

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Carnegie Library Repair and Retrofitting
DATE: December 18, 2007

NEEDS: For the City Council to allocate funding and award a construction contract to repair and retrofit the Carnegie Library.

- FACTS:**
1. On December 22, 2003, the City was subjected to a 6.5 magnitude earthquake which caused moderate damage to the City's Carnegie Library.
 2. On July 6, 2004, the City engaged the services of Architectural Resources Group to prepare the construction documents to repair and retrofit the Carnegie Library.
 3. The project was advertised for bid and bids opened July 5, 2007. At that time all bids received were evaluated and found to be non-responsive.
 4. On September 18, 2007 the City Council adopted Resolution No. 07-202 which rejected all bids received and authorized staff to re-advertise.
 5. The project was re-advertised for bid, and at the bid opening on October 18, 2007, three bids were received:

Wysong Construction	\$ 1,892,000
Newton Construction	1,958,000
Giampolini & Co.	2,211,159

6. The bid documents called for bidders to price two bid alternates as follows:

Alternate #1 Slate roof covering and copper flashing:

Wysong Construction	\$ 42,000
Newton Construction	42,000
Giampolini & Co.	107,786

Alternate #2 Improved electrical items:

Wysong Construction	\$ 40,000
Newton Construction	17,500
Giampolini & Co.	116,250

These alternates are not included in the bid prices set forth above.

**ANALYSIS &
CONCLUSION:**

The Carnegie Library was built in 1907 as an unreinforced masonry (URM) building. It is listed on the National Registry of Historic Places. Due to its historical significance, the bid documents issued for its repair and retrofit required that the prospective bidder and subcontractors have qualifications and experience in renovation of historic buildings in the following areas of work: selective demolition, polyester resin concrete, masonry restoration, masonry cleaning, wood window

rehabilitation, lath and plaster, and painting. Bidders were required to provide written evidence of their experience with their bids.

The City is required to award the contract, if at all; to the responsible bidder that submits the lowest responsive bid. For the reasons discussed below, Staff recommends that the City reject the bid from Wysong and award the contract to Newton Construction.

Wysong and Newton have acknowledged that they do not meet the specific experience requirements for work on historic structures, citing the limitations of the local subcontractor pool. However, both bidders have affirmed their teams' ability to meet the requirements of the contract documents. Newton has raised questions about Giampolini's qualifications to perform certain elements of the work; staff has asked Giampolini to address that issue and is awaiting a response.

In addition to questions regarding experience with historic structures, Staff does not believe that Wysong is a responsible bidder for this contract. Based on the City's prior experience with Wysong, Staff recommends that the Council reject Wysong's bid. The concerns with Wysong's fitness and ability to perform arise from Wysong's work on Centennial Pool in 2005. On that project, Wysong failed to prosecute the work diligently and was not responsive to Staff's concerns about the schedule or quality of the work. Based on that experience, the City terminated Wysong's contract on Sherwood Park for convenience.

In its bid documents, the City reserves the right to reject "proposals from bidders who have previously failed to perform properly or to complete contracts of any nature on time." Not only has the City had bad experience with Wysong, but Staff has confirmed that, in 2005, the San Luis Obispo County Board of Education made an express determination that Wysong was not a responsible bidder. A copy of the Board's adopted minutes from that meeting is attached to this staff report.

Newton Construction submitted a responsive bid, and is the lowest responsible bidder for this project. Newton has been the general contractor on several successful City projects, including Sherwood Park and earthquake repairs to City Hall. In addition, Newton has provided construction management services for several other City projects, including the airport, Public Safety Center, and senior center. He has prior experience with the City's Carnegie Library, as he managed construction of the accessibility upgrades to that building in 2002, and installed the structural steel supports that have protected the building since the earthquake.

Since Newton is the lowest responsible bidder, it is not necessary for the Council to address the bid from Giampolini. For the Council's information, however, that bid was not responsive. Bidders were required to include specified allowances in their bid price to cover items of work (like upgrading electrical fixtures and maintaining or replacing the historic rose plants) with unknown quantities. Giampolini improperly included the allowance amounts in its unit prices, so that it is not possible to determine the correct unit prices or to track expenditure of the allowances.

It is proposed that the City Council appropriate the budget to repair and retrofit the City's Carnegie Library as outlined in the Fiscal Impact section below, and award the

construction contract to Newton Construction in the amount of \$2,017,500 (includes both alternates).

POLICY

REFERENCE: Capital Improvement Project

FISCAL

IMPACT: The following is a summary of the funding needs for this project:

Construction	\$ 2,017,500
Public Art (2%)	40,350
Construction administration (10%)	201,750*
Contingency (7.5%)	<u>151,313</u>
	\$ 2,410,913

*Construction Administration is reimbursable staff time

It is proposed that the City Council allocate \$2,411,000 (rounded up) to Budget Account No. 100.820.5224.261 to cover the cost of rehabilitating the Carnegie Library.

Approximately \$1,556,160 of the total bid should be subject to reimbursement by FEMA. Those items being addressed in the course of construction as a result of deferred maintenance such as replacement of carpet and floor coverings, replicating original six-foot high light posts at stairs, improving wiring distribution at basement, installing an automatic sprinkler system, sealing exterior surface, providing new custom-made wood sash screens including all hardware to match historic existing screens would not be covered. Implementation of these items is estimated to result in a non-reimbursable cost of \$461,341.

This appropriation, net of FEMA grant reimbursements, plus prior appropriation approvals would impact General Fund results by \$461,341.

OPTIONS:

- a. Adopt Resolution No. 07-xx to:
 - 1) Appropriate \$2,411,000 to Account No. 100.820.5224.261,
 - 2) Award the construction contract to Newton Construction in the amount of \$2,017,500, and
 - 3) Recognize that the City will need to fund \$461,341, the portion of the cost to repair and retrofit the Carnegie Library not reimbursed by FEMA.
- b. Amend, modify, or reject the above option.

Attachments (3)

- 1) Resolution
- 2) Minutes from Board of Education
- 3) Staff report for Sherwood Park

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROPRIATING FUNDS AND AWARDING A CONTRACT
TO REPAIR AND RETROFIT THE CITY'S CARNEGIE LIBRARY

WHEREAS, on December 22, 2003, the City was subjected to a 6.5 magnitude earthquake which caused moderate damage to the City's Carnegie Library; and

WHEREAS, on July 6, 2004, the City engaged the services of Architectural Resources Group to prepare the construction documents to repair and retrofit the Carnegie Library; and

WHEREAS, the construction/repair/retrofit contract was advertised for bid, and at the bid opening on July 5, 2007, three bids were received, all of which were evaluated by staff and found to be non-responsive; and

WHEREAS, on September 18, 2007 the City Council adopted Resolution No. 07-202 which rejected all bids received and authorized staff to re-advertise; and

WHEREAS, the construction/repair/retrofit contract was re-advertised for bid, and at the bid opening on October 18, 2007, three bids were received ranging from \$1,892,000 to \$2,211,159; and

WHEREAS, contractors were also required to submit a unit price Bid Schedule on October 24, 2007 and all three of-the contractors responded with unit price information; and

WHEREAS, the bid documents called for two bid alternates, which were submitted as follows:

Alternate #1, Slate roof covering and copper flashing:

Giampolini & Co.	\$107,786
Newton Construction.....	\$42,000
Wysong Construction.....	\$42,000

Alternate #2, Improved electrical items:

Giampolini & Co.	\$116,250
Newton Construction.....	\$17,500
Wysong Construction.....	\$40,000; and

Whereas, Wysong Construction does not meet the experience requirements of the contract documents, and, based on its previous work for the City is not a responsible bidder, and the San Luis Obispo County Board of Education has determined that Wysong is not a responsible bidder;

Whereas, Newton Construction is a responsible bidder that has performed successfully on other City contracts, including previous work on the Carnegie Library building, and submitted the lowest responsive bid.

WHEREAS, the funding needs for the project are \$2,410,913 as follows:

Construction (unit based bid plus alternates)	\$2,017,500
Public Art (2%)	40,350
Construction administration (10%)	201,750
Contingency (7.5%).....	151,313; and

WHEREAS, it is proposed that the City Council appropriate \$2,411,000 to Budget Account No. 100.820.5224.261 to meet the funding needs for the project; and

WHEREAS, in the City's negotiations with FEMA there were certain items on the work list that were identified as not qualifying for federal reimbursement (such as replacing the carpet, replicating original six-foot high light posts at stairs, improving wiring distribution at basement, installing an automatic sprinkler system, sealing exterior surface, providing new custom-made wood sash screens including all hardware to match historic existing screens, etc.), and these items are estimated to cost \$461,341.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby appropriate \$2,411,00 to Account No. 100.820.5224.261.

SECTION 2. The City Council does hereby reject the bid submitted by Wysong Construction, and award the contract to repair and retrofit the City's Carnegie Library to Newton Construction in the amount of \$2,017,500, and authorizes the City Manager to execute the contract.

SECTION 3. The City Council does hereby recognize that the City will need to separately fund \$461,341, the portion of the cost to repair and retrofit the Carnegie Library that is not reimbursed by FEMA.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 18th day of December 2007 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Frank R. Mecham, Mayor

Deborah D. Robinson, Deputy City Clerk

**ADOPTED
MINUTES of the
SAN LUIS OBISPO COUNTY BOARD OF EDUCATION**

DATE: December 16, 2005

PLACE OF MEETING: San Luis Obispo County Office of Education
Board Room

TYPE OF MEETING: Special

TIME OF MEETING: 2:30 p.m.

MEMBERS PRESENT: Mr. Larry Peterson, Vice-President; Mrs. Gaye Galvan;
Mr. Paul Madonna; Mr. Floyd Moffatt

MEMBERS ABSENT: Ms. Diane Ward

ADMINISTRATION: Dr. Julian D. Crocker, County Superintendent of Schools and
Secretary to the County Board of Education
Valerie Kraskey, Administrative Manager

**VISITORS/STAFF
PRESENT:** Record on file

- 1.0 **CALL TO ORDER AND PLEDGE OF ALLEGIANCE TO THE FLAG** *CALL TO ORDER*
Vice-President Larry Peterson called the meeting to order at 2:30 p.m., followed
by the Pledge of Allegiance to the Flag.
- 2.0 **ADOPTION OF AGENDA** *ADOPTION OF
AGENDA*
MOTION: GALVAN/MOFFATT A motion was approved to adopt the
agenda as presented. (4-0)
- 3.0 **PUBLIC COMMENT** *PUBLIC COMMENT*
There were no requests from the public to address the Board on any items not
on the agenda.
- 4.0 **ADMINISTRATION**
- 4.1 **Report Item(s)**
- 4.1.1 **Superintendent and Staff** *SUPERINTENDENT
AND STAFF*
- Dr. Crocker informed the Board that the P-16 Council,
which is a collaborative formed to refine the educational
process from preschool through post-secondary, has been
notified that they have received a \$20,000.00 grant through
ARHCES/ENLACE. SLOCOE will be the administrative
agency for the P-16 Council and Dr. Crocker is currently
the chairman.

4.1.2 Board

BOARD

- Mrs. Galvan reported that graduation for the Grizzly ChalleNGe Charter School was wonderful, as always. The program graduated 161 cadets from the current class.
- Mr. Moffatt also enjoyed the graduation, complete with being seated in the VIP section.
- Mr. Peterson enjoyed the Holiday Celebration held on December 13th and the Grizzly graduation ceremonies.

4.1.3 Employee Organizations

EMPLOYEE ORGANIZATIONS

There were no reports from employee organizations.

5.0 BUSINESS and INFORMATION SERVICES

5.1 Action Item(s)

5.1.1 Determine that Wysong Construction Company is a Nonresponsible Bidder and Reject its Bids for Construction of Additional Parking Lot at SLOCOE Main Office and for Construction of the Loma Vista Community School

DETERMINE THAT WYSONG CONSTRUCTION COMPANY IS A NONRESPONSIBLE BIDDER AND REJECT ITS BIDS FOR CONSTRUCTION OF ADDITIONAL PARKING LOT AT SLOCOE MAIN OFFICE AND FOR CONSTRUCTION OF THE LOMA VISTA COMMUNITY SCHOOL

According to the California Public Contract Code 20111, school districts and county offices of education must award bid to the lowest responsive and responsible bidder or reject all bids. The term "responsible" includes the attribute of trustworthiness, and also references the quality, fitness and capacity of the low bidder to satisfactorily perform the proposed work.

The Board of Education may determine that a bidder is nonresponsible based on certain factors. Once such a determination is made, the Board shall reject bids from the nonresponsible bidder. Recommendation is made to the Board to determine that Wysong Construction Company is a nonresponsible bidder based on evidence in the staff report.

Dr. Crocker noted that the Board's legal counsel, Holly Parrish Bezner of Kronick, Moskovitz, Tiedemann, & Girard, was standing by to assist the Board by telephone during their discussion. Staff is asking the Board to declare Wysong Construction Company a nonresponsible bidder. If the Board declares Wysong Construction Company nonresponsible they will also reject that company's bids received for the construction of an additional parking lot at the SLOCOE Main Office and for construction of the Loma Vista Community School. The Board has received documentation from staff clarifying their issues with Wysong Construction Company. Dr. Crocker also noted that there is a difference between a nonresponsive bidder versus a nonresponsible bidder.

Mrs. Galvan noted that projects that are not completed on time cost the office each day that project is delayed. Mr. Moffatt asked if the office had heard from Wysong Construction Company after receiving SLOCOE's correspondence. Dr. Crocker noted that the office has had no direct contact from the contractor since the documents were mailed. Mr. Peterson noted that his feeling is that Wysong Construction Company is currently over extended. Holly Parrish Bezner noted that the documentation goes to show that Wysong Construction Company's track record does support the finding of a nonresponsible bidder. Mr. Madonna expressed his feeling that the Board is justified to consider Wysong Construction Company as a nonresponsible bidder. Mr. Peterson also noted the difficulty subcontractors appear to have with being paid in a timely manner for their work.

Mr. Peterson asked Holly Parrish Bezner what the process would be if the Board does declare Wysong Construction Company nonresponsible. Ms. Parrish Bezner noted that she would draft the formal legal response to Wysong Construction Company.

Mrs. Galvan and Mr. Peterson expressed their appreciation to staff for their work in maintaining accurate records on the various projects involving this contractor in order to provide the documentation provided to the Board on this item.

MOTION: GALVAN/MADONNA A motion was approved Determining that Wysong Construction Company is a Nonresponsible Bidder and Rejecting its Bids for Construction of an Additional Parking Lot at SLOCOE Main Office and for Construction of the Loma Vista Community School.

(4-0)

5.1.2 Award Bid for Construction of Loma Vista Community School

Staff opened bids on December 7, 2005 for construction of the Loma Vista Community School in San Luis Obispo at 2494 Pennington Creek Road. Staff recommended the Board award the bid to Morrissey Construction for the construction of Loma Vista Community School.

***AWARD BID FOR
CONSTRUCTION OF
LOMA VISTA
COMMUNITY
SCHOOL***

Dr. Crocker reported that the office has received a bid protest from Specialty Construction concerning the absence of steel subcontractors for this project. SLOCOE asked our architect, Heiser and Associates, to clarify the amount of steel required. Heiser and Associates response was received late yesterday afternoon and a copy of that letter has been provided to each Board member.

Holly Parrish Bezner, legal counsel, noted that the license issue with Morrissey Construction has been resolved and the company has met all of the licensing requirements as required by the state. Mrs. Galvan asked if we knew if Morrissey Construction would be using local subcontractors on the job. Peggy Edwards, Purchasing Manager, noted that the list submitted by Morrissey Construction does show that local subcontractors will be used and they are reputable.

Jeff Martin, representing Specialty Construction, addressed the Board. He thanked the Board for allowing Specialty Construction to address their issues and noted that his company will accept the Board's decision on this issue. Mr. Martin suggested that staff monitor the contractor after awarding of the bid to assure his commitment and intent to the bid process. Mr. Martin further noted that Specialty Construction looks forward to the opportunity to work with the San Luis Obispo County Office of Education on future projects. Mr. Peterson thanked Mr. Martin for bringing his company's concerns to the Board for discussion.

Mr. Moffatt asked about the last paragraph in Mr. Heiser's response. Dave Keil, Director of Operational Services, noted that the Board couldn't take into consideration whether a contractor has had experience with school construction in California. It was noted that if the Board were not comfortable with Morrissey Construction's qualifications, they would need to reject all bids and start the bid process over.

MOTION: MOFFATT/MADONNA A motion was approved to Award the Bid for Construction on Loma Vista Community School in the amount of \$4,166,500 to Morrissey Construction Company.

(4-0)

5.1.3 Award Bid for Construction of Additional Parking Lot for the SLOCOE Main Office

Staff opened bids on November 30, 2005 for construction of an additional parking lot for the SLOCOE Main Office, located at 3350 Education Drive. This parking lot is part of the County of San Luis Obispo Planning Department requirement in conjunction with the site work related to the Student Services portable being placed by the Main Office. Staff made the recommendation to award the bid to RSH Construction of Atascadero.

***AWARD BID FOR
CONSTRUCTION OF
ADDITIONAL
PARKING LOT FOR
THE SLOCOE MAIN
OFFICE***

Dr. Crocker noted that this project would provide 60 additional parking spaces at the Main Office. The additional spaces will accommodate the overflow for the Main Office and will satisfy the requirement for additional parking spaces with the move of the Student Services unit to the Main Office.

MOTION: MADONNA/MOFFATT A motion was approved to Award Bid for Construction of Additional Parking Lot for the SLOCOE Main Office in the amount of \$203,613.00 to RSH Construction of Atascadero.

(4-0)

Dr. Crocker expressed his appreciation to the Business Services staff who have worked diligently to prepare the information for the Board. He especially noted the work put in by Dave Keil, Director of Operational Services, Peggy Edwards, Purchasing Manager, and Tina Davidson, Executive Assistant. Mr. Peterson also thanked staff for their efforts to prepare this information and put it into a format that made it very easy to understand.

Mr. Moffatt asked if the office anticipates any problems with Wysong Construction Company with the completion of their current project, the Morro Road Education Center. Dave Keil, Director of Operational Services, noted that Wysong Construction Company continues to work towards completion of the Morro Road project.

6.0 ADJOURNMENT

ADJOURNMENT

The meeting was adjourned by Vice President Peterson at 3:15 p.m.

Unless otherwise announced, the next regular meeting of the County Board of Education will be on Thursday, January 12, 2006, at 1:30 p.m., in the San Luis Obispo County Office of Education Board Room.

Respectfully submitted,



Julian D. Crocker
County Superintendent of Schools and
Secretary to the County Board of Education

The agenda of this meeting and the information materials, reports, and personnel items provided to the County Board of Education are incorporated as attachments to the official minutes.

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Cancel Award of Contract for Sherwood Park Phase 1A
DATE: February 21, 2006

NEEDS: For the City Council to consider terminating for convenience the contract awarded to Wysong Construction for Phase 1A of the Sherwood Park Master Plan and award it to the next responsible bidder, Newton Construction.

- FACTS:**
1. On November 21, 2005, three bids were received for construction of Phase 1A of Sherwood Park ranging from \$1,055,325.00 to 1,100,450.00.
 2. The bid of \$1,055,325.00 submitted by Wysong Construction was initially determined to be a responsive low bid. However, after review of Wysong's performance on other City Projects, most recently Centennial Park, staff has observed that the contractor has problems staffing projects, submitting and/or adhering to construction schedules and completing the projects in a timely manner.
 3. The City's bid documents for the Sherwood Project reference the CalTrans Standard Specifications. Section 8-1.11 of the documents provides for the agency to "terminate the contract at any time upon a determination ... that termination of the contract is in the best interest of the [City]."
 4. Further, the Standard Specs set forth the process of providing written notice to the contractor that staff is recommending the contract be terminated effective upon City Council action, based upon the City's determination that termination is in the City's best interest and stating the facts. The written notice was delivered to the Contractor by 1st class and Certified Mail on February 1, 2006.
 5. The termination for convenience process entitles Wysong Construction to request repayment for costs related to preparation for the Sherwood Park project, such as any non-refundable bond premiums, subject to submittal of a claim accompanied by proof that said costs were incurred (receipts). Wysong Construction has provided the City with labor and performance bonds and evidence of insurance for the project. Should the City Council terminate the contract prior to issuance of a Notice to Proceed, Wysong Construction is entitled to receive a refund of the majority of the bond costs (\$14,438.00), less a possible administrative fee from the surety. Wysong may seek other costs incurred in preparing for the project. Staff has no way of determining what, if any, potential claim may be incurred. As a result, staff is recommending that City Council not allocate any funding to offset any potential claims until it is determined if any exist.
 6. The second low bid for the Sherwood Park project was submitted by Newton Construction in the amount of \$1,092,729.00. To complete the project, City Council would need to allocate \$40,000.00 from available funding sources to award a contract for the project.

**ANALYSIS
AND**

CONCLUSION: The project specifications establish that the contract for Sherwood Park Master Plan Phase 1A may be terminated for convenience. Staff has expressed a concern the project may not be constructed in a time frame or manner that serves the best interest of the public if Wysong is allowed to proceed. Whereas, Phase 1A of the Sherwood Park Master Plan will set the trend for all other subsequent phases of the Park Master Plan, it would seem prudent to terminate the present contract and proceed with an alternate contractor.

POLICY

REFERENCE: Section 8-1.11 of the CalTrans Standard Specifications incorporated into the contract for Sherwood Phase 1A

Fiscal

Impact: The December 20, 2006 bid award did not provide enough funding to cover the contract cost for the next bidder on this project or the funding necessary to cover the bond costs for Wysong Construction. A General Fund appropriation of \$40,000.00 will be required to pay any termination claim and award the contract to Newton Construction.

OPTIONS:

- a. Approve Resolution No. 06-xx:
 - 1) Terminating for the City's convenience, the contract with Wysong Construction for Phase 1A of the Sherwood Park Master Plan; and
 - 2) Authorizing the City Manager to enter into a contract with Newton Construction in the amount of \$1,092,729.00 for Phase 1A of the Sherwood Park Master Plan; and
 - 3) Appropriating an additional \$40,000.00 to cover the increased cost of the contract.
- b. Amend, modify, or reject the above option.

Attachments

- 1) Resolution