TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DATE: JULY 21, 2008

SUBJECT: APPROVAL OF A UTILITIES ENTERPRISE FUND CONTRACT WITH D’ARCY & HARTY CONSTRUCTION, INC. IN AN AMOUNT NOT TO EXCEED $1,177,695 FOR WASTEWATER COLLECTION SYSTEM REHABILITATION CAPITAL IMPROVEMENT PROGRAM PROJECT WC-06003 PROJECT 19B

RECOMMENDATION

Staff recommends that Council approve and authorize the City Manager or his designee to execute the attached contract with D’Arcy & Harty Construction, Inc. (Attachment A) in an amount not to exceed $1,177,695 for Wastewater Collection System Rehabilitation Capital Improvement Program WC-06003 (WWC Project 19B).

Staff also recommends that Council approve and authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with D’Arcy & Harty Construction, Inc. for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed $117,770.

DISCUSSION

Continuance of Contract Award From June 16 to July 21, 2008

Rehabilitation work on the wastewater collection system for this project will occur along Arastradero Road between King Arthur’s Court and El Camino Real. This contract award was originally scheduled for Council approval on June 16, 2008, to provide adequate time for the winning bidder to be able to complete work on Arastradero before the start of the school year on August 25. Immediately following completion of the work on Arastradero, the project is then scheduled to move to the California Avenue area with the schedule minimizing California Avenue area impacts during the September 21 Jewish Community Center event. However, the Council approval for award of the contract was moved to July 21, 2008, in order to allow staff adequate time to evaluate a bid protest filed by KJ Woods Construction Company, the low bidder, on June 13, 2008. The roughly one month delay has removed any flexibility in the schedule to accommodate anticipated construction issues.
In the protest letter, KJ Woods acknowledged that failure to complete forms in the Invitation for Bids (IFB) that identified the contractor’s specific experience for the work included in the bid items, as well as the experience of the contractor’s supervising staff could result in rejection of the bid. The requirement for completing the forms (Form Numbers 2735-1 and 2735-2) was stated in three different places in the bid documents: Section 2-Table of Contents, Section 300A – Bidder Information, and Section 2735 – Polyethylene Sewer Pipe. Further information about these forms was included in Section 2735 of the bid package. Section 2735 is a critical section of the bid package because it includes construction methods and materials used for 75% of the project. Thus, it is unlikely that a bidder would have overlooked this section. The city uses specialized construction techniques in its wastewater collection system rehabilitation and augmentation capital improvement program that requires a high level of expertise for correctly installing lasting facility improvements. The required bid forms are not generic “just for information” forms. The forms serve the important function of providing information critical to the evaluation of the bids. Bidders acknowledge their obligation to provide the information in the forms provided by signing the Bidder’s Bid Pages in Section 300 of the project Invitation for Bids.

After receiving KJ Woods’ written protest, the City’s Purchasing division conducted an investigation to determine whether the protest had merit. Following the investigation, Purchasing informed KJ Woods in writing that the protest was denied and offered KJ Woods an informal hearing with the Purchasing Manager. On July 8, the Purchasing Manager conducted an informal hearing with KJ Woods. After further consideration of the issues discussed in the hearing, the Purchasing Manager affirmed the City’s decision to deny KJ Woods’ protest in a letter faxed and mailed on July 9. If KJ Woods was dissatisfied with the Purchasing Manager’s response to the protest, KJ Woods had five working days to appeal to the Director of Administrative Services. A timely appeal was filed by the July 16 deadline.

The City has had projects installed by inexperienced contractors that resulted in additional construction costs, disruption to the community, increased and significant staff time to manage the projects and contracts, arbitration, and increased maintenance costs. Staff has developed and refined the issued bid documents over many years in order to be able to select the best qualified bidders with project-specific experience for the City’s infrastructure replacement projects. Staff has found that these forms have aided in the hiring of experienced contractors whose installations have been of high quality, requiring reduced maintenance over time, and whose construction practices have helped to minimize disruptions to the community. Staff uses the required forms to quickly identify and verify the types of projects and specific experience bidders claim in their bids.

For the last four fiscal years, the City has used some of the same forms on sanitary sewer collection CIP projects to evaluate bidders’ specific project experience. It is noted that, with the exception of one bid submittal, KJ Woods was a non-responsive bidder for failure to fill out the required project experience forms on all but one of the IFBs the City issued over the last four fiscal years. In the only instance where KJ Woods correctly filled out and submitted the required forms, the firm’s bid was determined and declared to be a non-responsive bid because staff was able to evaluate the information provided in the completed form and determine that the firm
lacked the required experience. KJ Woods failed to fill out the required forms for this IFB and, as a result, similar to what has been done with past non-responsive submissions, has been determined to be a non-responsive bidder. In the present case, however, staff expresses no opinion as to KJ Woods’ qualifications or experience, based on the lack of properly completed forms to use to make that determination.

Staff experience to date is that use of these IFB forms to thoroughly evaluate a bidder’s experience for the project specific work has provided the City with the lowest possible total overall project installation and maintenance costs and with well-qualified contractors.

Project Description
The work to be performed under the contract is for the replacement of approximately 8,100 linear feet of sanitary sewer mains of various sizes, 30 sewer manholes, and 200 sewer service laterals. The scope includes the replacement of sewer mains, manholes, and laterals on Arastradero Road and adjacent streets, as well as the replacement of sewer laterals on California Avenue in the business district. As this sanitary sewer rehabilitation contract is a critical component of the City’s overall infrastructure maintenance goals, staff wishes to avoid further delay in completing the work. Any additional delay will also negatively impact back-to-school traffic in the Arastradero Road area and the September 21 Jewish Community Center event on California Avenue.

Summary of Bid Process

<table>
<thead>
<tr>
<th>Bid Name/Number</th>
<th>Project 19B Sanitary Sewer Rehabilitation/126462</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Length of Project</td>
<td>180 calendar days</td>
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<tr>
<td>Number of Bids Mailed to Contractors</td>
<td>8</td>
</tr>
<tr>
<td>Number of Bids Mailed to Builder’s Exchanges</td>
<td>3</td>
</tr>
<tr>
<td>Total Days to Respond to Bid</td>
<td>21</td>
</tr>
<tr>
<td>Pre-Bid Meeting?</td>
<td>Yes</td>
</tr>
<tr>
<td>Number of Company Attendees at Pre-Bid Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Number of Bids Received:</td>
<td>6*</td>
</tr>
<tr>
<td>Bid Price Range</td>
<td>From a low of $958,000 to a high of $1,612,390</td>
</tr>
</tbody>
</table>

*2 responsive bids were received out of a total of 6 submittals. Bid summary is provided in Attachment B.

Staff has reviewed all bids submitted and found that four out of six bids were non-responsive because they failed to submit the required documentation for pipe-bursting experience. Staff recommends that the bid of $1,177,695 submitted by D’Arcy & Harty Construction, Inc. be accepted and that D’Arcy & Harty Construction, Inc. be declared the lowest responsive and responsible bidder. The bid is eighteen percent below the engineer’s estimate of $1,438,750. The change order amount of $117,770, which equals 10 percent of the total contract, is requested for unforeseen additional work that may develop during the project.
Staff confirmed with the Contractor's State License Board that the contractor has an active license on file. Staff checked references supplied by the contractor for previous work performed and found no significant complaints.

**PROJECT COORDINATION**
The work will be coordinated with the Public Works Department at the monthly department coordination meetings and by meeting independently with Public Works’ project managers whose projects may directly impact this project. During the coordination meetings, staff is aggressively targeting areas such as Arastradero Road and California Avenue to more closely plan and coordinate underground infrastructure into future street maintenance phases. The targeted streets will be resurfaced in Public Works Engineering’s upcoming projects after utility work is completed to prevent trenching in newly repaved streets.

**RESOURCE IMPACT**
Funds for this project are available in the Wastewater Collection Funds Capital Improvement Program budgets.

**POLICY IMPLICATIONS**
This recommendation is consistent with the Council-approved Utilities Strategic Plan, Key Strategy #2, “Invest in utility infrastructure to deliver reliable service.”

**ENVIRONMENTAL REVIEW**
This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Sections 15301 (b) repair and maintenance of existing public utility facilities and 15302 (c) replacement or reconstruction of existing utility facilities involving no expansion of capacity.

**ATTACHMENTS**
A: Contract  
B: Bid Summary  
C: Certificate of Non-Discrimination

**PREPARED BY:**
Silvia Santos, Project Engineer  
Edward Wu, Senior Project Engineer  
Roger Cwiak, Engineering Manager

**DEPARTMENT HEAD:**
__________________________________  
VALERIE O. FONG  
Director of Utilities

**CITY MANAGER APPROVAL:**
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Deputy City Managers