

TO: Meg Williamson, Acting City Manager
FROM: Dick McKinley, Public Works Director
SUBJECT: Contract to Rehabilitate the Municipal and Centennial Park Pool Facilities
DATE: January 5, 2016

NEEDS: For City Council to consider a contract to rehabilitate the Municipal and Centennial Park pool facilities.

FACTS:

1. On February 15, 2011, City Council voted 3-2 to close Centennial Pool indefinitely to achieve cost savings of approximately \$112,000 per year.
2. Beginning in January 2015 and continuing through May 2015, Council requested and reviewed information on the costs and logistical requirements of opening and operating Municipal and Centennial pools. This information included cost estimates for Americans with Disabilities Act code compliance needs at both pools as well as the timeline for project completion.
3. On May 5, 2015, City Council directed staff to begin the process to design repairs at both facilities. An RFP for ADA/Building Code Compliance and Rehabilitation of the Municipal and Centennial Park Pool Facilities was issued in June. No responses were received. Staff contacted Omni Design Group, Inc. Omni, a highly qualified design firm, had previously expressed interest in the project but declined to bid due to concerns about the extensive scope of work.
4. Staff negotiated with Omni to reach a design services agreement and on August 27, 2015 issued a Notice to Proceed to prepare bid documents and specifications for the rehabilitation projects at both pools.
5. At the construction bid opening on December 17, 2015, two bids were received as follows:

American Construction Engineers.....	\$ 329,889.00
Newton Construction & Management.....	\$ 612,000.00
6. Section 7 of the Instruction to Bidders provides that bid forms shall be completely filled out with strict conformity to the requirements of the bid and contract documents. Based on this language, each bidder was required to complete and submit the bid forms included in the bid specifications in order for their bid to be deemed responsive.
7. American Construction Engineers (ACE) did not submit a complete bid in accordance with bid specifications and has been deemed non-responsive. ACE failed to submit the required Site Visit Affidavit and failed to submit a fully

completed Iran Contracting Act Certification with its bid. Additionally, ACE did not fully provide the required completed listing of previous like projects.

8. The bid submitted by Newton Construction & Management included all required proposal documents and information and is a responsive bid.

**ANALYSIS &
CONCLUSION:**

The bid submitted by American Construction Engineers is not a complete bid in accordance with bid specifications and has been deemed non-responsive. Newton Construction & Management is the lowest responsible bidder submitting a responsive bid.

**POLICY
REFERENCE:**

Public Contract Code

FISCAL IMPACT:

City Council had specified \$509,874 to be allocated from General Fund Reserves to cover needed repairs and operating costs. \$340,000 of the allocation was designated for repairs; the remainder for annual operating costs.

The project budget includes

Construction Contract	\$612,000
10% Contingency	<u>\$ 61,200</u>
	\$673,200

OPTIONS:

- a. Adopt Resolution No. 16-xxx
 - 1) Allocating an additional \$333,200 from Reserves (fund[s] source to be determined by date of City Council consideration) to cover construction costs.
 - 2) Rejecting American Construction Engineers bid as non-responsive due to their failure to submit a complete bid in accordance with bid specifications; and
 - 3) Establishing a project budget of \$673,200 and authorizing the City Manager to enter into a contract with Newton Construction & Management in the amount of \$612,000 to rehabilitate the Municipal and Centennial Park pool facilities.
- b. Reject all bids, re-evaluate the scope, adjust the construction schedule to a later opening, and re-bid the project.
- c. Reject all bids and cancel the project.
- d. Amend or modify any of the above options.

Attachment:

- 1) Resolution
- 2) Correspondence – Rejection of Non-Responsive Bid

RESOLUTION NO. 16-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AWARDING A CONTRACT TO REHABILITATE THE MUNICIPAL AND CENTENNIAL
PARK POOL FACILITIES

WHEREAS, in February 2011, City Council closed Centennial Pool indefinitely to achieve cost savings of approximately \$112,000 per year; and

WHEREAS, beginning in January 2015, City Council reviewed information on the costs and logistical requirements of operating Municipal and Centennial pools; and

WHEREAS, in May 2015 Council directed staff to begin the process to design the rehabilitation project at both facilities; and

WHEREAS, bid documents were prepared and advertised, and at the bid opening on December 17, 2015, two bids were received for \$329,889 and \$612,000; and

WHEREAS, staff reviewed the bids and found the lowest bid from American Construction Engineers to be nonresponsive due to their failure to submit a complete bid in accordance with bid specifications; and

WHEREAS, Newton Construction & Management submitted a complete, responsive bid; and

WHEREAS, funds for this rehabilitation project are to be allocated from the General Fund Reserves.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby approve an allocation of \$333,200 from Fund(s) XXX to cover construction costs – \$xxx to Budget No. 103254F-54520-P0015 – Centennial Pool; and \$xxx to Budget No. 103255F-54520-P0016 – Municipal Pool.

SECTION 2. The City Council does hereby reject American Construction Engineers' bid as non-responsive; and

SECTION 3. The City Council does hereby authorize the City Manager to execute a contract with Newton Construction & Management in the amount of \$612,000 to rehabilitate the Municipal and Centennial Park pool facilities in accordance with the bid documents issued for the work.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 5th day of January 2016 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Steven W. Martin, Mayor

Kristen L. Buxkemper, Deputy City Clerk



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

December 21, 2015

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

American Construction Engineers
26375 Watts Valley Road
Tollhouse, CA 93667
Attention: Bill Williams

Re: Rehabilitation of the Municipal and Centennial Park Pool Facilities
Rejection of Non-Responsive Bid

Dear Mr. Williams:

The City of Paso Robles ("City") has reviewed American Construction Engineers' ("ACE") bid submitted on the above captioned project ("Project") and has determined that the bid is non-responsive for failure to submit a complete bid in accordance with the bid specifications. City staff will recommend that the City Council reject ACE's bid as nonresponsive and award the contract to the lowest responsible bidder submitting a responsive bid, Newton Construction & Management, Inc.

As a preliminary matter, Section 7 of the Instructions to Bidders provides that bid forms shall be completely filled out with strict conformity to the requirements of the bid and contract documents. Based on this language, each bidder was required to complete and submit the bid forms included in the bid specifications in order for their bid to be deemed responsive.

As a general rule, the City has the discretion to demand strict compliance with its solicitation requirements. (See *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175; *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897; *Konica Business Machines v. Regents of the University of California* (1988) 206 Cal.App.3d 449.)

ACE failed to submit the required Site Visit Affidavit, included as page 22 of the bid specifications, and failed to submit a fully completed Iran Contracting Act Certification with its bid. ACE's failure to submit these forms in compliance with the bid specifications renders its bid nonresponsive.

The City Council will consider the award of this contract at its meeting on January 5, 2016. City staff will recommend that the Council reject ACE's bid as nonresponsive and award the contract to the lowest responsible bidder submitting a responsive bid, Newton Construction & Management, Inc.

Sincerely,

Richard E. McKinley
Public Works Director
City of Paso Robles

Cc: Iris Yang, City Attorney
Kevin Wang, Esq.