



Office of the City Manager

CONSENT CALENDAR

April 25, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Department of Public Works
Subject: Reject Bids for the MRP Trash Capture FY 2023 Project, Specification No. 23-11556-C

RECOMMENDATION

Adopt a Resolution rejecting all bids and authorizing the City Manager to re-advertise the work associated with the MRP Trash Capture FY 2023 Project, Specification No. 23-11556-C.

FISCAL IMPACTS OF RECOMMENDATION

Additional staff time will be required to re-advertise the MRP Trash Capture FY 2023 Project (Project).

CURRENT SITUATION AND ITS EFFECTS

The MRP Trash Capture FY 2023 Project (Specification No. 23-11556-C) was released for bids on January 11, 2023, and bids were opened on February 2, 2023. Four non-local bids were received, from a low of \$421,950 to a high of \$620,000. The engineer's estimate for the project was \$420,000.

Three bids were publicly read. A fourth bid submitted by United Storm Water, Inc. (United) was missing at the time of the public opening due to a clerical error on the City's behalf. This bid was opened shortly after the public bid opening. United's bid was the lowest and all bidders received an email notification recognizing United as the apparent low bidder on February 3, 2023. A bid protest was submitted on February 6, 2023 by the second lowest bidder, Paulson Cox Construction, Inc. The protest contended that United's bid was non-responsive because it was not publicly read.

An internal investigation by City staff determined that no impropriety or unfair advantage had resulted from the clerical error. However, due to the technical defect resulting from United's bid not being publicly read, staff recommends rejecting bids and re-advertising the project. This course of action would avoid controversy from a perceived impropriety and avoid potential litigation.

BACKGROUND

Under the Municipal Regional National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit (MRP), the City is mandated to implement trash load reduction controls to reduce trash discharges to receiving water bodies. The current MRP, Order No. R2-2022-0018, stipulates permittees are required to reduce 2009 trash discharge levels by 90 percent by June 30, 2023, and by 100 percent by June 30, 2025.

To date, the City has achieved a 73.1 percent trash load reduction by implementing the following:

- Installing full trash capture devices throughout many of the City’s medium, high, and very high trash generation areas; and
- Biannual creek and shoreline cleanups.

Full trash capture devices (FTCDs) capture trash in storm drain inlets keeping it from flowing further downstream and into receiving waters. This Project would install approximately 200 FTCDs, mostly in moderate and high trash generating areas, allowing the City to achieve an additional 10 percent trash load reduction credit.

Table 1. Trash Load Reduction Summary

Trash Load Reductions	
Current Trash Reduction Achieved with FTCDs	63.1%
Reduction Expected from MRP Trash Capture FY 2023 Project	10%
Trash Offsets	
Offset Associated with Creek and Shoreline Cleanups	10%
Total Trash Load Reduction	
	83.1%
Additional Reduction Needed to Achieve June 30, 2023 target¹	
	6.9%

Delays resulting from re-advertising the Project will likely impact the City’s ability to meet the stipulated June 30, 2023, trash load reduction milestone. As required by MRP Section C.10, staff will be preparing and submitting a revised trash load reduction plan with a schedule of implementation, to ensure the City is on track to meet the June 30, 2025 benchmark.

¹ The City is actively seeking alternative compliance methods which will allow the City to meet regulatory compliance milestones.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This Project supports efforts to reduce trash and litter entering the storm drain systems, improve the health and water quality of Berkeley's creeks and waterways, and prevent pollutants from entering San Francisco Bay.

RATIONALE FOR RECOMMENDATION

Staff recommends rejecting bids and re-advertising the project as this course of action would avoid controversy from a perceived impropriety and avoid potential litigation.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered awarding the contract to United Storm Water, Inc., but determined that this course of action could potentially result in litigation and a public perception of impropriety.

CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation and Engineering,
(510) 981-7061

Ronald Nevels, Interim Manager of Engineering, Public Works, (510) 981-6439

Srinivas Muktevi, Supervising Civil Engineer, Public Works, (510) 981-6402

Attachments:

1: Resolution

2: Abstract of Bids

RESOLUTION NO. ##,###-N.S.

REJECT BIDS FOR THE MRP TRASH CAPTURE FY 2023 PROJECT,
SPECIFICATION NO. 23-11556-C

WHEREAS, the City is a permittee under Municipal Regional National Pollutant Discharge Elimination System (NPDES) San Francisco Bay Region Stormwater Discharge Permit, Order No. R2-2022-0018 (MRP 3); and

WHEREAS, under Provision C.10 of MRP 3, by June 30, 2023, the City is required to reduce the trash load reaching San Francisco Bay by 90% relative to benchmark levels established in 2009; and

WHEREAS, the MRP Trash Capture FY 2023 Project is part of the City's ongoing progress to reach the regulatory trash load reduction milestones; and

WHEREAS, the City does not possess the in-house labor necessary to undertake this Project in a timely fashion; and

WHEREAS, an invitation for bids was duly advertised (Specification No. 23-11556-C) and bids were opened on February 2, 2023; and

WHEREAS, four total bids were received. Three bids were publicly read. A fourth bid submitted by United Storm Water, Inc. (United) was unavailable at the time of public opening as a result of a clerical error on the City's behalf. This bid was opened shortly after the public bid opening. United's bid was the lowest and all bidders received an email notification identifying United as the apparent low bidder on February 3, 2023; and

WHEREAS, on February 6, 2023, the City received a Bid Protest from the second lowest bidder, Paulson Cox Construction, Inc. and the protest contended that United's bid was non-responsive because it was not publicly opened; and

WHEREAS, staff have evaluated the potential litigation risk of awarding to United Storm Water, Inc., and determined it to be in the City's best interest to re-advertise the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that all bids received are rejected and the City Manager is authorized to re-bid the MRP Trash Capture FY 2023 Project, Specification No. 23-11556-C.



City of Berkeley
Abstract of Bid Worksheet

Finance Department
General Services Division

Spec. No. 23-11556-C

Bid Date:

2/2/2023

FOR: [MRP TRASH CAPTURE FY 2023](#)

required w/ bid

	Bidders	Base Bid	Bid Bond	Addendum (1)	Experience - Fin. Qual.	Taxpayer ID	Nuclear Free	Opp.States	Sanctuary City	EBO
1	Bay Construction Co.	\$ 620,000.00	X	X	X	X	X	X	X	X
2	Koios Engineering, Inc	\$ 541,325.00	X		X	X	X	X	X	X
3	Paulson Cox Construction, Inc. (PCCI)	\$ 493,900.00	X	X	X	X	X	X	X	X
4	United Storm Water, Inc.	\$ 421,950.00	X	X	X	X	X	X	X	X
5										
6										
7										
8										
9										
10										

Bid Recorder: Josh Roben

Josh Roben (Feb 6, 2023 09:24 PST)

Date Feb 6, 2023

Bid Opener: Josh Roben

Josh Roben (Feb 6, 2023 09:24 PST)

Date Feb 6, 2023

Project Manager: Srinivas Muktevi

Date Feb 6, 2023

