



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** January 12, 2016

**TO:** Mayor and Councilmembers

**FROM:** Engineering Division, Public Works Department

**SUBJECT:** Reject Bid Protest For Secondary Process Improvements Project At The Wastewater Treatment Plant

### **RECOMMENDATION:**

That Council reject Shimmick Construction Company, Inc.'s bid protest of Stanek Constructors, Inc. apparent lowest bid for the Secondary Process Improvements Project, Bid No. 3737.

### **DISCUSSION:**

The El Estero Wastewater Treatment Plant (El Estero) processes approximately six million gallons of wastewater each day. El Estero was originally constructed in 1952; however, a majority of its current infrastructure was constructed in 1978 to meet 1972 Clean Water Act requirements.

Although capital improvements have been made consistently in the past years to maintain treatment quality, El Estero has had longstanding issues with highly variable secondary effluent quality, operational inflexibility, and energy inefficiency. El Estero was originally designed to provide a high-rate activated sludge treatment system. While this system provides suitable secondary effluent quality to meet all regulatory requirements, this final effluent still has a higher level of turbidity than is desired for subsequent use in tertiary treatment or future advanced water treatment projects.

The Secondary Process Improvements Project (Project) will modify El Estero's secondary treatment processes and provide a better quality to final effluent prior to ocean discharge or usage in subsequent recycled water treatment. Final design is complete and the project was competitively bid in fall 2015.

This Project is funded by the State Revolving Fund (SRF) loan program. The SRF loan process requires completion and submittal of a Final Budget Approval (FBA) after contractor bids are received. The FBA provides the required information to finalize our SRF loan amount based on actual expected costs, rather than budgetary costs that the

City provided during the initial loan process. Once the State approves the FBA, the SRF loan will be updated to reflect actual expected costs and executed by all parties. The FBA require that all bid protests be resolved prior to its approval. The City may then award a contract to the lowest responsible bidder for the Project.

## **BID PROTEST**

On November 18, 2015, five bids were received for the Project ranging from approximately \$21.7 million to nearly \$27.5 million. Stanek Constructors, Inc. (Stanek) submitted the lowest bid of \$21,710,000, and Shimmick Construction Company, Inc. (Shimmick) submitted the second lowest bid of \$23,885,000.

On November 24, 2015, the City received a letter from Shimmick protesting the award of the Project to the apparent lowest bidder, Stanek. Shimmick's protest letter alleged that Stanek's bid was non-responsive because Stanek failed to submit a completed Bidder's List in its initial bid package, and incorrectly listed non-DBE (Disadvantaged Business Enterprise) subcontractors on Environmental Protection Agency (EPA) Forms 6100-3 and 6100-4. Stanek responded to the protest in writing on December 2, 2015, arguing that the omissions were inconsequential and should be waived by the City.

Staff has reviewed the items set forth in Shimmick's bid protest and finds that the deviations contained in Stanek's bid are minor irregularities that may be waived by the City. Specifically, staff has determined that the submission of the Bidder's List was intended as evidence of good faith compliance with the EPA's DBE program, and could be properly submitted within ten (10) days of bid opening, pursuant to the contract specifications. Similarly, the errors and/or unnecessary information contain in Stanek's EPA Forms 6100-3 and 6100-4 were also related to Stanek's good faith compliance efforts, and were not the type of errors that would allow Stanek to withdraw its bid without forfeiture of its bid bond. Since these minor irregularities do not create a material advantage over other bidders, they may be waived by the City in the best interest of the rate payers. Please reference the indexed Reading File located in the City Clerk's Office to review the documents pertaining to the bid protest.

Staff finds Stanek's bid proposal to be responsive to the request for bids and recommends that Council reject the bid protest filed by Shimmick. Staff will return to Council to recommend award of the construction contract to Stanek after the FBA is accepted by the State and the revised SRF loan document is executed. This is expected within the next two months. A detailed project presentation will be made to Council at that time.

**PREPARED BY:** Linda Sumansky, Principal Civil Engineer/LA/mh

**SUBMITTED BY:** Rebecca J. Bjork, Public Works Director

**APPROVED BY:** City Administrator's Office