



CITY COUNCIL STAFF REPORT

DATE: March 17, 2010 Consent Agenda

SUBJECT: DISPOSITION OF BID PROTEST FOR THE PALM SPRINGS ANIMAL CARE FACILITY, CITY PROJECT 07-24.

FROM: David H. Ready, City Manager

BY: Owner's Representative

SUMMARY

This action would result in the rejection of the bid protest concerning the Palm Springs Animal Care Facility, City Project 07-24, and a finding of who the lowest, responsive, responsible bidder is for the project.

RECOMMENDATION:

1. Approve a finding that the bid protest from Parkwest Construction Company was not material to the outcome of the bid and reject the protest.
2. Approve a finding that WE Oneil Construction is the lowest, responsive, responsible bidder for the Animal Care Facility, City Project 07-24.

STAFF ANALYSIS:

Bids were received at 3:00pm local time on February 23, 2010 for the Palm Springs Animal Care Facility, CP# 07-24. Nineteen (19) firms had been pre-qualified to bid the project and twelve (12) bids were received as follows:

<u>Contractor</u>	<u>Adjusted Base Bid</u>
WE Oneil Construction	\$6,529,000
Parkwest Construction	\$6,566,500
PW Construction	\$6,617,000
Construct One	\$6,637,200
Jaynes Corporation	\$6,784,700
Summit Construction	\$6,848,000
Orr Construction	\$6,899,300

ITEM NO. 2.L.

Roel Construction	\$7,014,583
Doug Wall Const.	\$7,123,172
Rsm2 Const.	\$7,156,832
Diffenbaugh Const.	\$7,196,300
Royal Construction	\$7,288,000

On February 25, 2010 Parkwest Construction Company formally protested the low bid of WE Oneil, a copy of the protest is attached. The protest centers around a discrepancy between the words and numbers found in the base bid of WE Oneil Construction as well as an issue related to crossing through a bid amount and acknowledging that change. The City Attorney has carefully reviewed the protest and has advised Parkwest Construction that he is recommending to the City Council that the bid protest is not material to the outcome of the bid, or any future award, as none of the issues affected the Adjusted Base Bid, which is the basis of award. Further, it is recommended that upon rejection of the protest that the City Council find that WE Oneil Construction is the lowest, responsive, responsible bidder for the Palm Springs Animal Care Facility, CP 07-24.

Based on the bids received the City is experiencing a funding shortfall that must be closed prior to any award of a contract (see below). The bids are good for a 90 day period which runs through Monday May 24, 2010, after which the bid prices will expire. The last scheduled City Council meeting before the expiration of the bids is May 19, 2010.

FISCAL IMPACT:

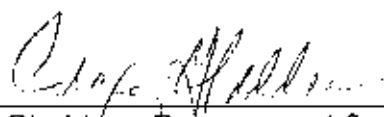
The project was bid with a series of deductive alternates as well as the requirement to carry a \$600,000 allowance for Photo Voltaics. The following comparison depicts the WE Oneil bid amount for each of three scenarios; 1) the full project with no deducts and photo voltaics included, 2) a reduced project taking the deductive alternates with photo voltaics included, and 3) a reduced project taking the deductive alternates with no photo voltaics.

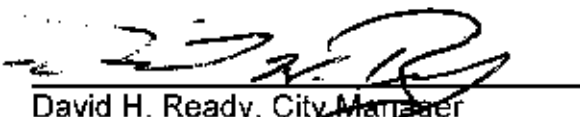
Bidder	Full Project	Reduced Project Photo Voltaics	Reduced Project No Photo Voltaics
WE Oneil	\$7,055,000	\$ 6,519,000	\$5,919,000
Plus Soft/FF&E/Cont.	<u>1,502,543</u>	<u>1,502,543</u>	<u>1,502,543</u>
Total Cost*	8,557,543	8,021,543	7,421,543
Available Funds	<u>5,598,715</u>	<u>5,598,715</u>	<u>5,598,715</u>
Shortfall	(\$2,958,828)	(\$2,422,828)	(\$1,822,828)

*Note: The "Available Funds" include \$5 million of bond proceeds, \$550,000 from the Friends of the Animal Shelter, and the remainder from small grants.

The bottom line of the above comparison shows the funding shortfall that the City has for each of the scenarios. The City Council Subcommittee has endorsed the concept of conducting an aggressive fund raising effort to try and close the funding gap prior to the current bids expiring.


Allen F. Smoot, Owner's Representative


Craig Gladders, Procurement & Contracting


David H. Ready, City Manager

Attachment: Protest letter

PARKWEST CONSTRUCTION
PHONE (909) 798-1333
FAX (909) 793-2485

FACSIMILE TRANSMITTAL SHEET

TO:	Craig Gladders	FROM:	Jody
COMPANY:	City of Palm Springs	DATE:	02/25/10
FAX NUMBER:	(760) 323-8238	TOTAL NO. OF PAGES INCLUDING COVER:	5
PHONE NUMBER:	(760) 322-8368	SENDER'S REFERENCE NUMBER:	10-3218
RE:	Protest	YOUR REFERENCE NUMBER:	07-24

URGENT FOR REVIEW EMAILED

NOTES/COMMENTS:

Attached please find a copy of our letter of protest for the Palm Springs Animal Care Facility project. Please feel free to contact us if you have any questions.

Thank you ☺

P.O. BOX 790
REDLANDS, CA 92378

Parkwest Construction Company



February 25, 2010

City of Palm Springs
Procurement & Contracting Manager
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262

Attn: Craig L. Gladders, C.P.M.

Re: Palm Springs Animal Care Facility Project No. 07- 24, SE Corner of Mesquite Rd. & Valla Rd.

Parkwest Construction formally protests and appeals the apparent low bid of W.E. Oneil Construction, on the above referenced project. The appeal/protest is submitted based on errors made by W.E. Oneil on the bid form, page 16, "Base Bid Price". The price in words and the price in figures are not the same amount, which established errors to occur on page 20, "Adjusted Base Bid Worksheet".

The bid documents are very clear regarding figures and words of the numbers as called out in the Information to Bidders - item 8, Bid Schedule - page 16 and Adjusted Bid Worksheet - page 20 clearly state "In case the words and figures do not agree, the words shall govern and the figures shall be disregarded." See the attached pages.

W.E. Oneil Construction's Base Bid Price on page 16 has a discrepancy between the words and figures. This would cause their Adjusted Base Bid to be incorrect.

There are also discrepancies for alternate 1: there are two numbers in words: one is typed (Nineteen thousand) not lined out and not acknowledged, the other (Twenty thousand) is hand written, and the typed figure (\$19,000) is lined out but not acknowledged.

Due to the numerical errors made in the bid documents submitted by W.E. Oneil Construction, we request that the City of Palm Springs reject W.E. Oneil Construction's bid proposal as non-responsive, and award the contract to Parkwest Construction Company as the lowest responsive and responsible bidder.

Please feel free to contact me if you need any additional information in support of our protest, and please keep us informed of the City of Palm Springs' decision regarding this matter.

Sincerely,


Ron Moore
President

Lifetime Industries, Incorporated DBA: Parkwest Construction Company
P.O. Box 790, Redlands, CA 92373 Phone 909-798-1333 Fax 909-793-2485 Lic. # 580133

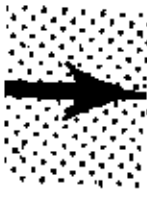
(h) The lands upon which the Work is to be performed, the rights-of-way and easements for access thereto, and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Contractor. Easement for permanent structures or permanent changes in existing structures will be obtained and paid for by the City unless otherwise provided in the Contract Documents.

(i) The submittal of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this Article 4; that without exception the Bid is premised upon performing the Work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents; and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all the terms and conditions for performance of the Work.

5. **INTERPRETATIONS** - All questions about the meaning or intent of the Contract Documents are to be directed to the Procurement & Contracting Manager. Interpretations or clarifications considered necessary by the Architect in response to such questions will be resolved by the issuance of Addenda mailed or delivered to all parties recorded by the Architect or the City as having received the Contract Documents. Questions received after February 4, 2010 may not be answered. Only questions that have been resolved by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

6. **BID SECURITY, BONDS, AND INSURANCE** - Each Bid shall be accompanied by a certified or cashier's check or approved Bid Bond in the amount stated in the Notice Inviting Bids. Said check or bond shall be made payable to the City and shall be given as a guarantee that the Bidder, if awarded the Work, will enter into an Agreement with the City and will furnish the necessary insurance certificates, Payment Bond, and Performance Bond. Each of said bonds and insurance certificates shall be in the amounts stated in the Supplementary General Conditions. In case of refusal or failure of the successful Bidder to enter into said Agreement, the check or Bid Bond, as the case may be, shall be forfeited to the City. If the Bidder elects to furnish a Bid Bond as its security, the Bidder shall use the Bid Bond form bound herein, or one conforming substantially to it in form.

7. **RETURN OF BID SECURITY** - Within 14 days after award of the Contract, the City will return all bid securities accompanying such of the Bids that are not considered in making the award. All other Bid securities will be held until the Agreement has been finally executed. They will then be returned to the respective Bidders whose Bids they accompany.



8. **BID FORM** - The Bid shall be made on the Bid Schedule sheets bound herein. Unless otherwise provided in the Notice Inviting Bids, in the event there is more than one Bid Schedule, the Bidder may Bid on any individual schedule or on any combination of schedules. All bid items shall be properly filled out. Where so indicated in the Bid Documents, Bid price shall be shown in words and figures, and in the event of any conflict between the words and figures, the words shall govern. The envelope enclosing the sealed bids shall be plainly marked in the upper left-hand corner with the name and address of the Bidder and shall bear the words "BID FOR," followed by the title of the Contract Documents for the Work, the name of the "CITY OF PALM SPRINGS," the address where the bids are to be delivered or mailed to, and the date and hour of opening of bids. The Bid Security shall be enclosed in the same envelope with the Bid.

9. **SUBMITTAL OF BIDS** - The Bids shall be delivered by the time and to the place stipulated in the Notice Inviting Bids. It is the Bidder's sole responsibility to see that its Bid is received in proper time. Bids will not be accepted after the appointed time for opening of bids, no matter what the reason.

10. **DISCREPANCIES IN BIDS** - In the event that there is more than one Bid Item in the Bid Schedule, the Bidder shall furnish a price for all Bid Items in the schedule, and failure to do so will render the Bid as non-responsive and may cause its rejection. In the event that there are unit price Bid Items in a Bid Schedule and the "amount" indicated for a unit price Bid Item does not equal the product of the unit price and quantity listed, the unit price shall govern and the amount will be corrected accordingly, and the Contractor shall be bound by such correction, subject to the provisions of Section 5100 et seq. of the California Public Contract Code. In the event that there is more than one Bid Item in a Bid Schedule and the total indicated for the schedule does not agree with the sum of prices Bid on the individual items, the prices bid on the individual items shall govern and the total for the schedule will be corrected accordingly, and the Contractor shall be bound by said correction, subject to the provisions of Section 5100 et seq. of the California Public Contract Code.

11. **QUANTITIES OF WORK** - Section Not Used as this is a LUMP SUM Bid.

12. **WITHDRAWAL OF BID** - The Bid may be withdrawn by the Bidder by means of a written request, signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Notice Inviting Bids prior to the scheduled closing time for receipt of Bids.

13. **MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS** - Unauthorized conditions, limitations, or provisions attached to the Bid will render it informal and may cause its rejection as being non-responsive. The completed Bid forms shall be without interlineations, alterations, or erasures. Alternative Bids will not be considered unless expressly called for in the Notice Inviting Bids. Oral, FAX, telegraphic, or telephone Bids or modifications will not be considered.

BID SCHEDULE

Lump Sum Price for Construction of

CITY OF PALM SPRINGS ANIMAL CARE FACILITY PROJECT NO. 07 - 24

In Palm Springs, California

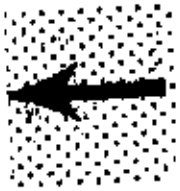
Description: Provide all materials, supplies, services, equipment and manpower necessary to complete the grading, landscaping, irrigation, fencing, lighting, street improvements, and general building construction work, bonds and insurance for the Palm Springs Animal Care Facility project as detailed in the Plans & Specifications entitled "City of Palm Springs Animal Care Facility, City Project No. 07-24".

BASE BID PRICE for the lump sum of:

\$ _____
(Price in figures)

(Price in words)

(In case the words and figures do not match, the words shall govern and the figures shall be disregarded.)



ALTERNATE BID PRICES

Bidders are advised that all of the following alternates must be priced for the bid to be considered responsive. The lowest responsive bid shall be determined by adjusting the **BASE BID PRICE by subtracting all of the **Deductive Alternates** and adding all of the **Additive Alternates** to achieve an **ADJUSTED BASE BID**. It should be noted that the City reserves the right, after determining the responsive low bidder, to accept all, a portion of, or none of the Alternate pricing. In case the words and figures do not agree, the words shall govern and the figures shall be disregarded.**



NOTE: Bidders are advised that the full descriptions of the alternates and related work can be found in Specification Section 01230 or on Plan sheet A0.50.

Deductive Alternate 1: Delete South Planter #2 for the LUMP SUM PRICE OF:

Deduct -\$ _____
(Price in Figures)

(Price in Words)

ADJUSTED BASE BID WORKSHEET

Bidders shall transfer the Base Bid and the Alternate Bids to this worksheet to determine the final **ADJUSTED BASE BID AMOUNT**. The Lowest Responsible Bidder shall be determined using the Adjusted Base Bid Amount:

Base Bid	\$ _____
Minus Deductive Alternate 1	(\$ _____)
Minus Deductive Alternate 2	(\$ _____)
Minus Deductive Alternate 3	(\$ _____)
Minus Deductive Alternate 4	(\$ _____)
Minus Deductive Alternate 5	(\$ _____)
Plus Additive Alternate 6	\$ _____
Minus Deductive Alternate 7	(\$ _____)
Minus Deductive Alternate 8	(\$ _____)
Minus Deductive Alternate 9	(\$ _____)
Minus Deductive Alternate 10	(\$ _____)
Minus Deductive Alternate 11	(\$ _____)
Minus Deductive Alternate 12	(\$ _____)
Add Additive Alternate 13	\$ 25,000.00
Add Additive Alternate 14	\$ 600,000.00
Minus Deductive Alternate 15	(\$ _____)

ADJUSTED BASE BID \$ _____
(Price in Figures)

(Price in Words)

(In case the words and figures do not agree, the words shall govern and the figures shall be disregarded)

BIDDER: _____

BY: _____
Signature

TITLE: _____

DATE: _____

LAW OFFICES OF
WOODRUFF, SPRADLIN & SMART

A PROFESSIONAL CORPORATION

555 ANTON BOULEVARD, SUITE 1200 ■ COSTA MESA, CA 92626-7670 ■ (714) 558-7000 ■ FAX (714) 835-7787

DIRECT DIAL: (714) 415-1042
DIRECT FAX: (714) 415-1142
E-MAIL: DHOLLAND@WSS-LAW.COM

March 8, 2010

VIA E-MAIL AND FIRST CLASS MAIL

John Finn
Vice President
W.E. O'Neil
3990 E. Concours Drive, Suite 400
Ontario, CA 91764

Re: City of Palm Springs Animal Care Facility
City Project No. 07-24

Dear Mr. Finn:

Thank you for your letter of February 24, 2010, discussing an error in your apparent low bid on the City's Animal Care Facility project. We also want to advise you that the City received a protest from Parkwest Construction Company, the second lowest bid on this project. A copy of the Parkwest protest is attached for your information.

This Office has reviewed your correspondence, the protest from Parkwest, and the relevant portions of the bid schedule and related documents. The bid documents expressly provide that "Bid price shall be shown in words and figures, and in the event of any conflict between the words and figures, the words shall govern." Under the "Base Bid Price" requirement in the Bid Schedule, you provided the amount of "\$6,420,000.00" as the "Price in figures." For the "Price in words," however, you wrote "six million four hundred and twenty dollars and no cents," an amount that is \$419,580.00 less than the amount in figures. Thus, the base bid amounts conflict.

Nevertheless, the contract for work under this bid proposal is required to be awarded to the lowest adjusted base bid and not the lowest base bid. "The lowest responsive bid shall be determined by adjusting the BASE BID PRICE by subtracting all the Deductive Alternates and adding all the Additive Alternatives to achieve the ADJUSTED BASE BID." For the adjusted base bid, you entered the amount of "Six Million Five Hundred Twenty Nine Thousand Dollars and No Cents" and "\$6,529,000.00," amounts which do not conflict.

BEN AMMERMAN ■ TERRY C. ANDRUS ■ EDWARD L. BERTRAND ■ M. JOIS BOBAK ■ CAROLINE A. BYRNE ■ PATRICK M. DESMOND
JAMES M. DONICH ■ CRISTINA M. DOYLE ■ JAMES H. EGGART ■ CRAIG G. FARRINGTON ■ JOSEPH W. FORBATH ■ RICIA E. HAGER
BRADLEY R. HOGIN ■ DOUGLAS C. HOLLAND ■ DAVID E. KENDIG ■ CYNTHIA W. KOLE ■ EDWARD Z. KOTKIN ■ ROBERTA A. KRAUS
MAGDALENA LONA-WIANT ■ JASON M. McEWEN ■ MARK M. MONACHINO ■ LAURA A. MORGAN ■ THOMAS P. NDON ■ JENNIFER L. RADAICH
STEVEN L. RADER ■ BARBARA RAILEANU ■ ANNA R. SALUSKY ■ OMAR SANDOVAL ■ DIEGO SANTANA ■ JOHN B. SHAW (OF COUNSEL)
GREGORY E. SIMONIAN ■ KENNARD R. SMART, JR. ■ DANIEL K. SPRADLIN ■ ALYSON C. SUN ■ THOMAS L. WOODRUFF (OF COUNSEL)

John Finn
March 8, 2010
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This Office in consultation with the Purchasing Division will recommend to the City Council that the Council set the protest aside, determine that the error in your bid in the "base bid price" is not a material error, and adjusted base bid of \$6,529,000.00 is the lowest responsible bid. Please note that the City Council will make the final decision on this matter. In addition, we will also note that the Council also has the authority to reject all bids for any reason and not approve any agreement with any bidder. The City will advise you of the date and time of the Council's meeting on the award of any construction agreement on this project.

Very truly yours,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DOUGLAS C. HOLLAND

DCH:nl
Enclosure

LAW OFFICES OF
WOODRUFF, SPRADLIN & SMART

A PROFESSIONAL CORPORATION

555 ANTON BOULEVARD, SUITE 1200 ■ COSTA MESA, CA 92626-7670 ■ (714) 558-7000 ■ FAX (714) 835-7787

DIRECT DIAL: (714) 415-1042
DIRECT FAX (714) 415-1142
E-MAIL: DHOLLAND@WSS-LAW.COM

March 8, 2010

VIA E-MAIL AND FIRST CLASS MAIL

Ron Moore
President
Lifetime Industries, Incorporated
DBA: Parkwest Construction Company
P.O. Box 790
Redlands, CA 92373

Re: City of Palm Springs Animal Care Facility
City Project No. 07-24

Dear Mr. Moore:

Thank you for your protest letter of February 25, 2010, discussing W.E. O'Neil's error in its bid to the City. W.E. O'Neil, the apparent low bidder, provided the amount of "\$6,420,000.00" as the "Price in figures" for the base bid amount. For the "Price in words" for the base bid amount, however, W.E. O'Neil wrote "six million four hundred and twenty dollars and no cents," an amount that is \$419,580.00 less than the amount in figures.

This Office has reviewed your protest and the relevant portions of the bid schedule and related documents. The bid documents expressly provide that "Bid price shall be shown in words and figures, and in the event of any conflict between the words and figures, the words shall govern." Nevertheless, the contract for work under this bid proposal is required to be awarded to the lowest adjusted base bid and not the lowest base bid. "The lowest responsive bid shall be determined by adjusting the BASE BID PRICE by subtracting all the Deductive Alternates and adding all the Additive Alternatives to achieve the ADJUSTED BASE BID." For the adjusted base bid, W.E. O'Neil entered the amount of "Six Million Five Hundred Twenty Nine Thousand Dollars and No Cents" and "\$6,529,000.00," amounts which do not conflict.

This Office in consultation with the Purchasing Division will recommend to the City Council that the Council set the protest aside, determine that the error in the O'Neil bid in the "base bid price" is not a material error, and the adjusted base bid of \$6,529,000.00 from W.E. O'Neil is the lowest responsible bid. Please note that the City Council will make the final

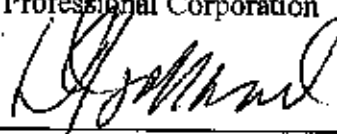
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Ron Moore
March 8, 2010
Page 2

decision on this matter. In addition, we will also note that the Council also has the authority to reject all bids for any reason and not approve any agreement with any bidder. The City will advise you of the date and time of the Council's meeting on the award of any construction agreement on this project.

Very truly yours,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DOUGLAS C. HOLLAND

DCH:nl