



Cover Memorandum/Staff Report

File #: 18-0981 CRA

Agenda Date: 1/25/2022

Item #: 9B.

TO: CRA Board of Commissioners
FROM: Tara Toto, Redevelopment Manager
THROUGH: Renée A. Jadusingh, Executive Director
DATE: January 25, 2022

98 NW 5th AVENUE RENOVATION - UPDATE AND DIRECTION

Recommended Action:

Update and discussion regarding the 98 NW 5th Avenue Renovation Project and direction regarding the following options:

- 1) Accept the January 5, 2022, Change Order request from Waypoint Consulting, Inc. in the amount of \$225,582.60; or
- 2) Reject the January 5, 2022, Change Order request from Waypoint Consulting, Inc., cancel the October 20, 2021, Agreement with Waypoint Consulting, Inc., and award Invitation to Bid 2021-03 to the next low responsible bidder; or
- 3) Reject the January 5, 2022, Change Order request from Waypoint Consulting, Inc. and cancel the October 20, 2021, Agreement with Waypoint Consulting, Inc., and rebid the 98 NW 5th Avenue Renovation Project.

Background:

98 NW 5th Avenue ("Subject Property") is located within the City of Delray Beach's Historic West Settlers District and was purchased by the Delray Beach Community Redevelopment Agency ("CRA") in August 2018 for the purchase price of \$1,400,000 with the intention of repurposing and renovating the interior and exterior of the building for commercial use (office/retail) to be offered at an affordable rental rate. An Invitation to Bid for the interior and exterior renovation construction work for 98 NW 5th Avenue ("Project") was published on March 29, 2021 ("ITB 2021-03") with an extended submittal deadline of May 10, 2021. On May 25, 2021, the Delray Beach CRA Board awarded the Invitation to Bid 2021-03 to Waypoint Contracting, Inc. in the amount of \$1,925,000 based on the three (3) responses received to ITB 2021-03:

1. Coastal Quality Construction, Inc. ("CQC") - \$2,369,510
2. Hatcher Construction and Development, Inc. ("HCD") - \$1,980,000
3. Waypoint Contracting, Inc. - ("WC") \$1,925,000

On May 25, 2021, the CRA Board awarded the ITB 2021-03 to WC in the amount of \$1,925,000. After negotiations, an agreement between the CRA and WC was executed on October 20, 2021 ("Agreement"). On November 16, 2021, WC submitted a Change Order in the amount of \$285,867.01. On November 24, 2021, and on December 13, 2021, CRA staff and CRA consultant, Synalovski Romanik and Saye ("SRS"), met virtually with WC to discuss the Change Order and review the requested back up documentation and information.

Below is a timeline summarizing the events since the Agreement was executed:

- 10-20-21: Agreement for Project executed.
- 11-16-21: WC submitted a Change Order request for \$285,867.01.
- 11-24-21: Meeting between CRA, CRA consultant, and WC wherein the CRA stated the Change Order provided by WC did not contain the necessary information for CRA staff to thoroughly review the Change Order. CRA staff and CRA consultant requested additional information from WC that would support the Change Order and is necessary to complete a thorough review of the Change Order.
- 12-8-21: WC provided additional information to support the Change Order.
- 12-13-21: Meeting between CRA, CRA consultant, and WC wherein the CRA stated the additional information provided by WC did not contain the necessary information for CRA staff to thoroughly review the Change Order. CRA staff and CRA consultant requested additional information from WC that would support the Change Order and is necessary to complete a thorough review of the Change Order.
- 12-20-21: WC provided additional information to support the Change Order; and WC submitted a revised Change Order in the amount of \$250,506.37.
- 1-5-22: WC provided additional information to support the Change Order; and WC Submitted a revised Change Order in the amount of \$225,582.60.

On multiple occasions, CRA staff and CRA consultant SRS have requested WC to provide additional information and supporting documentation related to the Change Order for review and explained the necessity of this additional information and supporting documentation. The information and supporting documentation provided was not adequate to perform a complete analysis of the requested Change Order.

WC has stated that the Change Order reflects the current market conditions.

Due to the Change Order, a notice to proceed has not been issued to WC for the Project.

At this time, the final Change Order submitted by WC on January 5, 2021, is in the amount of \$225,582.60, which would bring the total contract sum to \$2,150,582.60.

As it relates to the contract sum, Article 3 Contract Sum of the Agreement states the following:

Article 3. CONTRACT SUM.

The CRA shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations, labor, materials, equipment, or any costs associated with Contractor's full performance of this Construction Contract hereunder, **the guaranteed maximum price of One Million Nine Hundred Twenty-Five and 00/100 Dollars (\$1,925,000.00)**, which shall constitute the Contract Price. The Contract Price shall be fixed and firm during the performance of this Construction Contract, including the costs of labor, materials, equipment, and any costs associated with Contractor's full performance regardless of any and all price increases, except for any change orders or variations, which must meet the prior approval and authorization of the CRA.

Additionally, ITB 2021-03 expressly stated that the price was firm and fixed, and WC also submitted a signed Bid Pricing Form with the firm and fixed price at the rate of \$1,925,000 with its Bid.

ITB Section 2, paragraph 6 states:

- 6. PRICES SHALL BE FIXED AND FIRM
If the Bidder is awarded a Contract under this Bid Solicitation, the prices offered by the Bidder shall remain fixed and firm during the performance of the work, except for any change orders or variations, which must meet the prior approval and written authorization of the CRA.

Excerpt of the Bid Pricing Form submitted by WC:

BID PRICING FORM

- 1. PRICES AND RATES
Bidder shall indicate the firm and fixed prices and rates offered to the Delray Beach Community Redevelopment Agency for the work described in this Bid Solicitation.
- 2. PROJECT COMPLETION
Bidder agrees that the work will be finally complete within eleven (11) months from the date of issuance of the Notice to Proceed.

BID PRICE:

\$ 1,925,000.00

 DOLLAR AMOUNT
 One Million Nine hundred twenty five thousand dollars

 WRITTEN DOLLAR AMOUNT

Katrina Gonzalez _____ 05/06/2021
 Authorized Agent Signature Date
 Katrina Gonzalez, President

 Printed Name and Title

The ITB which was incorporated by reference in the Agreement allows the CRA to terminate the Agreement for Convenience.

Section 1, paragraph 27 of the ITB specifically states:

27. TERMINATION FOR CONVENIENCE

The CRA, at its sole and absolute discretion, reserves the right to terminate any Contract entered into pursuant to this ITB with or without cause immediately upon providing written notice to the Awarded Bidder. Upon receipt of such notice, the Awarded Bidder shall not incur any additional costs under the Contract. The CRA shall be liable only for reasonable costs incurred by the Awarded Bidder prior to the date of the notice of termination. The CRA shall be the sole judge of "reasonable costs."

Furthermore, the CRA's Purchasing Policies and Procedures Manual provides that in the event of the cancellation of a contract with the lowest responsible bidder, the CRA may elect to award the contract to the next low responsible bidder if it is in the best interest of the CRA, rather than rebidding, and the next low responsible bidder agrees to the extension of the bid price for the additional period of time.

More specifically, the CRA's Purchasing Policies and Procedures Manual states:

**AUTHORITY TO AWARD TO SECOND LOW BIDDER
AFTER CANCELLATION OF CONTRACT**

If within one hundred twenty (120) days after bids are opened, or any period bids are required to remain firm as prescribed in the Invitation for Bid, the Contract of the lowest responsible vendor is canceled, the City may elect to award the contract to the next low responsible bidder. After the one hundred twenty (120) day period or alternate period prescribed in the Invitation to Bid, the City may award to the next low responsible bidder provided:

1. A determination is made that it is in the best interest of the City to award based on the present bids rather than rebid, and
2. The next low responsible bidder agrees, in writing, to the extension of the bid price for the additional period of time.

Id. at 18.

Based on the above, CRA Staff is seeking direction from the CRA Board regarding the following options:

- 1) Accept the January 5, 2022, Change Order request from Waypoint Consulting, Inc. in the amount of \$225,582.60; or
- 2) Reject the January 5, 2022, Change Order request from Waypoint Consulting, Inc., cancel the October 20, 2021, Agreement with Waypoint Consulting, Inc., and award Invitation to Bid 2021-03 to the next low responsible bidder; or
- 3) Reject the January 5, 2022, Change Order request from Waypoint Consulting, Inc. and cancel the October 20, 2021, Agreement with Waypoint Consulting, Inc., and rebid the 98 NW 5th Avenue Renovation Project.

Attachments: Exhibit A - Location Map; Exhibit B - Colored Elevation; Exhibit C - ITB 2021-03 Schedule of Values; Exhibit D - Agreement; Exhibit E - Change Order dated 11.16.21; Exhibit F - Change Order dated 12.20.21; Exhibit G - Change Order dated 1.5.22

CRA Attorney Review:

N/A

Finance Review:

N/A

Funding Source/Financial Impact:

Funds allocated from General Ledger # 6208B - 98 NW 5th Avenue Renovation- Construction