



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/20/2023

ITEM NO: 19

DATE: June 5, 2023

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Consider the Following Actions for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601):

- a. Consider a Protest in Opposition of the Intent to Award a Construction Agreement for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601) to Tucker Construction;
- b. Authorize the Town Manager to Award and Execute a Construction Agreement with Tucker Construction Inc. in an Amount not to Exceed \$249,490; and
- c. Authorize Staff to Execute Change Orders in an Amount Not to Exceed Ten Percent of the Contract Award Amount

RECOMMENDATION:

Consider the following actions for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601):

- a. Consider a protest in opposition of the intent to award a Construction Agreement for the Adult Recreation Center - Americans with Disabilities Act (ADA) Compliant Public Restroom Project (CIP No. 821-2601) to Tucker Construction;
- b. Authorize the Town Manager to award and execute a Construction Agreement with Tucker Construction Inc. in an amount not to exceed \$249,490; and
- c. Authorize staff to execute change orders in an amount not to exceed ten percent of the contract award amount.

PREPARED BY: Dan Keller
Facilities and Environmental Services Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Parks and Public Works Director

SUBJECT: Protest and Intent to Award Construction Agreement for the Adult Recreation Center Americans with Disabilities Act (ADA) Public Restroom Project (CIP No. 821-2601)
DATE: June 5, 2023

BACKGROUND:

The Adult Recreation Center is lacking a restroom that is compliant with the Americans with Disabilities Act (ADA). Architectural plans have been developed and permitting has been approved to implement this project. Town Council authorized the project for bidding at its meeting of February 7, 2023. The project was advertised for construction on Friday, May 5, 2023. On May 18, 2023, bid packages were opened, and two contractors submitted bids: Tucker Construction Inc. and San Jose Demolition Inc. On May 19, 2023, staff emailed San Jose Demolition and noted that they were the apparent low bidder (Attachment 1).

DISCUSSION:

During detailed review of the bids and associated documentation, staff determined that San Jose Demolition did not have the required Class A or B Contractor License at the time of the bid opening. The bid specifications required that responsive bids demonstrate that the bidder must possess a Class A or B Contractor License at the time of the bid opening (see Attachment 6). On San Jose Demolition's bid form, "Class A License" was noted next to their Class C License number.

Staff contacted the Contractor State Licensing Board (CSLB) and verified that San Jose Demolition Inc. currently holds a Class C License and did not possess a Class A Contractor License as of May 18th, which was the date of the bid opening. CSLB confirmed that San Jose Demolition had applied for a Class A Contractor License and made an individual with a Class A License an Officer of their company on May 11, 2023. CSLB confirmed that the License change would not be in effect until after approval from the Contractor State Licensing Board.

CSLB also confirmed that an Officer's Contractor License does not transfer to the company. In other words, San Jose Demolition did not obtain a Class A Contractor License by virtue of hiring an Officer with a Class A Contractor License. CSLB confirmed that obtaining a Class A Contractor License takes approximately 30 days from the date of application. As a result of this information from the CSLB, staff notified San Jose Demolition via a letter dated June 1 that their bid was not responsive (Attachment 2). In accordance with the Town's purchasing policy, staff provided San Jose Demolition a 10-day bid protest period.

On June 9, 2023, San Jose Demolition submitted a formal bid protest (Attachment 3) stating that since an Officer of their company holds a Class A license, the firm was eligible for bidding, but did not provide statutory authority. CLSB has stated that the entity (rather than an employee of the entity) with which the Town would enter into contract must possess the applicable license on the date of the bid submittal.

SUBJECT: Protest and Intent to Award Construction Agreement for the Adult Recreation Center Americans with Disabilities Act (ADA) Public Restroom Project (CIP No. 821-2601)
DATE: June 5, 2023

DISCUSSION (continued):

Tucker Construction Inc. provided the one other bid for this project, which was within 10% of the engineer's estimate with a base bid of \$250,000 (Attachment 4).

Staff recommends that the Town Council:

- 1) Deny the bid protest and reject the bid from San Jose Demolition as non-responsive; and
- 2) Award the Construction Agreement to Tucker Construction Inc. (Attachment 5) and authorize the Town Manager to execute the contract on behalf of the Town.

CONTRACTOR	Base Bid
Engineer's Estimate	\$250,000
Tucker Construction Inc.	\$249,490
San Jose Demolition Inc.	\$247,000

ALTERNATIVE:

The Town Council could reject all bids and re-bid the project. However, because the Town's grant money must be committed no later than June 30, 2023, this option is not recommended.

CONCLUSION:

Town Council's rejection of the bid protest and award to Tucker Construction will allow this project to move forward in a timely manner.

FISCAL IMPACT:

The adopted Fiscal Year (FY) 2022/23-2026/27 Capital Improvement Program (CIP) Budget is sufficient for the construction contract.

SUBJECT: Protest and Intent to Award Construction Agreement for the Adult Recreation Center Americans with Disabilities Act (ADA) Public Restroom Project (CIP No. 821-2601)
 DATE: June 5, 2023

FISCAL IMPACT (continued):

Americans with Disabilities Act (ADA) Public Restroom Upgrade - Adult Recreation Center CIP No. 821-2601		
	Budget	Costs
GFAR	\$ 183,000	
Grant Funding - Santa Clara County Board of Supervisors	\$ 250,000	
Grant Funding - Community Development Block Grant (CDBG)	\$ 218,979	
Total Budget	\$ 651,979	
Consultant Services		\$ 65,365
Construction		\$ 249,490
Construction Contingency (15%)		\$ 24,949
Other Project Delivery Costs		\$ 830
Total Costs		\$ 340,634
Available Balance		\$ 311,345

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorical Exempt (Section 15301) as a modification to an existing facility.

Attachments:

1. Email - Intent to Award
2. Letter – Bid Not Responsive
3. Protest Letter
4. Bid Summary
5. Construction Agreement with Exhibit A – Tucker Construction Inc. Bid
6. Project Specifications