



# Santa Clara Valley Water District

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**File No.:** 16-0272

**Agenda Date:** 5/10/2016

**Item No.:** 6.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Report of Bids Received, Award of Construction Contract to Granite Construction Company, and Budget Adjustment of \$3,800,000 for the Canoas Creek Rodent Damage Repair Project, Project No. 30114002, Contract No. C0612 (San Jose).

### **RECOMMENDATION:**

- A. Approve Budget Adjustment in the amount of \$3,800,000;
- B. Ratify Addendum No. 1 and Addendum No. 2 to the Contract Documents for the Canoas Creek Rodent Damage Repair Project (Project);
- C. Waive Minor Irregularities in Granite Construction Company's Bid;
- D. Award the Contract to Granite Construction Company in Santa Clara, California, in the sum of \$5,448,300; and
- E. Approve Contingency in the sum of \$544,830 and authorize the Interim Chief Executive Officer (CEO) or designee to approve individual change orders up to the designated amount.

### **SUMMARY:**

The scope of work for this Project includes repair of damages in the levees and embankments due to rodents/burrowing animals along the most critical reaches of the Canoas Creek (Creek). Since the original flood protection project was built in the early 70's, there have been many small scale maintenance projects throughout the Creek to address on-going bank/levee erosion. This Project will: A) repair approximately 1 mile of damaged Creek levee and embankment; B) reduce frequent maintenance costs associated with routine bank erosion repair projects; and C) reduce the risk of levee/bank slope failure due to damage caused from burrowing animals.

The need for this Project was identified as a high priority as a result of information collected in annual facility inspections conducted by Watersheds Operations & Maintenance District staff. This Project was approved for inclusion in the FY2016 CIP by action of the Board on February 24, 2015.

Board approval of the recommendations will allow the Project to be constructed. If the construction

contract is awarded, it will create about 60 jobs for the community

### ***Addendum Ratification***

Two Addenda (Attachment 1) were issued during the bid period to clarify the Project Contract Documents, descriptions of certain bid items, and answers to the questions during the bidding period. To formally incorporate the addendum into the Project Contract Documents, staff recommends that the Board ratify both addenda.

### ***Budget Adjustment***

During the planning and design phase of this Project, the scope of work was expanded to a longer creek length to address more rodent damage, resulting in a higher cost to undertake the Project. The combined amount of the recommended contract award sum plus the contingency encumbrance will exceed the funds available in the FY2015-16 budget. Approving a budget adjustment of \$3,800,000 will allow the construction work to proceed. The recommended budget adjustment of \$3,800,000 utilizes funds from the Watersheds Operating and Capital reserves.

### ***Waiver of Minor Irregularities in Granite Construction Company's Bid***

Per the Notice to Bidders, paragraph 13, the District reserved its right to reject any and all bid proposals and to waive minor defects and irregularities in any submitted Bid form(s). Granite Construction Company's Bid contained a several minor, immaterial errors.

Granite Construction Company's initial Bid Form No. 2 Designation of Subcontractors listed two scopes of work that are not required to be included on this form as the services are performed by consulting firms, not California licensed subcontractors. The first was Tully Consulting to prepare the "SWPP" meaning the Stormwater Pollution Prevention Plan, and the second was Condor to perform biology services. The requisite information of name, location, and contractor license number was not provided for either firm. These are immaterial errors and can be waived by the District since neither scope is required to be included in Bid Form No. 2 so to do so was an inadvertent error by Granite Construction Company.

In addition, the District's Bid Form No. 2 requires information about the percent of total work to be performed by the designated subcontractors listed on this form, information omitted by Granite Construction Company in their Bid Form No. 2. Granite Construction Company also inadvertently listed an incorrect license number for one of its designated subcontractors

Public Contract Code (PCC) 4104 allows the District to permit contractors to provide corrected license numbers and submit requested subcontractor information (percent of total work to be performed by the designated subcontractors, in this case) other than the subcontractors name and location of business, up to 24 hours after the deadline for receipt of bids. Granite Construction Company supplied the missing information within the 24-hour period. The discrepancies are

immaterial, have no bearing on Granite Construction Company's bid price or ability to perform the work, and the PCC allows for the corrections they made; therefore, these errors may be waived as minor irregularities.

On the Small Business Outreach Program, Instructions and Compliance Document, Bid Form 4, page 2, Granite Construction Company checked the box indicating the Bidder is qualified for a Small Business preference because it has subcontracted 40% of the job to Certified Small Businesses. However, on Bid Form 4, page 6, the sum of the subcontracting amounts listed totaled slightly more than 12%. In addition and perhaps recognizing the participation percentage was well below the level required for receiving a preference; Granite Construction Company also indicated on their Bid Form No. 4 that they had made good faith efforts to generate Small Business participation. Granite Construction Company clarified their intent and resolved any ambiguity in how they completed Bid Form No. 4 by timely turning in their documentation demonstrating good faith efforts were made to generate Small Business participation on this Project.

The District's waiver of the minor irregularities discussed above does not result in the bid process being unfair or give the firm an unfair advantage over the other bidders. The errors do not render Granite Construction Company's bid nonresponsive. The public's interest is served by waiving these minor irregularities and awarding a contract to Granite Construction Company as a responsible firm submitting the lowest bid.

### **Contract Award**

Four (4) bid proposals were received and opened on April 13, 2016, and are summarized in Table 1.

**Table 1 - Report of Bids**

<b>Company, Location</b>	<b>Bid Amount</b>	<b>Award Amount</b>
Granite Construction Company, Santa Clara, CA	\$5,448,300	\$5,448,300
Quest Civil Constructors, Phoenix, AZ	\$5,707,707	
Gordon N. Ball, Inc., Alamo CA	\$6,075,500	
Granite Rock Company, San Jose, CA	\$6,449,700	
<b>Engineer's Estimate:</b>	<b>\$5,790,700</b>	

The Apparent Low Bid was submitted by Granite Construction Company. A timely bid protest was received on April 18, 2016 from Quest Civil Constructors, the bidder submitting the second lowest bid. The protest contends that Granite Construction Company's bid was non-responsive for two reasons. First, Quest asserts that Granite Construction Company's bid was not signed by an officer or authorized agent of the company. Granite Construction Company submitted documentation verifying their Chief Estimator had legal authority to sign the bid forms and bind Granite Construction Company to its bid. The District's Contract Documents allow for this affirmation to be submitted after

bids are opened and Granite Construction Company did so.

Second, Quest asserts that Granite Construction Company's errors made in completing the Designation of Subcontractors Bid Form No. 2 and Affidavit (Small/Micro Business Subcontractor List) Bid Form No. 4 render its bid nonresponsive. Relevant factual information and analysis pertaining to these errors is detailed above in this Memo. Staff recommends the Board determine the mistakes were immaterial and irregularities that can be waived as the two firms inadvertently listed are consultants, not licensed subcontractors and therefore not required to be listed by the bidder, and the incorrect license number as well as the missing percent of total contract amount to be performed was information provided by Granite Construction Company within the requisite timeframe after bids were opened.

In accordance with the Contract Documents, the Designated Engineer for this Project considered Quest's protest. She determined it was without merit and her decision was communicated to the protestor by letter dated April 26, 2016, which also advised that award of a construction contract, was scheduled for the Board's special meeting on April 29, 2016. Subsequent to issuance of this letter, staff moved this agenda item to May 10, 2016; Quest was notified of this date change.

The Engineer's Estimate, \$5,790,700, is 2% lower than the median of all four bids and 6% higher than the apparent low bid. The bid spread is narrow within the four bids.

Staff has reviewed all the bid proposals and recommends that the contract for the Project be awarded to Granite Construction Company for the following reasons:

1. All bid entries and requirements in the proposal submitted by Granite Construction Company are either in order or can be waived as minor irregularities.
2. Granite Construction Company's license is current, active and in good standing.
3. Granite Construction Company is in compliance with the requirements of the California Labor Code section 1771.1. Granite Construction Company and its subcontractors are registered with the California Department of Industrial Relations and qualified to perform public works pursuant to section 1725.5 of the Labor Code.

### ***Contingency Funds***

Staff is recommending approval of \$544,830 (10% of contract amount) in contingency funds for the Project to allow staff to quickly address unforeseen or changed site conditions and other

unanticipated occurrences, without causing unnecessary delays or consequential costs to the Project.

The contingency amount was estimated due to known and unknown risks, such as:

1. Unanticipated variances in quantities and cost of various lump sum items estimated in the Bid Proposal.
2. Unforeseen hazardous soil removal and disposal.
3. Differing site conditions.
4. Concealed conditions and/or field conditions that may be different from the baseline or as-built information used in preparation of Project Contract Documents.
5. Coordination issues and risks associated with weather conditions and unplanned water releases in to the creek.

Approval of individual change orders will be made up to the designated amounts as follows:

Engineering Unit Manager: \$30,000

Deputy Operating Officer: \$50,000  
(Designated Engineer)

CEO or designee: Up to the approved contingency amount of \$544,830

### ***Public Outreach***

District staff held a pre-construction public meeting on July 21, 2015 and plans to hold another pre-construction public meeting on May 11, 2016 to update the citizens and businesses in the vicinity of the Project. During construction, steps will be taken to minimize impacts associated with the Project, such as noise and construction traffic. Neighbors will be informed of potential issues, as appropriate. Project Contract Documents include requirements and measures to minimize impacts during the construction.

### ***Outreach to Bidders***

The Notice to Bidders was sent to 500 certified Small Business Contractors that have the appropriate license. Twenty Chambers of Commerce, and 27 plan rooms (Builder Exchanges) and District's own web site were used to solicit interest in the Project work from prospective Contractors. Five hundred seventy contractors were contacted through the Building Construction & Trades Council, and 165 contractors were contacted using the District's own Master Contractor Database.

### ***Next Steps***

If the Board approves the recommendations, staff will proceed with administering Project construction.

### **FINANCIAL IMPACT:**

The amount of the construction contract (including contingency) of \$5,993,130 exceeds the funds available in the FY2015-16 Project budget.

As of April 18, 2016, the available budget for this project is \$3.57 million. The recommended budget adjustment amount includes cost for construction, construction management, project management, biological survey, environmental compliance monitoring per Stream Maintenance Program-2 requirements, vegetation monitoring for three years, surveying for contractor's payout, inspection, and acceptance by the field operations and maintenance.

Board approval of the recommended budget adjustment in the amount of \$3,800,000 is necessary in order to award the construction contract, fund the contingency amount, provide construction management, and administer the construction contract. The recommended budget adjustment utilizes funds from the Watersheds Operating and Capital Reserves. There are adequate reserves to fund this budget adjustment.

### **CEQA:**

The District is the lead agency under the California Environmental Quality Act for this Project.

The Project is covered under the Stream Maintenance Program-2 Permit. The Environmental Impact Report for the Stream Maintenance Program was certified by the Board on January 24, 2012.

### **ATTACHMENTS:**

Attachment 1: Addendum No. 1 and Addendum No. 2

Attachment 2: Project Delivery Process Chart

### **UNCLASSIFIED MANAGER:**

Melanie Richardson, 408-630-2035