



City Council Staff Report

Date: November 16, 2011 CONSENT CALENDAR
Subject: DEMUTH COMMUNITY CENTER GARDEN, CITY PROJECT 11-03
From: David H. Ready, City Manager
Initiated by: Public Works and Engineering Department, Office of Sustainability

SUMMARY

The Palm Springs Path to a Sustainable Community recommended a community garden pilot project as a key sustainability initiative. Approval of this contract will allow staff to proceed with construction of a community garden at the Demuth Community Center.

RECOMMENDATION:

- 1) Reject the bid protests submitted by Braughton Construction, Inc., and determine the bid submitted by Leon's Landscaping & Tree Service, Inc., as the lowest, responsive bid; and
- 2) Approve Agreement No. _____ in the amount of \$67,918.75 with Leon's Landscaping & Tree Service, Inc., for the Demuth Community Center Garden, City Project 11-03; and
- 3) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Palm Springs Path to a Sustainable Community recommended a community garden pilot project as a key sustainability initiative. To initiate this task, staff members who serve on the internal City Green Team formed a subcommittee to compile ideas, develop conceptual design, facilitate public input and solicit construction drawings.

The Office of Sustainability procured the services of TKD Associates to develop a landscape and irrigation plan for the site and provide a complete set of construction drawings. The design was developed based on examples of community garden projects already completed within the Coachella Valley, community recommendations and the site available for development. The Demuth Park Community Center location

was chosen based on demographics, community interest, site availability, and proximity to services such as lighting, restroom facilities, and parking.

At the April and May 2011 Sustainability Commission meetings the Sustainability Commission reviewed the conceptual design for the Demuth Community Garden, provided positive feedback and requested that staff execute the project.

On July 6, 2011, the City Council reviewed and approved the conceptual design for the Demuth Community Garden, and authorized staff to proceed with bidding. On August 11 and 18, 2011, the project was advertised for bids, and at 3:00 p.m. on September 13, 2011, the Procurement and Contracting Division received construction bids from the following contractors:

1. Leon's Landscaping & Tree Service, Inc.; Indio, CA:	\$67,918.75
2. Soholt & Company Landscape, Inc.; Riverside, CA:	\$85,366.20
3. Desert Concepts Construction, Inc.; Palm Desert, CA:	\$90,094.69
4. Tryco General Engineering; Lake Arrowhead, CA:	\$97,725.50
5. Braughton Construction, Inc.; Rancho Cucamonga, CA:	\$114,760.88
6. Moalej Builders, Inc.; Sherman Oaks, CA:	\$129,401.17
7. AToM Engineering Construction, Inc.; Hemet, CA:	\$137,398.00
8. G&M Construction, Inc.; Palm Springs, CA:	\$152,630.00
9. JDC Inc.; Rancho Cucamonga, CA:	\$159,044.00
10. Ted Enterprises, Inc.; San Clemente, CA:	\$173,900.00
11. Earth Sculptures, Inc.; Indio, CA:	\$200,114.40

The engineer's estimate was \$80,000.

On September 14, 2011, one of the bidders (Braughton Construction) submitted bid protests requesting the City to determine the apparent low bidder non-responsive for not submitting its bid on yellow paper as required by the specifications; for not identifying the percentage of work the bidder is self-performing; and for not demonstrating a good faith effort to find local hires in accordance with the City's Local Business Preference Program. Staff reviewed the bid protests and determined that the bid protests were without merit, and that any bid irregularity was immaterial to the apparent low bidder's bid. On September 20, 2011, Braughton Construction was advised that staff would recommend that the City Council deny the bid protests and award a contract to Leon's Landscaping & Tree Service as the lowest, responsive bidder (see copy of letter, Attachment 1).

Local Business Preference Compliance

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires prime contractors to 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; submission of good

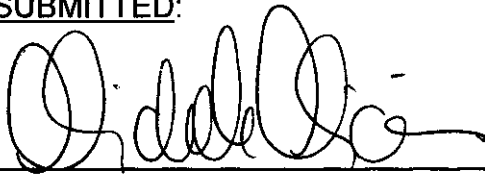
faith efforts is required. Of the 11 bids received, four are from a prime contractor located within the Coachella Valley, including the low bidder, Leon's Landscaping & Tree Service. Therefore, it is staff's determination that the prime contractor has demonstrated compliance with the Local Business Preference Program.

The company is a California corporation, and its officers are: Serafin Leon, President; Maria C. Leon, Secretary; and Juan Murillo, Superintendent.

FISCAL IMPACT:

Sufficient funding is available in account 420-6800-57021. No local miscellaneous General Funds are being used for this project.

SUBMITTED:

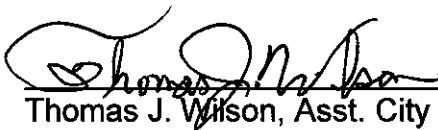


Michele Mician, Manager
Office of Sustainability

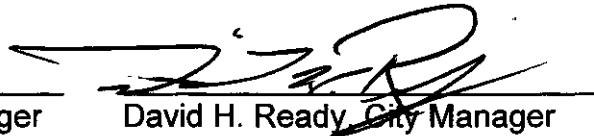


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Bid Protest Response Letter
2. 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

September 20, 2011

Mr. Gilbert Abel
Braughton Construction
10722 Arrow Rte Ste 810
Rancho Cucamonga, CA 91730

Via Facsimile: (909) 481-6136
Via E-Mail: gilbert@braughtonconstruction.com

Re: **Demuth Community Center Garden, City Project 11-03**
Bid Protests of September 14, 2011

Dear Mr. Abel,

On September 13, 2011, Leon's Landscaping & Tree Service, Inc. ("Leon's") submitted a bid in response to the City of Palm Springs' ("City") call for bids for the above-referenced project. After an initial review, Leon's was the apparent low-bidder. Subsequently, on September 14, 2011, the apparent fifth low-bidder, Braughton Construction, Inc. ("Braughton"), submitted three protest letters (the "bid protest") requesting that Leon's bid be rejected by the City as non-responsive to the bid specifications. The bid protest is considered a timely filed bid protest in accordance with Chapter 7.08 of the Palm Springs Municipal Code, and has identified the following three issues with regard to the apparent low bid submitted by Leon's:

- 1) Bid document (Bid Forms), page 1, fully state that the bid form must be reproduced on colored paper. Further details were given to provide yellow paper.
- 2) Bid document (Bid Forms), page 6, fully state that the bidder shall not perform less than 50% of the work identified in this bid and must write in the amount on this page.
- 3) Bid document (Bid Forms), page 8 & 9, fully state that the awarded bidders make available work for local contractors. If they are not able to find any local hires, they shall demonstrate a good faith effort.

The City has thoroughly reviewed the bid submitted by Leon's and City staff has found that Leon's bid is responsive to the bid specifications for the following reasons:

Regarding item 1 (that Leon's bid was not submitted on yellow paper), it is our determination that this oversight is a minor irregularity and is immaterial to the completeness and responsiveness of Leon's bid.

Regarding item 2 (to verify if Leon's bid identified the amount of work it self-performs), we acknowledge that Leon's bid did not identify the amount of work as requested on the bid form, however, the form lists two subcontractors from which we are able to identify and confirm that the low bidder intends to self-perform at least 50% of the work as required by the specifications. Therefore, it is our determination that this oversight is a minor irregularity and is immaterial to the completeness and responsiveness of Leon's bid.

Mr. Gilbert Abel
September 20, 2011
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Regarding item 3 (to verify if Leon's bid demonstrates compliance with the City's Local Business Preference Program ["Program"]), we have determined that Leon's bid complies with the Program, and that no bid irregularity exists.

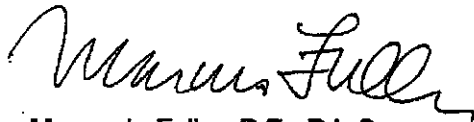
As requested in the bid protest, a copy of Leon's bid is enclosed for your reference.

~~With no other bid irregularities which would otherwise be considered material to the bid, it is our intention to schedule award of the contract to the apparent low bidder at the October 5, 2011, City Council meeting.~~ This determination has been made in accordance with Paragraph N-3(a) "Award of Contract" of the Notice Inviting Bids for this project, which states:

The City reserves the right after opening bids to reject any or all bids, to waive any informality (non-responsiveness) in a bid, or to make award to the lowest responsive, responsible bidder, and reject all other bids, as it may best serve the interest of the City.

Although your bid protest did not request an appeal before the City Council, it is your right to request an appeal of our decision to recommend award to the apparent low bidder to the City Council in accordance with Chapter 2.05 of the 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 September 27, 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@palmspringsca.gov.

Sincerely,



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

cc: Craig Gladders
file

AGREEMENT

THIS AGREEMENT made this _____ day of _____ in the year 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 Leon's Landscaping & Tree Service, Inc., a California 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:

DEMUTH COMMUNITY CENTER GARDEN CITY PROJECT NO. 11-03

The Work is generally described as follows:

Construction of a new community garden facility next to the Demuth Community Center in Palm Springs. Work includes clearing and grading of site, installation of an irrigation system, furnishing and installing plants and landscaping, installation of furniture, construction of concrete walkways, construction of precision block planter bins, installation of wrought iron and chain link fence, and all appurtenant work.

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 the 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 **\$792** for each calendar day that expires after the time specified in Article 2, herein.

ARTICLE 3 -- CONTRACT PRICE

\$67,918.75

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 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 provisions of 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

By _____
City Clerk

APPROVED BY THE CITY COUNCIL:

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: Leon's Landscaping & Tree Service, Inc. Check one: Individual Partnership X Corp
Address: 81500 Industrial Place
Indio, CA 92201

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.

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

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WITNESS my hand and official seal.

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Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal: