

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, FEBRUARY 12, 2019**

A. Call to Order / Roll Call

The Special City Council meeting of February 12, 2019, was called to order by Mayor Chandler at 7:01 a.m.

Present: Council Member Johnson, Mayor Pro Tempore Kuehne, and Mayor Chandler
Absent: Council Member Mounce, and Council Member Nakanishi
Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

NOTE: Council Member Johnson participated in the meeting via teleconference.

B. Regular Calendar

B-1 Adopt Resolution Rescinding Resolution No. 2018-25, Rejecting All Bids, Approving Plans and Specifications, Authorizing Re-Advertisement for Bids, Authorizing City Manager to Award Contract to Lowest, Responsive Bidder for Lockeford Street Improvement Project (\$3,400,000), and Appropriating Funds (\$3,750,000) (PW)

Public Works Director Charlie Swimley provided a PowerPoint presentation regarding the Lockeford Street Improvement Project. Specific topics of discussion included project scope, history of project, facts and good faith effort, and recommendation to reject all bids and authorize the City Manager to award to the lowest responsive bidder up to \$3.4 million. Mr. Swimley added that the City does not take these decisions lightly; however, the recommendation to reject and rebid the project is in the City's best interest in order to complete the project in a timely manner and not compromise the federally-funded portion of the project.

In response to Mayor Pro Tempore Kuehne, Mr. Swimley stated that either contractor - A.M. Stephens or George Reed - could file a protest if the project is awarded to the other. City Manager Schwabauer added A. M. Stephens does not agree that it did not meet the Disadvantaged Business Enterprise (DBE) goals or make a "good faith effort" and could protest if the project is awarded to George Reed, the next lowest bidder. George Reed feels it met the DBE goals and made a "good faith effort" and would likely protest if the project were awarded to A.M. Stephens. A protest hearing would significantly delay the project and put the federal funds at risk. Further, Mr. Swimley explained that the request for award authorization and appropriation amounts increased slightly in case bids come in higher than what was originally submitted.

In response to Mayor Chandler, Mr. Swimley stated that, if Council approves the recommended action, staff will advertise for bids immediately, publish for three and a half weeks with bids due on March 13, 2019, perform the bid review and evaluation, and recommend award with the City Manager executing the contract immediately thereafter. The goal is to complete most of the project by September 3, 2019, in time for the Lodi Grape Festival. There may be minor work still necessary to complete, but the road will be paved in time for the Festival.

Council Member Johnson asked what assurances there were that anything will change with the new bids, to which Mr. Swimley replied there are no guarantees the results will change. The primary difficulty with doing federally-funded projects is meeting the DBE goals, which is defined as a "good faith effort." Mr. Schwabauer added there is no numerical standard to follow to show that a "good faith effort" was made.

Stephanie Fuller, estimate manager with George Reed, stated the company put significant effort into ensuring DBE goals were met, that it operated by all of the rules, and met all of the

regulations, which is a burdensome process. She stated it is clear that A.M. Stephens did not put in the same effort and rebidding the project gives them another bite at the apple. She stated that local bidders know the process and have learned how to comply with the DBE goals. She urged Council to award the project to the second responsible bidder, George Reed, and continue with the project.

Mr. Schwabauer expressed appreciation and respect for George Reed's effort in meeting the DBE goals, but explained the City's position that a protest hearing will delay the project, which will negatively effect the Grape Festival and put the federal dollars at risk if the project is not completed this year.

In response to Mayor Chandler, Mr. Schwabauer stated that a hearing is required if a protest is filed. If the project is awarded and construction begins before the hearing outcome is determined, the City is at risk of compensating the company that protested if its protest is granted.

In response to Council Member Johnson, Mr. Schwabauer stated the hearing goes before the Council first, after it is reviewed and analyzed by staff, and could move toward a writ of mandate if the company protests the City's decision. Mr. Swimley stated it will take a few weeks to review the bids and make an award recommendation and, if a protest is filed, it would take even longer for staff to review everything, come up with findings, and make a recommendation in preparation of a hearing. Council has authority to reject bids for any reason; in this case, the reason is due to timing and the potential for protests relating to the DBE goals. This situation would not exist if not for the federal dollars included in the project.

Mayor Pro Tempore Kuehne stated his preference would be to award the project to George Reed because it made a "good faith effort" to meet the DBE goals; however, the City is in a difficult situation in that a protest could significantly delay the project and cost the City federal dollars for the project.

Myrna Wetzel, member of the public, suggested that, instead of rejecting the bids and rebidding the project, a coin toss be done to determine which of the two companies will be awarded the project.

City Attorney Magdich stated that a coin toss would be an option, but only if both parties agreed in writing.

Council Member Johnson questioned whether a coin toss determination was viable. Ms. Magdich stated that, in addition to getting both parties to agree, there is still the issue of whether or not DBE goals were met because the party receiving the award must still comply with the guidelines. At this time, staff believes A.M. Stephens did not meet the guidelines. Mr. Swimley added that as soon as the new bids are received, staff will ensure they are responsive and send them to Caltrans to review so the City Manager can award the project.

Ms. Fuller suggested sending the current bids to Caltrans now to review.

Ms. Magdich explained that the Caltrans review is solely an administrative review and would not stop the possibility of a protest, which could put \$1 million of federal money at risk.

Council Member Johnson made a motion, second by Mayor Chandler, to adopt Resolution No. 2019-14 rescinding Resolution No. 2018-25, rejecting all bids, approving plans and specifications, authorizing re-advertisement for bids, authorizing the City Manager to award the contract to the lowest responsive bidder for Lockeford Street Improvement Project, in an amount not to exceed \$3,400,000, and appropriating funds in the amount of \$3,750,000.

ROLL CALL VOTE

The City Council held a ROLL CALL vote (all voiced their votes).

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: Council Member Mounce, and Council Member Nakanishi

C. Announcement of Closed Session

C-1 Pending Litigation: Government Code §54956.9(a); One Case; Melinda Farmer v. City of Lodi; San Joaquin County Superior Court, Case No. STK-CV-UPI-2016-006641 (CA)

D. Adjourn to Closed Session

At 7:33 a.m., Mayor Chandler adjourned the meeting to a Closed Session to discuss the above matter. The Closed Session adjourned at 7:50 a.m.

E. Return to Open Session / Disclosure of Action

At 7:51 a.m., Mayor Chandler reconvened the City Council meeting, and City Attorney Magdich disclosed the following action.

Item C-1 was discussion and direction given with no reportable action.

F. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:52 a.m.

ATTEST:

Jennifer M. Ferraiolo
City Clerk