



# Santa Clara Valley Water District

**File No.:** 19-0297

**Agenda Date:** 3/26/2019

**Item No.:** \*6.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Report of Bids Received, and Award of Construction Contract for San Francisquito Creek Mitigation Planting and Establishment Maintenance Project, Project No. 26284002, Contract No. C0649 (Palo Alto) (District 7).

### **RECOMMENDATION:**

- A. Ratify Addendum No. 1 to the Contract Documents for the San Francisquito Creek Mitigation Planting and Establishment Maintenance Project;
- B. Award the Contract to Ecological Concerns Inc., located in Santa Cruz, California, in the sum of either:
  - 1. \$416,250 for the Base Bid; or
  - 2. \$619,250 for the Base Bid and all Additives Bid Items; and
- C. Approve a contingency sum of 10% of the awarded Contract Price and authorize the Deputy Operating Officer to approve individual change orders up to the designated amount.

### **SUMMARY:**

On February 26, 2019, the Board adopted final plans and specifications for the Project and authorized staff to advertise for construction bids. Staff has provided two alternative recommendations (Recommendation B.1. and B.2.) for the Board to consider: 1. Award the Base Bid scope of work, plant installation and one year of maintenance, or 2. Award the Base Bid scope and the additive bid items, which all relate to the contractor performing a second year of plant establishment maintenance.

The decision to award the additive items relates solely to whether the Board chooses to pay for this work. In 2014 the Board established a not-to-exceed limit of \$28 million in funding as its contribution for construction of the San Francisco Bay to Highway 101 project reach. The San Francisquito Creek Joint Powers Authority (SFCJPA) member agencies entered into a Construction Funding Agreement (Agreement), (later amended to increase the total amounts to be paid by each agency except Valley Water), which provides for the monetary commitments of each member agency. There are sufficient funds remaining in the Agreement and Valley Water's not-to-exceed amount to pay for awarding the Base Bid scope to the construction contractor (Recommendation B. 1.).

Approving Recommendation B. 2. would require the Board to increase Valley Water's not-to-exceed \$28 million limit by \$176,500. Doing so would provide a second year of plant establishment to be

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performed by Ecological Concerns Inc. All future years of plant established that are required by environmental regulatory permits would be included in the operations and maintenance (O&M) agreement by and between Valley Water and the City of East Palo Alto (as the agencies that are responsible for O&M along the creek) and with the SFCJPA (as the agency that is responsible for compliance with the regulatory permits). Execution of the final O&M agreement is planned for the end of FY19.

This construction work may create or sustain approximately 4 to 12 jobs in the community

### ***Project Background:***

Construction of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation San Francisco Bay to Highway 101 (Bay-101) Project, which extends approximately 1.5 miles from San Francisco Bay upstream to East Bayshore Road and Highway 101, was completed in December 2018. The Project increased the Creek's capacity by excavating sediment deposits within the channel, rebuilding and setting back levees to widen the channel, and constructing floodwalls. In addition, major Bay-101 Project elements include expanded and improved tidal marsh habitat for endangered species in the Project area and adjacent Faber Marsh, and improvement of public access trails.

In mid-2018, it was determined that the Bay-101 Project construction contractor's landscaping subcontractor, responsible for tidal marsh/mitigation planting and three years of establishment maintenance, had not worked in tidal marsh environments before and was not prepared to perform the work under the conditions that would be present after construction. To resolve these concerns, staff and the construction contractor agreed to a deductive change order to remove the mitigation planting and establishment maintenance scope of work from the Bay to 101 Project, and repackage this work as a separate construction contract. The Bid Documents for the Mitigation Planting and Establishment Maintenance Project now require contractors to demonstrate relevant experience with planting and plant maintenance in riverine and tidal marsh environments to ensure they are qualified to perform the work. The recommended contractor met these requirements.

### ***Additive Items of Work***

The Bid Documents identified three separate scopes of work that must be performed to carry out the second year of the plant establishment period. All three must be performed if the contractor will be responsible for survival of the vegetation during that time period. As explained in this memo, if the additive items are not awarded, the contractor will not perform the second year of plant establishment and that work will be done pursuant to an O&M agreement to be developed between Valley Water, the SFCJPA, and the City of East Palo Alto. The three bid additive bid items are as follows:

1. Year 2 - Plant Establishment Maintenance
2. Year 2 - Additional Container Planting Watering
3. Year 2 - Additional Hydroseed Irrigation

### ***Addenda Ratification***

One addendum (Attachment 1) was issued during the bid period to clarify the Project Contract Documents. To formally incorporate the addenda into the Project Contract Documents, staff recommends that the Board ratify the addenda.

### ***Contract Award***

A report of bids received at the bid opening for the Project on March 13, 2019 is summarized in Table 1. The apparent Low Bid was submitted by Ecological Concerns Inc. of Santa Cruz, California. In accordance with the Bid Documents, the apparent Low Bid will expire forty-five (45) days after the public bid opening.

The Bid submitted by Ecological Concerns Inc. is 8% lower than the Engineer's Estimate of \$674,000.

Staff has reviewed the bid proposals and, for the reasons stated below, recommends the Board award the contract to Ecological Concerns Inc. as the responsible bidder submitting the lowest responsive bid:

1. All bid entries and requirements in the proposal submitted by Ecological Concerns Inc. are in order;
2. Ecological Concerns Inc.'s license is current, active and in good standing;
3. Ecological Concerns Inc. is a Department of General Services certified Small Business Enterprise (SBE); and
4. Ecological Concerns Inc. is in compliance with the requirements of the California Labor Code §1771.1. Ecological Concerns Inc. 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.

**Table 1 - Bids Received**

| <b>Company, Location</b>                                | <b>Bid Amount</b> |
|---|-------------------|
| Ecological Concerns Inc. Santa Cruz, CA                 | \$ 619,250.00     |
| Bortolussi & Watkin, Inc. San Rafael, CA                | \$ 816,186.00     |
| Hanford Applied Restoration & Conservation Petaluma, CA | \$ 1,531,800.00   |
|   |                   |
| <b>Engineer's Estimate</b>                              | <b>\$ 674,000</b> |

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### **Contingency Funds**

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, staff recommends the Board approve a contingency amount equal to 10% of the contract award amount.

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

1. Concealed conditions and/or field conditions that may be different from the baseline or as-built information used in preparation of Project Contract Documents; and
2. The limited work window that could be imposed on the Project due to the presence of Ridgeway's rail and tide flow influence in the Project area.

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

Engineering Unit Manager: \$25,000

Deputy Operating Officer: up to the total amount of the contingency

### **Outreach to Bidders**

As part of the District's customary small and local business outreach, the following routine steps were taken: the Notice to Bidders was sent to 20 minority business Chambers of Commerce and small business groups. In addition, the Notice was sent to certified small business contractors and local and regional firms that have the appropriate license for this type of work. The Notice was provided to the Santa Clara and San Benito Counties Building and Construction Trades Council, which maintains contacts with at least 500 contractors and 70 union representatives, for distribution to their members.

### **Public Outreach**

A variety of public outreach strategies were employed before and during construction of the Bay-101 Project. The District will continue to coordinate public outreach and communication with the SFCJPA and its member agencies for the duration of this contract. The SFCJPA will continue to serve as the main Project contact for the community and media. On-site signs with information about the Project that were used during flood protection construction will be retained or reinstalled during the mitigation planting work.

### **Next Steps**

If the Board approves the recommendations, staff will proceed with administering construction of the Project. The installation of plants and the first year of plant maintenance is anticipated to be completed in June 2020. The second year of plant maintenance, if awarded, is anticipated to be completed in June 2021. Project Delivery Process Attachment 2 (Project Delivery Process Schematic) highlights the current Project phase and the staff recommendations before the Board.

In addition, staff will ensure the final version of the O&M agreement, which is currently in development, incorporates the Board's decision. The agreement by and between Valley Water, the City of East Palo Alto, and the SFCJPA will document each agency's commitments for the balance of the permit-required plant establishment period.

**FINANCIAL IMPACT:**

The total cost for the recommended construction contract, including the change order contingency sum, is either \$457,875 or \$681,175 depending on which recommendation the Board approves. There are adequate funds in the Fiscal Year 2019 (FY19) Project budget to encumber \$400,000. A budget adjustment will be required to pay for the remaining contract amount and the staff time to administer the contract. Staff plans to return to the Board in April 2019 with a budget adjustment to fund the phased encumbrance for this construction contract and other activities on the larger Bay 101 Project. The budget adjustment will pull funds from future years of the Project's 15-year funding allocation from the Fund 26 Operating and Capital Reserves.

**CEQA:**

On June 10, 2014, the Board considered the Environmental Impact Report (EIR) prepared by the SFCJPA and adopted a Resolution Making Findings of Fact and a Statement of Overriding Considerations regarding the EIR for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project and adopted a Mitigation Monitoring and Reporting Program.

On August 25, 2015, the Board considered an addendum to the certified EIR and approved the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project changes.

The previously adopted EIR and approved changes cover the Mitigation Planting and Establishment Maintenance work and no other CEQA compliance actions are necessary for this work.

**ATTACHMENTS:**

Attachment 1: Addendum No. 1

Attachment 2: Project Delivery Process

**UNCLASSIFIED MANAGER:**

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