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To: Lynden City Council
From: Robert Carmichael, Luke Phifer, and Bridget Bryck
Date: April 21, 2025
Subject: Withdrawal of Resolution 25-1119 - Rejecting All Bids for Stage 2 Prep - Wastewater Treatment Plant Demolition Project

This memo provides (1) an update regarding the status of bid evaluation for the above-referenced project, and (2) an explanation as to why proposed Resolution No. 25-1119 (Rejecting All Bids for Stage 2 Prep – Wastewater Treatment Plant Demolition Project) has been withdrawn from the agenda for the April 21, 2025 City Council meeting.

Project Background:

Four bids for this project were received and opened on March 19, 2025. BOSS Construction submitted the apparent low responsive bid, coming in approximately \$400,000 below the next lowest bidder and nearly \$1,000,000 under the engineer's estimate.

On March 20, 2025, the City received a timely bid protest from Faber Construction, Inc. (the third lowest bidder) asserting that BOSS Construction did not meet the supplemental bidder responsibility criteria.

Preliminary Determination Regarding BOSS Construction's Bid

Following a review of the material submitted by BOSS Construction, the Public Works Department determined that BOSS had not demonstrated it met the experience qualifications required by the supplemental responsibility criteria included in the contract documents. Specifically, Section 1-02.1(2) of the bid specifications required bidders to provide evidence of successful completion of at least three wastewater treatment plant projects with a value exceeding \$1 million within the past five years. Based on the information submitted with the bid, BOSS did not clearly establish that it had satisfied this requirement.

As a result of the issues with the bids received, the Public Works Department proposed Resolution 25-1119, which would have rejected all bids on the project, pursuant to RCW [35.23.352](#).

Statutory Requirements re: Determining Bidder Responsibility

In order to be considered a responsible bidder and qualified to be awarded a public works project, the bidder must meet any relevant supplemental criteria established by the municipality for a project. [RCW 39.04.350\(3\)](#). However, if it is not clear from the material submitted that the bidder meets the criteria, a municipality “may base its determination of responsibility upon any available information related to the supplemental criteria.” [RCW 39.04.350\(3\)\(c\)](#).

Furthermore, if the municipality determines the bidder is not responsible, it must provide the bidder an opportunity to present additional information concerning its satisfaction of the relevant criteria. [RCW 39.04.350\(3\)\(d\)](#). Any additional information submitted must be considered by the municipality prior to issuing a final determination. *Id.* These requirements are reflected in the bid documents for the project (*see* 1-02.1(4)).

Additional Information Submitted by BOSS Construction

On April 18, 2025, following the City's preliminary determination, BOSS submitted a letter from its legal counsel along with supplemental project information intended to clarify and support its qualifications.

The letter included a list of nine projects completed within the past five years, each exceeding \$1 million in value and involving similar scope of work. It also explained that certain projects listed as “ongoing” in the original bid submittal are now physically complete and operational, with only administrative close-out tasks remaining.

After reviewing the additional information provided, the Public Works Department believes that BOSS has satisfactorily demonstrated compliance with the supplemental responsibility criteria. The Department found that the nature, scope, and timing of the projects submitted are sufficiently comparable to the work required under the City’s contract. Additionally, BOSS has not been found to lack any of the mandatory responsibility elements under RCW 39.04.350(1).

Withdrawal of Resolution and Anticipated Final Determination

As a result of these developments, the Department has withdrawn the proposed resolution to reject all bids from the agenda for the April 21, 2025, City Council meeting.

Based on its evaluation of the supplemental material provided by BOSS Construction (as permitted by RCW 39.04.350(3) and Section 1-02.1(4) of the bid documents) on April 18, 2025, the Public Works Department anticipates (1) issuing a final determination that BOSS is a responsible bidder (which would render BOSS the lowest responsive and responsible bidder), and (2) proposing a resolution to accept BOSS’ bid at the May 5, 2025, City Council meeting.