



## City of Biggs Memorandum

**To: Honorable Mayor and Members of the City Council**

**Date: June 20, 2014**

**From: Brian Martin, PE – City Engineer**

**Subject: Phase I Wastewater Treatment Improvement Project**

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### **BACKGROUND**

The City's existing wastewater treatment plant (WWTP) is in need of upgrades to enhance its operational capabilities and meet updated discharge permit requirements from the Regional Water Quality Control Board (RWQCB). To address these needs, the City developed a two-phase WWTP improvement project. The Phase 1 project includes maintenance and capital improvements at the City's treatment plant. The Phase 2 project includes land acquisition and disposal system improvements.

The project was put out to public bid in March and bids were opened on May 13, 2014. The City received three bids for the project and the apparent low bidder was Cal Electro, Inc. of Redding, California with a bid of \$1,839,000.

The City received a bid protest from the second low bidder, RTA Construction, Inc. of Redding California. The protest from RTA was reviewed and evaluated and it was determined that the protest had no substantial merit.

Then on June 10, 2014, just prior to the start of the Council Meeting, the City received a request from the International Brotherhood of Electrical Workers (IBEW) requesting that the City reject Cal Electro Inc.'s bid on the City's Phase 1 Wastewater Treatment Improvement Project as a "Non Responsive" bidder. IBEW stated that Cal Electro, Inc. is not qualified to perform all aspects of the construction. We have reviewed this request and have the following comments:

1. The IBEW's request is not a bid protest because Section 3.107 "Bid Protest" of the specifications requires that the party filing a protest must have actually submitted a bid for the work. In addition, a protest must be submitted to the City Engineer before 5:00pm on the fifth (5<sup>th</sup>) working day following the bid opening.
2. In their request, the IBEW refers to Section 16390, "Control Panels", 1.03 "Quality Assurance" and implies that this section requires a subcontractor. Section 1.03E of Section 16390 of the specifications requires that custom control panels shall be

fabricated by a UL 508 recognized panel assembler. It does not state that the installation shall be done by a UL 508 recognized panel assembler. Cal Electro, Inc was contacted on this issue and it is their intent to utilize a UL 508 panel fabricator (Supplier) and then install the panels with their own (Cal Electro, Inc.) forces. Cal Electro, Inc. has a C-10 Electrical Contractor License. Under California contractor licensing laws an electrical contractor places, installs, erects or connects any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar voltaic cells, or any part of these of which generate, transmit, transform or utilize electrical energy in any form for any purpose.

3. Cal Electro, Inc. intends to install the fabricated panels assembled by a UL508 assembler. This does not require the UL 508 assembler to be a subcontractor because the UL 508 fabricator will not be field installing the panels. In this situation, the UL 508 fabricator is a vendor and not a subcontractor.

Subsequent to the above evaluation of the IBEW request to reject the Cal Electro Inc. bid the City, on June 13, 2014, received additional communication from the IBEW representative Andrew J. Meredith. This communication was in the form of an email with attachments. One attachment was a copy of a letter dated June 11, 2014 to the Contracts Administration Bureau of San Francisco Water Power Sewer (San Francisco Public Utilities Commission) requesting that Cal Electro, Inc. not be awarded the bid for the Moccasin Control and Server Building project because they felt Cal Electro was not a responsible bidder. Cal Electro, Inc. was the apparent low bidder on the project, but the SFPUD has a 10 percent preference for local contractors. As a result, Robert E. Boyer of Twain Harte, California, became the low bidder because of the 10 percent local preference.

The letter also indicated that Cal Electro Inc. was involved in a court injunction that resulted in a Court Ordered Injunction for the Alder Point Water District. We spoke with Mr. Robert Meissner of Cal Electro Inc. on this issue and were informed that the third low bidder, Mercer-Fraser, sued the Alder point County Water District because it felt that the District should not have awarded the contract for the project to Cal Electro Inc. because Cal Electro Inc. was not a responsible bidder. The California Department of Public Health was also named as a Respondent because it was providing the funding for the project. On May 30, 2014 the court issued a tentative ruling denying the petition and indicating that the District acted well within its discretion in awarding the contract to Cal Electro Inc.

The letter further indicated that Cal Electro Inc. did not list their sub-contractors properly for the City of Biggs Waste Water Project and there was a bid protest. We have previously evaluated this issue and have determined that Cal Electro Inc. has properly listed their subcontractors.

The letter also includes references to various court filings between 1993 and 2007. No attempt was made to review these filings. Cal Electro Inc. has indicated that these types of filings are not uncommon in the construction contracting industry and all of those filings have been settled.

Should the City decide not to award the project to Cal Electro Inc. and award to the second low bidder Cal Electro Inc. could potentially have justification to file an action against the City. If the City decides to not award the project to Cal Electro Inc. it is recommended that all of the bids

be rejected and the bid process be re-done. This, of course, would add additional time and costs to the project, and make it more difficult to meet the time line imposed in the State of California Time Schedule Order.

**CITY ATTORNEY REVIEW**

The city attorney has reviewed all of the documents referenced and has discussed the objections of IBEW with the city administrator and the city's engineers. The city attorney concurs with this recommendation.

**RECOMMENDATION**

Based on the above, it is recommended that the City award the Phase 1 Wastewater Improvement Treatment Project to Cal Electro Inc. in the amount of \$1,839,000 contingent upon a favorable review from SWRCB and notice of full project funding through SRF sources.