

MEMO

To: TOWN COUNCIL

From: Joanna Gutierrez, Town Clerk



Subject: Additional Agenda Material for Agenda Item 7(f)

Date: August 6, 2010

Attached is Additional Agenda Material for Agenda Item 7(f) regarding the Pinewood Drive Street Repair Project, Recommended Award of Bid.


jmg/attachment(s)


cc: Chuck Rough
Dwight Moore
Enterprise Record
Paradise Post
Public View Packet

Memorandum

To: Joanna Gutierrez, Town Clerk

Town Council

Charles L. Rough, Jr., Town Manager 

From: Dennis J. Schmidt, Public Works Director/Town Engineer 

Date: August 5, 2010

**Re: Pinewood Drive Street Repair Project – Recommended Award of Bid,
Supplemental Information for Agenda Item 7(F)**

Recommended Action:

- 1) Accept the bid from **FRANKLIN CONSTRUCTION, INC.**, in the amount of **\$65,965.00** for the **PINEWOOD DRIVE STREET REPAIR PROJECT; AND**
- 2) Award the contract to **FRANKLIN CONSTRUCTION, INC.**, in the amount of **\$65,965.00** and authorize the Town Manager and Town Mayor to execute the contract; **AND**
- 3) Authorize the Town Manager to execute Contract Change Orders on this project up to the 10% contingency limit (\$6,596.50)

Background:

On August 5, 2010, at 10:00 AM, staff opened bids for the above project. Five bids were received, with the bids ranging from a low of \$65,965 to a high of \$94,879.00.

There were no additive bid items for this contract. The Engineers Estimate for the project (without contingency) was \$84,500. The lowest bid was \$18,535 less than the Engineers Estimate (approximately 22% lower). Total bid spread (between the high and low bidder) was \$28,914.

All bids have been carefully examined for compliance with all State, Federal and Town of Paradise contracting regulations. The low bid is valid and responsive, and the Contractor has the capability to perform this project. The low bidder, Franklin Construction, Inc., has a long history of construction projects in the Town of Paradise. They will soon be initiating work on the Memorial Trailway southern extension. Past Town of Paradise Public Works projects

August 5, 2010

include the Skyway/Wagstaff Traffic Signal, Clark/Skyway Traffic Signals, Pearson TEA Pedestrian Improvements Project, and the Memorial Trailway Infill Project.

Financial Impact:

Award of this bid will result in the contract expenditure of approximately \$72,561.50 (after allowing for a 10% contingency). This award also allows the Town Manager to execute change orders up to the 10% limit, to allow for changed conditions in the field. This project is funded in the adopted FY 2010/2011 budget in the amount of \$158,000.

N:\PW\Public Works Director\Memos\Town Clerk\Pinewood Award of Bid 8_5_10

**TOWN OF PARADISE
CONTRACT
FOR THE PINEWOOD DRIVE STREET REPAIR PROJECT**

THIS CONTRACT is entered into this _____ day of _____, 2010 between the Town of Paradise (hereinafter called "Town"), and _____ (hereinafter called that "Contractor").

WHEREAS, Contractor has been awarded the Contract for the work relating to the **Pinewood Drive Street Repair Project**. The parties hereto mutually agree as to the terms and conditions herein set forth.

1. STATEMENT OF WORK:

Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for the Construction of the **Pinewood Drive Street Repair Project**.

2. CONTRACT DOCUMENTS:

This instrument, together with the other documents listed below, which said other documents shall be as binding upon the parties hereto as if they were fully set forth herein, shall form the Contract. Work called for in any one Contract Document and not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

The Contract Documents, sometimes also referred to as "the contract," consist of the following:

- | | |
|-------------------------------|-----------------------------|
| a. Advertisement for Bids | i. Labor and Materials Bond |
| b. Preconstruction Work Items | j. Performance Bond |
| c. General Work Items | k. General Provisions |
| d. Special Provisions | l. Labor Law Requirements |
| e. Bid Items | m. Vicinity Map |
| f. List of Subcontractors | n. Insurance Requirements |
| g. Contract | o. Construction Exhibit |
| h. Bidder's Bond | |

3. SCOPE OF CONTRACT:

Contractor agrees to undertake and complete all obligations under the Contract Documents, and in the manner designated in, and in strict conformity with, the Contract Documents.

4. CONTRACT AMOUNT:

Town agrees to pay and Contractor agrees to accept, in full payment for the above work, subject to additions and deductions as provided in the Contract Documents, the amount of _____ dollars (\$ _____), which amount includes all applicable fees and taxes, and which amount is hereinafter referred to as the "Contract Amount".

5. LEGAL WORK DAY:

Eight (8) hours labor constitutes a legal day's work performed pursuant to this Contract. Contractor shall forfeit as a penalty to the Town TWENTY-FIVE DOLLARS (\$25.00) for each workman employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight hours in any one calendar day and forty (40) hours in any one calendar week in violation of Division 2, Part 7, Chapter 1, Article 3, of the Labor Code (Labor Code Section 1810-1815). Notwithstanding the foregoing provisions of this Section, work performed by employees of Contractors and of subcontractors in excess of eight hours per day and forty hours in any one week shall be permitted upon compensation for all hours worked in excess of eight hours a day and at not less than one and one-half times the basic rate of pay.

6. WORKMEN'S COMPENSATION:

In accordance with the provisions of 3700 of the Labor Code, every Contractor will obtain worker's compensation insurance covering the Contractor's employees and to furnish a certificate to the Town showing such coverage before commencement of the work.

7. INSURANCE

The Contractor shall provide to Town a certificate of insurance for Commercial General Liability Insurance and Worker's Compensation Insurance in the form and amounts shown in the specifications. Such insurance shall name Town as an additional insured and shall not be canceled without a 30-day written notice to the Town.

8. TIME OF COMMENCEMENT AND COMPLETION

The work to be performed under this Contract shall be commenced no later than fourteen (14) calendar days after the date of written "Notice to Proceed" from the Town to start and diligently and continuously prosecute to final completion. In no event shall contractor fail to complete the work any later than **thirty (30) calendar days after the date of written Notice to Proceed. The Notice to Proceed will be issued when weather conditions are appropriate for construction. Early fall rains and/or cool weather may cause this project to be suspended until Spring, 2011.**

9. NONASSIGNMENT

Contractor shall not assign this Contract to any other party without the prior written consent of the Town.

10. DISPUTES

Disputes between the Town and Contractor of \$375,000 or less shall be resolved in accordance with Public Contract Code Section 20104 et. seq., a copy of which is shown below:

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

- (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

- (d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

- (c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties.

The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
- 20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

11. INDEMNIFICATION

Contractor shall hold harmless, indemnify and defend Town, its officers, officials, employees, agents and volunteers from and against any liability, claims loss, damages and costs, including attorney's fees and court costs of every nature resulting from connection with Contractor's work under this Contract, except for damages caused solely by the Town's active negligence.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

TOWN OF PARADISE

By: _____
Town Manager

APPROVED AS TO FORM

By: _____
Town Attorney

CONTRACTOR

By: _____

Signature: _____

Title: _____

Address: _____

(City, State, Zip)

Contractor's I.D. or SSN