

# COLFAX CITY COUNCIL MEETING

## Special Meeting

Railroad Depot Building  
99 Railroad St, Colfax, CA.

**Monday April 30, 2012**

**3:00 PM**

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the building & safety director, (530) 346-2313. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibilities to this meeting.

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### 1. OPENING:

- A. Call To Order
- B. Roll Call
- C. Pledge Of Allegiance
- D. Approval of Agenda Order

This is the time for changes to the agenda to be considered including removal, postponement or change to agenda sequence.

**Recommended Action:** By motion accept the agenda as presented or amended.

### 2. COUNCIL BUSINESS

- A. Conduct Discussion and Adopt One of Three Alternative Resolutions Either (1) Determining That Campbell Construction Is The Lowest Responsive, Responsible Bidder On The Pond 3 Liner Project And, Waiving Any Irregularities In Its Bid, or (2) Determining that Campbell Construction's Bid on the Pond 3 Liner Project is Non-Responsive to the Invitation to Bid, Rejecting Campbell Construction's Bid as Non-Responsive and Awarding the Pond 3 Liner Project to Civil Engineering Construction as Second Low Bidder or (3) Rejecting All Bids and Re-Advertising the Pond 3 Liner Project

**Recommended Action:** Staff recommends the City Council conduct the discussion as indicated and take the action the City Council deems appropriate

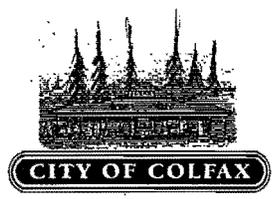
### 3. ADJOURNMENT

**Administrative Remedies must be exhausted prior to action being initiated in a court of law. If you challenge City Council action in court, you may be limited to raising only those issues you or someone else raised at a public hearing described in this notice/agenda, or in written correspondence delivered to the City Clerk of the City of Colfax at, or prior to said public hearing.**

AGENDA POSTED, April 26, 2012



Karen Pierce, City Clerk



**REPORT TO  
COLFAX CITY COUNCIL**

**COUNCIL MEETING OF  
April 25, 2012**

Agenda Item No.

2A

**To:** Honorable Mayor and Members of the City Council  
**From:** Bruce Kranz, City Manager  
**Prepared By:** Alfred A. Cabral, City Attorney  
**Date:** April 30, 2012 Special Meeting  
**Subject:** Conduct Discussion and Adopt One of Three Alternative Resolutions Either (1) Determining That Campbell Construction Is The Lowest Responsive, Responsible Bidder On The Pond 3 Liner Project And, Waiving Any Irregularities In Its Bid, or (2) Determining that Campbell Construction's Bid on the Pond 3 Liner Project is Non-Responsive to the Invitation to Bid, Rejecting Campbell Construction's Bid as Non-Responsive and Awarding the Pond 3 Liner Project to Civil Engineering Construction as Second Low Bidder or (3) Rejecting All Bids and Re-Advertising the Pond 3 Liner Project.

**Recommended Action:** Staff recommends the City Council conduct the discussion as indicated and take the action the City Council deems appropriate.

**ISSUE STATEMENT AND DISCUSSION:** The City is required to install a liner in Pond 3 at its wastewater treatment plant by November 30, 2012. The construction bid documents for installation of a geomembrane liner in Pond 3 and associated earthwork and fencing were completed in January, 2012 and competitive bids were solicited.

The bid opening was held on March 14, 2012. The City received proposals from nine bidders. The bid results are attached as Exhibit A and range from a low of \$1,995,730.00 by Campbell Construction to a high of \$3,316,237.65. The Engineer's Construction Cost Estimate for the project was \$2,626,800.

Campbell Construction failed to submit documentation of its good faith efforts to seek and utilize disadvantaged business enterprises ("DBEs") for this project. Campbell Construction claims that the bid documents did not clearly require submission of the good faith effort documentation at bid opening because the title of Bid Addendum 2, Section 00301-3, Paragraph 7 was changed from "Required Bid Documents" to "Document Required At Time Of Bid" and Paragraph 7 made no mention of the good faith effort documentation.

Although Campbell correctly pointed out the change in title to that paragraph in Addendum 2, Campbell's interpretation overlooks the following:

- A. In Invitation to Bid Section 00200, page 00020-3 provides "All information supporting the Bidders [sic] Good Faith Effort (GFE) must be submitted at bid opening.

Requirements concerning the GFE of BIDDERS are described in Section 00100 – Instructions to Bidders, Bid Form in Section 00301 and Guidelines for Clean Water State Revolving Fund (CWSFR) [sic] Program/Disadvantaged Business Enterprise (DBE) and Approval of Award (AOA), dated December 2010 DBE Requirements.”

B. Original Bid page 00301-3, paragraph 6 refers to several attached documents that are made a condition of the bid. Those documents include the Guidelines for Clean Water State Revolving Fund Program (paragraph 6a), Disadvantaged Business Enterprise (DBE) and Approval of Award (AOA) dated December, 2010 (paragraph 6b), DBE/MBE/WBE ~Good Faith Effort (“GFE”) Requirements (paragraph 6c) and Davis Bacon wage requirements (paragraph 6d & e). The Guidelines state “Once a bidder is selected, the prime contractor should compile the information required by the GFE process. **All information supporting the GFE must be submitted at bid opening.** Recipient shall review the successful bidder’s records closely to be sure that the GFE was made. Failure of either the bidder or prime contractor/subcontractor to follow the GFE and provide the necessary information could jeopardize funding of the project. The following situations and circumstances require action as indicated: ...3. Failure of the apparent low bidder to perform the GFE prior to bid opening will result in its bid being declared non-responsive. The construction contract may then be awarded to the next low, responsive, and responsible bidder that meets the requirements or the recipient may re-advertise the project.”

C. Revised Bid Addendum 1 issued February 15, 2012, Item 4 requires GFE postings for a minimum of 15 days before the bid. Section 5 states “All information supporting the Good Faith Effort (GFE) must be submitted at bid opening.” Item 6 provides, in part “Complying/Completing the Six Good Faith Efforts is mandatory regardless of Goals obtained or not.” These requirements were not subsequently modified.

D. There are three attachments to Bid Addendum 1. Attachment 1 is entitled “Disadvantaged Business Enterprise (DBE) Contractor Subcontractor Certification. Attachment 2 is entitled Disadvantaged Business Enterprise (DBE) Selected Prime Contractor/Recipient. Attachment 3 is entitled Disadvantaged Business Enterprise (DBE) Bidders List Contractor/Subcontractor. The bottom of each form states in bold font “THIS FORM SHALL BE SUBMITTED AT BID OPENING.” This requirement was not subsequently modified.

Thus, there is little doubt that Campbell Construction failed to comply with the bid requirements because it failed to submit its GFE documentation at bid opening. The issue for the Council to consider is whether it should waive that failure as inconsequential and award the contract to Campbell or whether it should declare Campbell’s bid non-responsive and either award the contract to Civil Engineering Construction or reject all bids and re-advertise the project.

Staff was initially concerned that Campbell’s failure to submit that documentation would render its proposal non-responsive and subject to mandatory rejection. Guidelines issued by the State Water Resources Control Board suggest that failure to comply with the good faith effort requirements could jeopardize project funding.

Staff contacted Meghan Brown at the State Water Resources Control Board to ascertain whether the City must disqualify Campbell Construction for its failure to submit the required good faith effort documentation at bid opening. On April 6, 2012, Ms. Brown confirmed that as long as acceptable good faith efforts to seek and utilize DBEs were made prior to bid opening, the City may accept the

bid even if all of the supporting documentation was not submitted until after bid opening. A copy of Ms. Brown's April 6, 2012 email is attached as Exhibit B.

After receiving Ms. Brown's email, staff reviewed Campbell Construction's documentation of the good faith efforts it made to seek and utilize DBEs on the project. Staff determined that the documentation submitted adequately demonstrated Campbell Construction's compliance with the requirement to seek and utilize DBEs. Copies of Campbell Construction's documentation are attached as Exhibit C to this staff report. Campbell appears to have complied with the GFE requirements but failed to submit its documentation at bid opening.

The City received a formal bid protest from the 2<sup>nd</sup> low bidder, Civil Engineering Construction. A copy of Civil Engineering Construction's protest is attached as Exhibit D to this staff report. Mr. Hogan and his attorney appeared at the April 25, 2012 City Council meeting and presented their case to the Council.

Civil Engineering Construction asserts that Campbell Construction's bid should be deemed non-responsive for three basic reasons: (1) Campbell failed to submit the required good faith effort documentation at bid opening, (2) Campbell failed to indicate a slide gate supplier on page 301-8 of its proposal and (3) Campbell failed to submit additional required GFE information at bid opening.

Claim (1) that Campbell failed to submit the required good faith effort documentation at bid opening and claim (3) that Campbell failed to submit additional required GFE information at bid opening have been adequately addressed above and by Ms. Brown's email attached as Exhibit B. In staff's opinion, Campbell adequately completed the required good faith efforts even if its documentation was not submitted at bid opening.

Civil Engineering's claim that Campbell failed to indicate a slide gate supplier on page 301-8 of its proposal is without consequence or merit. Page 00301-8 is included as part of Civil Engineering's bid protest. Item 3 requires each bidder to select and supply a slide gate manufactured either by Golden Harvest or Rodney Hunt.

Bidders were required to circle either "Golden Harvest" or "Rodney Hunt" on page 00301-8. The instructions in this regard provide "A. Bidder agrees to the following...3. Only one manufacturer per equipment item is circled or written in, and that the circling of more than one or no manufacturers per equipment item is acknowledgment by the Bidder that he will furnish and install the equipment of the first listed manufacturer for that item." Since Campbell circled neither Golden Harvest nor Rodney Hunt and did not write in another manufacturer, Campbell is required to supply a slide gate manufactured by Golden Harvest.

It is therefore staff's opinion that any irregularities in Campbell Construction's bid for failure to submit its GFE documentation at bid opening can be waived and the project can be awarded to Campbell Construction. The important qualifier in this opinion is that the Council can but is not required to do so. The Council has the right to require bidders to demand strict compliance with its bid documents and can reject Campbell's bid for failure to comply. Conversely, since the error made by Campbell is one allowed by the State Water Resources Control Board and did not affect the amount of the bid, give one bidder an advantage over another, become a potential vehicle for favoritism, influence potential bidders to refrain from bidding or affect the ability to make bid comparisons, the error can be waived as inconsequential.

**ALTERNATIVES:** None recommended by staff. Awarding the project to the second low bidder will unnecessarily cost an additional \$152,770 for the same project. Re-bidding may unnecessarily

delay the project and place the City in jeopardy of violating the mandates under which this project must proceed.

**FINANCIAL AND/OR POLICY IMPLICATIONS:** Construction costs are funded from the Grant/Loan from the State Clean Water Revolving Fund and EPA funds associated with the Collection System I&I Repair/Replacement and WWTP Reservoir Pond Lining Project.

- Exhibits
- A. Bid Results
  - B. April 6, 2012 Email from Meghan Brown.
  - C. Campbell Construction's GFE Documentation
  - D. Civil Engineering Construction's bid protest.