



City of Needles, California Request for City Council Action

☒ CITY COUNCIL ☐ NPUA ☒ Regular ☐ Board of Public Utilities

Meeting Date: November 14, 2023

Title: Reject All Bids for the Phase IV-A Water Service Replacement and Street Improvements Project and Authorize Staff to Re-package the Project Bid Documents and Re-solicit Bids for Construction

Background: On September 27, 2023, the Phase IV-A Water Service Replacement and Street Improvements Project was advertised for bid with a bid opening date of November 1, 2023.

The proposed project consists of the removal and replacement of approximately 171 water service laterals, grind and pave approximately 399,275 S.F. of 2" thick asphalt, placement of petromat fabric, adjust water valve cans and manhole lids to grade, and pavement striping.

On November 1, 2023, three (3) bids were received which are summarized below:


Christensen Brothers General Engineering, Inc.	\$2,254,132.82
EverLevel Holdings, LLC.	\$2,577,800.50
United Paving	\$2,798,180.35

Contracts for competitively bid public projects must be awarded to the lowest responsible bidder unless deemed unresponsive. As shown above, Christensen Brothers General Engineering, Inc. of Apple Valley, CA submitted the lowest bid and is the apparent low bidder. However, on November 6, 2023, City Staff received a written bid protest from the 2nd lowest bidder, Everlevel Holdings, Inc. The bid protest claimed that the apparent low bidder, Christensen Brothers, did not comply with the mandatory requirements for a responsive bid related to the list of subcontractors.

After review of all bid documents and considering all information in the bid protest, staff recommends that the City Council reject all bids received. The City Council may, in its discretion, reject all bids per Public Contract Code §20166.

Staff further recommends that the City Council authorize staff to re-package the project bid documents and re-solicit bids for construction. Staff will work with the project engineering design consultant, TKE Engineering, to further refine plans and specifications to eliminate any ambiguities and to ensure concise bid documents.

Fiscal Impact: The City will incur minimal costs related to rejecting bids for the Phase IV-A Water Service Replacement and Street Improvement project.


Finance Dept.

Recommendation: Reject All Bids for the Phase IV-A Water Service Replacement and Street Improvements Project and Authorize Staff to Re-package the Project Bid Documents and Re-solicit Bids for Construction.

Submitted By: Kathy Raasch, Projects Manager

City Management Review:  **Date:** 11-9-23

Approved: ☐ Not Approved: ☐ Tabled: ☐ Other: ☐

Agenda Item: 11



October 3, 2023

City of Needles
Office of City Clerk
817 Third Street
Needles, CA 92363

Re: Everlevel Holdings, LLC's Protest of The Bid Submitted by
Christensen Brothers General Engineering, Inc.

Project Description: Phase IV-A: Water Service Replacement & Street
Improvement Project

Bid Date: 11/01/2023

Dear City of Needles,

Everlevel Holdings, LLC ("Everlevel") submits the following formal protest of the bid submitted by Christensen Brothers General Engineering, Inc. ("CBGE") for the Construction of Phase IV-A Water Service Replacement & Street Improvement Project. In compliance with the Contract Documents and Specifications the following information is provided to support the protest, in which CBGE's bid should be deemed non-responsive, and the project should be awarded to the next responsive and responsible bidder Everlevel.

In accordance with the requirements (of the bid documents), this letter is intended to be:

- A. A protest against any award of the contract to a bidder other than EverLevel.
- B. A request to be informed (by telephone or fax) as soon as any recommendations concerning any issues pertaining to the award of the above contract are available to the public, so we can immediately inspect those reports or recommendations.

CBGE's Subcontractor Listing form is not in compliance with the mandatory requirements for a responsive bid: CBGE DID NOT list a clear percentage of project cost for the listed subcontractor All American Asphalt. The Contract Documents clearly states, "A BID will be considered responsive if it conforms in ALL respects with the requirements of the invitation to bid and CONTRACT DOCUMENTS" (Attachment A), including a complete and compliant subcontractor listing form (Attachment B).



CBGE listed the percentage of contract cost for All American Asphalt as <8 %. This is in violation of the required information of the Subcontractor Listing Form, as it specifically required a clear percentage to be listed at the time of bid. A <8% listing can be anywhere from \$0 to \$180,105 based on CBGE's bid value of \$2,254,132.82. Not only is this not in compliance with the CONTRACT DOCUMENTS it allows CBGE to negotiate (bid shop) after the bid with All American Asphalt. This gives CBGE a definite unfair advantage at the time of bid. In addition, the city has no way to confirm the committed dollar value for the listed subcontractor All American Asphalt. In addition, the listed value of <8% can not clearly determine whether the city will require the MANDATORY subcontractor bonding requirements set forth in the Invitation to Bid (Attachment C). This is in violation of the city's evaluation and award requirements in determining whether a bidder is responsive and responsible for award set forth in the CONTRACT DOCUMENTS Invitation to Bid (Attachment D).

Christensen Brothers Bid Is Non-Responsive Under California Law And The Bid Documents

California law mandates that a public entity must competitively bid public works contracts and award the contract to the lowest responsible bidder that submits a responsive bid. (*MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368; *Associated Builders & Contractors, Inc. v. Metropolitan Water Dist.* (1997) 59 Cal.App.4th 1503, 1507.) These requirements are strictly enforced to protect taxpayers by inviting competition, which helps "guard against favoritism, improvidence, extravagance, fraud and corruption," and serves "to secure the best work or supplies at the lowest price practicable." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) Section 9 of the Specification section 00 11 16.

California law prohibits the City of Needles from awarding the contract to a non-responsive bidder like CBGE. (*Konica Business Machines v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454 ("Konica").) To be responsive, a bid must conform to the material terms of the bid documents. (*City of Inglewood v. Los Angeles County Civic Center Authority* (1972) 7 Cal.3d 861, 867; *Konica, supra*, 206 Cal.App.3d at 456-57; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180 ("Menefee").) While a public entity may waive minor or inconsequential irregularities in a bid, bids that differ materially from the bid specifications must be rejected. (*Desilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1422; *Ghilotti Construction Co. v. Richmond* (1996) 45 Cal.App.4th 897, 904.) Typically, the material terms of a bid, which are not waivable, are those that affect price, quantity, quality, or delivery, and those the terms that the bid package clearly identifies as mandatory. (*Konica, supra*, 206 Cal.App.3d at p. 454-45; *Ghilotti, supra*, 45 Cal.App.4th at p. 906-07; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442 ("Valley") ["there can be factors other than price which are material to the bid"].)

CBGE's bid must be deemed non-responsive for failure to submit a complete and compliant Subcontracting Listing Form as part of the mandatory CONTRACT DOCUMENTS:



In sum, CBGE simply failed to provide a complete and compliant bid as shown in the above facts and documents. Based upon the foregoing, Everlevel requests that the City of Needles reject CBGE's bid as non-responsive, and award the project contract to Everlevel Holdings, LLC, the lowest responsive and responsible bidder.

Sincerely,

Craig Roth
President – EverLevel Holdings, LLC

ATTACHMENT A

integrity or moral integrity or fails to meet any other pertinent standard or criteria established by the intent of the CONTRACT DOCUMENTS.

A BID will be considered responsive if it conforms in all respects with the requirements of the Invitation to Bid, CONTRACT DOCUMENTS, the Public Contracts Code and other applicable law. To be considered responsive without limitation, a BID shall:

1. Be completed, signed and be responsive in all respects to all Bidding requirements contained in the Invitation to Bid, CONTRACT DOCUMENTS, Public Contracts Code, and other applicable law.
2. Be made on the BID forms provided with the CONTRACT DOCUMENTS and submitted in accordance with the applicable Bidding requirements.
3. Include all additional documents provided with the CONTRACT DOCUMENTS and submitted in accordance with the applicable Bidding requirements.
4. Include Acknowledgment of ADDENDA.

To be considered responsible, a BIDDER must also establish to the complete satisfaction of City, as a minimum, that it:

1. Has adequate financial resources to meet the obligations of the CONTRACT DOCUMENTS and will maintain same for the CONTRACT TIME.
2. Has adequate equipment to perform the WORK properly and within the CONTRACT TIME.
3. Has evidence of the necessary experience and technical qualifications in the type of WORK provided for in the Agreement.
4. Will conform to all requirements and conditions contained in the Invitation to Bid CONTRACT DOCUMENTS, Public Contracts Code, and other applicable law.
5. Proposed SUBCONTRACTORS, suppliers or other persons or organizations hold valid State, county and local licenses or certificates covering all operations or specialty trades and areas of political jurisdiction involved in the WORK.
6. Has conformed to the pre-award Qualification Submittals requirement outlined in these Instructions to BIDDERS.
7. Does not have a documented record of past projects resulting in arbitration or litigation in which it was found to be at fault.
8. Comply with Public Works Contractor Registration Laws SB 854 and 96.

7. **LIST OF SUBCONTRACTORS** (Must be submitted with BID Form)

Name, Address, and Phone Number of SUBCONTRACTOR	Trade / License #	Public Works Registration #	Percent of PROJECT Cost
ALL AMERICAN ASPHALT P O BOX 2229 CORONA, CA 92878 (951) 736-7600	Fabric and Coatings 267073	1000001051	<8
			0%
		LESS THAN 8%	0%
			0%
			0%
			0%
			0%
			0%
			0%

TOTAL: 0%

IS IT 0%?

Contractor Name: _____

this job. BIDDERS must possess a valid **California Class A (General CONTRACTOR) License** and a City business license at the time of award of the BID. SUBCONTRACTORS must possess the appropriate licenses for their respective specialties. Failure to possess the specified license(s) shall act as a bar to award of contract.

BID security in the amount of 10% of the BID amount shall be required with all BIDs. The BID check shall be a certified or cashier's check drawn upon a responsible bank or trust company and must be scanned and uploaded to Planetbids portal as a required document and sent to City of Needles 817 Third Street, Needles, CA 92363 if awarded bid within 72 hours. In lieu of the BID check, a BIDDER's BOND will be acceptable in the amount of 10% of the BID amount. BID security shall be made payable to City and shall be in a form acceptable to City. City reserves the right to reject any forms of security which in its sole opinion do not comply with all requirements of California law, codes, or regulations. Unsuccessful BIDDERS shall be entitled to the prompt return of all BID security monies. BID security of the successful BIDDER shall be returned upon execution of the Agreement and submittal of all other required CONTRACT DOCUMENTS. In the event the successful BIDDER fails to enter into an Agreement and to provide the required BONDS, insurance certificates, endorsements, and other required documentation within ten (10) days after NOTICE OF AWARD, the BID security shall be forfeited by BIDDER and retained by City as liquidated damages.

A Payment BOND and Performance BOND, each in an amount equal to 100% of the total Agreement amount shall be required concurrently with the execution of the Agreement and shall be in the form set forth in the CONTRACT DOCUMENTS. Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR may substitute securities for money withheld by City. In accordance with Public Contract Code section 4108, CONTRACTOR shall require all SUBCONTRACTORS providing labor and materials more than \$50,000 to supply Payment and Performance BONDS in the amounts and manner required of CONTRACTOR. CONTRACTOR shall specify this requirement for SUBCONTRACTOR BONDS in its written or published request for SUBCONTRACTOR bids. If the cost of the BONDS is to be borne by the SUBCONTRACTORS, that fact shall also be stated.

Pursuant to Public Contract Code section 3400(b), City may make a finding that designates certain materials, products, things, or services by specific brand or trade name for the statutorily enumerated purposes. As required by section 3400(b), if City has made such findings, these findings shall be set forth in more detail in the SUPPLEMENTAL CONDITIONS. These findings, if any, as well as the materials, products, things, or services and their specific brand or trade names that may be used for the PROJECT may be found in the SUPPLEMENTAL CONDITIONS.

It is the responsibility of BIDDER to see that any BID electronically submitted through the PlanetBids e-bidding system via the link provided for Project No. PK2301 be submitted prior to the deadline. The receiving time date stamp in PlanetBids will be the governing time for acceptability of received bids. Late bids will not be accepted.

City reserves the right to reject all BIDs or any portion of any BID.

liability on the part of either party.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates, including the per diem wages applicable to the work, and for holiday and overtime work, including employer payments for health and welfare, pension, vacation, and similar purposes, in the County of Riverside in which the work is to be done, have been determined by the Director of the Department of Industrial Relations, State of California. These wages are set forth in the General Prevailing Wage Rates for this project, available from the California Department of Industrial Relations' Internet web site at www.dir.ca.gov. Future effective prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations, are referenced but not printed in the general prevailing wage rates.

A weekly certified payroll is required during the term of construction. Payment of invoice may be delayed when certified payrolls are not submitted weekly. City shall make progress payments on any properly completed payment request submitted by CONTRACTOR. The payment request shall not be deemed properly completed unless certified payroll form has been properly completed and submitted on a weekly basis for each week worked during the time covered by said payment request.

City may make such investigations as deemed necessary to determine the ability of BIDDER to perform the WORK, and BIDDER shall furnish to City all such information and data for this purpose as City may request. City reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy City that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will be deemed non-responsive and will not be accepted.

SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents.

Award will be made to the lowest responsive, responsible BIDDER. The lowest responsive, responsible BIDDER will be determined by:

1. The lowest BID cost to City; and
2. An evaluation of BIDDER's experience and proposal that complies with all the requirements prescribed in the Invitation to Bid, CONTRACT DOCUMENTS, the Public Contracts Code and other applicable law.

Only the manufacturers (suppliers) listed on the Schedule of Manufacturers shall be used in determining the total BID amount, if applicable. To the extent permitted by applicable state and federal laws and regulations, City reserves the right to reject all BIDs, to waive all informalities, and to disregard all nonconforming, non-responsive, or conditional BIDs, or to re-advertise for BIDs. Also, City reserves the right to reject the BID of any BIDDER if City believes that it would not be in the best interest of the City to make an award to that BIDDER, whether because the BID is not responsive or BIDDER is unqualified or of doubtful financial ability, or is found to lack honesty,

City of Needles
 Bid Results for Project Phase IV-A Water Service Replacement & Street Improvements (PW2301)
 Issued on 09/27/2023
 Bid Due on November 01, 2023 3:30 PM (PST)
 Exported on 11/09/2023

Item Num	Description	U of M	Quantity	Christensen Brothers General Engineering, Inc.	Everlevel Holdings, LLC	United Paving Co.
1	Mobilization / Demobilization	LS	1	\$106,000.00	\$120,000.00	\$50,000.00
2	Traffic, Control and Safety	LS	1	\$85,000.00	\$178,000.00	\$85,765.00
3	SWPPP, Best Management Practice and NPDES Requirements	LS	1	\$37,000.00	\$20,000.00	\$25,000.00
4	Encroachment Permit (8 Streets)	LS	8	\$33,088.00	\$33,088.00	\$33,088.00
5	Grind Existing AC Pavement (2" Min)	SF	399275	\$223,594.00	\$139,746.25	\$431,217.00
6	Construct 2" Asphalt Concrete Pavement Overlay with Petromat	SF	399275	\$1,117,970.00	\$1,018,151.25	\$1,389,477.00
7	Construct Asphalt Concrete Leveling Course, As Required	Ton	36	\$6,768.00	\$12,600.00	\$12,780.00
8	Remove Existing AC Pavement and Subgrade (10" Total Depth)	SF	423	\$1,412.82	\$6,345.00	\$6,454.98
9	Construct 6" Miscellaneous Aggregate Base over (12" Compacted Native)	CY	16	\$2,752.00	\$5,200.00	\$3,608.96
10	Construct 2" Base Asphalt Concrete Pavement	Ton	31	\$5,704.00	\$10,850.00	\$11,098.00
11	Construct 2" Asphalt Concrete Overlay	Ton	31	\$5,704.00	\$10,850.00	\$11,098.00
12	Install Striping	LS	1	\$16,400.00	\$25,000.00	\$13,347.00
13	Remove and Replace Existing Service Laterals	EA	171	\$571,140.00	\$952,470.00	\$653,823.63
14	Adjust Existing Manhole to Grade with New Concrete Collar	EA	26	\$24,700.00	\$26,000.00	\$41,293.98
15	Adjust Existing Valve Can to Grade with New Concrete Collar	EA	26	\$16,900.00	\$19,500.00	\$30,128.80
			Subtotal	\$2,254,132.82	\$2,577,800.50	\$2,798,180.35
			Total	\$2,254,132.82	\$2,577,800.50	\$2,798,180.35

Unit Price	Description	U of M	Quantity	Christensen Brothers General Engineering, Inc.	Everlevel Holdings, LLC	United Paving Co.
1	Mobilization / Demobilization	LS	1	\$106,000.00	\$120,000.00	\$50,000.00
2	Traffic, Control and Safety	LS	1	\$85,000.00	\$178,000.00	\$85,765.00
3	SWPPP, Best Management Practice and NPDES Requirements	LS	1	\$37,000.00	\$20,000.00	\$25,000.00
4	Encroachment Permit (8 Streets)	LS	8	\$4,136.00	\$4,136.00	\$4,136.00
5	Grind Existing AC Pavement (2" Min)	SF	399275	\$0.56	\$0.35	\$1.08
6	Construct 2" Asphalt Concrete Pavement Overlay with Petromat	SF	399275	\$2.80	\$2.55	\$3.48
7	Construct Asphalt Concrete Leveling Course, As Required	Ton	36	\$188.00	\$350.00	\$355.00
8	Remove Existing AC Pavement and Subgrade (10" Total Depth)	SF	423	\$3.34	\$15.00	\$15.26
9	Construct 6" Miscellaneous Aggregate Base over (12" Compacted Native)	CY	16	\$172.00	\$325.00	\$225.56
10	Construct 2" Base Asphalt Concrete Pavement	Ton	31	\$184.00	\$350.00	\$358.00
11	Construct 2" Asphalt Concrete Overlay	Ton	31	\$184.00	\$350.00	\$358.00
12	Install Striping	LS	1	\$16,400.00	\$25,000.00	\$13,347.00
13	Remove and Replace Existing Service Laterals	EA	171	\$3,340.00	\$5,570.00	\$3,823.53
14	Adjust Existing Manhole to Grade with New Concrete Collar	EA	26	\$950.00	\$1,000.00	\$1,588.23
15	Adjust Existing Valve Can to Grade with New Concrete Collar	EA	26	\$650.00	\$750.00	\$1,158.80