



CITY OF RAPID CITY

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MEMORANDUM

TO: Mayor Allender and Common Council

FROM: Wade Nyberg *WEN*

DATE: March 13, 2017

RE: WRF Potable Water Improvements Bid Award

BACKGROUND

This memo is a follow up to the email I sent related to the WRF Potable Water Improvements Project. As you may recall, bids for the Project were opened last Tuesday. The Engineer's Estimate was \$550,392.05. There were 2 bidders: RCS Construction @ \$585,048.60 and Mainline Contracting @ \$736,094.66. Following bid opening, RCS Construction notified Dan Coon, the Project Manager, that it had made an error in its bid and wished to withdraw its bid. In the bid tab for the project (Item 67 – Plumbing), RCS entered a lump sum bid of \$6,600. The Engineer's Estimate for that item was \$67,091.06; Mainline's bid for the item was \$82,500.

Bid withdrawal is not allowed after bids are opened. SDCL 5-18A-5(6). RCS has indicated to Dan that it does not want to enter into a contract for the amount it bid. RCS did provide a bid bond to secure that it would enter a contract for the bid amount, which is required to be 10% of the bid. Engineering staff has met with Bob Scull, and they informed him of their intention to pursue award of the bid to RCS.

There are four chapters of state statutes that deal with the bidding process. The bid process begins with the City issuing an invitation for bids. Bids may be modified or withdrawn up until the time the bids are opened. Upon opening, the bids are considered legally binding offers to do the work described at the prices in the bidder's proposal. The offer is generally good for 30 days (with some exceptions that allow a longer time period). The City accepts the lowest responsible offer, which is termed *awarding* the bid. Generally speaking, awarding the bid does not create a contract. A written contract must be entered. The penalty for not entering into the contract is forfeiture of the bid bond.

A word of caution when looking at line items in a bid tabulation. The Engineer's Estimate does not always reflect what will actually be bid. Sometimes estimates are low: See item 47 "Rough & Finish Carpentry," which is a lump sum bid item on this Project. The Engineer's Estimate is \$1,500; RCS bid \$25,600; Mainline bid \$7,000. Also, see bid items 11-14 related to excavation, topsoil, and seeding. The amounts vary widely. So while staff takes RCS at its word when it says an error occurred, it is not necessarily easy to discern a mistake.

COUNCIL OPTIONS

The following options are available to the Council:

1. **Rejection of all bids.** The Council has the discretion to reject all bids. Both bids exceeded the engineer's estimate. This would save RCS from fulfilling its obligation to enter a contract or forfeit its bid bond. Rejecting the bids would come with a cost to the City. Additional printing and publishing costs (approx. \$5,000) would be incurred. Also, it is unlikely that rebidding the project would garner better prices.

Public Works Staff is concerned about the message it would send to other bidders if RCS was relieved of its obligation. When low bids are significantly lower than other bids, contractors could claim mistake(s) and use this situation as a precedent. This mistake is roughly 10% of the bid amount. Staff does not believe this mistake will substantially burden RCS, nor does it feel that letting RCS out of its obligation is worth the potential future costs that a precedent could set.

2. **Award the bid to RCS.** Awarding the bid to RCS would force it to make the decision to enter the contract that it feels is \$60,000 short of what it should be or forfeit its bid bond. Here are the possibilities upon award:

- a. **RCS Contract.** If RCS agreed to do the work for the bid price, a contract would be entered as with any other bid. RCS would not be entitled to a change order or further compensation unless there was some other good reason for such a change.
- b. **Bond Forfeiture.** If RCS refused to enter a contract, as it has stated it will, then its bond could be pulled. The bond is 10% of the bid (\$58,504.86). Unless the Council specified otherwise, staff would pursue forfeiture of the bond. Pursuant to its terms, RCS would receive a demand to execute the contract, or pay the 10%, and failing to do either would allow the City to get the 10% from the bonding company.

RECOMMENDATION

It is staff's recommendation that the bid be awarded to RCS according to the bid it submitted. Please note that if the Council decides to reject bids, staff would ask for authority to rebid as part of that motion as well.