

STAFF REPORT



ITEM NO. 27

CITY OF OCEANSIDE

DATE: June 20, 2007
TO: Honorable Mayor and City Councilmembers
FROM: Public Works Department
SUBJECT: **AWARD OF CONTRACT FOR THE ANNUAL SLURRY SEAL FY 2006-07 PROJECT**

SYNOPSIS

Staff recommends that the City Council consider and adopt the Bid Protest Committee's Statement of Findings and award a contract in the amount of \$636,279.62 to Roy Allan Slurry Seal, Inc. ("Roy Allan"), of Santa Fe Springs for the Annual Slurry Seal FY 2006-07 project, and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

BACKGROUND

On January 10, 2007, the City Council approved the plans and specifications and authorized a call for bids. Notices inviting sealed bids were sent to Oceanside contractors and were also advertised in local papers and trade journals in accordance with the City's standard bidding procedures.

ANALYSIS

The project will apply a tire-modified slurry seal to 10 lane-miles, located on sixty street segments Citywide. The project also includes the removal and replacement of deteriorated sections of streets and crack-sealing. The process will provide a flexible and new wearing surface to the pavement extending its useful life and delaying the need for costly major restoration. The slurry seal mixture contains rubber from recycled automobile tires.

On February 22, 2007, the following five (5) bids were received and opened:

Doug Martin Contracting Co., Inc.	\$ 779,387.21
Pavement Coatings Co.	729,947.03
American Asphalt South, Inc.	651,373.03
Bond Blacktop	639,123.39
Roy Allan, Inc.	636,279.62

The Engineer's estimate of cost is \$675,000. The lowest qualified bidder is Roy Allan, Inc., of Santa Fe Springs. The firm's credentials have been researched and meet City's requirements. The bid was reviewed and was found to be within market expectations.

On March 8, 2007, staff received a letter of protest from Bond Blacktop Inc., ("Bond") alleging that Roy Allan, the low bidder, had an unfair competitive advantage during the bid process, that the City violated Section 3400 of the Public Contracts Code ("or equal" requirements for materials) and that the slurry seal to be used by Roy Allan (TRMSS) is an unproven product. City staff conducted a Bid Protest Hearing on the allegations on April 25, 2007. The bid protest letter, responses from the parties involved, a transcript of the bid protest hearing, the exhibits presented at the hearing and Staff's Statement of Findings are attached to this report. Staff has found that there was no violation of the Public Contracts Code and that Roy Allan is the lowest responsible bidder.

Bond further alleges that ". . . TRMSS is an unproven product that has not been successfully applied anywhere in California." However, City Staff contacted all references provided by Roy Allan, Inc., and found that all parties were satisfied with the performance of TRMSS on test applications. The City of Oceanside allowed the use of TRMSS at the intersection of Oceanside Boulevard and Corporate Way, and City staff reported that TRMSS has performed well with no deficiencies.

The City's Statement of Findings were given to all parties and all were invited to the June 20, 2007, City Council meeting to address any additional concerns they may have regarding this matter.

FISCAL IMPACT

The FY 2006-07 Capital Improvement Program (CIP) budget includes a sum of \$500,000 for the total street restoration program in Transnet Funds (Acct. # 212.755216). An additional \$1,000,000 will be recommended as new Transnet funding to this account when the City Council adopts the FY 2007-08 CIP budget.

Provided the City Council authorizes the award of contract to Roy Allan, Inc., a Notice to Proceed will not be issued prior to the beginning of FY 2007-08. Thus, the current budget amount of \$500,000 plus the additional FY 2007-08 appropriation of \$1,000,000 provides for the estimated total cost, which includes administration, inspection, project management, and contingencies, at \$875,000. Sufficient funds will be available for this project.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

Bond alleges the City violated Public Contracts Code, section 3400, which states in part that no agency. . .shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product thing, or service by specific brand or trade name unless the specification is followed by the words, 'or equal' so that bidders may furnish any equal material, product, thing, or service.

Section 2.10 of Slurry Seal Contract 212.755216, contains a provision which states in pertinent part "Whenever any particular material, process, or equipment is indicated in the Contract Documents by patent, proprietary or brand name, or by name of manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or equal." Based on the section 2.10, the bidders could bid on REAS or an equivalent and/or TRMSS or an equivalent. As the bidding was not limited to one specific concern, there is no violation of Public Contracts Code, section 3400.

Bond also protested that two bidders, including Roy Allan, had "an interest" in each others' bids for this contract in violation of section 2.7 of the contract. Section 2.7 prohibits any bidder from having "an interest" in more than one bid, or the bidder is to be disqualified. In all of the information provided to date, there is no information establishing that any of the companies involved in the bids had an interest in any other parties bid. All bidders, including the lowest bidder, signed an Affidavit of Non-collusion attesting that their bids were genuine and non-collusive. The information indicates that Roy Allan is the lowest responsible bidder.

RECOMMENDATION

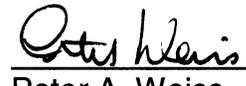
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