



## CITY OF MARSHALL AGENDA ITEM REPORT

<b>Meeting Date:</b>	Tuesday, September 14, 2021
<b>Category:</b>	TABLED ITEM
<b>Type:</b>	ACTION
<b>Subject:</b>	Project Z87 - Diversion Channel Slope Repair and Sheet Piling Removal Project – Consider Award of Bid.
<b>Background Information:</b>	<p>This agenda item was tabled at the August 24, 2021 meeting to September 14, 2021 meeting. The following is a summary of the unapproved minutes:</p> <ul style="list-style-type: none"> <li>- Motion made to award to R&amp;G Construction Co. of Marshall, MN in the amount of \$98,950.44 and failed by a 3-3 vote.</li> <li>- Motion made to award to Towne &amp; Country Excavating, LLC of Garvin, MN in the amount of \$85,094.00 and failed by a 2-4 vote.</li> <li>- Motion made to table until the September 14, 2021, regular Council meeting and carried by a 6-0 vote.</li> </ul> <p>The Redwood River Diversion Channel begins west of the Lyon County Public Works property at the diversion structure east of County Road 7. Over the last several years, the channel bank has eroded significantly in several locations upstream of the drop structure north of Madrid Street. There are several locations where sheet piling used for outfall installation was left in place. This sheet piling, along with numerous recent high-water events, has contributed to the erosion of the diversion channel banks. The drainage ditches adjacent to the diversion channel spill into the channel via flume channels. These flume channels have also exhibited erosion and need repair.</p> <p>City Engineering staff has identified a project to repair the severely eroded channel bank locations, remove sheet piling, and repair flume channels and storm water pipe outfalls. Staff originally budgeted \$155,000 in the 2021 Capital Budget to perform repairs in the diversion channel.</p> <p>At the July 27, 2021 meeting, City Council authorized staff to advertise for bids.</p> <p>On August 18, 2021, bids were received for the above-referenced project. At the bid opening, it was noted that our electronic bidding system indicated that three bids were completed and those three bids were read aloud. It was noted that R &amp; G Construction of Marshall was the apparent low bidder with a bid of \$98,950.44.</p> <p>Following the bid opening, City staff identified that a fourth bid was submitted on time, but the bidder had not acknowledged the third and last project addendum that was issued. Because the final addendum was not acknowledged, our electronic bidding program identified the bid as being incomplete. Upon investigation, staff realized that Towne &amp; Country Excavating’s proposal was completed and submitted on Friday, August 13<sup>th</sup>. The third addendum was issued on Monday, August 16<sup>th</sup>. The electronic bidding program sends an e-mail notification that an addendum is issued, but Towne &amp; Country did not check e-mail or otherwise failed to acknowledge the</p>

	<p>most recent addendum. Therefore, the program turned Towne &amp; Country's "completed" submittal into an "incomplete" submittal. Towne &amp; Country's proposal was for \$85,094.00 and the contractor has notified staff that Addendum No. 3 does not impact their submittal.</p> <p>The purpose of Addendum No. 3 was to notify all bidders of an alternative method of completing a portion of the contract work. Staff determined the need to issue Addendum No. 3 because staff had authorized one contractor that they may utilize an alternative method to complete work and it was important to issue notification of the alternative method to all plan holders to help ensure that contractors are aware of all construction methods available to them to give the City of Marshall the best possible price.</p> <p>City staff has conferred with City legal staff regarding this situation. As is common in municipal bid advertisements, the City's advertisements contain the language that the City reserves the right to reject all bids or waive informalities or irregularities. There are several court rulings that have established that a bidder who has deviated from the specifications may still be awarded a contract if the deviation was a non-material deviation. A general rule is that a deviation is material if it gives a bidder a substantial advantage or benefit over other bidders. Conversely, non-material deviations are those that are technical irregularities that do not injure other bidders.</p> <p>Reviewing Addendum No. 3, it is not requiring any additional information from bidders, it is not changing the scope of work that is required to be completed, it is not changing project quantities, it does not contain a new proposal sheet, it does not change the nature of work to be completed, and by City staff's determination, it is largely non-material in nature because it is a question and answer type of project addendum.</p> <p>To make an award recommendation in this instance, the City Council will need to make the determination of whether the failed acknowledgement of Addendum No. 3 constitutes a material deviation.</p>
<b>Fiscal Impact:</b>	<p>Staff budgeted \$155,000 in the CIP for this project. The project will be funded by the Surface Water Management Utility. If awarded to Towne &amp; Country Excavating, the project will cost \$103,644.49, including 5% contingency and 16% engineering fees. If awarded to R&amp;G Construction, the project will cost \$120,521.64, including 5% contingency and 16% engineering fees.</p>
<b>Alternative/ Variations:</b>	<ol style="list-style-type: none"> <li>1) that the Council declare the failed acknowledgement of Addendum No. 3 to be material in nature, reject the non-conforming apparent low bid and authorize award of the project to the second low bid received from R&amp;G Construction Co. of Marshall, MN in the amount of \$98,950.44.</li> <li>2) that the Council reject all bids and put the contract out for bid again.</li> </ol>
<b>Recommendation:</b>	<p>that the Council declare the failed acknowledgement of Addendum No. 3 to be non-material in nature and authorize award of the project to Towne &amp; Country Excavating, LLC of Garvin, MN in the amount of \$85,094.00.</p>