



Santa Clara Valley Water District

File No.: 21-0448

Agenda Date: 4/27/2021

Item No.: *7.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Report of Bids Received and Award of Construction Contract to Flatiron West Inc. in the sum of \$161,140,321 for the Anderson Dam Tunnel Project, Project No. 91864005, Contract No. C0663 (Morgan Hill) (District 1).

RECOMMENDATION:

- A. Ratify Addenda Nos. 1, 2, 3, 4, 5, 6, 7 and 8 to the Contract Documents for the Anderson Dam Tunnel Project;
- B. Deny the April 5, 2021 bid protest submitted by Kiewit Infrastructure West, Inc., consistent with the Designated Engineer's April 15, 2021 final decision;
- C. Award the Contract to Flatiron West Inc., located in Benicia California, in the sum of \$161,140,321; and
- D. Approve a contingency sum of \$40,000,000 and authorize the Chief Executive Officer (CEO) or designee to approve individual change orders up to the designated amount.

SUMMARY:

Board approval of these recommendations will allow the Anderson Dam Tunnel Project to be constructed. If the construction Contract is awarded, it will create and sustain approximately 1,400-2,800 jobs for the community.

Project Background

The Anderson Dam Seismic Retrofit Project (ADSRP) will correct dam seismic deficiencies and meet all current Federal Energy Regulatory Commission (FERC) and California Department of Water Resources, Division of Safety of Dams (DSOD) dam safety design standards.

Santa Clara Valley Water District (Valley Water) is undertaking the Anderson Dam Federal Energy Regulatory Commission Order Compliance Project (FOCP) as a result of the February 20, 2020 directive from FERC to implement interim risk reduction measures at Anderson Dam. One of those measures is the Anderson Dam Tunnel Project (ADTP).

The ADTP will construct a diversion system to augment the existing outlet, which will consist of a new diversion tunnel, an outlet structure, a micro-tunnel lake tap, and modifications to Coyote Creek just downstream of the base of the dam. The ADTP also includes reservoir bank and rim stability

improvements and existing intake structure modification.

The diversion system, which will consist of a 23-ft diameter, approximately 1,450-ft long tunnel, will be able to pass releases from the reservoir at flow rates up to 2,000 cubic feet per second (cfs). The new outlet structure will be used to control flows through the tunnel, which will go through dissipation chambers and will be discharged into a rip-rap lined channel before entering the Coyote Creek. Modifications to Coyote Creek just downstream of the base of the dam will be made to accommodate the higher flows from the tunnel.

Addenda Ratification

Eight addenda were issued during the bid period to clarify the Project Contract Documents and answer bidders' questions. To formally incorporate the addenda into the Project Contract Documents, staff recommends that the Board ratify the addenda. All Project Contract Documents, including the addenda, have been provided directly to the Board, however, in compliance with confidentiality requirements imposed by FERC, they are not accessible to the public with this item.

Report of Bids Received

The results of the five bid proposals received and opened on March 30, 2021, from the five pre-qualified contractors, are summarized in Table 1. The Board of Directors had previously (August 25, 2020) adopted Resolution No. 20-70 approving the Best Value Contractor Selection for the ADTP. A formula, which was provided to the contractors in the "Notice to Bid" instructions, was used to calculate the Best Value Bid.

The bid price proposed by each bidder (contractor) was represented by P and each bidder (contractor) pre-qualification score was represented by Q. The Q was determined by the evaluation of an objective criteria of each contractor's competency, capability, and capacity to complete a project of similar size, scope, complexity, recently performed similar projects, references to verify past performance, history of regulatory compliance, bonding capacity, and ability to meet insurance requirements.

The Q number was determined during the pre-qualification process and therefore, each bidder (contractor) was aware of their Q score before they submitted their bid proposal. Table 1 presents the Best Value Bid Summary for the five bid proposals received.

TABLE 1
Best Value Bid Summary

Contractor	Qualification Score (Q)	Bidder's Price (P)	Best Value Score (P/Q)	Rank
Flatiron West, Inc.	93.4	\$ 161,140,321.00	1,725,705.84	1
Kiewit Infrastructure West Co.	91.9	\$ 172,749,219.00	1,879,230.87	2

Dragados USA, Inc./ Obayashi Corporation Joint Venture	93.6	\$ 186,793,560.00	1,994,613.09	3
Granite Construction Company	93.4	\$ 265,035,409.00	2,836,923.53	4
Traylor Brothers, Inc. / Michels Pipeline Joint Venture	91.7	\$ 305,608,925.00	3,331,279.03	5
Engineer's Estimate		\$221,021,000.00		

Bid Protest

On April 5, 2021, Kiewit Infrastructure West Co. (Kiewit), the second-ranked bidder, submitted a protest objecting to Flatiron being awarded the contract. Valley Water's ADTP Designated Engineer (Deputy Operating Officer Chris Hakes) determined the protest was without merit and recommends the Board affirm his decision. Mr. Hakes will address the protest in the staff presentation supporting the award on April 27, 2021.

Briefly, Kiewit's protest contends that the top-ranked bidder, Flatiron West, Inc. is related to Dragados USA, Inc. (Dragados), part of the third ranked bidder, a joint venture named Dragados USA, Inc./Obayashi Corporation Joint Venture (Dragados/Obayashi JV). Because of this, Kiewit contends that both Flatiron and Dragados/Obayashi JV bids should be disqualified.

Kiewit cites to Valley Water's Instructions to Bidders, paragraph 18.A. Disqualification of Bidders, providing that: "Submittal of more than one Bid from an individual, firm, partnership, corporation, or a combination thereof under the same or different names, will not be considered."

Staff recommends rejection of the Kiewit bid protest for the reasons stated in the Designated Engineer's letter, which include:

- Flatiron and Dragados/Obayashi JV are not "an individual, firm, partnership, corporation, or a combination thereof under the same or different names." Flatiron and Dragados/Obayashi JV are separate entities. Further, there is no evidence of anti-competitive activity.
- Kiewit delayed submitting its protest until after Valley Water opened bids and the bid amounts of all bidders was known. The Kiewit bid protest was due before bid opening, not after. Further, the relief Kiewit seeks is to narrow the bid field from four pre-qualified bidders, to only two. The result Kiewit seeks is anti-competitive.

Included with this memorandum are documents relied on by the Designated Engineer in deciding the protest and that he will reference in his remarks in support of the award to Flatiron on April 27, 2021.

Contract Award

As presented in Table1, the bidder with the lowest Best Value score and therefore ranked 1 was Flatiron West Inc. of Benicia, California, with a bid price of \$161,140,321.00. It should be noted that the Best Value ranking for all the bidders matches their Bid Price ranking also.

The bid submitted by Flatiron West Inc. is approximately 27% lower than the Engineer's estimate of \$221,021,000. Review of the bids revealed that Flatiron submitted bid pricing on the diversion portal cost, tunnel excavation, and lining costs lower than what was assumed by the Engineer. Flatiron may have submitted a lower bid price since they were recently awarded the Upper Llagas Creek Flood Protection Project construction contract at the April 13, 2021 Board meeting by Valley Water Board of Directors. This project has a tunnel construction component and is located very close to the ADTP construction site; Flatiron can therefore use and share resources and equipment between the two projects. The Engineer's estimate was in line with the average bid (\$218,265,487) for the 5 bids.

Staff recommends the Board award the Construction Contract to Flatiron West Inc., in the sum of \$161,140,321.

Staff has reviewed the bid proposals and, for reasons stated below, recommends the Board award the Contract to Flatiron West Inc., as the responsible bidder submitting the Best Value bid:

1. It is the Best Value bid;
2. All bid entries and requirements in the proposal submitted by Flatiron West Inc. are in order;
3. Flatiron West Inc. license is current, active and in good standing; and
4. Flatiron West Inc. is in compliance with the requirements of California Labor Code section 1771.1. Flatiron West Inc. and its sub-contractors 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

The Contract award sum for the Project is \$161,140,321. 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 encumbering a contingency amount of \$40,000,000 (25% of the contract price) for the subject Project:

The recommended contingency amount is based on an estimate of known and unknown risks, such as:

1. Unanticipated variances in quantities and cost of various lump sum items estimated in the Bid Proposal;
2. Differing site conditions;
3. Concealed conditions and/or field conditions that may be different from the baseline or as-built information used in the preparation of Project Contract Documents; and
4. Mandatory coordination processes and consultation regime with regulatory agencies having oversight over the Project, including negotiating phased approval of construction elements.

Approval of individual change orders for the Project will be subject to approval at the following

designated amounts:

Unit Manager: \$100,000

Assistant Operating Officer: \$250,000

Deputy Operating Officer: \$500,000

Assistant Chief Executive Officer: up to half of the total amount of the contingency

Chief Executive Officer: up to the total amount of the contingency

In addition to the known and unknown risks mentioned above, construction costs could increase above the contingency amount encumbered by the Board, based on additional circumstances including:

1. Construction delays from the phased approvals from the regulatory agencies FERC and DSOD, described in the section under “Phased Approvals”.
2. Changes that may be required by the regulatory agencies (FERC and DSOD) as they continue with their reviews of the contract documents during the phased approvals.
3. Changes from the environmental regulating agencies who are yet to issue permits for the project,

Relevant Previous Board Meetings

On June 23, 2020, the Board approved the CEQA emergency exemption determination for the FOCP; adopted the Resolution approving the Engineer’s Report for the FOCP; and approved the Project.

On August 25, 2020, the Board approved implementing a best value construction contractor selection method for the ADTP.

On December 8, 2020, the Board approved a budget adjustment in the amount of \$21 million from the Capital Warranty Services Project No. 95074001 to the Anderson Dam Seismic Retrofit Project No. 91864005.

On January 26, 2021, the Board adopted Plans and Specifications and authorized advertisement for bids for the Anderson Dam Tunnel Project, Project No. 91864005.

Public Outreach

During construction, steps will be taken to minimize impacts associated with the Project, such as noise and construction traffic. Outreach will target the surrounding neighborhoods and include pre-construction public meetings, as well as public meetings during the construction period. Outreach strategies will include updates on the Project website, Project fact sheets, media relations, and regular email updates and construction site signage. Neighbors will be informed of potential issues, as appropriate.

Phased Approvals by FERC and DSOD

Approval of all design documentation is required from FERC and DSOD prior to commencement of construction of the ADTP, but the approval process has been slowed due to their resources and time constraints.

Following ongoing discussions between Valley Water, FERC, and DSOD that began in November 2020, Valley Water was officially authorized on April 9, 2021 to utilize phased approvals for authorizing the contractor to proceed with building the ADTP. The intent of the phased approvals is to allow the ADTP to move forward this spring, while giving FERC and DSOD additional time to review and authorize the more complex components of the ADTP. Because of the time-sensitive nature of the ADTP and concerns that delays could further impact the construction schedule of the ADTP, the two regulatory agencies agreed that the ADTP would be approved in three phases.

Phase 1 approval will consist of site preparation activities (such as an access road across the dam's downstream slope), mobilization, establishing staging areas, installing construction fencing, clearing and grubbing, preparing the disposal area, and grading the access roads and Coyote Road pullouts needed to start tunneling, the construction of the high-level outlet works drop shaft excavation, construction exploration (diversion outlet borings) and instrumentation installation.

Phase 2 (2A and 2B) approvals will consist of the diversion portal excavation and support, diversion outlet structure foundation preparation, and the 18.5-foot diversion tunnel excavation. Phase 2A work does not include work in the "Waters of the United States," whereas Phase 2B work includes work in the "Waters of the United States".

Phase 3 approvals will consist of construction of the remaining elements of the ADTP, such as the low-level outlet tunnel (Stage 1 Diversion System), micro tunnel boring machine (MTBM) lake tap, intake structure, and Diversion Outlet Structure.

The timing of these approvals would determine the timing of the issuance of phased notice to proceed to the contract for the construction of the elements of that phased approval.

On April 9, 2021, Valley Water received FERC's Phase Construction Authorization letter (see Attachment 3) with several conditions (some of which are detailed in the section below).

On April 9, 2021, Valley Water received DSOD's approval of the Phase 1 letter (see Attachment 4).

Oversight of the ADTP Construction by FERC and DSOD

FERC's oversight as detailed in FERC's Phase Construction Authorization letter includes:

1. Monthly Project Construction Inspections
2. Review of contractor's submittals
3. Submittal of Monthly Construction reports (progress of work, status of construction, construction difficulties, contract status, critical events and dates, reservoir filling, foundation, sources of major construction materials, material testing and results, instrumentation,

- photographs, erosion control and other environmental measures, other items)
4. Coordination of changes to the plans and specifications with FERC
 5. Written description of evaluation of the possibility of interruption to construction from COVID-19 pandemic
 6. Quality Control Inspection Plan
 7. Construction Surveillance and Monitoring Plan (Instrumentation monitoring and reporting, etc.)
 8. Performance Failure Mode Analysis Report
 9. Temporary Construction Emergency Action Plan
 10. Filing of revised Exhibits A, F, & G (in FERC's letter of approval)
 11. Submittal of construction certificates and Final Construction Report.

DSOD's oversight may include periodic inspections and review of a certain number of submittals.

These are in addition to oversight functions from Valley Water's Construction Unit staff.

Rights of Way

Valley Water has been working and negotiating with Santa Clara County Parks and Recreation Department (SCC) staff on the impacts of the Project to adjacent SCC property. On April 20, 2021, the County of Santa Clara Board of Supervisors approved an Agreement for Possession and Use (PUA) with Valley Water affecting the following properties required for the Project as well as other FOCP sub-projects.

1. Live Oak Property 0.65 acres (in fee)
2. Cross Valley Pipeline Spur Temporary Easement
3. Coyote Percolation Dam Utility Easement
4. Holiday Lakes Property (in fee)

The PUA will enable Valley Water to take possession of the properties for the ADTP while formalities for transfer are finalized.

Valley Water is also working with SCC to finalize a Master License Agreement on various activities that impact SCC properties along the Project and FOCP sub-projects. The MLA is expected to be approved in time to allow construction activities to begin.

Valley Water has also been working with various property owners along the reservoir rim and in the Project area for easements and temporary entry and use. These agreement negotiations are ongoing in some cases and will be in place so as not to hinder construction activities.

Permits and Environmental Authorizations

Valley Water has obtained the following permits and authorizations prior to construction. The Contractor will be required to comply with regulatory requirements.

- Federal Energy Regulatory Commission License Exemption Amendment Authorization

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- Federal Endangered Species Act Section 7 Emergency Consultation from National Marine Fisheries Service
 - Federal Endangered Species Act Section 7 Emergency Consultation from U.S. Fish and Wildlife Service
 - National Historic Preservation Act Section 106 Consultation and Programmatic Agreement
 - California Department of Water Resources, Division of Safety of Dams, Approval of Plans and Specifications for the Repair or Alteration of a Dam and Reservoir Permit
 - California Department of Industrial Relations, Division of Occupational Safety and Health, Mining and Tunneling Unit, Underground Classification Permit
 - Clean Water Act Section 401 Water Quality Certification/Waste Discharge Requirements from the State Water Resources Control Board
 - Santa Clara Valley Habitat Conservation Plan Compliance
 - County of Santa Clara Encroachment Permit
 - Bay Area Air Quality District Asbestos Dust Mitigation Plan Permit (expected on or before April 27, 2021)

Given the phased approval approach, construction in areas outside waters of the U.S. and State and associated riparian habitats will be able to start prior to issuance of Clean Water Act Section 404 and California Fish and Game Code Section 1602 requirements. Staff continues to work with the U.S. Army Corps of Engineers (USACE) and the California Department of Fish and Wildlife (CDFW) to secure the required permits, which will be required before physical construction of phase 2B activities can begin in July 2021. USACE and CDFW report that authorizations will be delivered by May 26, 2021.

The Contractor will be responsible for obtaining all additional permits required by the applicable authorities having jurisdiction for all Work to be performed by the Contractor, its sub-subcontractors, material supplier, etc. The Contractor is responsible for determining the need for and obtaining the requisite permits.

Next Steps

If the Board approves the recommendations, staff will proceed with administering the Project construction, which is anticipated to begin in May 2021 and be completed by the end of December 2023.

FINANCIAL IMPACT:

The recommended construction contract for the Project is \$161,140,321. Combined with the contingency of \$40,000,000, the total recommended for Board approval is \$201,140, 321. The funding source for the Project is the Water Utility Enterprise Fund (Fund 61).

Funds to cover the ADTP construction effort in FY2022 will be recommended by staff through the FY2022 budget process. Funds to cover each subsequent fiscal year anticipated construction costs, FY23-25, will be recommended by staff during each fiscal year budget process or through budget

adjustment(s). This construction contract does not change the overall total Project cost reflected in the Draft Five-Year 2022-26 Capital Improvement Program (CIP).

CEQA:

CEQA provides a statutory exemption for emergency projects, which include specific actions necessary to prevent or mitigate an emergency (Public Resources Code §21080(b)(4) and CEQA Guidelines §15269(c)). After analysis of the facts and applicable law, on June 23, 2020 following a public hearing, the Board determined that the FOCP, inclusive of the ADTP measure, qualifies for this emergency exemption. Valley Water filed a Notice of Exemption with the County of Santa Clara Clerk/Recorder on June 26, 2020.

Acting as the federal lead agency, FERC issued an Environmental Assessment (EA) on October 1, 2020, and a supplemental EA on February 2, 2021, to evaluate effects of the project and satisfy National Environmental Policy Act (NEPA) requirements. In accordance with FERC orders issued with the NEPA documents, the Contractor will also be required to comply with avoidance and minimization measures, mitigation measures, and a number of plans for terrestrial and aquatic resources as recommended by natural resource agencies.

ATTACHMENTS:

Attachment 1: Project Delivery Process Chart
Attachment 2: Location Map
Attachment 3: FERC letter
Attachment 4: DSOD letter
Attachment 5: Prequalification Application
Attachment 6: Notice to Bidders
Attachment 7: Instructions to Bidders
Attachment 8: Final Prequalified Contractors List
Attachment 9: Prequalified Contractor Information
Attachment 10: Flatiron Bid Proposal
Attachment 11: Kiewit Bid Proposal
Attachment 12: Dragados Bid Proposal
Attachment 13: Bid Summary
Attachment 14: Best Value Bid Summary
Attachment 15: Kiewit Bid Protest
Attachment 16: Response Letter to Kiewit Bid Protest
Attachment 17: Flatiron CA SOS Entity Detail
Attachment 18: Flatiron CA SOS SDFC
Attachment 19: Flatiron CSLB Information
Attachment 20: Dragados CA SOS Entity Detail
Attachment 21: Dragados CA SOS SDFC
Attachment 22: Dragados CSLB Information.
Attachment 23: Obayashi CA SOS Entity Detail
Attachment 24: Obayashi CA SOS Amended SFC

Attachment 25: Obayashi CSLB Information

*Handout 7.3-A: J. Howard

*Handout 7.3-B: Scott

UNCLASSIFIED MANAGER:

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