

**City of Culver City, California
Agenda Item Report**

Meeting Date: 5/12/2014		Item Number: <u>C-13</u>	
CITY COUNCIL AGENDA ITEM: (1) Waive Minor Bid Irregularities in the Bid Submitted by G2 Construction; (2) Reject the Bid Protest Submitted by United Storm Water; (3) Award a Contract to G2 Construction, Inc., as the Lowest Responsive and Responsible Bidder, in the Amount of \$606,878 for Construction of the Culver City Catch Basin Trash Excluder Insert Project, Phase 2, PZ-497, Bid No. 1537; and (4) Approve a Catch Basin Maintenance Agreement with the Los Angeles County Flood Control District.			
Contact Person/Dept.: Steve Finton / Damian Skinner		Phone Number: (310) 253-6457 / (310) 253-6421	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☐ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: (E-mail) Agenda and Meetings – City Council (05/06/14); (E-Mail) Sustainability and Environmental Issues (05/06/14)			
Department Approval: Charles D. Herbertson (04/30/14)		City Attorney Approval: Carol Schwab (by H. Baker) (05/06/14)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (05/06/14)		City Manager Approval: John M. Nachbar (05/06/14)	
<u>RECOMMENDATION:</u> Staff recommends the City Council: 1. Waive minor irregularities in the bid submitted by G2 Construction, Inc.; and, 2. Reject the bid protest submitted by United Storm Water, Inc.; and, 3. Award a construction contract to G2 Construction, Inc. in the amount of \$606,878 for the Culver City Catch Basin Trash Excluder Insert Project, Phase 2, P-497, Bid No. 1537; and, 4. Authorize the Public Works Director/City Engineer to execute Change Orders in an amount not to exceed \$60,688 (10% of contract amount) to address unforeseen project costs, if any; and, 5. Approve an agreement with the Los Angeles County Flood Control District regarding maintenance of catch basins equipped with trash excluder devices. <u>BACKGROUND:</u> Since 2005, the City has been working to implement a multi-faceted project to reduce storm drain pollution City-wide. The project entitled "<i>Culver City City-wide</i>			

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BMP Treatment Train" includes implementation of several treatment and source control best management practices (BMPs) to reduce storm water pollution including rain gardens, trash receptacles, public outreach, and catch basin trash excluder inserts.

Grant Funding:

The City was successful in securing grant funding for the project as follows:

Proposition 50 Grant. On October 10, 2005 and September 25, 2006, the City Council adopted Resolution Numbers 2005-R068 and 2006-R066, respectively, accepting a Proposition 50 Grant for the "*Culver City City-wide BMP Treatment Train*" project. The grant consists of \$1,194,100 of reimbursable funds and requires \$720,521 in soft and hard match.

United States Environmental Protection Agency (USEPA) Grant. During design and implementation of the project, it was determined that additional funding would be required to complete the full scope of the project identified in the Proposition 50 grant agreement. Therefore, staff pursued and secured a grant through the USEPA in the amount of \$485,000 to complete the catch basin trash excluder inserts project. City Council appropriated the USEPA grant funds to the project on February 14, 2011.

Status of Project Completion

The rain gardens, trash receptacles, and public outreach efforts are complete. The remaining work, consisting of catch basin trash excluder insert installation, would be completed by the recommended contractor.

Trash Total Maximum Daily Load

The trash excluder inserts are required for the City to comply with the current National Pollutant Discharge Elimination Permit for Municipally Separate Storm Sewer Systems (MS4 Permit). The MS4 Permit includes a trash Total Maximum Daily Load (TMDL) that requires zero trash to be discharged to Ballona Creek by September 2015. Compliance is attained by installing full-capture trash excluder inserts in catch basins. The inserts consist of automatic retractable screens (ARS) across catch basin curb openings and connector pipe screens (CPS) mounted inside catch basins across the pipe outlet (See Attachment 1 for images of ARS and CPS devices). Both devices are typically installed on each catch basin; however, physical conditions may prevent installation of either or both of the devices at any particular location. The devices are designed to avoid blockages and maintain flood protection.

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Previous Contract to install Catch Basin Trash Excluder Inserts:

On December 6, 2010, City Council awarded a contract to West Coast Storm Water, Inc. (Contractor) to install trash excluder inserts (Inserts) in 834 catch basins City-wide. The Los Angeles County Flood Control District (County) issued the required permit and construction began in late 2011. In early 2012, the Contractor stopped working on the project for unknown reasons and appeared to cease business operations. Staff was forced to terminate the contract in February 2013 and consider other options to complete the project. In late Spring and Summer 2013, the Contractor attempted to reorganize to resume work on the contract; however, in September 2013 it was determined that the Contractor could not do so. The insolvency of the Contractor affected Culver City's project and projects of several other agencies as well. Prior to ceasing business operations, the Contractor installed inserts in 220 catch basins city-wide at the cost of \$346,535.

Approval of Plans and Specifications and Authorization to Issue a Notice Inviting Bids

On February 10, 2014, City Council approved the plans and specifications for the Culver City Catch Basin Trash Excluder Insert Project, Phase 2, P-497, Bid No. 1537 and authorized staff to advertise a Notice Inviting Bids. The Notice Inviting Bids was advertised in Culver City News on February 20 and 27, 2014. Staff also made extensive outreach to Disadvantaged Business Enterprises (DBEs) as required by the USEPA grant. These efforts included outreach through the federal Minority Business Development Agency network and direct solicitation to 425 registered DBE contractors in California. Five potential bidders attended a pre-bid meeting conducted on March 5, 2014.

DISCUSSION:

The following bids were received and opened on March 20, 2014.

<u>Bidder</u>	<u>Bid Amount</u>
1. G2 Construction, Inc.	\$606,878.00
2. United Storm Water, Inc.	\$617,799.94
<i>Engineer's Estimate</i>	<i>\$625,000.00</i>

G2 Construction, Inc. has verified successful experience with similar projects and references indicate quality work and professional integrity. The State Contractor's License issued to G2 Construction, Inc. has been reviewed and found to be in order. G2 Construction, Inc. is a certified DBE and their bid includes 94% DBE participation.

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On April 2, 2014, the second low bidder, United Storm Water, Inc. submitted a bid protest alleging that the bid submitted by G2 Construction, Inc. (G2) contains irregularities that render the bid "non-responsive". The City has the discretion to reject the bid submitted by G2 or to waive any irregularities or informalities. To be considered an irregularity or informality, the discrepancy should not affect the amount of the bid or give a bidder an advantage that is not available to other bidders. Staff recommends 1) the discrepancies identified in the bid protest constitute irregularities; 2) such irregularities be waived by the City Council; and 3) the contract be awarded to G2 as the lowest responsive and responsible bidder.

The points of protest submitted and staff's response is as follows:

1. PROTEST POINT: G2 Construction, Inc. did not conduct Six Good Faith Efforts to solicit subcontractor bids from Disadvantaged Business Enterprises (DBEs) as required by the bid documents.

RESPONSE: The Six Good Faith Efforts is a USEPA requirement intended to enhance the use of DBE contractors on USEPA-funded projects. The Six Good Faith Efforts is specified through USEPA policy and include actions such as advertising in DBE publications, using DBE databases to identify DBEs, configuring contracts and subcontracts to encourage DBE participation and, lastly, requiring that prime contractors use the Six Good Faith Efforts when soliciting bids for subcontracts.

The City conducted a full Six Good Faith Effort process on this project including specific outreach to the two bidders and many other DBE contractors. The low bidder, G2 Construction, Inc. (G2) is a DBE contractor and their bid includes 94% DBE participation.

The DBE participation goals of the USEPA grant agreement range from 6% to 30% DBE participation. Although G2 did not submit documentation of good faith efforts to secure a catch basin cleaning subcontractor bid and a material supplier bid, which represents approximately 6% of the total bid, G2's overall bid exceeds the DBE participation goals significantly. USEPA staff consulted on this issue indicated that bid exceeds USEPA DBE goals, and therefore, the City and bidder met the intent of the USEPA DBE program.

The bid documents give the City discretion to declare a bid responsive or non-responsive if good faith effort documentation is not submitted. In this case, G2 has submitted a bid with a very high (94%) DBE participation level and the intent of the DBE effort has been met. Therefore, staff deems that the bid is responsive from a DBE utilization standpoint and recommends that the omission of the Six Good Faith Effort documentation from the bid be declared a minor irregularity that is waived due to the high DBE utilization proposed by G2.

2. PROTEST POINT: The bid submitted by G2 was not signed by the Corporate Treasurer.

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RESPONSE: The President and Secretary of G2 signed the bid form. The President of G2 also serves as the Treasurer and, by mistake, didn't sign the bid document on the Treasurer's line. G2 submitted a supplemental Bidder Information page (Sheet 9 of the bid documents) including the Treasurer's signature as well. Staff recommends that this item be declared a minor irregularity that is waived.

3. PROTEST POINT: G2's bid did not include a listing of three projects in the past 5 years each in excess of \$200,000.

RESPONSE: The bid documents require that bidders "Furnish a list of at least three (3) similar projects completed in the past (5) years, for which construction costs exceeded \$200,000 for each project". The bid submitted by G2 included references from four agencies with contract amounts ranging from \$58,000 to \$175,000 which did not meet the experience requirements of the bid documents. When notified of this, G2 indicated they had made a mistake and had submitted their most recent projects only. Subsequently, G2 provided a supplemental list of project references that included two projects with "contract amounts" and "construction costs" exceeding \$200,000 and a third project with a contract amount of \$175,000 and actual construction costs to the contractor exceeding \$200,000.

It is important to differentiate between "contract amounts" and "construction costs" in this case. The City's reference form includes a line for "contract amount" which is the amount of the contract with the contracting entity. The language in the paragraph preceding the reference forms requires the listing of three projects with "construction costs" exceeding \$200,000, but does not provide a definition of "construction costs". G2 contends, and staff agrees, that this can be interpreted to mean actual construction costs to the contractor and not necessarily construction costs to the contracting entity or the contract amount.

This language has never been questioned by a bidder before; therefore, there is no precedent to follow. Where there has been no custom and practice in the interpretation of the specific language in the bid document, such language should be given its plain meaning. In this case, staff considers the position taken by G2 to be reasonable and acceptable in this circumstance. Therefore, staff finds that the supplemental list of references submitted by G2 meets the experience requirements of the bid documents. Additionally, staff recommends that G2's initial error of not submitting a list of qualifying references with their bid be declared a minor irregularity that is waived.

4. PROTEST POINT: G2's bid included a Bid Bond that was completed on the wrong form.

RESPONSE: The City issued an addendum on March 4, 2014 that changed several bid items and conditions. The Addendum included a new set of bid forms that were to be used when submitting bids. The bid bond form was included in the new bid forms. G2 submitted the entire addendum package as their bid, but submitted the bid bond on the original form. The bid bond form included in the

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addendum is identical to the original form and is therefore considered acceptable by staff. Staff recommends that that this be declared a minor irregularity that is waived.

Scope of Work

The scope of work includes fabrication and installation of 548 CPS and 424 ARS City-wide (see Attachment 2 for map of locations). ARS devices are screens visible from the street that cover catch basin openings along the curb. They are designed to keep trash on the street and accessible by street sweepers. ARSs open automatically when actuated by inflowing water. CPS devices are installed inside catch basins across pipe outlets that connect the catch basin to the mainline storm drain. The CPSs are designed to screen out trash as small as cigarette butts. Both ARS and CPS devices have been tested and approved by the County for use in County catch basins.

County Catch Basin Maintenance Agreement

In 2011, the County issued a permit for the City to install trash excluder inserts in County-owned catch basins in Culver City. This permit was specific to the previous construction contract. An amendment to the permit would be required to have a new contractor complete installations in County catch basins.

The County now requires that cities enter into catch basin maintenance agreements before new permits or amendments can be issued. The permit requires cities to assume responsibility for catch basin maintenance and places flooding liability related to the trash excluder inserts on the City. The City would also be required to clean catch basins at a frequency deemed appropriate to mitigate flooding risks. Presently, the County cleans catch basins on an annual basis at their expense. The Public Works Department estimates that cleaning catch basins three times annually would be sufficient to assure that the trash excluder inserts are free of debris and working properly. This agreement would relieve the County of their annual cleaning responsibility; therefore, the County would pay the City \$15.25 per year for each catch basin included in the agreement adjusted annually for inflation. This amount reflects the County's 2012 unit cost to clean a catch basin with no trash excluder device. Ongoing annual expenses related to this agreement are estimated to be \$24,309.25 as presented in Table 2 in the Fiscal Analysis section of this report.

The City Attorney's Office has reviewed and approved the agreement as to form.

FISCAL ANALYSIS:

Fiscal Analysis - Catch Basin Trash Excluder Insert Project, Phase 2, PZ-497

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The Proposition 50 Grant (\$1,194,100) was fully expended on project elements completed to date and all reimbursements have been received except for 10% retention that will be released to the City after the conclusion of the project. The USEPA grant has not yet been used and is available in its full amount (\$485,000). Hard match requirements of the USEPA grant (\$511,603) are being provided by previous Proposition 50 expenditures (\$346,535.53) and City General Funds appropriated to this project through the City Council Adopted Budget for Fiscal Year 2013/2014 (Capital Improvement Project PZ-497). Funding in the amount of \$250,000 is available for this project through PZ-497 account number 42080000.730100.PZ497. An accounting of project fund sources and estimated expenses is provided in Table 1 below.

TABLE 1	
Catch Basin Trash Excluder Insert Project, Phase 2, PZ-497	
Funding	Amount
USEPA Grant	\$485,000
General Funds (PZ-497)	\$250,000
Total Funding Available	\$735,000
Estimated Expenditures	Amount
Construction	\$606,878
Contingency (10%)	\$ 60,688
County Permit and Inspection	\$ 20,000
City Project Manager (Inspector)	\$ 20,000
Total Estimated Costs for Phase 2	\$707,566
Estimated Balance After Completion	\$ 27,434

County Catch Basin Maintenance Agreement

Projected expenses related to the Catch Basin Maintenance Agreement will be addressed in the City Manager's Proposed Budget for Fiscal Year 2014/2015. A detail of projected expenses is provided in Table 2 below.

TABLE 2			
County Catch Basin Maintenance Agreement			
	<i>Annual Cost per Catch Basin (\$22 per cleaning) 3 cleanings/Yr.</i>	<i>Number of County CBs</i>	<i>Total</i>
County Catch basin with CPS device	\$66	479	\$28,116.00
County credit	\$15.25	479	-\$7,304.75
Total Additional Annual Cost:			\$24,309.25

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ATTACHMENTS:

1. Image of Connector Pipe Screen and Automatic Retractable Screen
2. Maps of Storm Drain Catch Basins To Receive Trash Excluder Devices Under the Recommended Contract

MOTIONS:

That the City Council:

1. Waive minor irregularities in the bid submitted by G2 Construction, Inc.; and
2. Reject the bid protest submitted by United Storm Water, Inc.; and,
3. Award a construction contract to G2 Construction, Inc. in the amount of \$606,878 for the Culver City Catch Basin Trash Excluder Insert Project, Phase 2, PZ-497, Bid No. 1537; and,
4. Authorize the Public Works Director/City Engineer to execute Change Orders in an amount not to exceed \$60,688 (10% of contract amount) to address unforeseen project costs, if any; and,
5. Approve an agreement with the Los Angeles County Flood Control District (County) regarding maintenance of catch basins equipped with trash excluder devices; and,
6. Authorize the City Attorney to review/prepare the necessary documents; and,
7. Authorize the City Manager to execute such documents on behalf of the City.