

RESOLUTION 2017-195

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO (1) REJECTING THE BID PROTEST OF TRINET CONSTRUCTION, INC; (2) WAIVING A BIDDING DEVIATION AS IMMATERIAL AND INCONSEQUENTIAL AND AWARDING THE RANDY LANE DRAINAGE IMPROVEMENT PROJECT TO, THE LOW BIDDER, MAGGIORA & GHILOTTI, INC, OF SAN RAFAEL, CALIFORNIA; (3) AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MAGGIORA & GHILOTTI, INC. IN THE AMOUNT OF \$442,442 WITH A 15% CONTINGENCY OF APPROXIMATELY \$66,366, FOR A TOTAL AUTHORIZATION OF \$508,808; (4) RECEIVING REVENUES OF APPROXIMATELY \$174,187 FROM SB1 ROAD REPAIR AND ACCOUNTABILITY ACT FUNDS AND APPROPRIATING SAID FUNDS TO THE RANDY LANE DRAINAGE PROJECT (RLN-DRN); (5) APPROPRIATING \$150,000 FROM GENERAL FUND DESIGNATED RESERVE FOR DRAINAGE TO THE PROJECT; AND, (6) REALLOCATING \$84,813 OF UNOBLIGATED FUNDS FROM SPC-GAV BRIDGE REPAIR PROJECT AND \$81,000 FROM THE POSTPONED MARKET STREET PROJECT (MAR-STR) TO THE RANDY LANE DRAINAGE IMPROVEMENT PROJECT (320-3202-43600-RLN-DRN)

WHEREAS, City has repeatedly experienced minor to severe flooding issues near the Randy Lane area causing damage and inconvenience to the community, as well as significant City staff resources to respond to the flooding incidents. To resolve the flooding issue, the City hired Water Works Engineers (WWE) to design a new stormdrain system. The project includes constructing a new storm drain from Randy Lane, along Giant Road to an outfall by the bridge over San Pablo Creek, with approximately 570 feet of pipe length;

WHEREAS, the project was advertised on August 11, 2017 in conformance with Section 3.16.070 of the Municipal Code;

WHEREAS, on September 13, 2017, the City issued an Addendum to the bid specifications because of concerns in meeting the deadline to obtain the required Section 408 permit from the Contra Costa Flood Control District by October 2, 2017 in order to construct the new bridge culvert outfall at Randy Lane. The Addendum stated that the insurance required by the Flood Control District to obtain the Section 408 permit was to be submitted with the bid and then all other insurance documentation the day after the City Council awarded the project. The purpose of this Addendum was to avoid delays in obtaining the permit from the Flood Control District given the short deadline for the allocation of funds and the approaching winter rainy season. These deadlines also mean that there is no time to rebid the project;

WHEREAS, the bids were opened on September 18, 2017. Seven bids were received ranging from \$442,442 to \$802,570;

WHEREAS, the City of San Pablo received a bid protest on September 19, 2017 from Trinet Construction Inc., the second lowest bidder of the project. The basis of the protest was that the apparent low bidder, Maggiora & Ghilotti, Inc., did not submit their insurance for the 408 Permit from Contra Costa Flood Control District with their bid as required by the attached Addendum No. 4 of the bid documents;

WHEREAS, on September 19, 2017, Maggiora & Ghilotti, Inc. submitted the insurance required for the 408 permit;

WHEREAS, attorneys for both Maggiora & Ghilotti and Trinet have submitted extensive arguments to support their clients' positions, which were attached to the City Council staff report and carefully considered by both staff and the City Council;

WHEREAS, staff determined that Maggiora & Ghilotti's submittal of the insurance document for the 408 Permit one day after the bid opening was an immaterial and insubstantial bid deviation that did not affect the amount of Maggiora & Ghilotti's bid and did not give that company a competitive advantage nor the ability to claim a mistake under the Public Contract Code and withdraw its bid without forfeiting its bid bond;

WHEREAS, staff recommends that the City Council find that the low bid submitted by Maggiora & Ghilotti on September 18, 2017 was a valid and enforceable bid and the bid deviation to be immaterial and inconsequential, reject the bid protest and award the contract to Maggiora & Ghilotti, Inc. for \$442,442 with a 15% construction contingency of \$508,808;

WHEREAS, other costs incurred to date on the project include: design and environmental work, potholing to verify the design alignment, an archaeologist to monitor the excavation per the CEQA report requirement, a biologist to observe the existing pipe abandonment per the California Fish and Wildlife requirement, inspections every Friday to cover the construction work outside normal business hours, permit fees, and other administrative costs;

WHEREAS, the total cost of the project is estimated at \$765,000;

WHEREAS, funding in the amount of \$275,000 has been appropriated for the project under (320-3200-43600-RLN-DRN); and

WHEREAS, staff recommends an additional appropriation of \$490,000 as follows: receive \$174,187 in FY 2017/18 SB1 Road Repair and Accountability Act Revenues and appropriate said funds to the Randy Lane Drainage project; appropriate \$150,000 in FY 2017/18 General Fund Designated Reserve for Drainage to the project; and reallocate \$84,813 from the bridge repair project over San Pablo Creek on Giant Avenue (SPC-GAV) due to a reduction in Federal funding which consequently requires a smaller match, and reallocate \$81,000 from Market Street resurfacing project (MAR-STR) match due to postponement of OBAG funding to FY 2019/20 to the Randy Lane Drainage Improvement project (320-3202-43600-RLN-DRN) to cover the bid cost for construction work and other project expense.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Pablo makes the following determinations:

1. The City of San Pablo undertakes competitive bidding for public works projects pursuant to Chapter 3.16, "Purchasing System," of the San Pablo Municipal Code and the Uniform Public Construction Cost Accounting Act (Cal. Pub. Con. Code sections 22000 *et seq.* However, the "competitive bid requirement is to be construed fairly and reasonably with sole reference to the public interest and in light of the purposes to be accomplished." In making such determinations, the City Council is aware of the limited public funding for this much needed project. The City has SB1 funding that must be allocated by October 16, 2017 or risk losing those critical funds that will allow the project to go forward. In addition, the project must be commenced so that all creek work is completed by October 31, 2017. As discussed above, this area of the City has been prone to flooding during the winter months and this project will alleviate that condition if completed before the winter rains this year. Otherwise, this neighborhood will likely endure another winter of repeated flooding. There is not sufficient time to re-bid this project.
2. Under State law, the City's Municipal Code and the bid documents for this project (Section 12 of the Instructions to Bidders), the City has the discretion to waive inconsequential and immaterial deviations from the bidding process as long as such deviations do not: 1) affect the bid price; nor 2) give a bidder an unfair advantage such as the ability to withdraw its bid without forfeiting its bid bond (typographical or arithmetical errors under Public Contract Code section 5103).
3. The City is not waiving the requirement to provide insurance needed for the 408 Permit, but rather determining that the failure of Maggiora & Ghilotti to submit the insurance documentation with its bid on September 18, 2017 but on the following date is an immaterial and nonconsequential deviation to the bidding process. The submission of insurance to obtain the necessary Section 408 permit was important to the City as evidenced by the issuance of the Addendum. However, the one-day delay in submitting the required information has not affected the project timeline or the timeframe for obtaining the 408 permit.
4. The low bid of Maggiore & Ghilotti submitted on September 18, 2017 was a valid and enforceable bid and that the submission of the required insurance information on the following day was an inconsequential, immaterial and insubstantial deviation that did not affect the bid price and did not give M&G an unfair advantage to withdraw its bid without forfeiting its bid bond.

5. There is no legal mandate or due process need for the City Council to conduct a hearing or take evidence regarding this bid protest. The parties have had ample opportunity to present their arguments as shown by the extensive letters from their attorneys attached to this staff report, the City Council has duly considered all information, and the City does not have time to schedule a hearing and still meet the funding and permitting requirements of this project.

6. The City Council's exercise of discretion in determining whether to waive this bid irregularity is not based on any favoritism, extravagance, fraud or corruption or any other such evils, but rather is based on obtaining the best result for the City, which is rejecting the bid protest and awarding the contract to the lowest bidder, Maggiora & Ghilotti; and

BE IT FURTHER RESOLVED that the City Council rejects the bid protest submitted by Trinet Construction.

BE IT FURTHER RESOLVED that the City Council hereby awards the Randy Lane Drainage Improvement Project to the low bidder, Maggiora & Ghilotti, Inc. of San Rafael, California, and authorizes the City Manager to execute an agreement in the amount of \$442,442, with an available contingency of 15% for the Randy Lane Drainage Improvement project (RLN-DRN), for a total cost of \$508,808, and receives \$174,187 in FY 2017/18 SB1 Road Repair and Accountability Act revenues into the project fund (320-3202-33403-RLN-DRN) and appropriates funding in the same amount for expenditure to the project (320-3202-43600-RLN-DRN), , appropriates \$150,000 in FY 2017/18 General Fund Designated Reserve for drainage to the project (320-3202-43600-RLN-DRN), and reallocates \$84,813 from the bridge repair project (SPC-GAV) and \$81,000 from the Market Street project (MAR-STR) to the Randy Lane Drainage Improvement project (320-3202-43600-RLN-DRN).

BE IT FURTHER RESOLVED that the foregoing recitations are true and correct and are adopted herein by reference.

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ADOPTED this 2nd day of October 2017, by the following vote:

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| AYES: | COUNCILMEMBERS: | Cruz, Kinney, Calloway and Valdez |
| NOES: | COUNCILMEMBERS: | None |
| ABSENT: | COUNCILMEMBERS: | Morris |
| ABSTAIN: | COUNCILMEMBERS: | None |

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| ATTEST: | APPROVED: |
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/s/ Elizabeth Pabon-Alvarado
Elizabeth Pabon-Alvarado, City Clerk

/s/ Cecilia Valdez
Cecilia Valdez, Mayor