



# City of Grand Island

Tuesday, September 13, 2011

Council Session

## Item G19

**#2011-244 - Approving Bid Award for Moores Creek Drain  
Extension - Old Potash Crossing; Drainage Project No. 2008-D-2**

Staff Contact: John Collins, Public Works Director

# Council Agenda Memo

**From:** Terry Brown, Manager of Engineering Services

**Meeting:** September 13, 2011

**Subject:** Approving Bid Award for Moores Creek Drain Extension – Old Potash Crossing; Drainage Project No. 2008-D-2

**Item #'s:** G-19

**Presenter(s):** John Collins, Public Works Director

## Background

The Moores Creek Drain Extension Project will extend the last constructed segment of Moores Creek Drainway to the south under Old Potash Highway. The Moores Creek Drainway is one portion of a series of open ditches, detention cells and storm sewer that were proposed in a 1975 study to provide flood relief to urbanized areas in western Grand Island. Future extensions of this drainway will be constructed west and south beyond Engleman Road and Stolley Park Road. The 1975 study was conducted for a 17 Square Mile area to the west and adjacent to the City of Grand Island. The study references the historic flooding that occurred in 1967.

The Moores Creek Drain Extension project begins south of Old Potash Highway on the east side of North Road, and ends approximately 500' north.

On August 19, 2011 the Engineering Division of the Public Works Department advertised for bids for the Moores Creek Drain Extension – Old Potash Crossing; Drainage Project No. 2008-D-2. There were six (6) potential bidders for the project.

## Discussion

Four (4) bids were received and opened on August 31, 2011. The bids were submitted in compliance with the contract, plans and specifications. A summary of the bids is shown below.

<b>Bidder</b>	<b>Exceptions</b>	<b>Total Bid</b>
Midlands Contracting, Inc. of Kearney, NE	None	Base - \$166,805.00 Alternate - \$172,791.00
The Diamond Engineering Co., of Grand Island, NE	None	Base - \$171,752.45 Alternate - \$170,316.45
General Excavating of Lincoln, NE	None	Base - \$288,362.54 Alternate - \$225,770.48
Van Kirk Bros. Contracting of Sutton, NE	None	Base - \$186,861.30 Alternate - \$177,893.30

There are sufficient funds in Account No. 40033520-90013.

### **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 Midlands Contracting, Inc, of Kearney, NE in the amount of \$166,805.00 as the low compliant bid that meets specifications.

### **Sample Motion**

Move to approve the bid award.



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**BID OPENING**

**BID OPENING DATE:** August 31, 2011 at 2:00 p.m.

**FOR:** Moores Creek Drain Extension – Old Potash Crossing  
Project No. 2008-D-2

**DEPARTMENT:** Public Works

**ESTIMATE:** \$218,600.00

**FUND/ACCOUNT:** 40033520-90013

**PUBLICATION DATE:** August 19, 2011

**NO. POTENTIAL BIDDERS:** 6

**SUMMARY**

<b>Bidder:</b>	<b><u>General Excavating</u></b> Lincoln, NE	<b><u>Midlands Contracting, Inc.</u></b> Kearney, NE
<b>Bid Security:</b>	Universal Surety Co.	Travelers Casualty & Surety Co.
<b>Exceptions:</b>	None	None

<b>Bid Price:</b>	\$288,362.54	\$166,805.00
<b>Alternate Items:</b>	\$196,470.16	\$172,791.00

<b>Bidder:</b>	<b><u>Diamond Engineering Co.</u></b> Grand Island, NE	<b><u>Van Kirk Bros. Contracting</u></b> Sutton, NE
<b>Bid Security:</b>	Universal Surety Co.	Universal Surety Co.
<b>Exceptions:</b>	None	None

<b>Bid Price:</b>	\$171,752.45	\$186,861.30
<b>Alternate Items:</b>	\$142,927.00	\$153,152.00

cc: John Collins, Public Works Director  
Jason Eley, Purchasing Agent  
Mary Lou Brown, City Administrator

Catrina DeLosh, PW Admin. Assist.  
Terry Brown, PW Eng. Services

# **CONTRACT AGREEMENT**

## CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this 13<sup>th</sup> day of **September, 2011**, by and between **Midlands Contracting, 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 **MOORES CREEK DRAIN EXTENSION – OLD POTASH CROSSING, PROJECT NO. 2008-D-2**; 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, 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 **ONE HUNDRED SIXTY SIX THOUSAND AND EIGHT HUNDRED FIVE AND 00/100 DOLLARS (\$166,805.00)** 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 **MOORES CREEK DRAIN EXTENSION – OLD POTASH CROSSING, PROJECT NO. 2008-D-2**.

ARTICLE IV. That the contractor shall start work as soon as possible after the contract is signed and the required bond is approved, and that the work in this contract shall be completed no later than **November 10, 2011**.

ARTICLE V. 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 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.

ARTICLE VII. 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 and to comply at all times with all applicable state and federal civil rights acts and executive orders of the President of the United States.

ARTICLE VIII. Every public contractor and their subcontractors who are awarded a contract 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.

ARTICLE IX. 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 X. The City reserves the right to terminate this contract at any time upon 60 days notice. If the contract is terminated, the contractor will be compensated for any services rendered to date of termination.

ARTICLE XI. 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 XII. LB 403: Every public consultant and his, her or its subconsultants 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.

**Contractor:**

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

CITY OF GRAND ISLAND, NEBRASKA,

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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 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 subconsultants, 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 Subconsultants, 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 subagreement, including procurements of materials or leases of equipment, each potential subconsultant or 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 subagreement, 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 subagreement 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 subconsultant 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 2011-244

WHEREAS, the City of Grand Island invited sealed bids for Moores Creek Drain Extension – Old Potash Crossing; Project No. 2008-D-2, according to plans and specifications on file with the City Engineer/Public Works Director; and

WHEREAS, on August 31, 2011 bids were received, opened, and reviewed; and

WHEREAS, Midlands Contracting, Inc. of Kearney, NE 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 \$166,805.00, and

WHEREAS, Midlands Contracting, Inc.’s bid was below the engineering’s estimate for the project; and

WHEREAS, funds are available in the Fiscal Year 2010/2011 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 Midlands Contracting, Inc. of Kearney, NE in the amount of \$166,805.00 for Moores Creek Drain Extension – Old Potash Crossing; Project No. 2008-D-2 is hereby approved as the lowest responsible bid.

BE IT FUTHER 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.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 13, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form    ☐ \_\_\_\_\_  
September 8, 2011     ☐ City Attorney