

RESOLUTION NO. 4027

A RESOLUTION DENYING THE BID PROTEST OF COPENHAGEN UTILITIES AND CONSTRUCTION, INC. AND AWARDING THE CONTRACT FOR W-97-1, NORTH ALBANY WATER FACILITIES IMPROVEMENTS TO THE LOW BIDDER, MARION CONSTRUCTION COMPANY IN THE BID AMOUNT OF \$1,868,714.00.

WHEREAS, on or about September 14, 1998, the City went out to bid for the construction of a 1.15 million gallon water reservoir and related pump station facilities; and

WHEREAS, the bids were opened on October 16, 1998; and

WHEREAS, two bids were received, one from Copenhagen Utilities and Construction, Inc., in the amount of \$1,899,677.00 and one from Marion Construction Company in the amount of \$1,868,714; and

WHEREAS, subsequent to the bid opening, a Notice of Bid Protest was received from Copenhagen Utilities and Construction, Inc., challenging the apparent low bidder's compliance with Paragraph 1.03 A of Specifications Section 03314; and

WHEREAS, a bid protest hearing was held on October 14, 1998, before the City Council of the City of Albany acting as the local contract review board; and

WHEREAS, notice of the protest hearing was mailed to both bidders; and

WHEREAS, prior to the commencement of the bid protest hearing, rules of procedure were announced and accepted without objection by any party; and

WHEREAS, both bidders presented arguments in support of their respective positions; and

WHEREAS, City staff, including the City's contracted consulting engineer, David Evans and Associates, responded to the concerns raised by the bid protestor following the close of the hearing.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany, acting as the local contract review board, finds as follows:

1. The project in question calls for the construction of a 1.15 million gallon water reservoir off of Edgewood Drive in North Albany. Along with the water reservoir, assorted pumping facilities will be constructed. These facilities will generally be located along Gibson Hill Drive;
2. Construction of water reservoirs of this type is specialized work, and the City is interested in making certain that the contractor who is awarded the bid has sufficient experience and ability to satisfactorily complete the project;
3. In order to insure that the contractor who was awarded the bid was sufficiently responsible to do the work, the City adopted Specification Section 03314 which provided, in part, as follows: "in order to meet the experience requirements, the three (3) tanks shall be similar (i.e., freed wall base, poured-in-place corewall, externally machine strand wrapped, etc.) in design to the specified tank";

4. Copenhagen Utilities and Construction, Inc., filed a bid protest arguing that while the apparent low bidder, Marion Construction Company had previously constructed two tanks similar to the tank in question, that some of their other tank work was so dissimilar that it should not be considered to be qualifying experience;
5. Marion Construction Company, in turn, has represented to the City that it has successfully constructed 28 water containment structures in the last 25 years and that of these 28 structures, 10 were water reservoirs and that of those 10 water reservoirs, 5 had been constructed within the last 10 years. Marion Construction Company advised the City that of these 5 reservoirs, 3 are of the freed wall base, externally machine strand wrapped variety similar to the reservoir called for in the present bid proposal;
6. The "responsibility" specification referred to above was written by David Evans and Associates, an Engineering firm hired by the City to oversee design and construction of the tank in question. Representatives from David Evans and Associates testified that they had reviewed the three prior tank constructions projects referred to by Marion Construction Company and agreed that all three were sufficiently similar to the tank proposed for construction in the City of Albany as to insure that Marion Construction Company had sufficient resources, ability, and experience to satisfactorily perform the contract;
7. Evidence was also presented that between 1981 and 1983, Marion Construction Company built three additional water reservoirs of precisely the same type of construction as proposed in the present bid and that these tanks should also be considered in evaluating Marion Construction Company's ability to do the work in question;
8. Additional evidence was presented that Marion Construction Company constructed an eight (8) million gallon water reservoir for the City in 1993 of the same construction type and that the City was in all respects satisfied with the quality of the work;
9. The City has discretion to reject or accept bids as it deems to be in the public interest of its citizens;
10. The City has discretion to waive minor bid irregularities; and
11. The City has discretion to determine whether or not the particular specifications contained in a request for bids has been met.

BE IT FURTHER RESOLVED that the following conclusions are adopted:

1. Marion Construction Company is, in all respects, a responsible bidder; and the prior experience of Marion Construction Company satisfies the requirements of Specification Section 03314; and
2. To the extent that the bid of Marion Construction Company is irregular, such irregularity is hereby waived.

BE IT FURTHER RESOLVED that the bid protest of Copenhagen Utilities and Construction, Inc., is hereby denied.

BE IT FURTHER RESOLVED that the bid of Marion Construction Company concerning W-97-1 North Albany Water Facility Improvements in the amount of \$1,868,714 is hereby accepted.

DATED THIS 14th DAY OF OCTOBER 1998.


Mayor

ATTEST:



City Recorder

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