



City of Grand Island

Tuesday, February 12, 2019

Council Session

Item G-12

#2019-52 - Approving Bid Award for Asphalt Hot-Mix 2019

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Shannon Callahan, Streets Superintendent
Meeting: February 12, 2019
Subject: Approving Bid Award for Asphalt Hot-Mix 2019
Presenter(s): John Collins PE, Public Works Director

Background

Asphalt Hot-Mix is used by the Streets Division’s asphalt crew throughout the construction season to patch potholes and full-depth patch sections of roadways that are showing signs of failure.

Bidders are given the opportunity to write-in mixes that they know they will be producing this season. This allows a wider variety of mixes with set prices to be available to the Streets Division. The purchase of asphalt can then be based on the type of mix best suited for each patching job.

A primary and secondary bid award is being recommended for each mix type which sets prices for more than one producer so the optimal material can be purchased in the event the other producer(s) are not making that mix type or the plant is not running.

Discussion

Bids were advertised on January 19, 2019 and sent to four (4) potential bidders. Two (2) bids were received and opened on January 30, 2019.

Asphalt Hot-Mix 2019
 Bid Award Recommendation

Standard Mix Id	Binder	Primary Award	Secondary Award
SPR	64-34	Gary Smith Construction Co. \$49.90 per ton	J.I.L. Asphalt Paving Co. \$50.00 per ton
Alternate Mix Id	Binder	Primary Award	Secondary Award
SPR	64-22	J.I.L. Asphalt Paving Co. \$46.00 per ton	Gary Smith Construction Co. \$46.90 per ton
Type A	64-22	Gary Smith Construction Co. \$49.00 per ton	No Bid
Type B	64-22	J.I.L. Asphalt Paving Co. \$42.00 per ton	Gary Smith Construction Co. \$45.90 per ton
Type C	64-22	Gary Smith Construction Co. \$49.00 per ton	J.I.L. Asphalt Paving Co. \$60.90 per ton

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the purchase of Asphalt Hot-Mix 2019 according to the bid award recommendation.

Sample Motion

Move to approve the purchase of the Asphalt Hot-Mix 2019 according to the bid award recommendation.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: January 30, 2019 at 2:30 p.m.
FOR: Asphalt Hot-Mix for 2019
DEPARTMENT: Public Works
ESTIMATE: \$70.00 per ton
FUND/ACCOUNT: 21033503
PUBLICATION DATE: January 19, 2019
NO. POTENTIAL BIDDERS: 4

SUMMARY

Bidder:	<u>J.I.L. Asphalt Paving Co.</u> Grand Island, NE	<u>Gary Smith Const. Co., Inc.</u> Grand Island, NE
Exceptions:	Noted	Noted
Bid Price:		
Type SPR 64-22	\$46.00 per ton	\$46.90 per ton
Type SPR 64-34	\$50.00 per ton	\$49.90 per ton
Type A:	N/A	\$49.00 per ton
Type B:	\$42.00 per ton	\$45.90 per ton
Type C:	\$60.90 per ton	\$49.00 per ton

cc: John Collins, Public Works Director
Marlan Ferguson, City Administrator
Stacy Nonhof, Purchasing Agent

Catrina DeLosh, PW Admin. Assist.
Patrick Brown, Finance Director
Shannon Callahan, Street Superintendent

P2099

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2019, by and between **J.I.L. Asphalt Paving Company**, hereinafter called the Contractor, and the City of Grand Island, Nebraska, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for bids to be published, for furnishing of **Asphalt Hot-Mix for 2019**; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Contractor to be the lowest responsive bidder, and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's bid, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, or themselves, and its, his, or their successors, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this contract to the said Contractor, such award being based on the acceptance by the City of the Contractor's bid;

ARTICLE II. That the City shall pay to the Contractor for the performance of the work embraced in this contract and the Contractor will accept as full compensation therefore the sum of **Fifty and 00/100 Dollars per ton, \$50.00/ton for Type SPR with 64-34 binder – standard mix, and Forty-Six and 00/100 Dollars per ton, \$46.00/ton for Type SPR with 64-22 binder–alternate mix, and Forty-Two and 00/100 Dollars per ton, \$42.00/ton for Type B with 64-22 binder, and Sixty and 90/100 Dollars per ton, \$60.90/ton for Type C with 64-22 binder** For all services, materials and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

ARTICLE III. The Contractor hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the Contractor shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Contractor. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the Contractor's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of **Asphalt Hot-Mix for 2019**.

ARTICLE IV. That the Contractor shall start work as soon as possible after the contract is signed, and that the terms of the contract shall expire **December 31, 2019.**

ARTICLE V. The Contractor agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. The Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, the Contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. The Contractor agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VI. Gratuities and Kickbacks. City Code states that it is unethical for any person to offer, give or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

ARTICLE VII, Fiscal Year Budget. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as of the date and year first above written.

J.I.L. ASPHALT PAVING CO.

By _____

Date _____

Title _____

CITY OF GRAND ISLAND NEBRASKA

By _____

Date _____

Mayor

Attest _____

City Clerk

The contract is in due form according to law and is hereby approved.

Date _____

Attorney for the City

APPENDIX A – TITLE VI NON-DISCRIMINATION -

During the performance of this agreement, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- (1) **Compliance with Regulations:** The consultant shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor supplier shall be notified by the consultant of the consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant shall so certify to the City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this agreement, the City of Grand Island shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the consultant under the agreement until the consultant complies, and/or
 - (b.) cancellation, termination or suspension of the agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The consultant shall take such action with respect to any subcontract or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2019, by and between **Gary Smith Construction Company, Inc.** hereinafter called the Contractor, and the City of Grand Island, Nebraska, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for bids to be published, for furnishing of **Asphalt Hot-Mix for 2019**; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Contractor to be the lowest responsive bidder, and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's bid, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself, or themselves, and its, his, or their successors, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this contract to the said Contractor, such award being based on the acceptance by the City of the Contractor's bid;

ARTICLE II. That the City shall pay to the Contractor for the performance of the work embraced in this contract and the Contractor will accept as full compensation therefore the sum of **Forty-Nine and 90/100 Dollars per ton, \$49.90/ton for Type SPR with 64-34 binder – standard mix, Forty-Six and 90/100 Dollars per ton, \$46.90/ton for Type SPR with 64-22 binder – alternate mix, Forty-Nine and 00/100 Dollars per ton, \$49.00/ton for Type A with 64-22 binder, Forty-Five and 90/100 Dollars per ton, \$45.90/ton for Type B with 64-22 binder, and Forty-Nine and 00/100 Dollars per ton, \$49.00/ton for Type C with 64-22 binder,** For all services, materials and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

ARTICLE III. The Contractor hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the Contractor shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Contractor. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the Contractor's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of **Asphalt Hot-Mix for 2019**.

ARTICLE IV. That the Contractor shall start work as soon as possible after the contract is signed, and that the terms of the contract shall expire **December 31, 2019.**

ARTICLE V. The Contractor agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. The Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, the Contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. The Contractor agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VI. Gratuities and Kickbacks. City Code states that it is unethical for any person to offer, give or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

ARTICLE VII. Fiscal Year Budget. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as of the date and year first above written.

GARY SMITH CONSTRUCTION COMPANY, INC.

By _____

Date _____

Title _____

CITY OF GRAND ISLAND NEBRASKA

By _____

Mayor

Date _____

Attest _____

City Clerk

The contract is in due form according to law and is hereby approved.

Attorney for the City

Date _____

APPENDIX A – TITLE VI NON-DISCRIMINATION -

During the performance of this agreement, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- (1) **Compliance with Regulations:** The consultant shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor supplier shall be notified by the consultant of the consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant shall so certify to the City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this agreement, the City of Grand Island shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the consultant under the agreement until the consultant complies, and/or
 - (b.) cancellation, termination or suspension of the agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The consultant shall take such action with respect to any subcontract or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

RESOLUTION 2019-52

WHEREAS, the City of Grand Island invited sealed bids for furnishing Asphalt Hot-Mix for 2019, according to plans and specifications on file with the Public Works Department; and

WHEREAS, on January 30, 2019 bids were received, opened and reviewed; and,

WHEREAS, Gary Smith Construction Co. and J.I.L. Asphalt Paving Co. submitted responsible bids within the bid specifications for Asphalt Hot-Mix 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the below bids for asphalt hot-mix purchased in the 2019 calendar year, are hereby approved;

Asphalt Hot-Mix 2019
Bid Award Recommendation

Standard Mix Id	Binder	Primary Award	Secondary Award
SPR	64-34	Gary Smith Construction Co. \$49.90 per ton	J.I.L. Asphalt Paving Co. \$50.00 per ton
Alternate Mix Id	Binder	Primary Award	Secondary Award
SPR	64-22	J.I.L. Asphalt Paving Co. \$46.00 per ton	Gary Smith Construction Co. \$46.90 per ton
Type A	64-22	Gary Smith Construction Co. \$49.00 per ton	No Bid
Type B	64-22	J.I.L. Asphalt Paving Co. \$42.00 per ton	Gary Smith Construction Co. \$45.90 per ton
Type C	64-22	Gary Smith Construction Co. \$49.00 per ton	J.I.L. Asphalt Paving Co. \$60.90 per ton

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Adopted by the City Council of the City of Grand Island, Nebraska, February 12, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ✕ _____ February 8, 2019 ✕ City Attorney
