



PROCUREMENT COMMITTEE

Clifford J. Hurgin Municipal Center
1 School Street, Bethel, CT 06801 (203) 794-8514

MINUTES OF MEETING

Tuesday, October 28, 2008 -11:00 a.m.
Clifford J. Hurgin Municipal Center - Meeting Room "A"

PRESENT: Robert Burke, First Selectman
Barry Curina, Comptroller
Frank Ventrella, Purchasing Agent

First Selectman Robert Burke called the Meeting to order at 11:15 a.m.

BID # 09-01: Stony Hill Sewer Extension Area – Contract No. 3
Consideration and review of recommendation from Peter Sammis of URS and Andrew Morosky Director of Public Works. Recommendation to the Board of Selectman, if applicable.

Robert Burke made a motion, which was seconded by Barry Curina, to forward Bid 09-01 to the Board of Selectman and Public Utilities Commission for review of recommendation from Peter Sammis of URS & Andrew Morosky Director of Public Works (see attached memos). The apparent low bidder Baltazar Contractors, Inc. was disqualified for various reasons which resulted in Consultation with the law firm Pullman & Comley, LLC (see attached documentation). Ludlow Construction Co. was the second lowest bidder. Per all enclosed documentation vote to whom should be awarded the base bid for Bid 09-01. Vote, all in favor, motion unanimously approved.

As there was no further business to come before the Procurement Committee, Frank Ventrella made a motion, which was seconded by Barry Curina, to adjourn the meeting at 11:30 a.m. Vote, all in favor, motion unanimously approved.

Respectfully submitted,

Frank Ventrella, Purchasing Agent

RECEIVED

OCT 30 2008

TOWN OF BETHEL
TOWN CLERK



Memo

To: Robert E. Burke, Chairman, Procurement Committee
From: Andrew M. Morosky, P.E. *AM*
CC: Frank Ventrella; Barry Curina; File
Date: October 24, 2008
Re: Stony Hill Contract 3 - Recommendation of Award

I have reviewed the proposals received by the Procurement Committee on October 6, 2008 for the referenced project.

After careful consideration and consultation with the law firm of Pullman & Comley, the apparent low bidder, Baltazar Contractors, Inc., was disqualified for submitting a non-responsive bid. Baltazar did not include a Contractor's Qualification Statement with their bid; something each of the other eight bidders submitted prior to the bid opening. In addition, Baltazar's bid form contained several unbalanced items that, had the quantities shown on the *plans* remain unchanged, would have presented the prospect of the Town paying more to the apparent low bidder than it would have paid to the second or perhaps even the third low bidder. I have correspondence regarding the disqualification in my files if there is a need to review the documentation supporting the Town's decision.

The second bidder, Ludlow Construction Co., Inc., is in the process of completing the work on Contract 2 of the Stony Hill Sewer Project. By all accounts, Ludlow has done a very good job on Contract 2. They have generally provided good quality in all aspects of the construction project, from traffic protection to excavation, installation of mains, backfilling, pressure testing, et cetera. Ludlow has also been responsive when unforeseen issues cropped up that required input from all parties to come to a resolution. Ludlow has worked well with the residents in the area to accommodate their needs, insofar as possible, and they have coordinated well with the URS field representative to address issues with school bus routes and detours.

I have attached a memorandum dated October 24, 2008 from Peter Sammis of URS Corp. indicating that URS sees no reason for the Town not to award the work to Ludlow.

Based on the foregoing, I recommend that the Procurement Committee accept the bid from Ludlow Construction and forward its recommendation to the Board of Selectman for award.



MEMORANDUM

To: Andrew Morosky, P.E.
Bethel Town Engineer

From: Peter Sammis

Date: October 24, 2008

Subject: *Stony Hill Sewer Project*
36935520
Contract No. 3 – Second Low Bid Evaluation

Per your request, we have reviewed the apparent second low bid of Ludlow Construction Co., Inc. submitted on October 6, 2008 and have found no errors or inconsistencies. We reviewed their Statement of Qualifications and found no shortcomings. A comparison of the unit prices between Ludlow (second low bid) and Guerrera (third low bid) shows differences, but nothing that should impact the overall project cost to significant degree, should there be substantial additions or deletions to the project. Overall, Ludlow's base bid is \$131,290.25 less than Guerrera's base bid.

As you are aware, Ludlow Construction Co., Inc. was the low bidder on the Stony Hill Sewer Project - Contract No. 2, and was awarded Contract No. 2. Their performance on Contract No. 2 has generally been good to very good. The quality of field work installed, staffing levels, equipment mobilization, and equipment maintenance have all been more than acceptable. The quality of materials utilized for the project has been as specified or in some instances a better grade. The Ludlow office staff has been very responsive to the administrative needs of the project including additional requests, project paperwork and shop drawing submittals. Requests for additional work have all been reasonably negotiated with Ludlow throughout the duration of Contract No. 2.

Six (6) of their previous project related references had been previously contacted and the feedback on Ludlow Construction Co., Inc. had been positive. Their bank reference (Bank of America) was contacted and if the Town feels that this information is required, a financial status inquiry submission to "Bank of America Credit Inquiry Services" at (FAX 415- 343-9301) must be made on Town of Bethel letterhead. There have been no known instances of any financial issues with Ludlow (inability to provide materials, staffing, equipment, non-payment of Subcontractors, etc.) for the duration of Contract No. 2.

Therefore, based on the bid documents submitted and reviewed, previous telephone interviews with the references provided, as well as previous similar work completed in the Town of Bethel, we see no reason that the base bid should not be awarded to Ludlow Construction Co., Inc., should the Town desire to do so.



DEPARTMENT OF PUBLIC WORKS ADMINISTRATION
Clifford J. Hurgin Municipal Center, 1 School Street, Bethel, CT 06801
Telephone (203) 794-8549 Fax (203) 794-8767

FAX COVER SHEET

.....
Date: 10/15/08

To: Paulo Baltazar Fax Number: 413 583-6140

Regarding: Stony Hill Contract 3

From: Andrew Morosky

Pages Included w/ Cover: 3 TOTAL

Comments:

Please see attached letter.

Andrew



DEPARTMENT OF PUBLIC WORKS
Clifford J. Hurgin Municipal Center, 1 School Street, Bethel, CT 06801
Telephone (203) 794-8549 Fax (203) 794-8767

October 15, 2008

Mr. Paulo Baltazar, President
Baltazar Construction
83 Carmelina's Circle
Ludlow, MA 01056

Re: ~~Stony Hill Sewer Extension, Contract 3~~
Bid Results

Dear Mr. Baltazar:

The Town of Bethel has completed its initial review of the bids received for the referenced project. At this point, the Town is considering the lowest *qualified* bids for further review. As you may be aware, your company submitted the apparent low bid.

Based on our review of the bid documents, your bid is disqualified and/or deemed not to be the lowest bid for the following reasons:

1. No Contractor's Qualification Statement (CQS) was included with the bid. This was a requirement of all bidders as detailed in Article 6 of the Information for Bidders section. Each of the other eight bidders submitted the required CQS.
2. You did not show proof that your firm is authorized to perform work in the State of Connecticut.
3. In addition to the numerous items which had a unit price of one penny, the unit price for "Sanitary Sewer - 8" PVC" of \$15.00/lf is extremely low compared to the average unit price of the remaining bidders which is \$70.28/lf and compared to your unit prices for "6" PVC Lateral" (\$50/lf), "6" PVC C-900" (\$55/lf) and "8" PVC C-900" (\$75/lf).

The estimated quantity of Sanitary Sewer - 8" PVC pipe on the bid form is approximately 2,000 lf more than is shown on the plans. Therefore, if there is no increase in sewer main constructed as compared to the quantity of main shown on the plans, there will be a credit due to the Town. The credit due from Baltazar to the Town would be some \$110,000 less than the second bidder. As the difference between the first and second bidders is less than \$100,000, it is not in the Town's best interest to commit to a Contract which may require that more money be spent to complete the same amount of work.

4. The unit price for manholes (\$14,960/ea) is very high compared to other bidders, (average of \$3,150/ea) and if there is an increase in quantity of this item, which is not to be unexpected given the unknowns that materialize during open trench

excavation, it will not be in the Town's best interests to be subject to a significant increase in the cost of the work.

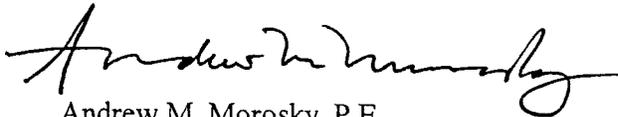
5. The unit price for force main (\$324/lf) is also extremely high compared to other bidders, (average of \$69.44/lf). Similarly, if there is an increase in quantity of this item, which is likely based on the quantity in the bid form being several hundred feet less than the quantity shown on the plans, it will not be in the Town's best interests to be subject to a significant increase in the cost of the work.

~~Notwithstanding the rejection of your bid for the above stated reasons, we invite your company to bid on future projects of the Town. We will make arrangements for your bid bond to be promptly returned and we will move on to complete our bid award. If you dispute this finding, please indicate by October 20, 2008, in writing addressed to my attention with the basis of your dispute and we will reply to your objection.~~

If you have any questions, please don't hesitate to contact me at (203) 794-8549.

Sincerely,

TOWN OF BETHEL



Andrew M. Morosky, P.E.
Town Engineer/Director of Public Works

Cc: R. Burke, Chairman, Public Utilities Commission
E. McCreery, Esq., Pullman & Comley, LLC
W. Hagan, Esq., Town Counsel



DEPARTMENT OF PUBLIC WORKS ADMINISTRATION
Clifford J. Hurgin Municipal Center, 1 School Street, Bethel, CT 06801
Telephone (203) 794-8549 Fax (203) 794-8767

FAX COVER SHEET

.....
Date: 10.16.08

To: Paulo Baltazar Fax Number: 413 583-6140

Regarding: Contract 3 - Stony Hill

From: Andrew Morosky

Pages Included w/ Cover: 2

Comments:



DEPARTMENT OF PUBLIC WORKS

Clifford J. Hurgin Municipal Center, 1 School Street, Bethel, CT 06801

Telephone (203) 794-8549 Fax (203) 794-8767

October 16, 2008

Mr. Paulo Baltazar, President
Baltazar Construction
83 Carmelina's Circle
Ludlow, MA 01056

Re: Stony Hill Sewer Extension, Contract 3 ✓
Correction

Dear Mr. Baltazar:

In my letter dated October 15, 2008, I referred to your unit price for force main as \$324/lf, which is not correct. The correct number of \$250/lf remains several times higher than the average unit price of \$69.44/lf and therefore it is still not in the Town's best interests to be subject to a significant increase in the cost of the work.

I apologize for any confusion that may have resulted from the error. If you have any questions, feel free to call me at (203) 794-8549.

Sincerely,

TOWN OF BETHEL

Andrew M. Morosky, P.E.
Town Engineer/Director of Public Works

Cc: R. Burke, Chairman, Public Utilities Commission
E. McCreery, Esq., Pullman & Comley, LLC
W. Hagan, Esq., Town Counsel



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Telephone (203) 794-8549 Fax (203) 794-8767

FAX COVER SHEET

.....
Date: 10-23-08

To: PAULO BALTAZAR Fax Number: 413-583-6140

Regarding: Stony Hill Sewer Contract 3

From: ANDREW

Pages Included w/ Cover: 3

Comments:



DEPARTMENT OF PUBLIC WORKS
Clifford J. Hurgin Municipal Center, 1 School Street, Bethel, CT 06801
Telephone (203) 794-8549 Fax (203) 794-8767

October 23, 2008

Mr. Paulo Baltazar
President
Baltazar Contractors, Inc.
83 Carmelina's Circle
Ludlow, MA 01056

Re: Stony Hill Sewer Extension, Contract 3 ✓

Dear Mr. Baltazar:

The Town has carefully considered the points in your October 17th letter relating to your bid for the above-referenced project, but they have failed to persuade us to reverse our decision concerning that bid. Nor have they persuaded us to reject all bids and re-bid the project.

First, you admit, as you must, that you failed to comply with two explicit requirements of the invitation to bid. You failed to submit *with your bid* a Contractor's Qualification Statement and proof of authority to transact business in Connecticut. Your attempt post-bid to respond to these requirements cannot alter or overcome the principle that responsiveness is determined as of the time of the bid opening. I also understand that you are claiming that these failures to comply are mere "minor irregularities," and that the Town has the ability to waive them. With all due respect, the Town does not see the subject requirements as "minor," or the failure to comply with them as simple "irregularities". In any event, the Town is unwilling to waive the non-compliance, since, among other things, waiving the non-compliance would be manifestly unfair to the other bidders, all of whom complied with these requirements.

Second, since the failure to comply with material requirements renders your company's bid non-responsive, there is no need for any additional reasons to support the Town's action. Nevertheless, I did previously identify the unbalanced nature of your bid as a separate and independent reason for rejecting it, and you addressed this in your October 17th letter. Consequently, I will comment further on the point.

In your letter, you concede, as again you must, that your bid is unbalanced and take no issue with our assertion that the imbalance is material. As I am sure you know, and for reasons I know you can appreciate, the Town has the right to reject unbalanced bids precisely because they are unbalanced and present the prospect that acceptance would not result in the lowest price for the work. Moreover, you attempt to correct the imbalance via a post-bid submission. For obvious reasons, you have no right to correct your bid post-submission, and the Town, for those very same reasons, cannot accept this post-bid submission.

I note your contention that all of the bidders submitted unbalanced bids, and that it would be unfair to "deny [your] bid and not all bids." I refer you once again to my earlier letters in which I noted the unbalanced items of your bid that were material and described for you that other bidders' bids were not unbalanced on these material items. Even if the unbalanced bid issue was not the purely academic issue it most surely is, your point misses the mark and in no way justifies re-bidding.

Your final point is that somehow by rejecting your bid, while considering the others and making an award to one of those other bidders, we would somehow be basing the award on "information only known after the bid." I am not quite sure what you mean by this, but my concern in terms of information is simply that all bidders have the same information from the Town during the bidding process so that they are each bidding from the same, level bidding field. I know for sure that all bidders did indeed have the same information from the Town during the bidding process and that the process, therefore, was entirely fair and beyond reproach.

We are sorry that we have had to treat your bid as we have, but we really had no choice. I hope that your company will continue bidding on future Town projects and that there will come a time when the Town and your company will work together.

Sincerely,

TOWN OF BETHEL



Andrew M. Morosky, P.E.
Town Engineer, Director of Public Works

Cc: R. Burke, Chairman, Public Utilities Commission
E. McCreery, Esq., Pullman & Comley
W. Hagan, Esq., Town Counsel
P. Sammis, P.E., URS Corp.

From: Andrew Morosky
To: Ventrella, Frank
Date: 10/29/2008 12:40 PM
Subject: Fwd: RE: Sewer Bid

Here's a third. There may be no others. I'll keep checking.

Andrew

>>> "Robinson, Richard C." <rrobinson@pullcom.com> 10/24/2008 2:09 PM >>>
Andrew,

Baltazar won't be able to hang his hat on the fact that Ludlow did not furnish a certificate from the State evidencing its authority to do business in Connecticut. The requirement is simply to produce evidence of this fact. No specific form of evidence is required. Ludlow furnished evidence by way of its own sworn statement. Thus, you will not be waiving some non-compliance for one bidder, but not another. You can proceed with the award to Ludlow.

Rick

Richard C. Robinson
Attorney

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

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BRIDGEPORT HARTFORD STAMFORD WESTPORT WHITE PLAINS

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-----Original Message-----

From: Andrew Morosky [mailto:MoroskyA@betheltownhall.org]
Sent: Friday, October 24, 2008 1:02 PM
To: Robinson, Richard C.
Cc: McCreery, Edward P.
Subject: RE: Sewer Bid

Rick,

I spoke with Bill from Baltazar and he indicated that he wants the Contractor's Qualification Statement for Ludlow and Guerrera faxed to Baltazar. I indicated that I could get these to him, and that each page would be \$0.50 and we would indicate the total cost on the cover letter. This will be sent in the next hour or so.

Bill is particularly interested in documentation from the State of CT indicating that Ludlow has authority to transact business in the State. He indicated that it is a "pain in the neck" to get this certification and that it took him six weeks to get it for a different project. I did not see such a certificate with Ludlow's CQS. They indicated, under oath as the document states, that they are authorized to transact business in Massachusetts and Connecticut.

Based on my discussion with Bill, this is the only thing Baltazar has to hang their hat on, apparently, so I have to ask you if you think that the Town should delay in awarding the work to Ludlow, as we have now received an endorsement for Ludlow from URS, the Town's engineering consultant for the project. We have a meeting scheduled at 3:00 this afternoon to accept Ludlow's bid. Please confirm if you think we're okay moving forward at this point.

Andrew

>>> "Robinson, Richard C." <rrobinson@pullcom.com> 10/24/2008 9:33 AM
>>> >>>

Andrew - You are not wrong. Proceed to comply with the FOI request. Any further action by Baltazar - a bid protest lawsuit seeking to enjoin the awarding of the contract to a bidder other than it - would be a waste of time and money. This is true as a general proposition - bid protests are almost impossible for a contractor to win, but here, the Town did nothing wrong and kept a level playing field for all bidders. Thanks for the update and please let me know if anything transpires.
Rick

Richard C. Robinson
Attorney

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-----Original Message-----

From: Andrew Morosky [<mailto:MoroskyA@betheltownhall.org>]
Sent: Friday, October 24, 2008 9:11 AM
To: Robinson, Richard C.
Cc: McCreery, Edward P.
Subject: RE: Sewer Bid

Bill from Baltazar called this morning to follow up on Baltazar's FOI request from October 17th. Correct me if I'm wrong, but at this point I will notify them that the information is available for viewing now and that photocopies will cost \$XX at \$0.50 per sheet if they prefer us to photocopy.

When I spoke to Bill yesterday, after sending the letter, he seemed resigned to the facts of the matter. I guess they may consider trying something if they don't like what they see in the bid documents.

Andrew

Andrew M. Morosky, P.E.
Director of Public Works / Town Engineer Town of Bethel C.J. Hurgin
Municipal Center
1 School Street
Bethel, CT 06801

(203) 794-8549
(203) 794-8767 FAX

>>> "Robinson, Richard C." <rrobinson@pullcom.com> 10/22/2008 4:35 PM
>>> >>>
Fair enough.

Richard C. Robinson
Attorney

PULLMAN & COMLEY, LLC

ATTORNEYS AT LAW

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-----Original Message-----

From: Andrew Morosky [<mailto:MoroskyA@betheltnhall.org>]
Sent: Wednesday, October 22, 2008 4:33 PM
To: Robinson, Richard C.
Cc: McCreery, Edward P.
Subject: RE: Sewer Bid

Hi Rick,

Thanks for the letter. I'm not sure what happened to the one you sent on Monday, but it never got to me...or our spam catcher which I kept checking. I'm glad I checked with you today. The letter is very well written and I don't think I have a single suggestion, although I will read it again later on. At this point I'm out of time so I will send it out tomorrow on letterhead. If I DO have any suggested changes I'll run them by you. Thanks again.

Andrew

>>> "Robinson, Richard C." <rrobinson@pullcom.com> 10/22/2008 3:59 PM
>>> >>>

Here it is again. Please confirm that you've received it. I sent it on Monday and re-sent it just now. This is yet another attempt to get it to you.

Richard C. Robinson