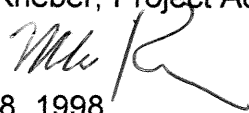


SUBJECT: Spruce Avenue Phase 1A Paving Bid

PREPARED BY: Mike Kriebler, Project Administrator

DATE: June 1, 1998



FOR AGENDA OF: June 8, 1998

SUMMARY: The bid opening for this project was held at 2 p.m., May 27, 1998. The three submitted bids were read aloud, as follows:

D&L Construction	\$578,936
Wilder Construction	581,835
Jim Psenak Construction	593,964

I have reviewed the bids and found that one bid irregularity existed with the apparent low bidder, D&L Construction. D&L Construction failed to submit a statement of non-collusion with its bid package. D&L Construction submitted this statement at 2:47 p.m., May 27.

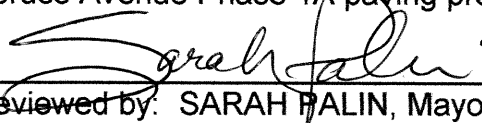
Attached is a memorandum I prepared explaining the irregularity. Also attached is a legal opinion prepared by the City's attorney, Kenneth Jacobus, P.C. Mr. Jacobus states that the irregularity "should be waived by the City under the circumstances of this bidding."

With the resolution of this irregularity, the D&L Construction bid complies with the bid conditions and instructions. I have determined that D&L Construction submitted the lowest responsive bid.

FISCAL IMPACT: No Yes, amount requested: \$578,936 Fund: 02-476-7093

RECOMMENDED ACTION:

I recommend that the Council approves the D&L Construction bid proposal for the Spruce Avenue Phase 1A paving project.



Reviewed by: SARAH PALIN, Mayor

Attachments:

- May 28, 1998 Kriebler Memorandum to Cindy Roberts
- May 31, 1998 Jacobus letter to Cindy Roberts

failed per Council action 6/8/98 J. Neumann

May 31, 1998

City of Wasilla
Attn: Cindy Roberts, Planning
290 East Herning Avenue
Wasilla AK 99654-7091

RECEIVED
JUN 1 1998
CITY OF WASILLA
PUBLIC WORKS

Re: Spruce Avenue Paving Bid
May 27, 1998

Dear Cindy,

D&L Construction failed to submit its Non-Collusion Affidavit in its bid package opened at 2:00 p.m. on May 27, 1998, and submitted the affidavit at 2:47 p.m. the same day. The failure to submit this affidavit is a type of irregularity or informality which may be waived by the City of Wasilla in its decision to award the contract.

In federal procurement, where most of the decisions arise, certain general principles have developed. Under federal law, a minor informality or irregularity must be waived, regardless of the contracting officer's preference. What is a minor informality or irregularity, however, is now always easy to decide. Generally, deviations which affect price, quantity, quality or delivery cannot be waived. Other types of deviations which might prejudice any other bidder in having his or her bid fairly considered and evaluated should also not be waived. Under federal law, it has been determined that failure to return all required documents is a waivable irregularity.

In summary, failure of D&L Construction to submit the Non-Collusion Affidavit with its bid package is an irregularity or informality which should be waived by the City of Wasilla under the circumstances of this bidding.

Since it is not necessary to provide an opinion on the failure of Psenak Construction to provide a sufficient bid bond, I will not do so. This issue presents a complicated question because the premium on a bond could very well affect the bid price, and this irregularity may very well be non-waivable.

In the future, when an irregularity or informality occurs in a City bid, I would appreciate an opportunity to review the situation. The issues presented by these irregularities and informalities are sometimes very complicated, and are almost always fact specific to the particular procurement. A legal review should be conducted in each circumstance in order to best insure

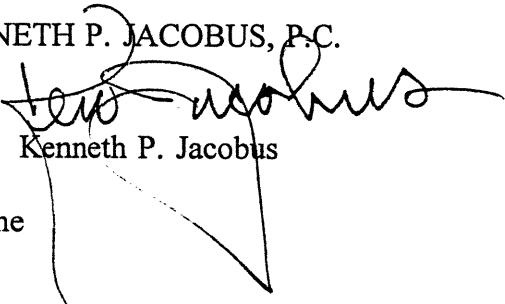
City of Wasilla
May 31, 1998
Page 2

that the City of Wasilla is protected against future challenges to the bidding and acceptance process.

Very truly yours,

KENNETH P. JACOBUS, P.C.

By


Kenneth P. Jacobus

KPJ:me

Encl.

cc. John Cramer

MEMORANDUM

To: Cindy Roberts
Public Works Director
From: Mike Krieber, P.E. *MK*
Projects Administrator
Date: May 28, 1998
Re: Spruce Avenue Phase 1A Bid Opening, Irregularities

Issue: Two irregularities arose during the Spruce Avenue bid opening, including one by the company (D&L Construction) submitting the lowest bid. Wilder Construction submitted the second lowest bid. Wilder is questioning whether D&L should be disqualified for failing to submit all of the required documents before the bid opening.

The issue for the City administration to decide is whether it will waive the bidding irregularity and recommend that the Council award the contract to D&L Construction.

Background: The Spruce Avenue paving contract bid opening was held at 2 p.m. on May 27, 1998 in the City Council hearing room. Three firms submitted bid packages (Wilder Construction, Jim Psenak Construction, and D&L Construction). Each of the firms had a representative at the bid opening. The lowest bid was submitted by D&L Construction.

However, two of the three bid packages did not completely comply with the instructions to bidders. (See the attached page 4 of the Contract Documents prepared by Alaska Rim Engineering and dated May 11, 1998). These irregularities are:

D&L Construction did not include the Non-Collusion Affidavit. During the bid opening, City staff and I verified that this document was not included in the submitted bid package and was so stated during the bid opening. D&L submitted this statement at 2:47 p.m. that same day.

Page 2 of the City's Contract Documents is the formal "Invitation to Bid" (attached). On this page is the statement,

"The City of Wasilla reserves the right to reject any and all Bids, and to waive any informalities and irregularities in Bidding or awarding of the Contract."

Jim Psenak Construction provided only a 5% bid bond. The Contract Documents states that the bidder is to comply with "provisions of Section 10.02, Bidding Requirements and Conditions." That document states that a bid bond shall be 10% of the bid. (I recommend that in future proposals that the bid documents specifically state that a 10% bond is required.)

See: Wasilla City Code 6.24.110 - .140
Chapter 3.4, Action on Bids, City Specifications

Summary: The Administration may desire to have an attorney review the Instructions to Bidders to determine if the failure for D&L to timely submit the Non-Collusion Affidavit warrants disqualifying that firm from receiving the contract.

SPRUCE AVENUE PAVING, PHASE I-A BID REQUIREMENT
 May 27, 1998 AT 2:00 P.M. , City Hall council chambers

BID OPENING

REQUIREMENT	Engineer's Estimate	Wilder Construction	Jim Psenak Construction	D & L Construction
PROPOSAL		X	X	X
BID BOND		X	5%	X
NON-COLLUSION AFFIDAVIT		X	X	Brought to Public Works at 2:47 p.m. 5/27/98
CONTRACTOR'S QUESTIONNAIRE		X	X	X
COPY OF VALID/CURRENT GENERAL CONTRACTOR'S LICENSE		X	X	X
COPY OF VALID/CURRENT SOA BUSINESS LICENSE		X	X	X
COPY OF VALID/CURRENT MSB BUSINESS LICENSE		X	X	X
COPY OF VALID SOA BUSINESS LICENSE		X	X	X
TOTAL	\$845,500	\$581,835	\$593,964	\$578,936

INVITATION TO BID

Sealed bids, in single copy, for furnishing all labor, equipment and materials and performing all work for the construction of:

SPRUCE AVENUE PAVING, PHASE 1-A

will be received at the office of the Department of Public Works, 290 E. Herning Avenue, Wasilla, Alaska 99654, until 2:00 P.M., prevailing time, on Wednesday, May 27, 1998, and then at said office publicly opened and read aloud.

This project includes approximately 5000 LF of road improvements, including paving, curbing, AC bike path, and striping.

The BID DOCUMENTS will be available on Monday, May 11, 1998 and may be examined by prospective bidders at the following address:

Department of Public Works
City of Wasilla
290 E. Herning Avenue
Wasilla, Alaska 99654

Copies may be obtained at the Department of Public Works upon payment of fifty dollars (\$50.00) for each set, NONREFUNDABLE. There will be an additional \$10.00 fee for any plans and specifications that are requested to be mailed. All mailings shall be First Class mail. Call 373-9095 to order.

A Pre-bid conference will be held on Wednesday, May 20, 1998 at 10:00 A.M. at the Wasilla City Council Chambers, same address as above.

A Bid Bond will be required.

State of Alaska, Department of Labor, Title 36 wage rates will apply.

Project is subject to the Equal Employment Opportunity requirements.

Performance and Payment Bonds will be required.

No bid will be accepted from any contractor to whom bid documents have not been issued by the City of Wasilla.

The City of Wasilla reserves the right to reject any and all Bids, and to waive any informalities and irregularities in Bidding or award of the Contract.

Date: May 11, 1998
Cindy Roberts
Public Works Director
City of Wasilla

INSTRUCTIONS TO BIDDERS

Comply with provisions of Section 10.02 "Bidding Requirements and Conditions" of the referenced Municipality of Anchorage 1994 Standard Specifications, Street-Drainage-Utilities-Parks, except as herein amended, supplemented, or superceded.

Provide Bid Bond in amount required by General Provision Article 2.4.

Each BID must be submitted in a sealed envelope, addressed to: City of Wasilla, Attention: Director of Public Works, at 290 E. Herning Ave., Wasilla, Alaska 99654. Each sealed envelope containing a BID must be plainly marked on the outside as

BID FOR SPRUCE AVENUE PAVING, PHASE 1-A

The envelope must also show the BIDDER'S name and address on the outside.

All BIDS must be made on the required bid PROPOSAL. The bid PROPOSAL must be fully completed and executed. All blank spaces for bid prices must be filled in, in ink or typewritten. Submit only one copy of the bid PROPOSAL.

Each BID package shall include:

- Proposal*
- Bid Bond*
- Non-Collusion Affidavit*
- Contractor's Questionnaire*
- Copy of valid and current Alaska General Contractor's License
- Copy of valid and current City of Wasilla Business License
- Copy of valid and current Mat. - Su. Borough Business License
- Copy of valid and current State of Alaska Business License

(* Bidder must use form included herein.)