

TO: JAMES L. APP, CITY MANAGER
FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: CDBG-FUNDED CARNEGIE LIBRARY REHABILITATION: AWARD OF BID AND APPROPRIATION OF SUPPLEMENTAL FUNDS
DATE: FEBRUARY 4, 2003

- NEEDS:**
- A. For the City Council to consider whether or not to award a contract to rehabilitate the Carnegie Library Building to the responsive bidder based on bids received last month. Alternatively, the Council could reject both bids, revise the bid standards, and re-solicit bids for this project.
 - B. If the Council opts to award the contract at this time, it will need to appropriate supplemental General Funds to complete the project.

FACTS RE: BIDDING ISSUES:

1. On December 13, 2002, bids for the Carnegie Library Rehabilitation project were opened. The City received two bids, a bid from RSH Construction of Atascadero for \$314,000 and a bid, from Maino Construction of San Luis Obispo for \$332,000.
2. The rehabilitation work to be performed includes the installation of an elevator, disabled-accessible restroom, and related improvements in a historic building.
3. The Carnegie Library Building is listed on the National Register of Historic Places. In order to protect the historic value of the building, the contract documents specified that the successful bidder must document experience with rehabilitation of historic buildings (including references) within the past 5 years. Additionally, the contract documents specified that, for four specific components of the work (selective demolition, finish carpentry, wood window rehab, painting), a minimum of 3 years of experience (including references) was to be documented.
4. RSH Construction's bid acknowledged that it did not have experience with historic buildings in the past 5 years. Additionally, it did not document compliance with the 3 year requirements for the four specific components of work.
5. Maino Construction's bid documented compliance with all of the experience requirements.
6. The City Attorney reviewed both bids and agreed that RSH Construction's bid was non-responsive, whereas Maino Construction's bid was responsive. On December 18, 2002, following a phone conversation with Linda Beck, the City sent RSH Construction a letter informing them that their bid was non-responsive.
7. On December 20, 2002, the City received a letter from Frederick Wood, attorney for RSH Construction, filing a "bid protest" and asserting that Maino's bid was also non-responsive.
8. On December 30, 2002, on the advice of the City Attorney, the City sent letters to both bidders, giving them until January 9 to submit written documentation to supplement their bids to establish compliance with the experience with historic buildings specifications. Because the question involved the bidders' experience and responsibility, the City could consider information provided after receiving the bids.
9. On January 8, 2003, Maino Construction submitted a letter documenting compliance with all four of the historic buildings specifications.

10. On January 9, 2003, RSH Construction submitted a letter documenting that two of their subcontractors had the required experience with the historic buildings. RSH's letter stated that its principal, Steve Hendricks, did have experience in finish carpentry and selective demolition at Hearst Castle and on a historic building in Wyoming at some unspecified time in the past. RSH also submitted several letters from building owners expressing satisfaction with RSH's performance on private and public projects.
11. On January 9, 2003, Frederick Wood submitted a letter that reiterated his assertion that neither contractor was responsive, that the experience with historic buildings requirement was "unnecessarily restrictive", and that the City should reject both bids, revise the specifications to relax the experience requirements, and re-solicit for bids. Mr. Wood referred to the City's request for clarifying information as a "modification" of the bids, which is not allowed post bid opening per the contract documents.
12. On January 13, 2003, having reviewed the letters received on January 8 and 9, the City Attorney responded that the City would be within its rights to reject RSH's bid and that an award to Maino would be defensible.
13. Alternatively, the City does have the right to reject all bids, modify the experience requirements somewhat, and re-advertise for bids. This approach would eliminate the possibility of a challenge to the award and might draw more bidders. It could also result in more competitive pricing.
14. Both contractors have indicated that they will appear before the Council to argue their cases.
15. Copies of the pertinent experience sections of both bids and the letters mentioned above are attached. A copy of Bid Addendum #3, which reminded all bidders of the historic building rehabilitation experience requirement is also attached.

FACTS RE: FUNDING:

16. The Council has allocated a total of \$319,900 from 1998, 2000, 2001, and 2002 Community Development Block Grant (CDBG) funds for rehabilitation of the Carnegie Library.
17. Under contract with the City, Architectural Resources Group (ARG) prepared construction plans and a cost estimate for the project. Construction cost estimates prepared by ARG and Harris Associates, a third party estimator hired by the City, in 2002 came to \$285,000 (\$260,000 base contractor fee plus \$25,000 for asbestos remediation).
18. The necessary resources to complete this project, including architectural design fees, construction management fees, construction costs, contingency costs (10% of construction contract), and bidding costs (printing, legal notices, legal services, postage, etc.) are estimated at \$465,000.
19. At its meeting of December 3, 2002, the City Council recommended that the Draft Annual Action Plan for 2003 CDBG funds include an allocation of \$90,100, which if approved following a public hearing on the Annual Action Plan (scheduled for March 4, 2003), would bring the amount of CDBG funds available for this project up to \$410,000, leaving a shortfall of \$55,000.
20. The Director of Administrative Services has recommended that the Council go ahead and award the bid and requests that the Council allocate additional CDBG resources at their March 4 meeting.

21. Should the Council choose not to allocate additional CDBG funds to the project, the Council will be asked at a subsequent meeting to allocate General Fund resources to cover the funding shortfall.
22. The City Council has previously approved the use of General Funds as an advance on future CDBG funds for public works projects such as the Skate Park, Park Street Improvements (adjacent to Oak Park Public Housing), and Downtown Street Lights projects.

ANALYSIS AND

CONCLUSION: Award of Contract

Arguments for and against awarding the bid to Maino Construction include the following:

- The City Attorney believes that their bid is responsive. RSH's bid is not responsive and RSH does not meet the experience requirements for this contract.
- Maino's rehabilitation experience includes the rehabilitation of the City of San Luis Obispo Carnegie Library, which was originally designed by the same architect (Weeks) as Paso Robles' Carnegie Library, and the rehabilitation improvements for both buildings were designed by the same architect (Architectural Resources Group or ARG). So Maino has experience with a similar building and with the same architect (ARG).
- The difference in bids is \$18,000.
- If the City goes back out to bid, there is no certainty that the City would receive better bid prices.
- If the Council awards the contract now the work could begin in February 2003, and would have less disruption to the Historical Society, which closed its operation in December, expecting work to begin in January, and hopes to re-open as soon as possible. Re-advertising of bids will move the start date back at least two months, possibly more.
- The City would send a strong message to contractors that it will adhere to standards published in contract documents and cannot be pressured into relaxing its standards or capitulating at each bid protest. If the project is rebid and experience standards are relaxed, the effect could possibly encourage another protest by an unqualified contractor .

Project Funding

An additional \$55,000 is needed to make up the difference between the estimated necessary resources of \$465,000 and the \$410,000 in CDBG funds allocated to date (including the Council action in December to nominate \$90,000 in 2003 funding). Sources of the needed \$55,000 could include \$5,000 in unused 2002 CDBG funds for the downtown street light project and to either increase the allocation of 2003 CDBG funding to this project or use General Funds, either as an advance until future (e.g. 2004) CDBG funds can be allocated, or as a permanent supplement to CDBG funds.

Should the Council allocate an additional \$50,000 in 2003 CDBG funds, they would have to make an offsetting reduction in amounts identified in their draft action plan. The Municipal Pool Changing Room Rehabilitation project, which was earmarked to receive \$51,200, would seem to be a logical source.

Conclusion

In summary, the following options are available:

- a. (1) Award the contract to Maino Construction.
 - (2) On March 4, 2003 allocate \$140,000 (the original \$90,000 plus an additional \$50,000) in 2003 CDBG funds for this project (which would reduce the amount of CDBG funds available for other projects or programs).
- b. (1) Award the contract to Maino Construction.
 - (2) If, after the CDBG hearing on March 4, 2003, the Council has not allocated \$140,000 in 2003 CDBG funds to this project, it will be proposed that the City Council allocate the necessary amount of General Funds (up to \$50,000 if only \$90,000 in CDBG funds were allocated) to complete the project. At that time, the Council may indicate a desire to allocate future CDBG funds to reimburse the City for the amount of General Funds allocated. However, the Council needs to be aware that, per federal regulations, future allocations of CDBG funds cannot be guaranteed in advance of conducting a public hearing on each future year's allocation of CDBG funds.)
- c. Reject both bids, modify the contract documents to relax the experience requirements, and re-advertise for bids. Should the Council select this option, it should give some indication as to the degree to which experience requirements would be relaxed.

POLICY

REFERENCE: Federal regulations governing CDBG funds

FISCAL

IMPACT: Under Option "a", there would be no impact to the General Fund. Under Option "b", the allocation of \$50,000 in General Fund resources to complete project would negatively impact projected General Fund results for the current fiscal year, but could be reimbursed in 2004.

The four-year financial plan projection update presented to the Council on June 18, 2002 indicated, assuming a worst case scenario, that the General Fund would experience a (\$1,255,000) operating loss for fiscal year 2003. Since that presentation, the Council has approved the following additional General Fund budget appropriations:

Public Safety Staffing	\$124,000
Downtown Trash Receptacles	17,000
Paso VCB Incentive Payment	66,500
City Speed Zone Survey	15,000
Pacific Waste Services	188,000
Paso Robles VCB	19,000
Employee Group Health Benefits	77,000
MS Software Licensing	13,500

These additional appropriations have increased the projected General Fund deficit to \$(1,775,000). Option "b" would increase the projected deficit by \$50,000. If 2004 CDBG funds were to be allocated for reimbursing an advance of General Funds, said reimbursement would not occur until September 2004, in Fiscal Year 04/05.

OPTIONS:

- a. (1) Adopt Resolution No. 03-xx to award the work to the responsive bidder for this project, Maino Construction of San Luis Obispo, in the amount of \$322,000.00.
- (2) By minute action indicate that on March 4, 2003 the Council will allocate \$140,000 in 2003 CDBG funds for this project (This action would reduce the amount of 2003 CDBG funds available for other projects or programs by as much as \$50,000).
- b. (1) Adopt Resolution No. 03-xx to award the work to the responsive bidder for this project, Maino Construction of San Luis Obispo, in the amount of \$322,000.00.
- (2) By minute action indicate that if, after the CDBG hearing on March 4, 2003, the Council did not allocate \$140,000 in 2003 CDBG funds to this project, the Council would then allocate the necessary amount of General Funds to complete the project. Said minute action may include an indication of a desire to allocate future CDBG funds to reimburse the City for the amount of General Funds allocated. Further, under said minute action, the Council acknowledges that, per federal regulations, future allocations of CDBG funds cannot be guaranteed in advance of conducting a public hearing on each future year's allocation of CDBG funds.
- c. Adopt Resolution No. 03-xx to reject both bids and direct staff to modify the contract documents to relax the experience requirements, and to re-advertise for bids.
- d. Amend, modify or reject the above options.

Prepared By:

Ed Gallagher
Housing Programs Manager

Attachments:

1. Resolution Awarding the Contract to the Responsive Bidder
2. Resolution Rejecting Both Bids
3. Selections from Both Bids Pertaining to Experience Requirements
4. Bid Addendum #3 (Historic Building Rehabilitation Experience Requirement Reminder)
5. Letter from Frederick Wood dated December 20, 2002
6. Letter from Maino Construction dated January 8, 2003
7. Letter from RSH Construction dated January 9, 2003 (with attached letters of recommendation)
8. Letter from Frederick Wood dated January 9, 2003

ED\COMREHAB\CARNEGIE\BIDS\CCR AWARD CONTRACT 020403

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
REJECTING ALL BIDS RECEIVED ON THE CARNEGIE LIBRARY REHABILITATION
PROJECT AND DIRECTING STAFF TO RE-ADVERTISE FOR BIDS

WHEREAS, the Bid Opening for the Carnegie Library Rehabilitation was held on December 13, 2002, with two (2) bids received; and

WHEREAS, the apparent low bid was submitted by RSH Construction of Atascadero; the higher bid was submitted by Maino Construction of San Luis Obispo; and

WHEREAS, the Carnegie Library building is listed on the National Register of Historic Places, and the contract documents specified that bidders were to demonstrate experience in the previous five years with rehabilitation of historic buildings and to demonstrate a minimum of three years experience with four specific rehabilitation components: selective demolition, finish carpentry, wood window rehabilitation, and painting; and

WHEREAS, on December 18, 2002, the City found the bid submitted by RSH Construction did not meet the contract documents' specifications for experience with historic buildings, determined their bid to be non-responsive, and so notified RSH Construction of its finding in writing; and

WHEREAS, on December 20, 2002, the City received a Bid Protest from Frederick Wood, Attorney for RSH Construction claiming that the bid submitted by Maino Construction was also non-responsive;

WHEREAS, on December 30, 2002, the City sent letters to both bidders asking them to submit any additional information regarding their experience with historical rehabilitation projects in general, and finish carpentry, window rehabilitation, and painting in particular, that they would like the City to consider in assessing the bids; and

WHEREAS, on January 8, 2003 the City received a written response from Maino Construction, which provided information to clarify their bid; and

WHEREAS, on January 9, 2003, the City received a written response from RSH Construction, which failed to establish that they had the amount of experience specified in the contract documents in rehabilitation of historic buildings; and

WHEREAS, on January 9, 2003, the City received a letter from Frederick Wood which reiterated his assertion that neither contractor was responsive, that the experience with historic buildings requirement was "unnecessarily restrictive", and that the City should reject both bids, revise the specifications to relax the experience requirements, and re-advertise for bids; additionally, Mr. Wood 's letter referred to the City's request for clarifying information as a "modification" of the bids, which is not allowed post bid opening per the contract documents; and

WHEREAS, it is within the City Council's right to reject all bids.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City Council of the City of Paso Robles does hereby reject all bids received for the Carnegie Library Rehabilitation Project on December 13, 2002.

SECTION 2. That the City Council of the City of Paso Robles does hereby direct staff to modify the experience requirements and re-advertise for bids.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this February 4, 2003, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AWARDING CONSTRUCTION OF CARNEGIE LIBRARY
REHABILITATION TO THE RESPONSIVE BIDDER

WHEREAS, via Resolutions 98-48, 00-46, 01-55, and 02-38, the City Council has allocated a total of \$319,850 from 1998, 2000, 2001, and 2002 Community Development Block Grant (CDBG) funds for the design and construction of disabled access improvements, including an elevator and accessible restroom in the Carnegie Library Building (the "Project"); and

WHEREAS, via Resolutions 99-122, 00-231, 01-05, 01-197, and 02-156, the City Council has appropriated a total of \$319,900 to complete the Project into Budget Account No. 227-910-5452-478; and

WHEREAS, at its meeting of December 3, 2002, the City Council recommended that the Draft Annual Action Plan for 2003 CDBG funds include an application for allocating an additional \$90,100 for the project; and

WHEREAS, the bid opening for the Project was held on December 13, 2002; two bids were received, of which only one was responsive, that submitted by Maino Construction of San Luis Obispo for \$332,000.00; and

WHEREAS, after deducting expenses for design, asbestos and lead-based paint survey and monitoring services, construction management services, printing, postage and legal advertising for bid documents, \$220,100 of the \$319,900 in CDBG funds for the Project will remain in the project budget for the construction contract and contingency costs; and

WHEREAS, there are \$5,000 in unspent CDBG funds from the completed Downtown Street Lights project that may be administratively transferred to the Project, raising the amount of presently-available CDBG funds to \$225,100; and

WHEREAS, an additional \$140,000 in supplemental funds would be needed to cover the amount bid by Maino Construction and provide an additional 10% of the contract price for any contingencies; and

WHEREAS, there are sufficient funds in the General Fund to supplement the remaining \$225,100 in CDBG funds to complete the Project; and

WHEREAS, federal regulations governing the CDBG Program allow that the City may apply for future CDBG funds to reimburse the City for non-CDBG funds advanced to supplement a CDBG-funded project, with the understanding that the City Council cannot guarantee the future allotment of CDBG funds prior to conducting a public hearing on the Consolidated Plan, in the manner prescribed in federal regulations.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City Council of the City of Paso Robles does hereby award the bid for the Project to the responsive bidder, Maino Construction of San Luis Obispo, in the amount of \$332,000.00.

SECTION 2. That the City Council of the City of Paso Robles does hereby authorize the City Manager to execute the construction contract.

SECTION 3. That the City Council of the City of Paso Robles will consider allocating additional CDBG 2003 resources at their March 4, 2003 or defer the allocation of CDBG resources until 2004 in which case General Fund resources will be "advanced". Should neither option be chosen, staff will return with a request that the Council allocate General Fund resources.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 4th day of February 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk