



City Council Staff Report

Date: November 16, 2011 CONSENT CALENDAR
Subject: AWARD OF CONTRACT FOR THE 2010/2011 TRAFFIC SIGNAL IMPROVEMENTS, CITY PROJECT 10-07
From: David H. Ready, City Manager
Initiated by: Public Works and Engineering Department

SUMMARY

The Public Works and Engineering Department has scheduled improvements to three existing traffic signals. Award of this contract will allow staff to proceed with this traffic signal modification and upgrade project.

RECOMMENDATION:

- 1) Determine the Bid submitted by the apparent low bidder, DBX, Inc., as incomplete and containing at least one major irregularity, and reject it as non-responsive; and
- 2) Determine the apparent second low bidder, Sully-Miller Contracting Company, as the lowest responsive bidder; and
- 3) Approve Agreement No. _____ in the amount of \$391,150 with Sully-Miller Contracting Company, a Delaware corporation, for the 2010/2011 Traffic Signal Improvements, City Project 10-07; and
- 4) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Public Works and Engineering Department included modification of three existing traffic signals in the 2010/2011 fiscal year budget. The three intersections are:

Indian Canyon Drive at San Rafael Road
Ramon Road at Sunrise Way
Ramon Road at Farrell Drive

The Public Works and Engineering Department has inventoried existing traffic signals that should be modified to remove protected signal phasing, or to install protected/permissive signal phasing. In the past, it was common to install a full-functioning 8-phase traffic signal (allowing traffic movement in each direction of a four-way intersection, and for each left-turn phase). However, the industry has subsequently analyzed ways to improve the efficiency of traffic movement on arterial streets, and determined that removal of protected phasing where not required drastically decreases delay of vehicles at signalized intersections.

A protected/permissive signal is one that has a five-section vehicle head on the signal mast arm, shown at right below, and has a five-section vehicle head on the far pole, shown at left below:



This type of signal phasing allows traffic to move through the intersection more efficiently, giving left-turning vehicles a “permissive” movement, allowing the turn when there are no opposing vehicles. In a true “protected” phase, a vehicle must wait for the green arrow to make the movement, whether or not there is opposing traffic.

Previously, staff had identified and converted most of the City’s existing traffic signals to permissive, or protected/permissive signal phasing. At these intersections, existing protected phasing on one or both approaches is converted to permissive phasing, or protected/permissive phasing; and in certain cases where protected phasing is warranted, protected/permissive phasing is added. Other modifications are proposed, including the addition of video detection systems, emergency vehicle preemption systems, ADA audible pedestrian bush button assemblies, and uninterrupted power supply systems (to keep the signals operational during power outages).

The plans and specifications were prepared by the City’s engineering consultant (RBF Consulting), and on September 7, 2011, the City Council approved the plans and authorized bidding. On September 15 and 22, 2011, the project was advertised for bids, and at 3:00 p.m. on October 18, 2011, the Procurement and Contracting Division received construction bids from the following contractors:

1. DBX, Inc.; Temecula, CA:	\$388,690.00
2. Sully-Miller Contracting Company, Brea, CA:	\$391,150.00
3. Traffic Development Services; Moorpark, CA:	\$392,540.00
4. Steiny and Company, Inc.; Baldwin Park, CA:	\$424,950.00
5. Unique Performance Construction, Inc.; Costa Mesa, CA:	\$494,666.00
6. PTM General Engineering Services; Riverside, CA:	\$496,314.00

The Engineer's Estimate was \$321,000.

Upon bid opening, the apparent low bidder was DBX, Inc. However, after reviewing all of the bid documents, staff determined that the bid submitted by DBX, Inc., was incomplete and should be considered non-responsive. Specifically, the City has implemented a bid form in all non-federally funded contracts that requires the bidder to identify local sub-contractors, or local firms supplying services or materials on a City contract. The good faith efforts form was instituted to ensure contractors were complying with the City's "Local Business Preference Program". In this case, DBX, Inc., did not list any sub-contractors, but did not fill-out or provide any information on the good faith efforts form as required by the bid documents. The second low bidder, Sully-Miller Contract Company, likewise didn't list any sub-contractors; however, Sully-Miller completed the good faith efforts form as required by the bid documents, and has identified a local company (Desert Electric Supply) as providing materials as part of the contract.

In consultation with the City Attorney's office, after reviewing the apparent low bidder's bid documents, it is staff's recommendation that the City Council find that the apparent low bidder is "non-responsive" for a failure to demonstrate good faith efforts to solicit local participation in the contract pursuant to the City's Ordinance No. 1756. A letter was sent to DBX, Inc., on October 27, 2011, advising them of the City's determination finding their bid non-responsive (see Attachment 1). On October 28, 2011, DBX Inc. advised the City of its decision to protest staff's determination, and their argument is outlined in their letter (see Attachment 2).

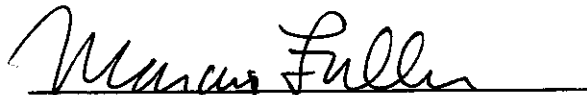
It is recommended that the City Council determine DBX, Inc., as non-responsive, and award this contract to the apparent second low bidder as the lowest, responsive bidder. The lowest, responsive bidder recommended by staff is Sully-Miller Contracting Company, whose principal officers are: David Martinez, President; Timothy Orchard, CFO/Treasurer/Vice President; and Anthony Martino II, Secretary.

FISCAL IMPACT:

Funding for this project is made available through local Measure A funds in accounts 134-4498-50224, 134-4498-50294 and 134-4498-50300. No local miscellaneous General Funds are being used for this project.

SUBMITTED:

Prepared by:



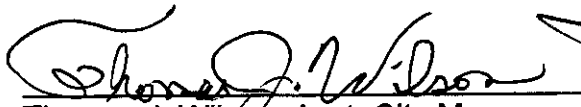
Marcus L. Fuller
Assistant Director of Public Works

Recommended by:

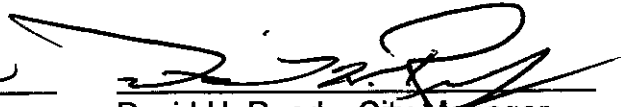


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Notification to DBX, Inc.
2. DBX, Inc. appeal letter
3. Agreement



City of Palm Springs

Department of Public Works and Engineering
3200 East Tahquitz Canyon Way • Palm Springs, California 92262
Tel: (760) 323-8253 • Fax: (760) 322-8325 • Web: www.palmspringsca.gov

October 27, 2011

Mr. Jim Perry
DBX, Inc.
42024 Avenida Alvarado, Suite A
Temecula, CA 92590

Via Facsimile: (951) 296-9978
Via E-Mail: charlesdbx@hotmail.com

Re: **2010/2011 Traffic Signal Improvements, City Project 10-07**

Dear Mr. Perry,

On October 18, 2011, DBX, Inc. ("DBX") submitted a bid in response to the City of Palm Springs' ("City") call for bids for the above-referenced project. Upon bid opening, DBX was the apparent low-bidder. Subsequently, upon further review of DBX's bid, we have determined your bid was incomplete for the following reasons:

- 1) Notice Inviting Bids, Item N-10 "Local Business Promotion" references the requirements of Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program, subsection (5) "Local Preference in Public Works Contracts (Sub-Contracting)", and that "...the prime contractor shall use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within the Coachella Valley."
- 2) Instructions to Bidders, Item 19 "Local Business Promotion" references the requirements of Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program, subsection (5) "Local Preference in Public Works Contracts (Sub-Contracting)", and that "...the prime contractor shall submit evidence of such good faith efforts at the time of submission of bids. Good faith efforts may be evaluated by placing advertisements inviting proposals in local newspapers, sending request for proposals to local sub-contractors, or by demonstrating that no local sub-contracts are qualified to perform the work or supply the materials or equipment... ***The City Council or Director may reject as non-responsive the bid of any contractor proposing to use sub-contractors that fail to comply with the requirements of this subsection.***"
- 3) Bid Documents, Cover Sheet (Bid Forms – Page 1) lists all documents to be fully executed and submitted with the Bid at the time of opening of bids. Included in the list is the Local Business Preference Good Faith Efforts" form. The Bid Cover Sheet specifies that "***Failure of a Bidder to fully execute and submit all of the listed documents with the Bid will render a Bid as non-responsive and subject to rejection.***"
- 4) The Local Business Preference Program – Good Faith Efforts form to be submitted with the Bid states: "Bidders shall provide sufficient information to demonstrate that they have made good faith efforts to comply with Palm Springs Ordinance No. 1756. ***In the event no local firm (as defined in Ordinance No. 1756) is listed as a subcontractor on the "List of***

Mr. Jim Perry
October 27, 2011
Page 2

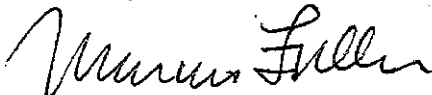
Subcontractors" submitted with its Bid, Bidders shall identify local subcontractors not required to be identified on the List of Subcontractors, and/or shall identify local firms with whom the Bidder has solicited to furnish materials and supplies for incorporation into the work of this project."

- 5) The Local Business Preference Program – Good Faith Efforts form to be submitted with the Bid states: ***"In the event no local firm (as defined in Ordinance No. 1756) will provide services, or furnish materials and supplies to the Bidder for this project, the Bidder shall provide information sufficient to demonstrate good faith efforts to do so."***

Staff has reviewed your bid submittal, and based on the items outlined above and your failure to show good faith efforts to comply with City of Palm Springs Ordinance No. 1756 and Section 7.09.030 of the Palm Springs Municipal Code "Local Business Preference Program, subsection (5) "Local Preference in Public Works Contracts (Sub-Contracting)," including, but not limited to, submitting incomplete bid forms, staff will recommend that the City Council find your bid "non-responsive" and will recommend award to the next lowest responsive bidder.

It is your right to request an appeal of our decision in accordance with Chapter 2.05 of the Palm Springs Municipal Code. If you request an appeal, I must receive notice of your request within 5 working days of the date of this letter (or November 3, 2011). If you have any questions, please feel free to contact me at (760) 323-8253, extension 8744, or by e-mail at Marcus.Fuller@palmsspringsca.gov.

Sincerely,



Marcus L. Fuller, P.E., P.L.S.
Assistant Director of Public Works/
Assistant City Engineer

cc: James Donich
Craig Gladders
file

D
B Inc.
X

42024 AVENIDA ALVARADO, SUITE A
TEMECULA, CALIFORNIA 92590

(951) 296-9909
FAX (951) 296-9978

October 28, 2011

City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262

Attn: Marcus Fuller, P.E., P.L.S.
Asst. Director of Public Works/
Asst. City Engineer

Re: 2010/2011 TRAFFIC SIGNAL IMPROVEMENTS, CITY PROJECT 10-07

We respectfully protest and appeal the City of Palm Springs decision to not award the 2010/2011 Traffic Signal Improvement project, City Project No. 10-07, to DBX, Inc. for failure to show "Good Faith Efforts" to comply with the "Local Business Preference Program".

DBX has based its appeal on the following reasons and facts:

1. There was 0% portion of the work to subcontract out to a local business (i.e. striping, paving, etc.). The work for this project was strictly traffic signal related which is our specialty and portion of work.
2. Materials that were specified in the bid book to be supplied were "sole source items", (i.e. Iteris - Cameras, McCain - Controllers, Cabinets, BBS and Signal Heads, and Tomar - EVPE). Since the materials specified were sole source they could not be provided by a local vendor or supplier.
3. We at DBX feel strongly that we did put forth a "Good Faith Effort" based solely on not advertising for local subs or vendors who could not provide the services or products that this particular project called out for. In fact it is our opinion that if we had advertised, it would not have been in "Good Faith", but a sham and false advertising based on the above listed reasons.

If you have any questions, please contact me at (951) 296-9909.

Thank you,



Jim Perry
President

AGREEMENT

THIS AGREEMENT made this ___ day of _____, 20___, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and Sully-Miller Contracting Company, a Delaware corporation, hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 -- THE WORK

The Contractor shall complete the Work as specified or indicated under the Bid Schedule(s) of the City's Contract Documents entitled:

2010/2011 TRAFFIC SIGNAL IMPROVEMENTS CITY PROJECT NO. 10-07

The Work is generally described as the modification and upgrade of the existing traffic signals located at the Indian Canyon Drive/San Rafael Road, Ramon Road/Sunrise Way, and Ramon Road/Farrell Drive intersections.

ARTICLE 2 -- COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum of **\$1,000** for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

ARTICLE 3 -- CONTRACT PRICE Bid Schedules A, B and C: \$391,150.00

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid and Bid Schedule(s).

ARTICLE 4 -- THE CONTRACT DOCUMENTS

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Affidavit, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers 01 to 01, inclusive, and all Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

ARTICLE 5 -- PAYMENT PROCEDURES

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the Engineer or the City as provided in the Contract Documents.

ARTICLE 6 -- NOTICES

Whenever any provision of the Contract Documents requires the giving of a written Notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

ARTICLE 7 -- MISCELLANEOUS

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

ATTEST:
CITY OF PALM SPRINGS,
CALIFORNIA

APPROVED BY THE CITY COUNCIL:

By _____
City Clerk

Date _____

Agreement No. _____

APPROVED AS TO FORM:

By _____
City Attorney

Date _____

CONTENTS APPROVED:

By _____
City Engineer

Date _____

By _____
City Manager

Date _____

Corporations require two notarized signatures: One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

CONTRACTOR: Name: Sully-Miller Contracting Company Check one: Individual Partnership Corporation
Address: 135 S. State College Blvd., Ste. 400
Brea, CA 92821

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

State of _____
County of _____ ss

State of _____
County of _____ ss

On _____
before me, _____
personally appeared _____

On _____
before me, _____
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal: