

City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Lipman Tennis Court Repair

DATE: September 21, 2009

City Council Goals:

To maintain and improve infrastructure. (#3)

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To obtain Council approval to expend public funds.

Recommendation:

Concur with the Brisbane School District's Board of Trustees' anticipated award of the Lipman Middle School Landslide Repair Project to Top Grade Construction, which includes repair of the tennis courts in the bid amount of \$64,278.

Background:

At its July 6, 2009 meeting, Council was updated on a pending Cooperative Agreement with the Brisbane School District to facilitate repairs to the Lipman Middle School hillside and the City of Brisbane's tennis courts. The underlying principles for that agreement included city staff serving in a reimbursable role as project & construction manager for the repairs, and the City reimbursing the District for their direct costs to design and construct the tennis court repairs. (See attached 7/6/09 staff report for further details.)

The District received bids for the project on 8/31/09, and is scheduled to consider award of the project at its September 22, 2009 meeting. The attached memorandum addressed to the District Superintendent details the results of the bid process, the pending approval from multiple state and federal agencies, and also includes a recommendation that the Superintendent be granted authority to delay the award of the project until November

if/when the necessary approvals are received. Unless all four agencies grant their approvals within the next 2 weeks, it is unlikely that construction will commence before summer of 2010.

Discussion:

If Council does not concur with the District's award, the District has the latitude to remove the tennis court repairs from their overall project. Assuming the City eventually wants the repairs completed, city staff will then have to commence the design/bid/construct process to complete the work.

Fiscal Impact:


FEMA previously provided the City an approved "Project Worksheet" for interim repairs of the tennis courts. It is assumed that our request for an amended final repair will likewise be approved. Emergency repair funds from the state/federal government are provided on a reimbursement basis. The initial outlay of funds is assumed to come from the city's General Fund.

Measure of Success

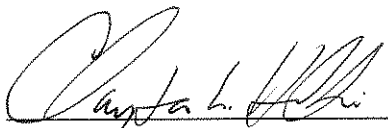
Completion of the tennis court repair allowing full, safe access to the original court area.

Attachments:

July 6, 2009 Brisbane City Council Agenda Report
September 22, 2009 Memorandum to Superintendent Presta



Director of Public Works/City Engineer



City Manager

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: City Manager Update on Pending Cooperative Agreement with BSD

DATE: July 6, 2009

City Council Goals:

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To update the City Council on a pending Cooperative Agreement with the Brisbane School District (BSD) to facilitate repairs to the Lipman Middle School hillside and the City of Brisbane's tennis courts.

The agreement is presently being drafted by the City Attorney's office, and will then require coordination of its final form with BSD. Due to the urgency of this work and the looming summer schedules for both agencies, the agreement will be signed by the executive officers of each agency.

Recommendation:

Provide any direction deemed necessary and appropriate.

Background:

Heavy rains in March and April of 2006 caused a landslide on Brisbane School District property that damaged the walkway students use to access Lipman Middle School, and also damaged the city owned and operated tennis courts. At FEMA's direction, the School District has gone through numerous design revisions, and is now approaching the point where the project is ready to bid.

BSD does not have staff with experience managing FEMA-funded civil engineering projects. These repairs are slightly more complicated than standard disaster recovery projects because FEMA has separated the approved funding into three "Project

Worksheets”; two are issued in favor of the District for repair of the landslide and walkway; one is issued in favor of the City for repair of the tennis courts and fencing.

As a follow on to the last “2x2” meeting between the District and the City, staff proposed the idea of a cooperative agreement where City Engineering personnel would provide project management and construction management to facilitate the delivery of this work.

Discussion:

The District Superintendent has already received approval from the Board to enter into an agreement with the City for the purpose described. The City Attorney is currently preparing a draft agreement to provide these services, and to also provide for the tennis court repairs to be bid and constructed under the same project as the landslide and walkway repairs.

Fiscal Impact:

The underlying principles for the agreement assume that the city will be reimbursed by District for all direct costs we incur (i.e., biological services consultant, disaster recovery consultant), and that we will bill the District for our labor and overhead costs. The principles also assume that the city will reimburse the District for their direct costs to design the tennis court repairs and to construct the repairs. The city anticipates that funding for the tennis court work will come from an amended version of the Project Worksheet previously prepared and approved by FEMA.

Measure of Success

Completion of all three repair efforts.

Director of Public Works/City Engineer

City Manager

M E M O R A N D U M

TO: Superintendent Toni Presta, Brisbane School District

FROM: Randy L. Breault, P.E.

SUBJECT: Lipman Middle School Slide Repair Project – Award Recommendation

DATE: for Board of Trustees meeting of 9/22/09

Recommendation:

I recommend the Board of Trustees take the following actions:

1. Reject Casey Construction's bid proposal as unresponsive.
2. Authorize the Superintendent to enter into a contract with Top Grade Construction in the amount of \$668,385.00 no later than November 22, 2009, with the condition that final project approvals are received from Division of the State Architect (DSA), U.S. Fish and Wildlife Service (USFWS), Federal Emergency Management Agency (FEMA), and California Emergency Management Agency (CalEMA) prior to entering into this contract¹.
3. If final project approval is not received by November 22, 2009 from all four (4) agencies listed above, then the Superintendent is directed to reject all bids.

Background:

The District received the following bids for this project on August 31, 2009:

Bidder	Bid Price	Corrected Bid
Casey Construction	\$599,182.00	<i>\$512,012.00</i>
Top Grade Construction	\$668,385.00	\$668,385.00
Siteworks Construction	\$692,997.50	<i>\$692,839.59</i>
Malcolm Drilling Const	\$694,667.00	\$694,667.00
ENGINEER'S ESTIMATE		\$650,000-\$700,000
W.R. Forde Associates	\$721,109.00	\$721,109.00
Tucker Engineering	\$743,122.29	<i>\$743,222.29</i>
J.J. Albanese Inc.	\$754,832.50	<i>\$755,130.50</i>
Cumiskey Const Corp	\$816,345.00	<i>\$1,072,244.16</i>
Soil Engineering Const	\$860,620.00	\$860,620.00
Valentine Corporation	\$899,648.00	\$899,648.00

¹ Paragraph 2.9 of the Instructions to Bidders specifically reserves the Board of Trustees' right to award the contract up to 90 calendar days after the bid opening.

Multiple bids were “corrected” during our review due to math errors by the bidders. The industry standard for bids is that in the case of a discrepancy between the “total” price for each line item, and the multiplication of the line item quantity by the “unit” price, the latter prevails.

The apparent low bidder, Casey Construction, advised after bid opening that they had mistakenly transferred the total unit price for bid item #9 directly from the original bid proposal on to the revised bid proposal provided with Addendum #1 without correcting for the quantity revision made in the addendum for this line item. Further complicating this error, when the unit price was transferred to the revised bid proposal, their administrative staff unintentionally changed the unit price from \$2300 per to \$230 per item. This combination of errors is so severe that I am recommending the school board reject Casey Construction’s proposal.²

Discussion:

Award of the project should be made to the lowest responsive and responsible bidder, Top Grade Construction. The errors in the apparent low bidder’s proposal are so severe that they should not be classified as administrative in nature; they can not be corrected without significantly modifying Casey Construction’s proposal. Top Grade Construction’s bid and supporting documentation have been reviewed, and in my estimate their proposal is fully responsive and they are a responsible bidder.

Delaying the bid award for up to ninety (90) days is necessary to allow for final approval regarding two matters; obtaining final clearance from DSA and the final clearance on a revised Biological Opinion.

The project engineer submitted plans and specifications to DSA for their review several months ago. Despite repeated inquires to the Oakland DSA Regional Manager’s Office, we have not had the courtesy of a response advising when the District might expect to receive final approval. The School District may wish to consider directing inquires be made above the local office.

The FEMA Project Worksheet for the landslide repair required a biological survey be completed prior to commencement of construction. The survey discovered the presence of silver lupine plants, which are host plants for the federally listed mission blue butterfly. As the FEMA-prepared Preliminary Biological Opinion allowed only for avoidance of protected species, it was necessary to develop a new Biological Opinion which would account for the “incidental take” of a mission blue butterfly.³ The new draft Biological Opinion was completed by USFWS on September 1, and is currently under joint review

² Casey Construction’s explanatory letters of 9/2/09 & 9/14/09, and Top Grade Construction’s letter of 9/4/09 protesting an award to Casey Construction are both attached to this memorandum.

³ Due to the close proximity of recorded sightings of the mission blue, it is generally assumed that any disturbance of a species host plant on this site could result in disturbance to this federally protected species.

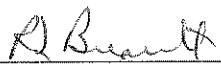
by USFWS and FEMA. CalEMA will also need to concur on the findings of the BO; their concurrence is assumed to follow with FEMA's.

Fiscal Impact:

The recommended awardee for this project offered a bid price within the design engineer's estimate. Disaster relief reimbursements for projects such as this are made on a reimbursable basis; that is, payment is made after the costs are expended. The current dollar amount approved by FEMA for this project is less than the awardee's bid price; District project management staff will submit a "version" request to CalEMA/FEMA based on the bid price and request an increase to the approved reimbursement. These requests are typically approved as the granting agencies understand their original amounts are based on estimates, while the competitive bid prices indicate what amount contractors are willing to accept for the work in the current market; however, there is no guarantee that the amount will be increased as requested.

Attachments:

- Casey Construction, Inc. 9/2/09 & 9/14/09 letters
- Top Grade Construction 9/4/09 letter



Randy L. Breault, P.E.

Casey Construction, Inc. 620 Handley Trail, Emerald Hills, Ca. 94062 650-369-1876

September 2, 2009

City of Brisbane
50 Park Place
Brisbane, Ca. 94005

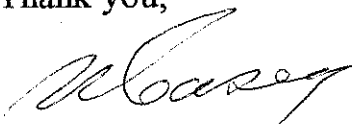
RECEIVED
SEP 07 2009
Brisbane Public Works Dept.

Reference: Landslide Repair at Existing Tennis Courts

Attn: Matt Lee,

This letter to the City of Brisbane is regarding the Landslide Repair at Existing Tennis Courts for the Brisbane School District bid on August 31, 2009. We apologize for the discrepancy in our bid in reference to bid item #9, "Installation of Tie-Back". This was due to an administrative error in our office. Our estimator filled in the original Bid Proposal sheet which called for 42 each installation of Tie-backs at the unit price of \$2300.00/tie-back for a total amount of \$96,600.00. The estimator's draft of unit items including totals was then transferred onto the new Bid Proposal per Addendum #1 by our secretary preparing the bid documents. While rewriting the unit items and totals, an error was made in transferring the unit item price by leaving out a "0" and writing \$230.00 instead of \$2300.00 although the total price was transferred correctly as \$96,600.00. Please accept our apologies for any inconvenience caused.

Thank you,



General Engineering & Building Contractor
CA. LIC. 798190-A, HIC

⋮

Casey Construction, Inc. 620 Handley Trail, Emerald Hills, Ca. 94062 650-369-1876

September 14, 2009

City of Brisbane
50 Park Place
Brisbane, Ca. 94005

Reference: Landslide Repair at Existing Tennis Courts

Attn: Matt Lee and Brisbane School District,

This letter is in regards to Casey Construction's bid for the Lipman Landslide Repair project, in follow up to our previous letter explaining the administrative error on our part with regard to bid item #9 on tie-back installation. We think that it is obvious that the bid item was supposed to be \$2,300.00 and not \$230.00 as was mistakenly written in for the unit price. At our price of \$2,300.00 each, we are still 23% lower than the next lowest bidder. We feel that based on the other bids received for this item, it is obvious that the mistake was and as any engineer familiar with the tie back installation process would agree it would be ludicrous to think that these could be done for \$230.00 each. Therefore, we request that you consider our bid for award at the unit price of \$2,300.00 which would bring our total bid to \$596,882.00 which is \$71,503.00 less than the next lowest bidder.

If the district feels that they can not award us this contract because of this administrative error, then we would respectfully request that the district release Casey Construction bid and bid bond provider based on this administrative error.

Yours respectfully,



Mel Casey
Gerry McGrillen

General Engineering & Building Contractor
CA. LIC. 798190-A, HIC



September 4, 2009

via Facsimile and E-mail

Matt Lee
City of Brisbane
City Hall
50 Park Place
Brisbane, California 94005

Re: Landslide Repair at Existing Tennis Court Project
Brisbane School District

Subject: Bid Protest

Dear Mr. Lee:

Top Grade Construction hereby protests the award of the above referenced project to Casey Construction. Top Grade Construction is the lowest responsive and responsible bidder and should be awarded the project.

On August 31, 2009 @3:00 PM, bids were submitted for the project. At the bid opening, Casey Construction's bid of \$599,182.00 was announced as the apparent low bidder with Top Grade Construction's bid of \$668,385.00 as the apparent second low bidder. Upon further investigation of the City's "Balanced Bid Check" tabulation and conversations with you, Casey Construction's bid had a different bid total of \$512,012.00 due to a corrected mathematical extension in one of their bid items (Bid Item No. 9 – Installation of Tie-back). In comparing their unit price for Bid Item No. 9 of \$23.00 each per tie-back with the other contractors, it is apparent there is obviously a mistake with their bid price. The average price per each tie-back is \$2,976.67 for the other nine bidders.

For the reason set forth above, Top Grade Construction requests the City of Brisbane / Brisbane School District reject the bid of Casey Construction as non-responsive and award the project to Top Grade Construction, the lowest responsive and responsible bidder.

Please note that if the City of Brisbane / Brisbane School District plans to issue an award based upon Casey Construction's bid total of \$599,182.00 not the \$512,012.00, we will seek legal remedies against the City / School District.

Sincerely,

Top Grade Construction

A handwritten signature in black ink, appearing to read "Rick Morales", is written over a horizontal line.

Rick Morales
Estimator

Telephone No.: (650) 356-6011