



---

DATE: June 22, 2011

TO: Chairman and Members of the Community Development Commission

FROM: Development Services Department

SUBJECT: **APPROVAL OF A BUDGET APPROPRIATION AND AUTHORIZATION TO AWARD A CONTRACT FOR THE TYSON STREET PUBLIC PARKING LOT AND THE COASTAL RAIL TRAIL PROJECT**

### **SYNOPSIS**

Staff recommends that the Community Development Commission (CDC) approve a budget appropriation in the amount of \$1,432,000 from Fund 504, unappropriated balance of the Non-redevelopment Downtown Capital Fund to the Tyson/Wisconsin Parking Lot project account (912118400504) and award a contract in the amount of \$1,419,233.07 to Jeff Tracy, Inc., dba Land Forms Landscape Construction, of Laguna Niguel for the Tyson/Wisconsin Parking Lot project, a 284-space surface public parking lot and portion of the Coastal Rail Trail located east of Myers Street and west of the railroad tracks between Wisconsin and Tyson Streets, and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

### **BACKGROUND**

The 2.5-acre site is the last piece of undeveloped land from the Redevelopment Agency's approximately 9.5-acre land purchase from the Atchison Topeka and Santa Fe Railroad in 1989.

On August 19, 2009, the CDC approved the concept plan on a 5-0 vote to proceed with the Lot 26 Parking Expansion Project. In the ensuing year, staff has been working with adjacent property owners to resolve encroachment issues.

On March 2, 2011, the CDC approved Regular Coastal Permit (RC-205-08), Development Plan (D-204-08), and Conditional Use Permit (C-203-08) for the project.

On March 16, 2011, the Community Development Commission approved plans and specifications and authorized the City Engineer to call for bids.

On May 26, 2011, the bids were publicly opened. 13 bids were received and are summarized in Exhibit A. The lowest responsible bidder is Jeff Tracy, Inc., dba Land Forms Landscape Construction, of Laguna Niguel with a total base bid of \$1,419,233.07. The bidder's credentials have been researched and found to meet City requirements.

On June 7, 2011, staff received bid protests submitted by the third lowest bidder, challenging the first and second lowest bids are being non-responsive due to alleged defects in the signatures on the bid documents (See exhibit B). In consultation with the City Attorney's office, staff has considered the protests and determined that rejection of the challenged bids is not warranted (See exhibit C).

**ANALYSIS**

The project consists of the construction of a public parking lot on the 2.5-acre site with 235 new and 49 reconstructed parking spaces (including eight accessible spaces) and 0.4 mile of Class I bicycle trail, which is part of the Coastal Rail Trail that is planned between Oceanside and San Diego.

Approximately 8,600 square feet of landscaped area is proposed with a native California plant palette, a dry river bed swale, and a water-efficient irrigation system. An 8-foot-high combination of fence and retaining wall will be placed adjacent to the residences to provide separation and screening. In addition, a chain link fence with vines will be placed along the railroad tracks.

The project's Storm Water Mitigation Plan incorporates self-treating landscape areas, pervious concrete pavement, and infiltration areas.

The project's electrical plan incorporates energy-saving LED lighting for the parking lot lights.

Construction of the project will require six months to complete.

Prior to commencement of work under the subject contract, the encroachments from the Myers Street private lots backyard will be removed. The City is currently working through a process with the lot owners that allows them to remove and/or relocate their personal properties from the project area and preserve an encroachment strip between the property line and the westerly limit of the project.

Because of the use of Redevelopment Bond Funds, the project is bid as a prevailing wage project.

**FISCAL IMPACT**

The project's construction costs are estimated as follows:

Construction Contract with Land Forms Landscape Construction	\$1,419,233
Demolition and Encroachment Removal	\$75,000
Construction Contingency	\$141,923
Construction Staking and Engineering Support Services	\$50,000
Geotechnical Inspection and Testing	\$20,000
City Construction Management, Inspection, and Administration	\$80,000
<b>Total</b>	<b>\$1,786,156</b>

The Capital Improvements Program Budget appropriates \$1,000,600 to the Tyson/Wisconsin Parking Lot project account (912118400504) for FY2011-2012. An appropriation of \$1,432,000 from the unallocated balance of the Non-redevelopment Downtown Capital Fund to the FY2011-2012 Tyson/Wisconsin Parking Lot fund is requested as part of the Community Development Commission approval of the project. With this appropriation, sufficient funds are available to complete this project. The source of these funds is the Redevelopment Tax Exempt Allocation Bonds issued in 2003.

### **INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met.

### **COMMISSION OR COMMITTEE REPORT**

On March 16, 2011, the Redevelopment Advisory Committee (RAC) recommended approval of the current plans and specifications for this project.

### **CITY ATTORNEY'S ANALYSIS**

The bid documents were previously reviewed by the City Attorney and approved as to form. The contract must be awarded to the lowest responsible bidder. The Public Contract Code defines "responsible bidder" as a bidder who has demonstrated the attributes of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform a public works contract. The Community Development Commission also has the discretion to reject all bids and re-advertise.

**RECOMMENDATION**

Staff recommends that the Community Development Commission (CDC) approve a budget appropriation in the amount of \$1,432,000 from Fund 504, unappropriated balance of the Non-redevelopment Downtown Capital Fund to the Tyson/Wisconsin Parking Lot project account (912118400504) and award a contract in the amount of \$1,419,233.07 to Jeff Tracy, Inc., dba Land Forms Landscape Construction, of Laguna Niguel for the Tyson/Wisconsin Parking Lot project, a 284-space surface public parking lot and portion of the Coastal Rail Trail located east of Myers Street and west of the railroad tracks between Wisconsin and Tyson Streets, and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

PREPARED BY:



Gabor Pakozdi  
Associate Engineer

SUBMITTED BY:



Peter A. Weiss  
CDC Executive Director

REVIEWED BY:

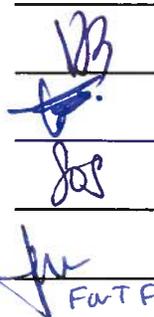
Michelle Skaggs Lawrence, Deputy City Manager

Kathy Baker, Redevelopment Manager

George Buell, Development Services Director

Scott O. Smith, City Engineer

Teri Ferro, Financial Services Director



Attachments:

- Exhibit A - List of bidders
- Exhibit B - Bid Protests
- Exhibit C – Response to bid protests

**Exhibit A**

BIDDER:	CITY:	BID AMOUNT
Jeff Tracy, Inc. dba Land Forms Landscape Construction	Laguna Niguel	\$1,419,233.07
Anchor Construction and Engineering, Inc.	Ontario	\$1,450,189.51
DMI	San Marcos	\$1,464,790.00
Sierra Pacific West, Inc.	Vista	\$1,664,678.40
PAL General Engineering Inc.	San Diego	\$1,710,926.68
Southland Paving, Inc.	Escondido	\$1,839,992.49
CS Legacy Construction, Inc.	Chino	\$1,851,790.54
Adams Mallory Construction, Co., Inc.	Placentia	\$1,881,144.80
West Coast Environmental	Temecula	\$1,887,190.00
Griffith Co.	Santa Fe Springs	\$1,895,800.00
Fordyce Construction	Santee	\$1,919,444.82
3-D Enterprise, Inc.	San Diego	\$1,919,922.60
Ramona Paving & Construction Corp., Inc.	Ramona	\$2,067,662.62

## Exhibit B

**DMI (DICK MILLER INC.)**

930 Boardwalk, Suite G  
San Marcos, CA 92078  
760-471-6842 Fax 760-471-6178

**City of Oceanside**  
300 N. Coast Highway  
Oceanside, CA 92054  
Attn: Gabor Pakozdi, Project Engineer

June 7, 2011

Re: Tyson-Wisconsin Parking Lot & Coastal Rail Trail Bid  
Project Number: 933118400573

**Subject: Challenge and Protest to Jeff Tracy, Inc. Bid**

Dear Mr. Pakozdi:

This letter serves as our challenge to the responsiveness of the bid submitted by Jeff Tracy, Inc. dba Land Forms Landscape Construction (hereinafter referred to as Tracy), and as our protest of any contemplated contract award to it for the above referenced project.

We believe the Tracy bid is irregular, materially deficient and non-responsive because it does not conform to the requirements of Section 2.5, Bidder's Signatures, of the Instructions to Bidders.

Section 2.11 of the Instructions to Bidders states: "A bid shall be considered irregular if any of the following situations occur: ... (d) The Bid is not properly signed in accordance with these instructions."

Section 2.5.2, paragraph two states: "The Bidder shall provide evidence that the individuals signing the document are authorized to bind the legal entity of the Bidder. The notarization does not constitute such proof unless the legal entity of the Bidder is an individual." Tracy is a corporation and therefore this requirement is applicable.

Evidence of Corporate authorization is defined in Section 2.5.4 as either: 1) the signatures of two corporate officers, as shown in columns A and B; or 2) "... a copy the board minutes, resolution, or articles of incorporation may be submitted to establish that the individuals have the authority to bind the corporation."

Page 19 of the Bid documents contains only one signature (not two) and no other evidence was submitted that the lone signatory is authorized to bind the corporation.

While some might consider this deficiency to be a minor irregularity or immaterial error which can be waived by the City, we would point out that the California Appeals court has determined that situations of this type constitute an unfair advantage for Tracy that the other bidder's did not have. (See, *Valley Crest Landscape v. City Council* (1996) 41 Cal.App.4<sup>th</sup> 1432.)

By submitting an incorrectly signed bid, the nature of Tracy's deficiency was a typographical or arithmetical error causing it to be materially different and is a mistake in filling out the Bid. As such, and as the Court held in *Valley Crest*, Tracy could have sought relief under Public Contract Code section 5103(d) claiming "the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications." Consequently, Tracey could have withdrawn its bid without forfeiting its bid bond, which constitutes an unfair advantage not available to other bidders. In other words, it gave Tracy an opportunity to see what others had bid, consider whether it really wanted the work at the price it submitted, and, if not, elect to withdraw its bid without forfeiting its 10% Bidder's Bond (in this case over \$140,000). Even if Tracy does not seek such relief, the fact remains that an unfair advantage was available to Tracy and not to other bidders who submitted complete and responsive bids.

For the reasons cited above, we believe the bid submitted by Tracy is non-responsive and appeal to the City to reject its bid.

If this notice needs to go to some other party, please forward it accordingly.

Sincerely,



Paul Smith  
DICK MILLER INC.

**DMI (DICK MILLER INC.)**

930 Boardwalk, Suite G  
San Marcos, CA 92078  
760-471-6842 Fax 760-471-6178

**City of Oceanside**  
300 N. Coast Highway  
Oceanside, CA 92054  
Attn: Gabor Pakozdi, Project Engineer

June 7, 2011

Re: Tyson-Wisconsin Parking Lot & Coastal Rail Trail Bid  
Project Number: 933118400573

**Subject: Challenge and Protest to Anchor Construction Bid**

Dear Mr. Pakozdi:

This letter serves as our challenge to the responsiveness of the bid submitted by Anchor Construction and Engineering, Inc. (hereinafter referred to as Anchor), and as our protest of any contemplated contract award to it for the above referenced project.

We believe Anchor's bid is irregular and materially deficient because, among other things, it does not conform to the bid requirements of Section 2.5, Bidder's Signatures, of the Instructions to Bidders.

Section 2.11 of the Instructions to Bidders states: "A bid shall be considered irregular if any of the following situations occur: ... (d) The Bid is not properly signed in accordance with these instructions."

First, we direct your attention to Pages 25 & 26, of the Bid Documents where Section 3.16 Non-Collusion Affidavit is not executed in accordance with the Bid Instructions. The note below the signature lines states in bold and capitalized words: "**SIGNATURES MUST BE MADE AND NOTARY ACKNOWLEDGEMENTS OF EXECUTION OF BIDDER MUST BE ATTACHED IN ACCORDANCE WITH SUBSECTION 2.5 OF THE INSTRUCTIONS TO BIDDERS.**" Section 2.5.2, in pertinent part states: "All signatures shall be notarized with a notary jurat." Neither Anchor's Bid nor its Non-Collusion Affidavit includes a notary jurat.

While some might consider this deficiency to be a minor irregularity or immaterial error which can be waived by the City, we would point out that the California Appeals court has determined that situations of this type constitute an

unfair advantage for Tracy that the other bidder's did not have. (See, *Valley Crest Landscape v. City Council* (1996) 41 Cal.App.4<sup>th</sup> 1432.)

By submitting an incorrectly signed bid, the nature of Anchor's deficiency was a typographical or arithmetical error causing it to be materially different and is a mistake in filling out the Bid. As such, and as the Court held in Valley Crest, Anchor could have sought relief under Public Contract Code section 5103(d) claiming "the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications." Consequently, Anchor could have withdrawn its bid without forfeiting its bid bond, which constitutes an unfair advantage not available to other bidders. In other words, it gave Anchor an opportunity to see what others had bid, consider whether it really wanted the work at the price it submitted, and, if not, elect to withdraw its bid without forfeiting its 10% Bidder's Bond (in this case over \$140,000). Even if Anchor does not seek such relief, the fact remains that an unfair advantage was available to Anchor and not to other bidders who submitted complete and responsive bids.

Second, on Page 26 of the Bid Documents, Anchor failed to provide its Federal Tax I. D. Number.

Third, on Page 22, Section 3.8, Anchor also failed to list the required information regarding names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint venturers, and/or corporate officers having a principal interest in the bid, as well as any current or prior DBAs for any of the above principals.

For the reasons cited above, we believe the bid submitted by Anchor Construction and Engineering, Inc. is non-responsive and appeal to the City to reject its bid.

If this notice needs to go to some other party, please forward it accordingly.

Sincerely,



Paul Smith  
DICK MILLER INC.

## Exhibit C



# CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / ENGINEERING DIVISION

June 9, 2011

Via USPS and Email: [psmith@dickmillerinc.com](mailto:psmith@dickmillerinc.com)

DMI (DICK MILLER INC.)  
930 Boardwalk, Suite G  
San Marcos, CA 92078  
Attn: Paul Smith

SUBJECT: Challenge and Protest to Jeff Tracy, Inc. Bid

PROJECT: TYSON-WISCONSIN PARKING LOT AND COASTAL RAIL TRAIL

Dear Mr. Smith,

The City is in receipt of your letter dated June 7, 2011 challenging the responsiveness of the bid submitted by Jeff Tracy, Inc. dba Land Forms Landscape Construction (hereinafter referred to as Tracy) and protesting any contemplated contract award to it for the above referenced project.

As you have pointed out, irregular bids may be rejected by the AGENCY if the Bid is not properly signed, according to section 2.11(d) of the bid document. However, section 2.11 also reserves the Agency's right to waive any irregularity.

Staff has considered the defects alleged by DMI's challenge and protest. The defects were found to be limited to the signatures on the bid documents. In consultation with the City Attorney's Office, staff has determined that rejection of the challenged bid is not warranted because these irregularities could not satisfy the criteria under Public Contract Code section 5103 to allow Tracy to withdraw its bid without forfeiting its bid bond. As such, said irregularities did not constitute an unfair advantage that was not available to other bidders.

If you have any questions, please do not hesitate to contact me at (760) 435 5080 or [gpakozdi@ci.oceanside.ca.us](mailto:gpakozdi@ci.oceanside.ca.us).

Sincerely,

Gabor Pakozdi, P.E.  
Project Manager



# CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT / ENGINEERING DIVISION

June 9, 2011

Via USPS and Email: [psmith@dickmillerinc.com](mailto:psmith@dickmillerinc.com)

DMI (DICK MILLER INC.)  
930 Boardwalk, Suite G  
San Marcos, CA 92078  
Attn: Paul Smith

SUBJECT: Challenge and Protest to Anchor Construction Bid

PROJECT: TYSON-WISCONSIN PARKING LOT AND COASTAL RAIL TRAIL

Dear Mr. Smith,

The City is in receipt of your letter dated June 7, 2011 challenging the responsiveness of the bid submitted by Anchor Construction and Engineering, Inc. (hereinafter referred to as Anchor) and protesting any contemplated contract award to it for the above referenced project.

As you have pointed out, irregular bids may be rejected by the AGENCY if the Bid is not properly signed, according to section 2.11(d) of the bid document. However, section 2.11 also reserves the Agency's right to waive any irregularity.

Staff has considered the defects alleged by DMI's challenge and protest. The defects were found to be limited to signatures and other noncritical irregularities. In consultation with the City Attorney's Office, staff has determined that rejection of the challenged bid is not warranted because these irregularities could not satisfy the criteria under Public Contract Code section 5103 to allow Anchor to withdraw its bid without forfeiting its bid bond. As such, said irregularities did not constitute an unfair advantage that was not available to other bidders.

If you have any questions, please do not hesitate to contact me at (760) 435 5080 or [gpakozdi@ci.oceanside.ca.us](mailto:gpakozdi@ci.oceanside.ca.us).

Sincerely,

Gabor Pakozdi, P.E.  
Project Manager

