



CITY OF WASHINGTON, ILLINOIS
City Council Agenda Communication

Meeting Date: April 13, 2020

Prepared By: John Anderson, Acting City Engineer

Agenda Item: Contract Award, N. Lawndale Avenue Reconstruction Project

Explanation: Bids were received on April 1, 2020 at 10:00 a.m. for the reconstruction of N. Lawndale Avenue from Business Route 24 northerly to just north of Knollcrest Drive. Please refer to the attached documents from Mohr & Kerr, design engineer for the project, recommending award to Stark Excavating. Also refer to attached document from attorney Davis & Campbell's legal opinion on said award. The Acting City Engineer agrees with these recommendations.

Fiscal Impact: \$1,900,000 was included in the FY20-21 proposed budget. Based on the recommended bid, allocation will be as follows:

\$242,800 Water
\$332,726 Sewer
\$899,259 Streets
\$323,734 Storm Water
\$1,798,519 Total

Recommendation/

Committee Discussion Summary: The Acting City Engineer recommends awarding the contract to Stark Excavating at a cost of \$1,798,518.76

Action Requested: Approval of contract



April 3, 2020

Mayor & City Council
City of Washington
301 Walnut St.
Washington, IL 61571

Re: Lawndale Ave.

Improvements

Washington, Illinois

Ladies & Gentlemen:

Bids were received for the above referenced project on Wednesday, April 1, 2020

The bids received were as follows:

<u>Contractor</u>	<u>Amounts</u>
Gensini Excavating	\$1,543,478.25
Knapp Concrete Contractors	\$1,692,103.00
Stark Excavating	\$1,798,518.76
Otto Baum	\$1,987,707.54
Ill. Civil Contractors	\$2,060,135.59
UCM/R. A. Cullinan	\$2,113,683.26
Engineer's Estimate	\$1,910,323.45

The two low bidders did not meet the IDOT Prequalification requirements. Although the two low bidders met qualifications for certain work items, their financial threshold/upper limit was not sufficient for a project of this cost. After reviewing the remaining bids, we recommend that Stark Excavating be awarded the contract based on their low bid of \$1,798,518.76. These bids were from six out of the six prime contractors that took out bid packages.

If you have any questions or need additional information, please contact our office.

Sincerely,

W. Franklin Sturm II, P.E.

DAVIS & CAMPBELL L.L.C.

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File Number: 31922-001

April 7, 2020

Via Electronic Mail Only

City of Washington
Attn: Ray Forsythe
301 Walnut St.
Washington, IL 61571

Re: Competitive Bidding – Lawndale Project

Dear Ray:

Section 30.35(C)(11) of the City Code incorporates the Illinois competitive statute applicable to municipalities. Section 5/8-9-1 of the Illinois Municipal Code (65 ILCS 5/8-9-1) requires the City for contracts in excess of \$25,000 to proceed “by a contract let to the lowest responsible bidder after advertising for bids, in the manner prescribed by ordinance, except that any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of two-thirds of all the aldermen or trustees then holding office.”

The City published a bid notice for the Lawndale Project which identified specific requirements for contractors to be eligible to be considered for the project, including a Certificate of Eligibility published by the Illinois Department of Transportation in an amount in excess of the estimated cost for the Lawndale Project (\$1,910,323.45) established by the project engineer Mohr & Kerr Engineering and Land Surveying, P.C. (“Mohr & Kerr”). The City received six bids that were opened on April 1, 2020. The two lowest bidders (Gensini Excavating and Knapp Concrete Contractors) were not able to present a Certificate of Eligibility published by the Illinois Department of Transportation in excess of the estimated project cost. Frank Sturm, the lead engineer employed by Mohr & Kerr on the project, recommends that the City maintain the integrity of the bidding process and award the Lawndale Project to the third lowest bidder, Stark Excavating. You have requested that our firm summarize the meaning of the “lowest responsible bidder” within the requirements of the Illinois Municipal Code.

The Illinois Supreme Court has construed the phrase “lowest responsible bidder” in public purchasing statutes such as Section 5/8-9-1 of the Illinois Municipal Code to not require the public body to award a contract to the lowest bidder.¹ A public body exercises a great deal of discretion in determining the lowest responsible bidder.² A public body’s exercise of discretion to award of

¹ *Court Street Steak House, Inc. v. County of Tazewell*, 163 Ill.2d 159, 164-165 (1994)

² *Id.*

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City of Washington

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contract to a party other than the low bidder should not be reversed unless the public body engaged in fraud, unfair dealing, favoritism, or similar arbitrary conduct.³

In this situation, the City is not engaged in arbitrary conduct by rejecting the bids submitted by Gensini Excavating and Knapp Concrete Contractors. The City established contractor requirements in the bid notice that mirror the requirements of the Illinois Department of Transportation that would govern if state funds were used on the Lawndale Project. The Certificate of Eligibility published by the Illinois Department of Transportation provides a cost-effective manner for the City to analyze whether a potential contractor has the experience and financial wherewithal to effectively manage a project of this size. Without including a Certificate of Eligibility requirement, City staff would be required to individually analyze each contractor's capabilities (a time intensive process).

If the City Council follows the recommendation of Mohr & Kerr and awards the Lawndale Project to Stark Excavating, the passed over low bidders have a limited legal recourse to challenge the City's decision. The Illinois Supreme Court has held that a rejected low bidder's only legal recourse is an action for mandamus (i.e. a court order requiring the City to award the contract to the rejected low bidder).⁴ The Illinois Supreme Court has made clear that a rejected low bidder cannot pursue a claim for monetary damages equal to the projected lost profits.

Please do not hesitate to contact me should you wish to discuss this analysis further.

Very truly yours,



Derek A. Schryer

³ *Id.* at 165.

⁴ *Id.* at 169-170.