

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 7

Date: December 7, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Christopher W. McKinney, Director of Utilities

SUBJECT: Bid Award for the 2011 Miscellaneous Water Main Replacement Project Phase I

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2011-150 authorizing the Mayor and City Clerk to execute an agreement with Shaw Equipment Rentals Incorporated in the amount of \$1,782,000 for the 2011 Miscellaneous Water Main Replacement Project Phase I.

FISCAL ANALYSIS:

Competitive bids were opened by the City Clerk's representative on October 27, 2011, with the following results:

1) Shaw Equipment Rentals Inc., San Marcos	\$1,782,000.00
2) Southland Paving Inc., Escondido	\$1,974,990.00
3) Garcia Juarez Construction, Brea	\$2,088,000.00
4) TE Roberts Inc., Tustin	\$2,091,000.00
5) L&S Construction, Orange	\$2,095,000.00
6) JR Pipeline Company Inc., Perris	\$2,195,000.00
7) Basile Construction Inc., San Diego	\$2,337,195.53
8) DDH Apple Valley Construction Co. Inc., Apple Valley	\$2,345,400.00
9) Burtech Pipeline Inc., Encinitas	\$2,537,000.00
10) JA Salazar Construction, La Habra	\$2,610,000.00
11) CCL Contracting, Escondido	\$2,639,000.00
12) Downing Construction Inc., Yucaipa	\$2,886,337.00
13) Lonerock Inc., Laguna Hills	\$3,480,000.00
14) Don Hubbard Contracting Company, San Marcos	\$4,090,250.00

This project is funded out of CIP line item 704003, water pipeline replacement bond money.

December 7, 2011

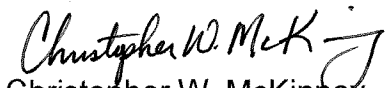
Bid Award 2011 Miscellaneous Water Main Replacement Project Phase I

Page 2

BACKGROUND:

This Project will remove and replace approximately 2-miles of old water mains in various locations throughout the northern part of Escondido. These various water mains were installed in the 1950's and have had numerous leaks and repairs. This Project will provide improved water main reliability and fire flow in the area.

Respectfully submitted,

A handwritten signature in black ink, reading "Christopher W. McKinney". The signature is written in a cursive, flowing style with a large, stylized "M" and "K".

Christopher W. McKinney
Director of Utilities

RESOLUTION NO. 2011-150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE, ON BEHALF OF THE CITY, A PUBLIC IMPROVEMENT AGREEMENT WITH SHAW EQUIPMENT RENTALS INCORPORATED, FOR THE CONSTRUCTION OF THE 2011 MISCELLANEOUS WATER MAIN REPLACEMENT PROJECT PHASE I

WHEREAS, the Escondido City Council authorized an invitation for bids for the construction of the 2011 Miscellaneous Water Main Replacement Project Phase I (the "Project"); and

WHEREAS, the City of Escondido opened sealed bids for the Project on October 27, 2011; and

WHEREAS, the Director of Utilities has determined Shaw Equipment Rentals Incorporated to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of \$1,782,000 to Shaw Equipment Rentals Incorporated; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to Shaw Equipment Rentals Incorporated.

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 City Council accepts the recommendation of the Director of Utilities and finds Shaw Equipment Rentals Incorporated to be the lowest responsive and responsible bidder.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with Shaw Equipment Rentals Incorporated for the Project. A copy of the Agreement is attached as Exhibit "A" and is 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 **Shaw Equipment Rentals Incorporated** (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

2011 MISCELLANEOUS WATER MAIN REPLACEMENT PROJECT PHASE I

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 **One Million Seven Hundred Eighty Two Thousand Dollars (\$1,782,000)**.
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 **two hundred sixty (260) calendar 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

PUBLIC IMPROVEMENT AGREEMENT
Page A-00500-2

- (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: _____
Sam Abed, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

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.

SECTION A-00610 - FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ ("Contractor") and _____ ("Surety") are held and firmly bound unto the CITY OF ESCONDIDO ("Owner") in the sum of _____ Dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has been awarded and is about to enter into a contract with Owner to perform all work required under the Bid Schedule(s) of the Owner's specifications entitled,

2011 MISCELLANEOUS WATER MAIN REPLACEMENT PROJECT PHASE I

WHEREAS, the provisions of the Contract are incorporated by reference into this Faithful Performance Bond and shall be part of Surety's obligation hereunder.

NOW THEREFORE, if Contractor shall perform all the requirements of said contract required to be performed on his part, at the times and in the manner specified herein, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDED, that

- (1) Any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or Surety thereunder;
- (2) Any extensions of time granted under the provisions of Contract shall not release either Contractor or Surety from their respective obligations to Owner;
- (3) Notice of any such alterations or extensions of the Contract is hereby waived by Surety;
- (4) Any payments (including progress payments) made on behalf of Owner to Contractor after the scheduled completion of the work to be performed pursuant to the Contract shall not release either Contractor or Surety from any obligations under the Contract or this Faithful Performance Bond, or both, including any obligation to pay liquidated damages to Owner; and
- (5) To the extent Owner exercises its rights pursuant to this Bond, Owner shall be entitled to demand performance by the surety and be further entitled to recover, in addition to all other remedies afforded by law, its reasonably incurred costs to complete the work,

attorneys fees and consultant costs, as well as actual costs incurred by OWNER for the increased dedication/commitment of time of OWNER employees to the Project.

SIGNED AND SEALED, this _____ day of _____, 20____.

Contractor

Surety

Address

Phone No.

(SEAL)

BY _____
Signature

Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

SECTION A-00620 - LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENT,

That _____ as Contractor, and
_____ as Surety, are held and firmly
bound unto the CITY OF ESCONDIDO, hereinafter called Owner, in the sum of
_____ dollars, for the payment of which sum well and
truly to be made, we bind ourselves our heirs, executors, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into the annexed contract
with said Owner to perform all work required under the Bid Schedule(s) of the Owner's specifi-
cations entitled,

2011 MISCELLANEOUS WATER MAIN REPLACEMENT PROJECT PHASE I

NOW THEREFORE, if said Contractor, or subcontractor, fails to pay for any materials, equip-
ment, or other supplies, or for rental of same, used in connection with the performance of work
contracted to be done, or for amounts due under applicable State law for any work or labor
thereon, or for amounts due under the Unemployment Insurance Code, or for any amounts
required to be deducted, withheld, and paid over to the Employment Development Department
from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020
of the Unemployment Insurance Code with respect to such labor, said Surety will pay for the
same in an amount not exceeding the sum specified above, and, in the event suit is brought upon
this bond, a reasonable attorney's fee to be fixed by the court. This bond shall inure to the
benefit of any persons, companies or corporations entitled to file claims under applicable State
law.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, which
may be made pursuant to the terms of said contract, shall not in any way release either said
Contractor or said Surety thereunder, nor shall any extensions of the time granted under the
provisions of said contract release either said Contractor or said surety, and notice of such
alterations or extensions of the contract is hereby waived by said Surety.

SIGNED AND SEALED, this _____ day of _____, 20____.

Contractor

Surety

Address

Phone No.

(SEAL)

BY _____

Signature

Signature

(SEAL AND NOTARIAL ACKNOWLEDGEMENT OF SURETY)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

SECTION A-00630 - CITY OF ESCONDIDO BUSINESS LICENSE

In accordance with Municipal Code Section 16, the successful bidder is required to obtain a City of Escondido Business License prior to execution of contract.

The following information must be submitted to the City Clerk prior to execution of contract:

City of Escondido Business License No. _____

Expiration Date _____

Name of Licensee _____

SECTION A-00660 - WORKERS' COMPENSATION INSURANCE CERTIFICATE

If self-insured for Workers' Compensation, the Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, Sections 1860 and 1861, and I will comply with such provisions before commencing the performance of the work of the contract.

Dated: _____

Contractor

By: _____
Signature