



Legislation Details (With Text)

File #: 21-1031 **Version:** 1 **Name:**

Type: Bid & Purchase **Status:** Passed

File created: 11/3/2021 **In control:** City Council

On agenda: 11/17/2021 **Final action:** 11/17/2021

Title: Award of Contract to Walsh Construction Company II, LLC. and Appropriation of Additional Funding from Various Agencies for the Construction of the McKinley Street Grade Separation Project.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Staff Report, 2. Exhibit 1 - Contract, 3. Exhibit 2 - RCTC - Riverside County Measure A Regional Arterial Draft Funding Agreement, 4. Exhibit 3 - State of California HRCSA Draft Agreement, 5. Exhibit 4 - State of California CPUC Section 190 Draft Agreement, 6. Exhibit 5 - TCEP Baseline Agreement, 7. Exhibit 6 - Executed BNSF Overpass Agreement, 8. Exhibit 7 - Executed WMWD.WRCRWA Cooperative Agreement

Date	Ver.	Action By	Action	Result
11/17/2021	1	City Council	approved	Pass

REQUEST FOR CITY COUNCIL ACTION

DATE: 11/17/2021

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT:

Award of Contract to Walsh Construction Company II, LLC. and Appropriation of Additional Funding from Various Agencies for the Construction of the McKinley Street Grade Separation Project.

EXECUTIVE SUMMARY:

This action is for the award of Notice Inviting Bids (NIB) 22-020CA to Walsh Construction Company II, LLC for \$60,899,929 for the construction of the McKinley Street Grade Separation Project. The Project will construct a four lane overhead grade separation at the Burlington Northern Santa Fe (BNSF) crossing at McKinley Street just south of Sampson Avenue. The bridge over the railroad and adjacent channel will be a 290-foot-long steel tied arch network structure. The project will also include modifications to the eastbound State Route 91 on/off ramps at McKinley Street, new connector road facilities between Sampson Avenue and McKinley Street, pre-cast panel, and mechanically stabilized earth retaining walls, and miscellaneous water/sewer/storm drain

infrastructure. Staff is also requesting the City Council accept and appropriate additional funding up to \$33,116,652 from various external agencies that have agreements already executed or are currently in process to aid in the project financing.

RECOMMENDED ACTION:
That the City Council:

- a. Adopt the Plans and Specifications for the McKinley Street Grade Separation Project, Project No. 2012-12, Notice Inviting Bids 22-020CA.
- b. Award Notice Inviting Bids 22-020CA for the McKinley Street Grade Separation Project to Walsh Construction Company II, LLC, of Corona, CA, as the lowest responsive, responsible bidder, for the total not to exceed amount of \$60,899,929, waive all minor bidding irregularities discussed in the Analysis section; and determine that steel fabrication is considered a materials supplier and not a subcontractor as defined as subcontracting or subletting per the California Subletting and Subcontracting Fair Practices Act (Chapter 4 of the California Public Contract Code).
- c. Authorize the City Manager, or his designee, to execute a contract with Walsh Construction Company II, LLC, for \$60,899,929.
- d. Authorize the City Manager, or his designees, to negotiate and execute non-substantive extensions, change orders, and amendments up to 10% or \$6,090,000 as authorized in Corona Municipal Code Section [3.08.050\(H\)](#).
- e. Authorize the Purchasing Manager to issue a Purchase Order to Walsh Construction Company II, LLC, in the amount of \$60,899,929.
- f. Authorize the City Manager, or his designee, to execute a funding agreement between the City and the Riverside County Transportation Commission (RCTC) that allocates up to \$9,889,692 from the Riverside County Measure A Regional Arterial funds approved at the Commission meeting on November 10, 2021, for the McKinley Street Grade Separation Project, and to approve any modifications to the form of the Funding Agreement deemed necessary by the City Attorney which does not impact the funding to be paid and are consistent with the Council's directions herein.
- g. Authorize the City Manager, or his designee, to execute a Funding Agreement between the City and the State of California, Department of Transportation that allocates up to \$2,876,960 from Highway Railroad Crossing Safety Account funds allocated by the California Transportation Commission (CTC) at the October 13-14, 2021 meeting for the construction of the McKinley Street Grade Separation Project; and approve any modifications to the form of the Funding Agreement deemed necessary by the City Attorney which does not impact the funding to be paid and are consistent with the Council's directions herein.
- h. Authorize the City Manager, or his designee, to execute a funding agreement between the City and the State of California Department of Transportation that allocates up to \$10,300,000 from the Transportation Corridor Enhancement Program (TCEP) allocated by California

Transportation Commission (CTC) at the October 13-14, 2021 meeting for the construction of the McKinley Street Grade Separation Project; and to approve any modifications to the form of the Funding Agreement deemed necessary by the City Attorney which does not impact the funding to be paid and are consistent with the Council's directions herein.

- i. Authorize the City Manager, or his designee, to execute a Funding Agreement between the City and the State of California Department of Transportation that allocates up to \$5,000,000 from California Public Utilities Commission Section 190 Grade Separation Program funds for the construction of the McKinley Street Grade Separation Project, and to approve any modifications to the form of the Funding Agreement deemed necessary by the City Attorney which does not impact the funding to be paid and are consistent with the Council's directions herein.
- j. Increase revenue in the amount of \$28,066,652 in the Public Works Capital Grants Fund (Fund 243), and appropriate the same amount for the McKinley Street Grade Separation Project, CIP Project No 69370.
- k. Increase revenue in the amount of \$3,810,000 in the Public Works Capital Grants Fund (Fund 243) and appropriate the same amount from a funding agreement between the City and Burlington Northern and Santa Fe Railway Company approved by the City Council on May 19, 2021, and executed on June 24, 2021, for the McKinley Street Grade Separation Project, CIP Project No 69370.
- l. Increase revenue in the amount of \$1,240,000 in the Public Works Capital Grants Fund (Fund 243), and appropriate the same amount from a cooperative funding agreement between the City, Western Municipal Water District (WMWD), and the Western Riverside County Regional Wastewater Authority (WRCRWA) approved by the City Council on July 7, 2021, and executed on the same day, for the McKinley Street Grade Separation Project, CIP Project No 69370.

BACKGROUND & HISTORY:

Project Update/Costs

The City recently completed the following milestones for the Project:

- 1) Approved an allocation of \$5,000,000 from the Section 190 Grade Separation Program from the California Public Utilities Commission (CPUC) based upon the City's March 2021 application for the program and consistent with City Resolution Number 2021-013 adopted March 17, 2021. Although the City requested \$10,000,000, CPUC awarded the City \$5,000,000 for the construction of the Project. The draft agreement the City must execute with the State of California is included as Exhibit 4.
- 2) Execution of an Overpass Agreement between the City and BNSF consistent with the Council Direction from the May 19, 2021 City Council Meeting (See Exhibit 6). Said execution occurred on June 24, 2021. This agreement dictates the estimated costs to be paid by the City for traffic control, closures, real property interests, and administrative efforts BNSF will undertake during the construction of this project. Additionally, this agreement provides BNSF's requirements to reimburse the City for a portion of the estimated cost of a theoretical

structure and approaches described in 23 CFR 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway. BNSF shall reimburse the City \$3,810,000 upon completion of construction of the Project.

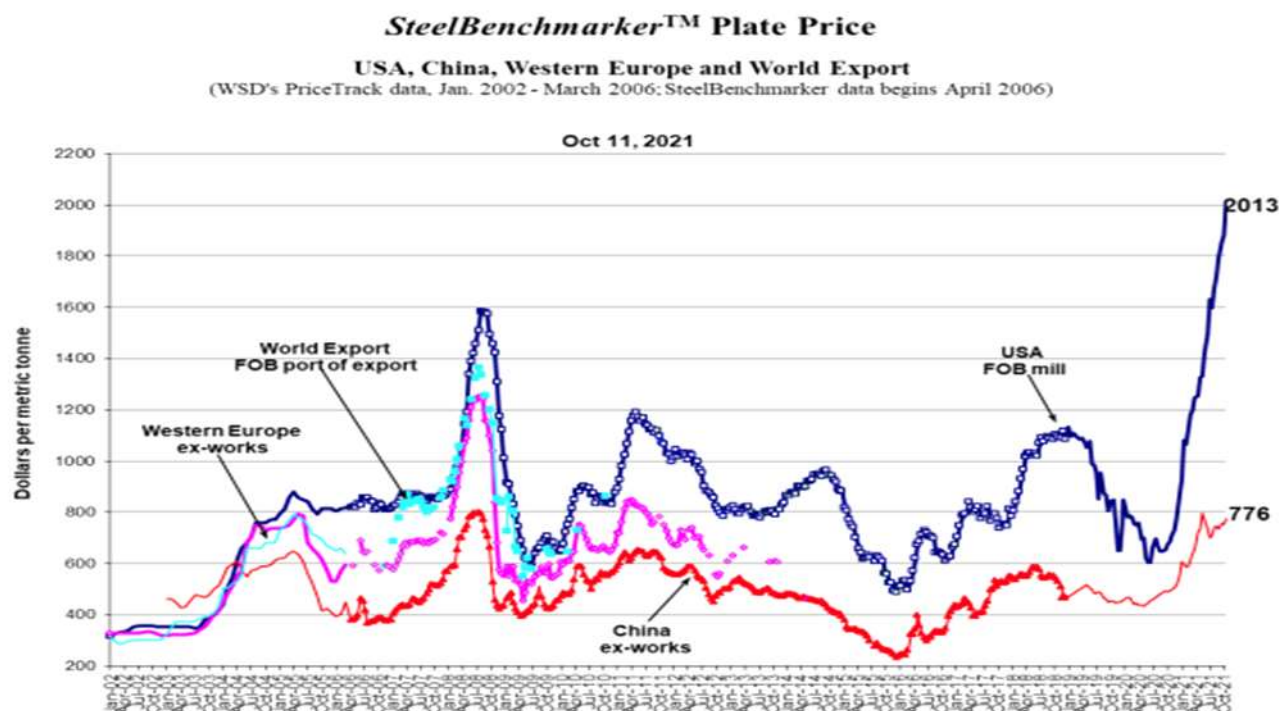
- 3) CPUC General Order 88 Approval to construct an overhead crossing along the BNSF railroad on June 30, 2021.
- 4) Execution of a Cooperative Agreement between the City, WMWD, and WRCRWA consistent with the Council Direction from the July 7, 2021 City Council Meeting (See Exhibit 7).
- 5) Obtained design approvals from the County of Riverside in January 2021 and Caltrans and Riverside County Flood Control in August 2021.
- 6) Approval of all utility relocation plans and issuance of notices to all affected utility purveyors in June 2021. Early utility relocation efforts include the relocation of AT&T facilities that were complete in June 2021, Southern California Edison (SCE), and Southern California Gas Company (SoCal Gas) facilities anticipated to be complete in December 2021, and Riverside Public Utilities (RPU) facilities in February 2022.
- 7) Secured possession of all required private property interests necessary to construct the Project and receiving approval for Right-of-Way Certification from the California Department of Transportation (Caltrans).
- 8) CTC's approval at the October 13 and 14, 2021 Commission Meeting to allocate \$10,300,000 in TCEP funding and \$2,876,960 in Highway Railroad Crossing Safety Account (HRCSA) funding for construction of the Project.
- 9) Completion of the bid advertisement process for the construction of all improvements associated with the Project as of October 14, 2021.

The City identified an approximate deficit of up to \$14.9 million upon opening bids and recently concluding property owner negotiations for a few businesses/properties. Upon review of the construction bids, final engineer's estimate of probable costs for construction, and previously estimated costs presented to City Council for the total Project costs, staff has evaluated each category and identified the following reasons in the overall difference between the July 2021 cost presented to City Council and the current Project estimate:

- 1) Staff/Consulting Services (design, acquisition, legal, and project management) - None.
- 2) Construction Management and Inspection Services - None.
- 3) Right-of-Way & Utilities Expenditures - RPU opened bids in late July 2021, and the lowest responsible, responsive bidder was higher than the engineers estimate provided by RPU prior to the execution of the Cooperative Agreement on January 11, 2021. Additionally, the City is close to reaching a settlement with a property and business impacted by the Project. Upon receiving the property owner/business financial information and completing appraisals, the estimated settlement will result in substantially higher costs than initial estimates. Initial

estimates were derived using the Project acquisition team, its appraisal consultants, eminent domain counsel, and a consultant goodwill appraiser. Costs were derived per available comparable land information and the team's past experience with similar estimates. The City has either settled with surrounding businesses/property owners (six [6] businesses, four [4] property owners) or been in active negotiations with access to appropriate documentation such that unforeseen loss of business goodwill is not anticipated for the remainder of the project.

- 4) BNSF Railway Company Fees/Costs - None, Estimated fees are consistent with the Overpass Agreement included as Exhibit 6, and any overages will be the contractual responsibility of Walsh Construction Company II, LLC.
- 5) Demolition of Structures Located at 151 and 165 N. McKinley Street - The contractor J&G Industries was able to perform all demolition services for their original bid price of \$187,530, less than the projected estimate.
- 6) Construction - There is approximately \$5.77 million difference between the estimate provided in July 2021 based on the 95% engineer's estimate of probable costs and the lowest responsible/responsive bid, which represents approximately 11% above the engineer's estimate. Additionally, the \$4.88 million difference between the final engineer's estimate (\$56,020,000) provided on August 1, 2021, and the construction cost is approximately 9% off the engineer's estimate. As a direct result of COVID-19 and restrictions to employees in workplaces, there has been growing shortages in materials for steel, lumber, and concrete beginning in December 2020. Both the 95% and final engineer's estimate included extraordinarily conservative numbers based on available recent bids for similar projects in the area to account for the inflation discussed below. One primary challenge was there were no similar projects for signature steel bridges with an aggressive schedule within the greater Southern California area. Concrete, steel reinforcing for concrete, asphalt concrete, and lumber had comparable numbers to draw from in recently bid/constructed projects. Steel costs, in general, were prepared by the design consultant BCA, then reviewed by their independent checker David Evans & Associates, and the City's project management consultant Mark Thomas & Company as part of quality assurances. All steel unit prices appeared to be very conservative, but with a little basis of actual comparison for the area or for a project with an aggressive construction schedule, numbers were developed based on the overall team's past experience based on estimated projections in rising unit costs for rolled and plate steel members. Upon review of the final engineer's estimate versus the miscellaneous bids, the following was apparent:
 - a. The two bid items involving the most steel members (Bid Item 237 - Sidewalk Overhang Supports and Bid Item 258 - Furnish Plate Steel Members) represented a delta of \$1.35 million (Bid Item 237) and \$5.91 million (Bid Item 258). All other items were within acceptable tolerances or could be explained when comparing other bids received and recent projects in the near area. The graph below illustrates the price differential for steel and the increase in costs since late 2020. The graph is derived from the October 11, 2021 weekly report provided by Steel Benchmarker, which tracks the United States and Foreign unit prices for rolled and plate member steel.



As shown above, since August of last year, steel has more than tripled in price and continues to show unforeseen increases in pricing. The closest steel rose in a similar manner was during 2008; however, the length of the steel price inflated peaked within less than a year. Currently, prices have continued to escalate over the last sixteen months. The City and its consultants provided an estimate to the best of the available information; however, without baselines for signature bridges within the general Southern California area, there was a significant challenge to provide an accurate estimate given the recent escalation and the challenges in the availability in steel.

- b. The SB 132 funds required an aggressive deadline. To ensure the City could meet the schedule to encumber and liquidate the entire \$84.45 million of SB 132 funds prior to the March 2023 invoice deadlines, the City opted to layer sets of liquidated damages for delays in the preparation of steel drawings/ordering of steel and overall delivery of the project to ensure the SB 132 funds could be invoiced prior to the funding deadline. Combined with the unavailability of steel currently, much of the differences discussed in item a. above are associated with risks the contractor will incur to deliver the project within the required schedule.

- 7) Construction Contingency - To account for unforeseen conditions, the City is including a 10% contingency to the construction costs.

The City approached RCTC to provide additional funds to cover the projected deficit. RCTC has agreed to provide up to \$9,889,692 in Measure A Regional Arterial (MARA) funds for construction and right-of-way acquisition pending the approval of the Board of Commissioners at the November 10, 2021 Commission meeting. The use of RCTC funding is contingent upon the following conditions:

- 1) Other Project related funding sources shall be used prior to the use of MARA.

- 2) MARA funds shall only be utilized for construction-related and right-of-way acquisition costs for the Project.

A draft Funding Agreement between RCTC and the City has been included as Exhibit 2.

Per the November 3, 2021 City Council meeting, the approved budgetary appropriations of \$5 million from the current unobligated City Developer Impact Fee (DIF), Roadway Maintenance and Roadway Accountability (RMRA), and additional Local Riverside County Measure A Gas Tax funding sources is necessary to account for the remaining Project deficit.

ANALYSIS:

Award of Construction Contract

As authorized by Public Contract Code, the City commenced advertisement for RFQ 21-053CA to pre-qualify contracting firms, their project managers, and their steel erection subcontractors, as well as their material supplier for steel fabrication that were interested in submitting bids for the Project in February 2021. The City received pre-qualification packages from twelve (12) prospective contractors. The City developed a panel of City, BBK, and Mark Thomas personnel to review packages and conduct interviews from references listed in each package for the contractor, project managers, and contractor team. This process was completed at the end of April 2021 and presented to City Council on May 19, 2021, and approved.

Notice Inviting Bids (NIB) 22-020CA was advertised pursuant to Public Contract Code bidding procedures and the Corona Municipal Code (CMC) section [3.08.050](#) public projects standard bidding procedure requirements on August 12, 2021, and posted to the PlanetBids bidding platform. The City would only consider bids from bidders who were approved as part of the pre-qualification process. A total of 103 contractors were notified by PlanetBids of the bid opportunity along with the 12 potential prime contractors who were approved as part of the pre-qualified list. Additionally, a total of 8 plan rooms and 136 suppliers/subcontractors downloaded the Bid and Contract Documents. The City conducted a mandatory job walk on August 18, 2021, with all 12 prequalified prime contractors in attendance. The bid close date was October 14, 2021. Five (5) bids were received by the October 14, 2021, bid due date and time.

The following table illustrates the results of the submitted bids:

<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>
Walsh Construction Company II, LLC	Corona, CA	\$60,899,929
Steve P. Rados, Inc.	Santa Ana, CA	\$63,673,834
Guy F Atkinson, LLC	Irvine, CA	\$65,171,743
American Bridge Company, Inc.	Concord, CA	\$75,659,637
Shimmick Construction Company, Inc.	Irvine, CA	Non-Responsive

Purchasing staff reviewed the bid submitted by Walsh Construction Company II, LLC, and determined the following minor irregularities:

- 1) Walsh Construction Company's bid included work from dba Legacy Foundations to perform pile construction work for the bridge. Upon investigation into the company's ownership, it was determined that dba Legacy Foundations is owned by Shimmick Construction Company, Inc. Instructions to Bidders Section 18 from the bid documents is copied below:

Section 18. Disqualification of Bidders; Interest in More Than One Bid:

"No bidder shall be allowed to make, submit or be interested in more than one bid. However, a person, firm, corporation or other entity that has submitted a sub-proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders submitting a bid to the City. No person, firm, corporation, or other entity may submit a sub-proposal to a bidder, except for quoting prices of materials to a bidder, when also submitting a prime bid on the same Project."

The Purchasing Division contacted the City Attorney's office to investigate whether Walsh Construction Company II, LLC's bid should be disqualified. Below is a summary of their findings:

- a. Whether Shimmick is ineligible to perform the work does not render Walsh Construction Company II, LLC's bid non-responsive or automatically non-responsive. Although there is no case directly on point, the situation is analogous to a subcontractor who would be disqualified from performing the work because of its lack of a license. The purpose of such a provision requiring the prime contractor to secure the necessary licenses, whether it does so itself or by retaining a licensed subcontractor, is to place the obligation on the prime contractor. (D.H. Williams Construction, Inc. v. Clovis Unified School Dist. (2007) 146 Cal.App.4th 757, 770). A requirement that a subcontractor not be disqualified by its conduct requires the prime contractor to either self-perform or secure later a compliant subcontractor that is not disqualified, just as D.H. Williams Construction, Inc. required the prime contractor to remedy the deficiency post-award but did not render the bid non-responsive.
- b. Walsh Construction Company II, LLC remedied this through the following actions:
 - i. Provided the City a letter and email from the ownership from dba Legacy Foundations indicating their voluntary withdrawal of bids.
 - ii. Provided the City a substitution request to replace dba Legacy Foundations with a valid subcontractor under the requirements of Section 4107 Subletting and Subcontracting of the Public Contract Code.
 - iii. Maintained the bid price and their individual bid item costs and scope consistent with the bid/contract documents submitted by Walsh per NIB 22-020CA on the October 14, 2021, bid due date.
- c. Shimmick Construction Company, Inc. was disqualified from bidding due to the requirements of Section 18 of the bid documents as they submitted both a prime bid and subcontractor bid to another prime through dba Legacy Foundations. They were formally notified on November 9, 2021, by the Purchasing Division and is, therefore, considered nonresponsive.

- 2) Walsh Construction Company II, LLC was required to resubmit the Designation of Subcontractor forms for one other subcontractor (Cell-Crete, Inc.) per the requirements of PCC Section 4104 due to inadvertent listings of the Department of Industrial Relations (DIR) and California State Licensing Board (CSLB) listings. They erroneously included DIR and CSLB listings for another firm; however, this has been corrected with a new submittal of the Designation of Subcontractor form with the correct DIR and CSLB information for the subcontractor.
- 3) Walsh Construction Company II, LLC did not designate steel erection subcontractors with their bid submission in conformance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 of the California Public Contract Code) Section 4106. Additionally, it did not list the company that would fabricate and supply steel. On October 29, 2021, Steve P. Rados, Inc., the 2nd lowest bidder, contacted the City Purchasing Staff to note this and request the City consider this in the determination of responsiveness. City staff conducted a review and requests that the City Council determine the bid is responsive due to the following findings:
 - a. Steel Fabrication - Per the bid documents, the contractor may elect to either:
 - i. Prepare shop drawings, manufacture the steel components in a mill, then fabricate the bridge on-site, move using self-propelled modular transport systems, and erect the bridge.
 - ii. Prepare shop drawings, manufacture the steel components in a mill, and fabricate/erect the bridge in place using specialized falsework.

Walsh Construction Company II, LLC had elected to perform fabrication efforts per item ii above with their bid submission, so all fabrication would occur off-site. They did not designate a subcontractor for this material as it's their position steel fabrication is considered a materials supplier where there is no legal requirement to designate with their bid submission. It provided a memorandum to the City illustrating quotes were received from their steel fabrication firm prior to the October 14, 2021 bid due date; its bid submission included the cost of the material reflected in the quote received from the fabrication firm that will provide the material on the Project, and that fabrication firm was prequalified as part of RFQ 21-053CA for the Project. City staff reviewed similar conditions with prefabricated components; determining steel fabrication should be considered a supplier based on the following:

- i. Steel components are commonly fabricated for project-specific needs, and these are routinely identified as materials suppliers. Notable examples include fabrication firms who prepare girders and specialty members for concrete bridges, cement mortar-lined steel pipe and fittings, and reinforced concrete boxes or pipe built off-site and delivered on-site. In all cases, these materials include shop drawings and specifications customized for the project, manufacturing or fabrication off-site, and delivery to the project site where the prime contractor erects and assembles the final product. These firms preparing, assembling, fabricating, and delivering the materials are considered materials suppliers, and the firm performing the construction in the field would be considered a subcontractor or contractor.
- ii. No labor will be performed in the field by the steel fabrication firm; it's

common practice for prime contractors to execute a purchase order for this material in lieu of a subcontractor agreement.

Therefore, staff has concluded that no designation of subcontractors was required for steel fabrication.

- b. Steel Erection - Walsh Construction Company II, LLC was prequalified for this Project as part of RFQ 21-053CA to self-perform steel erection. We have confirmed that Walsh will be self-performing this work. Therefore, no designation of subcontractors was required for steel erection.

Additionally, since less than 50% of the original contractors on the pre-qualified list submitted bids, the City interviewed the remaining seven bidders who did not submit a bid in response to NIB 22-020CA and were provided the following responses:

- 1) Vendor 1 - Vendor had limited resources (estimators) available at the time and chose to spend their time and effort on a larger bid, but they did not specify which project. They were interested in bidding the underground work as a sub and began working on it but could not complete it by the revised bid due date and time.
- 2) Vendor 2 - Vendor chose not to bid as the contractor had to assume too much risk with an aggressive schedule and the complexity of the steelwork. They committed significant manhours to preparing a bid for the project but chose not to submit.
- 3) Vendor 3 - Vendor chose not to bid as there was too much competition with 12 prequalified contractors. They only bid on projects that have a small pool of contractors, which they believe affords them a better chance of coming in low and winning the bid.
- 4) Vendor 4 - Vendor chose not to bid as it was too large of a bidder pool and had limited resources (estimators) to pursue. They chose to use their resources to pursue a grade separation in Los Angeles County, bidding concurrently with this Project. Additionally, they did not spend much time investigating the Project bid documents; however, they had heard concerns from other vendors regarding the risk placed on the contractor to deliver the Project.
- 5) Vendors 5 through 7 did not provide a response.

Although two vendors noted too much competition, when the City developed the prequalification process, there was significant concern about not having enough contractors to submit bids. Per the California Public Contract Code Section 20101, a prequalification process for construction must have a standardized process, uniform scoring system, and an appeals process. City staff contacted other public agencies with complex project and grade separation experience and industry groups specializing in steel components to establish the uniform grading scale and qualifications requirements that would provide minimum qualifications to build this Project and would not be so prohibitive to yield a limited amount of contractors. The prequalification of twelve contractors was higher than anticipated; however, the California Public Contract Code does not allow for subjective analysis or establishing the top-ranked contractors. The City solely established prequalifications based on the uniform scoring system. Additionally, if the bidding pool was reduced, the number of bids received would likely have the same results of between 4 and 6 bids received.

Vendors also noted risk on the contractor, concern on time to complete the work, and steel availability. City staff spent numerous hours evaluating the optimum schedule with regards to the requirements to provide a final invoice to RCTC for work associated with State Senate Bill 132 in March 2023 and have the funds completely liquidated by June 30, 2023. Staff identified a total schedule of 520 working days would allow sufficient time to construct the project, accommodate steel materials shortages currently occurring, and liquidate the \$54.9 million of remaining funds for construction (approximately \$34.1 million), construction/program management, and staff (approximately \$7.4 million), and utilities/right-of-way (approximately \$13.4 million) miscellaneous expenditures by January 2023. Any additional time would significantly increase the risk of not meeting the SB 132 funding deadline requirements to liquidate all remaining funds for the Project.

Therefore, City staff recommends that the City Council award NIB 22-020CA for the construction of the McKinley Street Grade Separation Project to Walsh Construction Company II, LLC, the lowest responsive, responsible bidder, for the total not to exceed bid amount of \$60,899,929.

Funding Approvals and Appropriations:

The following should be considered with each of the appropriated funding sources and budgetary transfers:

- 1) MARA Funds - These funds shall be only used for construction-related and right-of-way acquisitions for the project. All other funding sources shall be utilized prior to the use of these funds. Refer to Exhibit 2 for additional information. The attached agreement in Exhibit 2 is draft only; upon approval from RCTC's commission, the final agreement will be presented to the City Attorney for review and approval.
- 2) HRCSA Funds - These funds shall be only used for the construction of the Project and shall be expended prior to October 14, 2024. Refer to Exhibit 3 for additional information. The attached agreement in Exhibit 3 is draft only; upon approval from the State of California, the final agreement will be presented to the City Attorney for review and approval.
- 3) CPUC Section 190 Grade Separation Program Funds - These funds shall be only used for the construction of the Project and shall be expended prior to December 1, 2024. Refer to Exhibit 4 for additional information. Although they can be used for other Project elements, they were committed as construction only matching funds as part of the TCEP funding. The attached agreement in exhibit 4 is draft only; upon approval from the State of California, the final agreement will be presented to the City Attorney for review and approval.
- 4) TCEP Funds - These funds shall only be used for the construction of the Project and shall be expended within thirty-six (36) months from the requested allocation. All funds must be expended by October 13, 2024; however, extensions may be granted by the CTC as necessary. Refer to Exhibit 5 for additional information.
- 5) BNSF Contributions - There are no restrictions to these funds; however, they will not be available for the City's use until after the construction of the Project is complete. Refer to Exhibit 6 for additional information.

- 6) WMWD/WRCRWA Utility Relocation Reimbursement Funds - These funds shall only be applicable to the relocation or construction of any WMWD/WRCRWA facilities associated with the project. Although the Cooperative Agreement as attached as Exhibit 7 indicates only \$1,240,000 is available for the total construction costs, should additional funds be necessary, based on the actual construction costs, WMWD/WRCRWA will reimburse the City for said additional costs. The City will ensure the construction of these facilities will not occur until each utility owner's respective governing bodies approves an Amendment to the Utility Agreement to reimburse the City for said additional costs. Refer to Exhibit 7 for additional information.

The City has already applied for grants/funding programs specifically for the Project for items 1 through 4 above and are currently processing the agreements with the respective agencies. These funds would not be eligible for other uses or projects. Additionally, items 5 and 6 above are agreements tied explicitly to this Project, and although the BNSF contributions have no restrictions, these funds are necessary to complete the Project. Accepting, approving, and appropriating these funds will provide sufficient funding to complete the Project.

FINANCIAL IMPACT:

With the approvals/appropriations recommended herein and per the budgetary approvals/appropriations per the November 3, 2021, City Council meeting, available funding for this Project will be available as follows:

Project Funding	
Funding Source	Amount
State Senate Bill 132	\$84,450,000
Gas Tax	\$729,724
Transportation Development Act (TDA)	\$2,000,000
Transportation Uniform Mitigation Fees (TUMF)	\$1,626,084
Local Measure A	\$4,025,000
Trade Corridor Enhancement Program (TCEP)	\$10,300,000
Section 190 Grade Separation Program	\$5,000,000
BNSF Railroad Contributions	\$3,810,000
Western Municipal Water District Utility Contributions	\$1,240,000
Highway Railroad Safety Crossing Account (HRCSA)	\$2,876,960
City Development Impact Fees – Street/Signal	\$1,000,000
City Development Impact Fees – Drainage	\$1,000,000
Road Maintenance and Rehabilitation Account (RMRA)	\$500,000
RCTC – Measure A Regional Arterials	\$9,889,692
Total	\$128,447,460

The costs for this project are outlined as follows:

Project Expenditures	
Expenditure Source	Amount
Staff/Consulting Services (Design, Acquisition, Legal, and Project Management)	\$18,746,650
Construction Management Consulting Services	\$11,000,000
Right-of-Way & Utilities Expenditures	\$29,803,500
BNSF Railroad	\$1,718,858
Building Demolition	\$187,530
Construction	\$60,899,929
Construction Contingency (10%)	\$6,090,000
Total	\$128,446,500

Fund	07/01/21 Est. Fund Balance	Budgeted Revenues/ Sources	Budgeted Expenditures/ Uses	Fund Balance Impacts	06/30/22 Est. Fund Balance
Public Works Transportation Grants/Agreement Fund 243 [Note 1]	(\$72,530,892)	\$0	\$0	Appropriation (\$33,116,652) Revenue Increase \$33,116,652	(\$72,530,892)

Note 1: Negative ending balance due to revenue/reimbursement offset expected in out-years. Revenue recognized when expensed.

ENVIRONMENTAL ANALYSIS:

Per Public Resources Code Section 21080.13, all railroad grade separation projects which eliminates an existing at grade crossing is exempt from the laws for the California Environmental Quality Act (CEQA). As a grade separation project, this Project is statutorily exempt under the California Environmental Quality Act.

PREPARED BY: JOSHUA COSPER, P.E., P.L.S., CONSULTANT PROJECT MANAGER FOR THE MCKINLEY GRADE SEPARATION PROJECT

REVIEWED BY: SAVAT KHAMPHOU, PUBLIC WORKS DIRECTOR

Attachments:

1. Exhibit 1 - Contract
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