

## **RESOLUTION NO. 2009-681**

Adopted by the Sacramento City Council

October 27, 2009

### **AWARD CONTRACT FOR THE SAFE DRINKING WATER STATE REVOLVING FUND AMERICAN RECOVERY AND REINVESTMENT ACT WATER METER RETROFIT PROJECT PHASE 6 (Z14010000)**

#### **BACKGROUND**

- A. On August 6, 2009, the City Council approved Resolution 2009-516 authorizing the execution of a \$ 20 Million grant/loan funding agreement for the Water Meter Retrofit (WMR) Project (Phases 1-9), utilizing American Recovery and Reinvestment Act (ARRA) funding provided through the Safe Drinking Water State Revolving Fund (SDWSRF) Program administered by the California Department of Public Health. The City Council approved the addition of additional Phases to the Project on September 15 (Phase 10) and September 22 (Phase 11).
- B. The WMR Project will retrofit water services with meters at a total of 15,000 - 17,000 residential and commercial properties, and Phase 6 of the Project will install 1,045 meters on unmetered services.
- C. The plans and specifications for Phase 6 of the Project were approved by the City Council on June 23, 2009.
- D. Bids for Phase 6 of the Project were opened on September 9, 2009, and WR Forde Associates was the lowest bidder.
- E. On September 28, 2009, a bid protest was submitted by the second low bidder, Marques Pipeline, Inc., protesting the proposed award of the contract to WR Forde Associates. Marques' bid protest contended that Forde's bid should be rejected as non-responsive due to (1) Forde's submission of documentation of prior project experience after bid opening, rather than with its bid, and (2) irregularities in 3 ARRA forms required to be submitted with Forde's bid.
- F. Pursuant to Sacramento City Code ' 3.60.510, City staff investigated the bid protest and determined that these bid omissions constituted minor bid irregularities that should be waived. In accordance with the City's bid protest requirements, a hearing on the bid protest was held before an independent hearing examiner employed by the Institute for Administrative Justice at the University of the Pacific's McGeorge School of Law.
- G. The Hearing Examiner's decision was issued on October 23, 2009, and a copy of the decision, entitled "Decision on Administrative Appeal with Findings of Fact and Recommended Determination," referred to hereafter as the Hearing Examiner's Decision,

is included in the record as Attachment 4 to the Supplemental Report to Council submitted by City staff for this matter.

- H. The Hearing Examiner's Decision makes factual findings and recommends that the bid protest be denied and that the City Council waive the irregularities in Forde's bid and find Forde's bid to be responsive.
- I. Under City Code Section 3.60.540, the City Council has the following options prior to taking action on a bid protest:
- Adopt the findings of fact issued by the Hearing Examiner, without hearing factual evidence from any party; or
  - Review the recording of the hearing, or a transcript thereof, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the Hearing Examiner, without hearing factual evidence from any party; or
  - In addition to or in lieu of reviewing the recording of the hearing, or a transcript thereof, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the Hearing Examiner.

City Code Section 3.60.540 provides that the City Council may take any action on the bid protest that is authorized by law, including adoption of the Hearing Examiner's recommended determination of the bid protest, adoption of a determination different from that recommended by the Hearing Examiner or the rejection of all bids without deciding the bid protest.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The findings of fact issued by the Hearing Examiner and included in the Hearing Examiner's Decision are adopted.
- Section 2. The Hearing Examiner's recommended determination of the bid protest, set forth in the Hearing Examiner's Decision, is adopted. The bid protest submitted by Marques Pipeline, Inc. is denied, the irregularities in the bid submitted by WR Forde Associates are waived as minor informalities or irregularities, and the bid submitted by WR Forde Associates is determined to be responsive.
- Section 3. The contract for the SDWSRF ARRA Water Meter Retrofit Project Phase 6 is awarded to WR Forde Associates, for an amount not to exceed \$1,113,400.

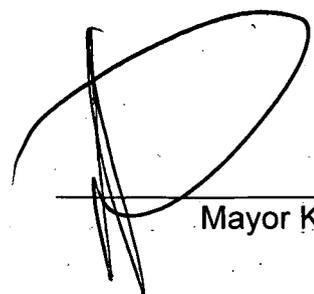
Adopted by the City of Sacramento City Council on October 27, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



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Mayor Kevin Johnson

Attest:

  
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Shirley Condolino, City Clerk