



City of Grand Island
Tuesday, May 14, 2019
Council Session/Budget Work Session

Item G-13

**#2019-161 - Approving Bid Award for Chip Seal Project No. 2019-
CS-1**

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

Council Agenda Memo

From: Keith Kurz PE, Assistant Public Works Director
Meeting: May 14, 2019
Subject: Approving Bid Award for Chip Seal Project No. 2019-CS-1
Presenter(s): John Collins PW, Public Works Director

Background

On April 7, 2019 the Engineering Division of the Public Works Department advertised for bids for Chip Seal Project No. 2019-CS-1. There were seven (7) potential bidders for this project. This project will allow for a chip seal on the following roadways:

- Manchester Road; Englemand Road to Mansfield Drive
- Mansfield Drive; Horseshoe Place to Manchester Road
- Independence Avenue; Capital Avenue to NE Highway 2
- North Road; Husker Highway to Stolley Park Road
- Stolley Park Road; North Road to UPRR Spur Line
- North Road; Old Highway 30 to US Highway 30
- Blaine Street; Garland Street to Phoenix Avenue

Chip Seal is the sprayed application of asphaltic material with a covering of aggregate.

Discussion

One (1) bid was received and opened on April 30, 2019. The bid was submitted in compliance with the contract, plans, and specifications and is considered fair and reasonable. A summary of the bid is shown below.

<i>Bidder</i>	<i>Exceptions</i>	<i>Base Bid</i>	<i>Alternate Bid</i>
Topkote, Inc. of Yankton, SD	None	\$153,807.94	\$49,950.77

There are sufficient funds in Account No. 21033506-85354 to fund this project.

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 awarding a contract to Topkote, Inc. of Yankton, South Dakota in the amount of \$203,758.71.

Sample Motion

Move to approve the bid award.



Stacy Nonhof, Purchasing Agent

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Better Tomorrow, Today*

BID OPENING

BID OPENING DATE: April 30, 2019 at 2:15 p.m.
FOR: Chip Seal Project No. 2019-CS-1
DEPARTMENT: Public Works
ESTIMATE: \$228,000.00
FUND/ACCOUNT: 21033506-85354
PUBLICATION DATE: April 7, 2019
NO. POTENTIAL BIDDERS: 7

SUMMARY

Bidder: Topkote, Inc.
Yankton, SD
Bid Security: Merchants Bonding Company
Exceptions: None
Base Bid Price: \$153,807.94
Alternate Bid: \$ 49,950.77

cc: John Collins, Public Works Director
Patrick Brown, Finance Director
Tim Golka, Public Works Engineer I

Catrina DeLosh, PW Admin. Assist.
Stacy Nonhof, Purchasing Agent
Jerry Janulewicz, City Attorney

P2124

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, **2019**, by and between **TOPKOTE, 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 construction of **Chip Seal Project No. 2019-CS-1**; 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 or themselves, and its 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 and Special Provisions, 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 (subject to adjustment as provided by the contract) of **TWO HUNDRED THREE THOUSAND SEVEN HUNDRED FIFTY EIGHT AND 71/100 DOLLARS (\$203,758.71)** 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 incorporation into the work of 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 **Chip Seal Project No. 2019-CS-1**.

ARTICLE IV. All work associated with the contract shall be completed no later than **September 1, 2019**.

ARTICLE V. The Contractor shall perform the work within the period of time stipulated in the Contract Agreement, unless an extension of time is granted by the City Council. Liquidated damages shall be assessed per working day as per the formula shown in the 2017 Edition of the Nebraska Department of Roads Standard Specifications for Highway Construction, Section 108.08; Paragraph 2.

ARTICLE VI. 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 VII. 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 to order.

ARTICLE VIII. 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.

ARTICLE IX. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE X. LB 403: Every public contractor and his, her or its subcontractors who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

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

TOPKOTE, INC.

By _____

Date _____

Title _____

CITY OF GRAND ISLAND, NEBRASKA,

By _____

Date _____

Mayor

Attest: _____

City Clerk

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

Attorney for the City

Date _____

APPENDIX A – TITLE VI NON-DISCRIMINATION -

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

- (1) **Compliance with Regulations:** The contractor 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 contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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 contractor 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 contract 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 contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract 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 contractor 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 contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor 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 contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Grand Island shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor 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 contractor 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 contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor 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 contractor may request the United States to enter into such litigation to protect the interests of the United States.

RESOLUTION 2019-161

WHEREAS, the City of Grand Island invited sealed bids for Chip Seal Project No. 2019-CS-1, according to plans and specifications on file with the City Engineer/Public Works Director; and

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

WHEREAS, Topkote, Inc. of Yankton, South Dakota submitted a bid in accordance with the terms of the advertisement of bids and plans and specifications and all other statutory requirements contained therein, such bid being in the amount of \$203,758.71; and

WHEREAS, Topkote, Inc.'s bid was below the engineer's estimate for the project: and

WHEREAS, funds are available in the Fiscal Year 2018/2019 budget for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the bid of Topkote, Inc. of Yankton, South Dakota in the amount of \$203,758.71 for Chip Seal Project No. 2019-CS-1 is hereby approved as the lowest responsible bid.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute a contract with such contractor for such project on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 14, 2019.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
May 10, 2019	☒ City Attorney