



Sutter Butte Flood Control Agency

A Partnership for Flood Safety

July 11, 2018

TO: Board of Directors

FROM: Mike Inamine, Executive Director
Michael Bessette, Director of Engineering

SUBJECT: Approval of Plans and Specifications, Rejection of Bid Protest, and Consideration of Award of the Oroville Wildlife Area Flood Stage Reduction and Restoration Project Construction Contract (Contract No. 02-2018-OWA) to Nordic Industries, Inc.

Recommendations

1. Approve the Plans and Specifications for the Oroville Wildlife Area Flood Stage Reduction and Restoration Project Construction Contract (Contract No. 02-2018-OWA).
2. Reject the bid protest of Teichert Construction.
3. Authorize the Executive Director to award and execute a contract for the Oroville Wildlife Area Flood Stage Reduction and Restoration Project Construction Contract (Contract No. 02-2018-OWA) to Nordic Industries, Inc. in the amount of \$12,477,770.
4. Authorize the Executive Director to take any and all actions reasonably necessary to complete the work described in the contract, including the approval of minor contract amendments that, in the judgment of the Executive Director, will not materially alter the purpose of the contract or increase the total compensation due under the contract by more than \$1,247,777 (10%), and to issue monthly progress payments to the contractor.

Background

The Oroville Wildlife Area Flood Stage Reduction Project (Project) aims to reconnect the Oroville Wildlife Area (OWA) D-Unit to the Feather River and lower flood stages within the main channel, restore riparian and fish habitat, and reduce post-flood maintenance and repairs. The Project consists of augmenting the existing system of inflow and outflow weirs to safely divert additional floodwaters from the main channel through the OWA. The Project also features ecosystem restoration, recreation improvements, and the reconnection of the Feather River to its historic floodplain.

In accordance with CEQA, a Final IS/MND has been prepared for the Project documenting environmental impacts. The IS/MND was circulated for public review between May 27, 2016 and June 25, 2016. The SBFC Board certified the subject CEQA document on August 10, 2016.

Discussion

The Feather River West Levee Project – Oroville Wildlife Area Flood Stage Reduction and Restoration Project (Contract No. 02-2018-OWA) is consistent with SBFC's Strategic Plan.

Sealed bids for the Oroville Wildlife Area Flood Stage Reduction and Restoration Project (Contract No. 02-2018-OWA) were received and opened on June 28, 2018 at 2 p.m. Five (5) sealed bids were received and opened, with the results as follows ranked by lowest bid:

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<u>Rank</u>	<u>Contractor</u>	<u>Total Bid Price</u>
1.	Nordic Industries, Inc.	\$12,477,770
2.	Teichert Construction	\$12,873,420
3.	Steelhead Constructors	\$12,979,360
4.	Sierra Mountain Construction	\$13,394,330
5.	Anderson Dragline, Inc.	\$16,528,236

The updated Engineer’s Estimate for the project, based on revised designs and specifications as directed by the State of California Department of Water Resources, is \$11,100,000. Staff has confirmed with the Contractor’s State License Board that the low bidder holds a current and proper license to legally perform the work and is in good standing.

Following bid opening, but after the award of the contract had been agendized and posted for consideration on July 11, 2018, staff received one timely protest from Teichert Construction (“Teichert”). Staff and legal counsel have reviewed this protest and find that the protest does not preclude an award of the contract to Nordic Industries, Inc. (“Nordic”) as the lowest responsible bidder.

Teichert raises five points in its protest. First, Teichert asserts that Nordic’s bid is non-responsive because its subcontractor listing does not include the percentages of work to be performed by identified subcontractors. Nordic, however, used the form provided in the bid documents and properly filled in each item as requested on the form. Because a bid is deemed responsive if the bidder does what is called for by the bid documents, Nordic’s bid here is responsive, as Nordic filled out the form as designated by the Agency.

As its second point, Teichert contends that Nordic should have listed a separate rebar subcontractor because it contends Nordic is not qualified to perform that work. According to Nordic, however, its listed subcontractor, “Get ‘Er Done, Inc.” is performing that work. Therefore, this alleged protest ground is without merit too.

As its third point, Teichert contends that Nordic’s bid is non-responsive because its subcontractor listing form does not identify the subcontractor DIR numbers, as required under the Public Contract Code. This protest ground fails for the same reason its first ground fails. Nordic completed the information called for on the Agency’s Designation of Subcontractor’s form and, therefore, its bid is responsive. A bid is responsive where it includes the information requested.

As its fourth point, Teichert contends that Nordic failed to acknowledge all addenda in its bid. Upon review, however, it appears that Teichert simply is wrong. Nordic acknowledged all addenda, Addendum 1 through 1C.

As its fifth protest ground, Teichert contends Nordic’s bid is non-responsive because Nordic apparently used a different form for the Subcontractor Qualification information requested in Section 6. Teichert contends that Nordic did not include all of the information required, and specifically, a designation of the percentage of on-site time for the subcontractor’s proposed superintendent. As to this item, it does appear that Nordic used a different form and, therefore, its bid does contain a deviation. Where a deviation exists, however, a public entity may elect to waive the deviation so long as it is not a material deviation. A deviation is considered material where it would result in an unfair advantage over other bidders. Here, we do not consider the omission of the percentage of on-site superintendent time a material deviation. Therefore, in staff’s opinion, the Agency may, but is not required to, waive the deviation in Nordic’s bid and proceed to award the contract to Nordic.

Finally, in reviewing this matter, staff also discovered that Teichert’s bid itself is non-responsive in that it did not properly acknowledge all addenda, Addendum 1 through Addendum 1C. As a result, Teichert does not appear to have proper standing to raise a bid protest and would be ineligible for award of the contract itself.

For the reasons discussed above, staff, in conjunction with legal counsel, recommend the Board reject the protest, waive the apparent deviation as an immaterial deviation, and award the contract to Nordic Industries, Inc., as the lowest responsible bidder for this project.

Fiscal Impact

The Final Approved Amended 3-Year and 2-Year Budgets includes budget for the construction of the OWA Flood Stage Reduction and Restoration Project based on the original cost estimates for the project and funding availability from SBFCA’s various grant sources. These approved budget amounts and grant sources are summarized as follows:

SBFCA Budget Account	Funding Source(s)	Scope of Work	Construction Budget
731-99-5001/6001-68940	SBFCA & DWR EIP/UFRR Grant (@ 81%)	Weirs, Access Road & Culverts, Low Flow Road Crossing	\$3,000,000
731-99-2007-TBD	CDFW Prop 1 Grant	Box Culvert	\$1,834,300
731-99-2007-TBD	WCB Prop 1 Grant	Channels & Berms	\$4,149,100
Total			\$8,983,400

As noted above, the lowest responsible bid plus 10% contingency (\$13,725,547) is in excess of the budgeted amounts noted by \$4,742,147. Staff’s recommendation has a fiscal impact to the budget by this amount. However, staff recommends proceeding with the project based on the following factors:

- As part of SBFCA’s UFRR Grant award for the FRWLP, SBFCA received additional State cost sharing (9%), because the OWA Restoration Project, as a component of the FRWLP, met the State’s Ecosystem Enhancement and Restoration objective. If SBFCA was to not proceed with the project, at a minimum this additional State Cost sharing would not be provided. The additional 9% cost sharing applies to approximately \$38,000,000 of work affording SBFCA an additional \$3,420,000. While the construction cost plus contingency exceeds this cost savings on the FRWLP, the State’s threshold for awarding the UFRR Funding was predicated on the fact that the FRWLP provided multi-benefit objectives including the OWA Project;
- SBFCA staff is currently reviewing the existing grant language and determining whether additional funding, based on the State’s requested design changes, could be made available to augment the grant budgets; and,
- SBFCA staff is also looking to apply for additional grant funding to cover the additional costs.

At this time, there is an approximately \$4,742,147 Fiscal Impact to the current Board Approved Amended 3-year and 2-year budgets. Staff recommends that the Board approve the recommended action and augment the construction budgets as follows:

SBFCA Budget Account	Scope of Work	Budget Increase	Revised Budget
731-99-5001/6001-68940	Weirs, Access Road & Culverts, Low Flow Road Crossing	\$921,291	\$3,921,291
731-99-2007-TBD	Box Culvert	\$2,272,396	\$4,106,696
731-99-2007-TBD	Channels & Berms	\$1,548,460	\$5,697,560
Total		\$4,742,147	\$13,725,547

Attachment: Sample Contract