

RESOLUTION NO. 2023-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AWARDING THE CITY OF MARINA MUNICIPAL GENERAL BUILDING IMPROVEMENTS ON-CALL CONTRACT 2023 TO PUEBLO CONSTRUCTION, INC. OF SEASIDE, CALIFORNIA FOR AN ANNUAL CONTRACT AMOUNT NOT TO EXCEED \$1,000,000, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL WORK AND CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, the City of Marina General Building On-Call Contract 2020 was successfully used to expedite the delivery of various City projects and expired on July 26, 2023, and;

WHEREAS, currently the City does not have an on-call contract for general building improvements to help expedite the execution of Capital Improvements Projects and maintenance projects. Having the on-call contract will help the City quickly respond to construction needs to deliver urgent projects on time, and possibly cost savings, and;

WHEREAS, this on-call contract is similar to a job order contract, which will augment the City staff, and provide a readily available work force to repair existing City's infrastructure, conduct emergency repairs and new construction, as the City deems appropriate, and;

WHEREAS, the Bid Schedule includes a Base Bid Schedule 1 to establish hourly rates for various construction trades, Base Bid Schedule 2 to establish the construction percentage mark up for general construction, sub-contractor, materials, equipment, contractor's fee and, bond payment, and;

WHEREAS, on September 19, 2023, the City Council of Marina adopted Resolution No. 2023-92 approving advertising and call for bids for the City of Marina General Building Improvements on Call Contract 2023, and;

WHEREAS, on October 24, 2023, two sealed bids were received, one was deemed non-responsive, and one was opened, and publicly read in person and via live video feed for the City of Marina General Building Improvements On-Call Contract 2023, and;

WHEREAS, the bid received from David Construction Management Inc. was deemed non-responsive due to omission of a required acknowledgement of addendum 1, and;

WHEREAS, after reviewing the responsive bid, Pueblo Construction Inc., of Seaside, California is deemed to be the lowest, responsive, and responsible bid, and;

WHEREAS, the bid schedule was used to capture the unit prices and percentages and it will be used for estimating and issuance of work orders, and;

WHEREAS, the awarding of the proposed construction contract does not have a direct fiscal impact and no minimum annual dollar value of work is guaranteed by the City, and;

WHEREAS, the construction contract with Pueblo Construction Inc. is awarded for a term of one (1) year with a not to exceed annual funding limit of \$1,000,000. The agreement will include an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000. The total term of this agreement will not exceed two (2) years, and;

WHEREAS, work orders issued under this contract will be funded by the respective approved Capital Improvement Project funding or appropriate maintenance account. In the case of emergency repairs, staff will bring a budget appropriation recommendation to the City Council for approval, and;

WHEREAS, the awarding of construction contract for the City of Marina General Building Improvements on Call Contract 2023 is not a project under CEQA guidelines. Each project that will be issued under the City of Marina General Building Improvements on Call Contract 2023 will require a CEQA determination and shall comply accordingly;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina to adopt Resolution No. 2023- for the following action:

1. Award the City of Marina Municipal Improvements On-Call Contract 2023, **Exhibit A**, to Pueblo Construction Inc. of Seaside, California for an annual contract amount not to exceed \$1,000,000, and an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000, and;
2. Authorize the City Manager or designee to execute contract documents and all work and change orders on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of November 2023, by the following vote:

AYES: COUNCIL MEMBERS: Visscher, Biala, Medina Dirksen, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: McCarthy

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk

A9 FORM OF CONTRACT

FOR

City of Marina General Building Improvements On Call Contract 2023

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and Pueblo Construction, Inc. "hereinafter called Contractor,"

W I T N E S S E T H:

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for the **City of Marina General Building Improvements On Call Contract 2023** at the City of Marina, CA.

SECOND: It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. Signed and executed Bid and Proposal of Contractor, as accepted by City;
- b. Proposal Guaranty Bond;
- c. Performance and Payment Bond;
- d. Plans and Specifications for the project;
- e. Insurance;
- f. California Building Code and associated codes, latest edition adopted by the City;
- g. Standard Plans and Standard Specifications, Caltrans 2018 Edition;
- h. Technical Specifications, issued for each work orders;
- i. And this Agreement.

THIRD: That said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City of Marina, a true copy thereof hereto attached, also, for all loss or damage arising out of the nature of said work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Marina and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Engineer under them, to wit:

The unit prices and percentages as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement. Work Orders are prepared and issued using the unit prices and percentages as set forth in the Proposal of said Contractor. This agreement is for a **not to exceed annual contract limit of one million dollars (\$1,000,000.00) and an option for an additional one (1) year extension with a not to exceed annual contract limit of one million dollars (\$1,000,000.00). The total term of this agreement will not exceed two (2) years. The amount of work to be requested during the one year or optional additional year contract period cannot be**

well defined at the outset. Work shall be issued through Work Orders. All issued Work Orders will become an Exhibit to this Agreement.

This Contract is for Contractor to perform "on-call" services or tasks and as such it is a standby agreement to assign work to the Contractor from time-to-time as needed and as appropriate. There is no minimum compensation for this engagement or for any work assigned pursuant to this On-Call Contract and no guarantee that any work will be assigned to Contractor during its term.

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Special Provisions after execution of the contract on behalf of the City of Marina and the receipt from the City of Marina of a notice to proceed with the work.

FOURTH: The City of Marina hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications; and the said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

FIFTH: No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this contract, so far as the City of Marina is concerned. All rights of action, however, for any breach of this contract are reserved to City.

SIXTH: Contractor shall keep harmless and indemnify the City of Marina, its officers and employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City of Marina, its officers, employees or agents, of articles supplied by the Contractor under this contract, of which he is not entitled to use or sell. Contractor agrees to, at his own cost and expense, defend in court the City, its officers, agents and employees, in any action which may be commenced or maintained against them or any of them, on account of any claimed infringement of patent rights, arising out of this agreement.

SEVENTH: The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance of final payment by Contractor and to indemnify said City of Marina against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Marina full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 1.04 of Part C-Special Provisions. Edition. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City of Marina by certified or registered mail of a written notice of such cancellation or reduction in coverage.

NINTH: Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1.

TENTH:

- a. The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.
- b. Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.
- c. Contractor shall comply with laws relating to the work.

ELEVENTH:

- a. To the full extent permitted by law, Contractor shall indemnify, defend (with independent counsel reasonably acceptable to the City) and hold harmless City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors, excepting only to the extent same result from the sole negligence, active negligence or willful misconduct of City, its employees, officials, or agents.
- b. All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.
- c. If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.
- d. This obligation to indemnify and defend City, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

TWELFTH:

ATTORNEY'S FEES. In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CONTRACTOR

CITY OF MARINA

By: _____

By: Layne P. Long, City Manager

Print Name: _____

Date: _____

Address: _____

Date: _____

APPROVED AS TO FROM:

By: _____

Heidi A. Quinn,
Interim City Attorney

By: _____

Date: _____

Date: _____

ATTESTED:

By: _____

Anita Shepherd-Sharp
Deputy City Clerk

Date: _____

Resolution No. 2023-_____

October 30, 2023

Item No. **10g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of November 7, 2023

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-,
AWARDING THE CITY OF MARINA GENERAL BUILDING
IMPROVEMENTS ON-CALL CONTRACT 2023 TO PUEBLO CONSTRUCTION
INC. OF SEASIDE, CALIFORNIA FOR AN ANNUAL CONTRACT AMOUNT
NOT TO EXCEED \$1,000,000, AUTHORIZING THE CITY MANAGER TO
EXECUTE CONTRACT DOCUMENTS AND ALL WORK AND CHANGE
ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND
APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE
DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY
ENTRIES**

REQUEST:

It is requested that the City Council consider adopting Resolution No. 2023- for the following action:

1. Awarding the City of Marina General Building Improvements On-Call Contract 2023, **Exhibit A**, to Pueblo Construction Inc. of Seaside, California for an annual contract amount not to exceed \$1,000,000, and an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000, and,
2. Authorizing the City Manager or designee to execute contract documents and all work and change orders on behalf of the City subject to final review and approval by the City Attorney, and,
3. Authorizing Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

The City of Marina General Building On-Call Contract 2020 was successfully used to expedite the delivery of various City projects and expired on July 26, 2023.

Currently the City does not have an on-call contract for general building improvements to help expedite the execution of Capital Improvements Projects and maintenance projects. Having the on-call contract will help the City quickly respond to construction needs to deliver urgent projects on time, and possibly cost savings.

This on-call contract is similar to a job order contract, which will augment the City staff, and provide a readily available work force to repair existing City's vertical infrastructure, conduct emergency repairs and new construction, as the City deems appropriate, for buildings and other related work. In general, the work consists of, but is not limited to repair, replacement and construction of any structure, shelter, enclosure and miscellaneous associated work at such times and locations as required.

The Bid Schedule includes a Base Bid Schedule 1 to establish hourly rates for various construction trades, Base Bid Schedule 2 to establish the construction percentage mark up for general construction, sub-contractor, materials, equipment, contractor's fee and bond payment.

On September 19, 2023, the City Council of Marina adopted Resolution No. 2023-92 approving advertising and call for bids for the City of Marina General Building Improvements on Call Contract 2023.

ANALYSIS:

On October 24, 2023, two sealed bids were received, one was deemed non-responsive, and one was opened, and publicly read in person and via live video feed for the City of Marina General Building Improvements On-Call Contract 2023.

Following is the bid summary:

Name of Company and Address	Base Bid (BB 1) Schedule 1	Base Bid (BB 2) Schedule 2	Grand Total Bid (BB 1+BB2)
Pueblo Construction, Inc. Seaside, CA	\$3,758.53	\$23,500.00	\$27,258.53
David Construction & Management, Inc. San Luis Obispo, CA	Non-Responsive		

The bid received from David Construction Management Inc. was deemed non-responsive due to omission of a required acknowledgement of addendum 1. After reviewing the responsive bid, Pueblo Construction Inc. of Seaside, California is deemed to be the lowest, responsive, and responsible bid. The Pueblo Construction Inc., main office is in Santa Barbara but the firm has a local office in the City of Seaside.

The City has not worked with Pueblo Construction Inc., however, the contractor successfully worked as an on-call contractor for the City of Monterey and other neighboring agencies. Feedback from those who have work experience with Pueblo Construction is favorable and the company's work quality is commendable.

The bid schedule was used to capture the unit prices and percentages and it will be used for estimating and issuance of work orders.

The construction contract with Pueblo Construction Inc is awarded for a term of one (1) year with a not to exceed annual funding limit of \$1,000,000. The agreement will include an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000. The total term of this agreement will not exceed two (2) years. The amount of work to be requested during the 1st year or optional 2nd year contract period cannot be well defined at the outset. Work shall be issued through Work Orders.

FISCAL IMPACT:

The awarding of the proposed construction contract does not have a direct fiscal impact and no minimum annual dollar value of work is guaranteed by the City. Work orders issued under this contract will be funded by the respective approved Capital Improvement Project funding or appropriate maintenance account. In the case of emergency repairs, staff will bring a budget appropriation recommendation to the City Council for approval.

California Environmental Quality Act (CEQA)

The awarding of construction contract for the City of Marina General Building Improvements On-call Contract 2023 is not a project under CEQA guidelines.

Each project that will be issued under the City of Marina General Building Improvements on Call Contract 2023 will require a CEQA determination and shall comply accordingly.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Elvira Morla-Camacho, P.E., QSD
Project Management Services
Wallace Group

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina