the CIP Reserve Fund for the next project, and it is not clear what kind of a delay that may create for starting the next CIP project after this current project.

Commissioner Krishnamurthy asked if there was any opportunity to negotiate with Emery & Sons at this point to establish a new price for certain individual items to lower the District's costs or is this the price that it is that the District will have to honor. Mr. Grimm stated the bid is the cost the District is required by law to honor. The bid is composed of unit prices and quantities for most items and lump costs for others. The sum of both is the total bid price.

Commissioner Wild stated she believes there won't be much change to the District's favor in workforce availability and the cost of materials and that she is hopeful the District can continue to move forward with much needed capital projects. Additionally, Commissioner Wild informed the Board that the summer months for Jesuit HS are June and July and by early August school is back in session, and it may be to the contractor's advantage to schedule work during the June & July months in an effort to reduce traffic congestion and the risk of driving mishaps in this area.

Mr. Grimm pointed out to the Board that the bid tabulation shows pipe costs and other water pipe materials are close in terms of unit price to the engineer's estimate. Conversely, the bid items not directly related to water main constructability (laser sensors for left turn lanes, concrete curbing between traffic lanes, etc.) are much higher than the engineer's estimate and comprise a large portion of the added cost to this project. Mr. Grimm believes it is appropriate to have a conversation with ODOT management pointing out many of these bid items are included as part of ODOT's permit approval and are not items that are currently found in the highway where the District's project will take place. That is, the ODOT permit process is obligating the District to make improvements to the highway (laser sensors on overhead poles to replace traffic loops embedded in the pavement) that have no real connection to the water main replacement project and now represent a large portion of the construction bid price. Mr. Grimm further stated his desire is to see ODOT reimburse the District for the added cost of the highway infrastructure improvements ... possibly with some of the State's billion dollars of ARPA funding received directly from the Federal Government (side note: While the State, Oregon Counties, and Oregon Cities all received \$ billions of ARPA funds, Special Districts received no ARPA funding).

4.0 – EVALUATION OR THE BIDS

Mr. Grimm shared on screen a comparison of the engineer's estimate and the two bids from ICON Construction and Emery & Sons Construction. Commissioner Meamber asked about Emery & Sons cost being higher for mobilization. Mr. Grimm responded typically a construction contractor calculates mobilization based on a percentage of the total bid. In most cases, mobilization is calculated at or below 10% of the total bid price, and it represents the cost of the contractor to make initial investments to order materials for the project. That is, rather than using the contractor's capital reserve to purchase materials for the project, it is understood the contractor would use the contracting agency's capital reserve for upfront purchases.

Mr. Grimm stated District staff is still very concerned about pursuing replacing the pipe in Beaverton-Hillsdale Hwy before there is a catastrophic failure of this pipe due to its inaccessibility (depth of existing pipe is roughly 9 feet). Following the recent large main break on SW Gardenview, District staff is even more concerned about water mains perceived to be at high risk for failure.

5.0 – BOARD DISCUSSION / DECISION TO ACCEPT OR REJECT APPARENT LOW BID

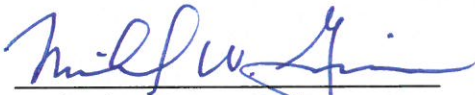
Commissioner Wild made a motion to accept the low bid from Emery & Sons and direct the General Manager to proceed to establish a contract between the contractor and the District. Commissioner Meamber seconded the motion, and the motion passed unanimously. Commissioner Krishnamurthy asked if Mr. Grimm would be serving as the District’s project manager for this CIP project, and Mr. Grimm confirmed he will serve as the District’s project manager.

6.0 - ADJOURNMENT

There being no further business to discuss, Commissioner Wild moved to adjourn the meeting. Commissioner Krishnamurthy seconded the motion, and the motion was approved unanimously (3-0). Commissioner Wild adjourned the September 6, 2022 Contract Review Board meeting at 5:51 PM.

Respectfully Submitted,

Approved:



Michael W. Grimm, P.E.
Acting Secretary

