

## CITY COUNCIL

For City Clerk's Use:

☐

**APPROVED**

☐

**DENIED**

Reso No. \_\_\_\_\_

File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.:** 6  
**Date:** January 13, 2010

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Rich Buquet, Neighborhood Services Manager  
**SUBJECT:** Bid Award for the Elm to Hickory Street Lights ARRA Project

**RECOMMENDATION:**

It is requested that Council determine the apparent low bid by HMS Construction to be non-responsive and the bid by Curto Construction Co. to be the lowest responsive and responsible bid and adopt Resolution No. 2010-01 authorizing the Mayor and the City Clerk to execute a Public Improvement Agreement with Curto Construction Co. in the amount of \$200,000 for the Elm to Hickory Street Lights ARRA project.

**FISCAL ANALYSIS:**

This project will be funded with the CDBG-R (Recovery Act) allocation from FY 2008-09.

**PREVIOUS ACTION:**

On May 20, 2009, Council approved an amendment to the FY 2008-09 One-Year Action Plan to allocate funds in the amount of \$464,210, which were received as a result of the American Recovery and Reinvestment Act (ARRA), to the Elm to Hickory Street Lights project.

**BACKGROUND:**

In February 2009 the City of Escondido was informed that it would be receiving an allocation of special CDBG funding in the amount of \$464,210 as a result of the American Recovery and Reinvestment Act (ARRA). The ARRA appropriated \$1 billion in CDBG funds to states and local governments to carry out eligible activities under the CDBG program.

The Elm to Hickory Street Lights project includes furnishing and installing street lights, sidewalks and landscape areas from Elm to Hickory Streets. The City of Escondido received nine (9) sealed bids in response to its advertised request for bids for this project.

The Engineers estimate for the Project is \$216,000.00. Sealed bids were received on December 3, 2009, and opened by the City Clerk with the following results:

Bid Award for the Elm to Hickory Street Lights ARRA Project

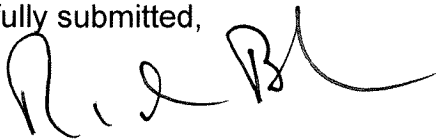
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1. HMS Construction	\$188,623.00
2. Curto Construction Co.	\$200,000.00
3. Palm Engineering	\$213,200.00
4. Stars Electric	\$214,900.00
5. Lekos Electric, Inc.	\$224,900.00
6. DBX, Inc.	\$231,313.00
7. Sutherlin Contracting	\$252,625.00
8. Valley Coast Construction	\$257,013.00
9. Team Fishel	\$284,891.55

City staff reviewed the three lowest and responsive bids and found that HMS failed to submit the HUD-required "Federal Regulations - Section D" paperwork and therefore is considered non-responsive. The next lowest and responsive bidder was Curto Construction Co., which had the preferred Section 3 hiring plan as well as all HUD-required paperwork. Staff recommends that the bid submitted by Curto Construction Co. be considered the lowest responsive and responsible bid and the contract be awarded to Curto Construction Co. in the amount of \$200,000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rich Buquet', written over the text 'Respectfully submitted,'.

Rich Buquet, Neighborhood Services Manager

RESOLUTION NO. 2010-01

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AWARDING A BID FOR THE ELM TO  
HICKORY STREET LIGHTS PROJECT AND  
AUTHORIZING THE MAYOR AND THE CITY  
CLERK TO EXECUTE, ON BEHALF OF THE  
CITY, A PUBLIC IMPROVEMENT  
AGREEMENT WITH CURTO  
CONSTRUCTION COMPANY

WHEREAS, the City Council has allocated funding for the Elm to Hickory Street Light Project; and

WHEREAS, a notice inviting bids for said improvement was duly published and, pursuant to said notice, HMS Construction Company, submitted a bid; and

WHEREAS, the bid submitted by HMS Construction Company was determined to be non-responsive due to its failure to submit the HUD required "Federal Regulations - Section D" paperwork; and

WHEREAS, pursuant to said notice, Curto Construction Company, submitted a bid; and

WHEREAS, Curto Construction Company was determined to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to Curto Construction Company;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the Mayor and the City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement and related amendments with Curto Construction Company in substantially the form as attached as Exhibit "A" and incorporated by this reference.

## PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and **CURTO CONSTRUCTION CO.** (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. CONTRACTOR shall perform, within the time set forth in Paragraph 4 of this Agreement, everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

### ELM TO HICKORY STREET LIGHTS ARRA PROJECT

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of Two Hundred Thousand Dollars (\$200,000.00).
4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **Forty (40) working days** from the date specified in the Notice to Proceed.
5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due



- (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.
- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

- 8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
  - (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less than **\$3,000,000 per occurrence**.
  - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.
  - (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
    - (1) Automotive and truck where operated in amounts as above
    - (2) Material hoist where used in amounts as above
  - (d) Workers' Compensation Insurance.
  - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
    - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.
    - (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.

- (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
- (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
- 9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
- 10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
- 11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.
- 12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.
- 13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.



IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO  
a municipal corporation  
201 North Broadway  
Escondido, CA 92025

By: \_\_\_\_\_  
Marsha Whalen, City Clerk

By: \_\_\_\_\_  
Lori Holt Pfeiler, Mayor

**CONTRACTOR**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(Second signature required only for  
corporation)

By: \_\_\_\_\_  
Signature\*\*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(CORPORATE SEAL OF CONTRACTOR, if  
corporation)

\_\_\_\_\_  
Contractor's License No.

\_\_\_\_\_  
Tax ID/Social Security No.

\*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

\*\*If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.