

## EAST BETHEL CITY COUNCIL SPECIAL MEETING

July 10, 2013

The East Bethel City Council met on July 10, 2013 at 5:30 PM for a special meeting at City Hall.

MEMBERS PRESENT:      Bob DeRoche              Ron Koller              Richard Lawrence (5:38 PM)  
                                 Heidi Moegerle              Tom Ronning

ALSO PRESENT:              Jack Davis, City Administrator  
                                 Mark Vierling, City Attorney  
                                 Craig Jochum, City Engineer

Call to Order      **The July 10, 2013 City Council special meeting was called to order by Acting Mayor Moegerle at 5:31 PM.**

Adopt Agenda      **Moegerle made a motion to adopt the July 10, 2013 City Council special meeting agenda. Ronning seconded; all in favor, motion carries.**

Consider              Davis explained staff is recommending that Council accept Alternate 1 & 2, but not Alternate 3.  
Approval of              The City's forcemain project Base Bid consists of the construction of 6-inch, 8-inch and 10-inch  
Resolution              forcemain and one lift station. Bids were opened on May 14, 2013. There were also three  
2013-38              Alternate Bids received. The Alternate Bids were as follows:

Accepting              **Alternate Bid No. 1:** Construct a gravity pipe between the existing lift station on Pierce Street  
Bids for the              to the new lift station. This alternate will allow the City to eliminate the current lift station on  
Castle              Pierce Street.

Towers/Whispering Aspen              **Alternate Bid No. 2:** Replace the proposed 8 inch forcemain with 10 inch forcemain. This  
2013              alternate will provide capacity of an additional 375 connections and will reduce the energy  
Forcemain              consumption of the Lift Station pumps.

Project and              **Alternate Bid No. 3:** Replace the existing lift station that services the Castle Towers Mobile  
Change Order              Home Park. This lift station is approximately 41 years old and is in very poor condition.  
No. 1

A detailed summary of the Base Bids and the Alternate Bids for all the contractors is included on the attached resolution.

If Alternate No. 1 and Alternate No. 2 are accepted certain items will be eliminated from the Base Bid. These items are summarized on attached Change Order No. 1. The total contract amount as outlined on Change Order No. 1 is \$2,084,071.19.

Staff is recommending the Council award the Base Bid, Alternate Bid No. 1 and Alternate Bid No. 2. to LaTour Construction, Inc. in the amount of \$2,084,071.19. Adding costs for easements, overhead and contingency the total estimated project cost is \$2,355,000.00. Staff recommends adopting Resolution 2013-38 Accepting Bids and Change Order No. 1 and awarding the contract for the Castle Towers/Whispering Aspen 2013 Forcemain project to LaTour Construction in the amount of \$2,084,071.19 contingent on LaTour Construction executing Change Order No. 1. After this is discussed, we will discuss Alternate 3 as a separate agenda item.

Moegerle, "Do we have any indication from LaTour that they will accept Change Order No. 1?" Vierling, "Yes, we do. And actually, for record clarity, what you will be doing is the first action will be adopting the resolution awarding the base bid to LaTour Construction for the \$1,849,982.69 contingent on the Change Order being executed. And then the second action, a motion after that approving the change order."

**Moegerle made a motion to approve LaTour's bid in the amount of \$2,084,071.19 contingent upon LaTour executing Change Order #1. Vierling, "We are going to ask you to adjust that action. We are asking for you to award LaTour Construction the Base Bid. Ronning made an amendment that we award LaTour the Base Bid in the amount of \$1,849,982.69 contingent on the Change Order being executed. Moegerle accepted the amendment. Ronning seconded.**

DeRoche, "What is the bottom line? If we eliminate Alternate 3, at some point we will have to put it back in. Right?" Davis, "Alternate 3 is a separate item. This is the pump station that connects Castle Towers and we can keep that station in operation. However, it does need to be rehabilitated. We feel that by bidding this separately, we might get a lower bid. We are proposing this be bid independently as a separate project in the next agenda item." DeRoche, "This is based on possible litigation? That is why we made this decision?" Vierling, "It is, in part, influenced by that issue." Ronning, "Doesn't the plaintiff have to show harm of some kind?" Vierling, "The issue that you have is that timing is important with these projects. If you end up with litigation, it isn't always whether they are right or wrong. You can end up winning the war, but because of timing and costs you can lose the battle. There was basically a dispute on the tabulation. There was an issue on how the low number was tabulated, no matter who got it. So that is why we are doing what we are doing tonight, awarding the base and coming back with a change order to award 1 & 2. Because even under the letter you got last week from LaTour's counsel, there was fundamentally a dispute of how the total numbers were being computed. This way we are not going to have a debate with them down road on this issue. Fundamentally, usually the statutory damage for not awarding to the low bidder is they get their bid costs. But the opportunity for people to try to make other type of claims in a litigation framework, it can hold up construction, force construction. We don't want to be in that position."

Moegerle, "On Alternate Bid Number 3 is it, in and of itself, sufficient that there would be someone that would bid on that portion alone?" Jochum, "Yes. We might get a different bidder pool. Some that might have not been able to bid on it before." DeRoche, "It could come back at even more." Jochum, "I think LaTour's bid was \$340,000 and the lowest was \$220,000. I apologize. I could have made the spec a little tighter, this has never happened to me. It just so happens that it was extremely close between the two low bidders. I will gladly pick up the advertising cost to re-advertise for Alternate Number 3."

Lawrence, "On the base bid, some of the questions that came out (when we were pulling the bids out) were that LaTour didn't bid on the whole project to make it look lower? I want to make sure we are getting a bid that is correct on the project, so we don't have to keep coming back here on this." Jochum, "The specifications were very clear that we had the right to pick the base bid and any alternate or combination. I evaluated them. I didn't specifically say that in the spec. It says, 'You only get paid for the work you put in.' That is where the spec is weak. That is what LaTour's is saying, 'You have to add them all up. If you pick 1, 2 & 3, who is low at the end?' Even though, at the end of the day when the project is done a different contractor might have been low because things come out of the base bid." DeRoche, "We have been down this road before."

Moegerle, "Has there been any correspondence with Minger on this? They were going to be awarded the contract, until we got the letter from LaTour?" Vierling, "That was if the Council went with 1, 2 and 3 as part of the add-on to the base bid." Moegerle, "Can we anticipate a letter like this from Minger?" Vierling, "I don't know if you can or can't. But, I don't think it will make any difference, because the way the contract is being awarded out, they wouldn't have a leg to stand on either way." Jochum, "That is part of the reason for kicking around all three. Because it is on the record that either method you use, LaTour is low." DeRoche, "My concern is getting in to that we will have Change Orders". Jochum, "The base bid includes detaching the old lift station and hooking it to the new system. So, as it stands it is a complete project." Ronning, "Is there any fudge room in these bids? Or do they come to us for the cushion?" Jochum, "Typically, in the mobilization costs, that is where they put their cushion."

DeRoche called the question. **All in favor, motion carries.**

**Moegerle made a motion to approve Change Order No. 1 between the City of East Bethel and LaTour Construction for the Castle Towers/Whispering Aspen 2013 Forcemain Project for a net increase of \$ 234,088.50. Ronning seconded; all in favor, motion carries.**

Consider Approval to Re-Bid for Alternate 3 the Castle Towers Mobile Home Park Lift Station Reconstruction

Davis explained that the reconstruction of the Castle Towers Mobile Home Park Lift Station was bid as Alternate No. 3 for the Castle Towers/Whispering Aspen 2013 Forcemain Project. Since this alternate was not accepted staff is requesting approval to solicit bids. The bids received for this lift station reconstruction ranged from \$220,012.25 to \$628,696.61. Bids would be advertised on July 19, 2013 and tabulated and presented to the City Council at the August 21, 2013 meeting.

This project will be financed by the excess bond funds from the Phase 1, Project 1 Utility Project. These funds are available and appropriate for this project.

Staff requests approval to solicit bids for the reconstruction of the Castle Towers Mobile Home Park Lift Station. All these projects are being financed by the bond funds for the sewer project. These funds have to be spent on infrastructure. If we decide not to spend them, we cannot use them to pay the bonds down. So, this is something in our case that is truly an investment. Because we are going to get something back from this in the long run.

Moegerle, "What happens with those funds if we don't and can't spend them on anything else?" Davis, "The bond requirements are they have to be spent. There may be some penalties if you don't spend them. The only penalty that we are aware of now if you don't spend them by December 1<sup>st</sup> is we cannot use them to accumulate any interest. But, since our interest bearing accounts on these ranges from .012% to .032% that isn't much of an impact."

**Moegerle made a motion to solicit re-bids for Alternate #3 on the reconstruction of the Castle Towers Mobile Home Park Lift Station. Lawrence seconded.**

Lawrence, "This is a pretty old lift station. It looks like it is 41 years old." Davis, "It is very old. It has problems with infiltration. Excess ground water flows in. The pumps have to work harder. With new pumps it will make for a much more sufficient system and it will increase the life of the facility. At some point it is going to have to be done. It is an excellent use for these bond funds, rather than using City general funds for this purpose." Lawrence, "Where is this lifting the waste to? Davis, "This is lifting all the waste back to the new lift station we are installing." Koller, "How many mobile homes can fit into Castle Towers?" Davis, "There is probably space for 150." Koller, "And we have a high bid for \$600,000?" Davis, "Well, I think somebody didn't want that bid very much. I don't think that is indicative of what the price is going to be." **All in favor, motion carries.**

Adjourn

**DeRoche made a motion to adjourn at 5:53 PM. Lawrence seconded; all in favor, motion carries.**

Attest:

Wendy Warren  
Deputy City Clerk