

RESOLUTION NO. 1614

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILSONVILLE ACTING AS THE LOCAL CONTRACT REVIEW BOARD MAKING FINDINGS, DETERMINATIONS AND CONCLUSIONS DENYING THE PROTEST OF DISQUALIFICATION AND REJECTION OF SKYLINE EQUIPMENT & UTILITIES' BID FOR THE PUBLIC IMPROVEMENT CONTRACT FOR THE WOMEN'S PRISON AND INTAKE CENTER INFRASTRUCTURE PROJECT PHASE-1, 18-INCH WATER MAIN (PROJECT NO. 530-49131-5410-131); DISQUALIFYING SKYLINE EQUIPMENT & UTILITIES FOR ONE-YEAR FROM BIDDING ON ANY CITY OF WILSONVILLE PUBLIC CONTRACTS, AND AWARDING A CONTRACT TO J. L. JERSEY, AS THE LOWEST RESPONSIBLE BIDDER.

WHEREAS, the City Council acting as the Contract Review Board, finds and recites:

1. Senate Bill 686, which sites a Women's Correctional Facility and Intake Center near Wilsonville, also compels the City of Wilsonville to provide certain public infrastructure improvements to the Facility, namely domestic/fire suppression water, waste water, storm water and transportation; and
2. In order to provide public services to facilitate the construction of the Facility, the City and the Oregon Department of Corrections (DOC) entered into a "Cooperative Agreement for the Provision of Public Services Necessary for the Construction and Operation of the Women's Prison and Intake Center, Day Road Property at Wilsonville, Oregon" dated November 30, 1999 ("Cooperative Agreement"), wherein the City agreed to an expedited process to install the required Infrastructure;
3. Plans and specifications for the Women's Prison and Intake Center Infrastructure Phase-1, 18-Inch Water Main ("Project") were prepared by MacKay and Sposito, and the Project was advertised for competitive bids in January 2000, with January 20, 2000 specified as the bid opening date; and
4. The Project bid solicitation required that all firms submitting proposals be prequalified with the City, and that all required documentation be on file with the Office of the City Engineer no later than seven (7) calendar days prior to the bid opening date of January 20, 2000. Furthermore, if it was determined that the firm submitting said proposal failed to meet the

minimum qualifications, a written notice indicating same was to be sent to the submitting party no later than three (3) days prior to the scheduled bid opening date of January 20, 2000; and

5. After carefully reviewing the pre-qualification information submitted by Skyline Equipment and Utilities ("Skyline"), Staff determined that on the basis of materials, equipment and experience Skyline appeared to be capable of performing the duties associated with the Project but was concerned about the City's recent past experiences with Skyline on a public improvement project; and

6. ORS 279.037(1)(d) provides that the statutory basis for disqualification of a bidder includes "... repeatedly breached contractual obligations to public and private agencies" and WC 3.214(6)(d) also contains this standard; and

7. ORS 279.039(2) provides that the disqualification be by written notice within thirty (30) days of submitting the pre-qualification information.

8. The City Engineer as the City's public improvements contracting officer, consulted with the City's Assistant City Attorney and after reviewing the standards for disqualification, determined that based on recent, past experience with Skyline, it was in the best interest of the public to disqualify Skyline and reject its bid from bid selection; and

9. WC 2.314(8) provides that "in addition to the powers and duties established by this Code, the board shall have such additional powers as authorized by state law and ORS 279.035 provides "...may, for good cause, reject any and all bids upon a finding of the agency it is in the public interest to do so."

10. On January 20, 2000, the City Engineer announced at the time set for bid opening that Skyline was disqualified from the bid process and rejected its bid, which occurred after Skyline had submitted its sealed bid, but prior to the City opening all sealed bids; and

11. Written notice of the reason for disqualification and bid rejection was recited together with a communication of the recommended disqualification time period and appeal process to Skyline through its attorney, Jan Sokol, by facsimile and by certified letter of January 24, 2000, from the City Attorney (copy attached and incorporated herein as "Exhibit 1"), and a facsimile copy of the Contract Review Board Public Contracting rules were also sent to Mr. Sokol's associate on January 24, 2000; and

12. By letter under the name of its attorney dated January 21, 2000, but received by the City January 24, 2000, Skyline timely protested its disqualification and rejection of bid, a

copy of which is attached and incorporated herein as "Exhibit 2". (The letter references a facsimile copy, but the City has no record of receiving any.)

13. The City's disqualification announcement and written notice occurred within the statutory 30-day period of ORS 279.039(2), but after the shorter pre-qualification period recited in finding 4 above; and

14. Based on a course of dealing with Skyline, it is the professional opinion of the City Engineer Staff that Skyline's performance was not satisfactory due to the repeated breaches of contractual obligations which occurred during the Wilsonville Road Reconstruction Phase 1 project as more particularly described as follows:

(1) Skyline failed to reasonably exercise due diligence in locating utilities before excavation causing unnecessary project delays;

(2) Skyline repeatedly submitted billings for equipment for more days on the job than the equipment was actual present and gainfully employed on the project;

(3) Skyline repeatedly submitted billings for employees who did not perform the jobs and/or did not work the hours indicated on certified payrolls submitted to the City as required by law;

(4) Skyline changed its project manager during the course of the contract and sought to seek double payment for the replacement personnel;

(5) Skyline failed to disclose it was not the general contractor performing 50% of the work;

(6) Skyline exaggerated claims for lost work time and employee hours gainfully employed on Change Order work;

(7) Skyline owners exhibited rudeness, harassment, profanity, and contentiousness to City inspectors, sub-contractors and utility representatives and created a hostile work environment;

(8) Skyline repeatedly submitted erroneous monthly payment documentation in order to meet the requirements of the contract and then sought damages from the City for the alleged delay in payment during the substantial effort, both in time and costs incurred by the City, required to place the documentation in the required order;

15. Skyline denies that its performance was unsatisfactory, alleges the City was in breach of contract in several particulars, and seeks damages of at least \$720,000 on the prior Wilsonville Road Reconstruction Phase 1 project.

16. At the express direction of the City Engineer, the City employed a full-time, on-site inspector with over twenty years experience in roadway construction with the State of Washington Department of Transportation, on the Wilsonville Road Reconstruction Phase 1 project; and

17. At the express direction of the City Engineer, the inspector compiled daily handwritten documentation on work performance, payment requests, those individuals and equipment gainfully employed, timeliness of performance, communication and ability to work in a cooperative and non-hostile manner with City personnel and inspectors; and

18. The City Engineer, having reviewed the inspection documents, the documents involving pay requests, correspondence between the City and Skyline, and observing on-site the performance of Skyline and receiving reports thereof, determined the performance of Skyline was unsatisfactory as recited above, based his determination of disqualification and rejection of bid thereon, and recommends a one-year disqualification period in the submission of future project bids and proposals; and

19. The course of conduct of unsatisfactory performance as found and recited herein establishes good cause to reject Skyline's bid in the public interest; and

20. Skyline requests that due to irregularities in providing notice of disqualification, all bids should be rejected; and

21. To meet the terms and conditions of the Cooperative Agreement it is imperative that the award of the construction of the water system improvements not be delayed and declaring all the bids received rejected and re-bidding the Project would cause material delay and exacerbate a known delay time for fabricating pipe and fitting materials;

22. The bid documents received at the bid opening have remained in the custody of MacKay and Sposito except for proposal submitted by Skyline; and

23. The bid documents submitted by Skyline remained unopened and in the possession of the City Engineer until January 24, 2000 wherein it was returned to Skyline at its request; and

24. Since Skyline withdrew its bid, the bid can no longer be considered; and

25. In the letter under date of January 21, 2000, but received by the City Engineer on January 24, 2000, there is no reference to the bid amount that would have been submitted by Skyline as the lowest responsible bid; and

26. If the Project were re-bid, the 27 firms submitting bids, especially the firm who submitted the current lowest responsible bid, would be at a distinct disadvantage as their proposal amounts are now known; and

27. Re-bidding the Project would result in a substantial reduction in the number of bid proposals resulting in a decrease in competition leading to additional construction costs to the City; and

28. Given the substance of the unsatisfactory past performance by Skyline, and when measured by the probabilities of repeated delays and contentious performance for a time sensitive, first in the series of sequenced, expedited public improvement projects for the Facility, the public interests in rejecting its bid for good cause clearly outweighs any procedural defect claimed by Skyline in the pre-qualification process in any balancing of the public interests. There is not good cause to reject all bids in the public interest; and

29. The City of Wilsonville adopted a motion at a regular meeting in June 1999, authorizing and approving budget appropriations for the 1999-2000 fiscal year; and

30. The approved City budget Capital Improvement Projects Fund for 1999-2000 contains funds for the design and construction of water system improvements associated with the Facility; and

31. The City duly advertised for competitive bids to construct the improvements in the Daily Journal of Commerce, a newspaper of general circulation; and

32. Sealed bids were received prior to 2:00 p.m., Pacific Standard Time, January 20, 2000, at the Community Development Department, 8445 SW Elligsen Road, Wilsonville, Oregon 97070. Except for Skyline's, 27 bids were then opened individually and separately read aloud after 2:00 p.m., Pacific Standard Time, January 20, 2000. The Summary of Bids from the 27 bidders is attached hereto and incorporated herein as "Exhibit 3"; and

33. The City Staff has reviewed the bids and recommends that a contract for the Project be awarded to J.L. Jersey, the lowest responsible bidder, and a Construction Contract Agreement be executed with J. L. Jersey in a timely manner; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

The City Council, acting as the Local Contract Review Board, makes the following findings, determinations and conclusions:

(1) The findings recited above are incorporated herein as if fully set forth.

(2) Skyline was given notice and opportunity to appeal the disqualification and rejection of its bid, and by letter dated January 21, 2000 and received by the City January 24, 2000, exercised those rights to appeal. Skyline has filed a timely protest of the disqualification and bid rejection process and has an opportunity to be heard de novo in this matter.

(3) The City Council, acting as the Contract Review Board, finds, determines and concludes that good cause has been presented of unsatisfactory past performance and repeated contractual breaches in the Wilsonville Road Reconstruction Phase-1 project by Skyline and that it is in the public interest to disqualify Skyline and to reject its bid under the standards of WC 2.314(6)d; WC 2.314(8); ORS 279.039; ORS 279.035.

(4) The City Council, acting as the Contract Review Board, further finds, determines and concludes that SB 686 makes time of the essence in constructing the Project and that this Project is the first in a series of sequential, expedited public infrastructure improvements for the prison Facility. Any defects in the pre-qualification procedure were minor in nature; and in any event, given the probability of incurring delays in the performance of the contract and in the extra work time caused staff in payment documentation and dispute resolution as recently experienced by the City with Skyline; there is not only good cause to support disqualification and to reject Skyline's bid in the public interest, but when the effect on the City and the other 27 bidders of re-bidding is also balanced against the public interest in declaring disqualification during the pre-qualification process, good cause is not established to reject all bids.

(5) The City Council, acting as the City Contract Review Board, finds, determines and concludes in the public interest, the Project shall not be re-bid.

(6) The City Council, acting as the City Contract Review Board, finds, determines and concludes that Skyline has withdrawn and revoked its tendered, but unopened, bid on January 24, 2000; the competitive bidding process was duly followed; that J. L. Jersey was the lowest responsible bidder and is awarded the Women's Prison and Intake Center Infrastructure Phase-1, 18-inch Water Main public improvement contract in the sum of \$326,969.00.

(7) Skyline's protest is denied.

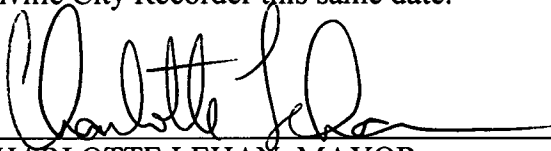
(8) The City Manager is authorized to execute the contract documents with J. L. Jersey on behalf of the City, subject to the City Attorney's approval as to form.

(9) Subject to the final completion of all improvements specified in the contract documents and any supplementary changes, the City Engineer is authorized to certify the required public improvements complete and make final payment including release of all retainage.

(10) Authorized the expenditure of funds for this contract from:

<u>ACCOUNT NO.</u>	<u>AMOUNT</u>
530-49131-5410-131	\$326,969.00

ADOPTED by the Wilsonville City Council at a special Council meeting thereof this 28th day of January, 2000, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Kirk	Yes
Councilor Holt	Yes