



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> <i>Robt M. P...</i> 15 May 2019		<b>GENERAL MANAGER ACTION REQ'D:</b> Approve and forward to Board of Directors		
<b>DATE:</b> 4/4/2019		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Samuel Hoffman <b>Dept:</b> Maintenance and Engineering <b>Signature/Date:</b> <i>Samuel R. Hoffman</i> 13 MAY 2019	<b>General Counsel</b> <i>[Signature]</i> 5/13/19 [ ]	<b>Controller/Treasurer</b> <i>[Signature]</i> 5/13/19 [ ]	<b>District Secretary</b> [ ]	<b>BARC</b> <i>[Signature]</i> 5.13.2019 [ ]

### Award of Contract No. 54RR-250, Concord Yard Fire Protection

#### PURPOSE:

To request Board authorization to award Contract No. 54RR-250 for Concord Yard Fire Protection replacement to DMZ Builders, in the amount of \$3,940,800.00.

#### DISCUSSION:

The fire mains and appurtenances in the District yards are currently beyond their design life. This contract will replace the water distribution infrastructure at the Concord Yard (OCY), therefore providing a more efficient fire protection system, meeting current National Fire Protection Association (NFPA) standards and requiring less maintenance. Contract No. 54RR-250 will support the Measure RR Bond initiative of infrastructure renewal.

On February 5, 2019, the District provided Advance Notice to fifty-six (56) prospective Bidders who received the electronic version of the Contract book, including forms to submit, from the District's Vendor Portal. Plans were sent to six (6) Plan Rooms.

On February 6, 2019, the Contract was advertised in local publications. A total of twenty-seven (27) firms downloaded the Contract Documents from the District's Vendor Portal. A pre-bid meeting was conducted on February 27, 2019 with five (5) prospective Bidders attending the meeting. A site tour was conducted on February 27, 2019 with three (3) prospective Bidders.

A total of two (2) Bids were received and publicly opened on March 26, 2019. Tabulation of the Bids, including the Engineer's Estimate, is as follows:

<b>No</b>	<b>BIDDER</b>	<b>LOCATION</b>	<b>TOTAL BID</b>
1	Eagle Solutions Inc. dba Eagle Builders	San Ramon, CA	\$2,751,000.00
2	DMZ Builders	Concord, CA	\$3,940,800.00
	<b>Engineer's Estimate</b>		\$1,893,677.43

Both bids were reviewed and determined to be responsive by the Engineer and Contract Administrator. Staff determined that Eagle Builders is not responsible because Eagle Builders has a common ownership and control with Federal Solutions Group (FSG). In 2018, FSG defaulted on BART Contract No. 47BS-152A, requiring action by the Surety. Additionally, the owners/officers of Eagle Solutions/FSG are being prosecuted by the Contra Costa District Attorney for multiple felony counts relating to their business operations. The District Attorney's office has initiated asset forfeiture proceedings against Eagle Solutions, dba Eagle Builders and Federal Solutions Group.

Staff reviewed the variance between the submitted Bids and the Engineer's Estimate. The primary discrepancy is in the estimated equipment and labor costs associated with the water distribution replacement (Bid Item 1). A secondary cost factor is the estimated safety training (Bid Item 6) and watchperson (Bid Item 7) costs. The location of the work, a railroad Yard that includes several locations within six (6) feet of mainline track, and the associated access constraints presents a high level of risk to the Contractor. Coupled with current limited labor resources and market conditions, the Bids received were substantially different from each other and significantly higher than the Engineer's Estimate.

#### **CAPITAL FISCAL IMPACT:**

Funding in the amount of \$3,940,800 to award Contract 54RR-250 is included in the total project budget for FMS# 54RR250 – Fire Services Yard – OCY. The table below lists funding assigned to the referenced project and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following source:

<b>PROPOSED FUNDING [To be updated]</b>	
F/G 802A – 2017 Measure RR	\$ 5,307,675
<b>TOTAL</b>	<b>5,307,675</b>

As of May 1, 2019, \$5,307,675 is the total budget for this project. BART has expended \$14,261, committed \$0, and reserved \$0 to date. This action will commit \$3,940,800, leaving an available fund balance of \$1,352,614 in these fund sources for this project.

The Office of Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

Pursuant to the District's Non-Discrimination Program for Subcontracting, the Availability Percentages for this Contract are 18.2% for Minority Business Enterprises ("MBEs") and 9.3% for Women Business Enterprises ("WBEs"). The Office of Civil Rights has determined that the Bidder, DMZ Builders, has exceeded both the MBE and WBE Availability Percentages for this Contract at 82.8% for MBEs and 92.7% for WBEs.

Pursuant to the District's Non-Federal Small Business Program, the Office of Civil Rights set a 7% Local Small Business Prime Preference for this Contract for Small Businesses certified by the California Department of General Services and verified as Local (i.e., located in Alameda, Contra Costa or San Francisco counties) by the District. The lowest responsive and responsible Bidder, DMZ Builders, is a certified Local Small Business, thus, making it eligible for the Prime Preference. Since the Bidder DMZ Builders is the lowest responsive Bidder, and is eligible for the 7% Local Small Business Prime Preference, capped at \$150,000, the application of the Prime Preference will not alter the award to the Bidder, DMZ Builders.

#### **ALTERNATIVES:**

The Board may reject all Bids and re-advertise the work or reject all Bids and decline to re-advertise the work. There is no assurance that a rebid would yield lower prices or that a greater number of bids would be received. By proceeding with the award, the District would reduce its safety and operational risks.

#### **RECOMMENDATION:**

On the basis of analysis by Staff and certification by the Controller-Treasurer that the funds are available for this purpose, it is recommended that the Board adopt the following Motion.

#### **MOTION:**

The General manager is authorized to award Contract No. 54RR-250 to DMZ Builders for Concord Yard Fire Protection in the amount of \$3,940,800.00, pursuant to notification to be issued by the General Manager and subject to compliance with the District's Protest Procedure.