

RESOLUTION NO. 4414

A RESOLUTION REJECTING ALL BIDS FOR WL-00-03, GOLDFISH FARM ROAD WATER LINE AND REJECTING THE BID PROTEST OF R&G EXCAVATING.

WHEREAS, the City of Albany solicited competitive construction bids for WL-00-03, Goldfish Farm Road Water Line; and

WHEREAS, the scope of work of the original project encompassed approximately 2,000 feet of 24-inch water line construction; and

WHEREAS, subsequent to the solicitation of bids, the City became aware of Linn County's intention to perform significant road improvements along Goldfish Farm Road; and

WHEREAS, the City has determined that it would be in the public's interest to have all of the water line improvements along Goldfish Farm Road constructed this construction season so that the new paving of Goldfish Farm Road would not have to be cut; and

WHEREAS, subsequent to the original solicitation for bids, the City has become aware of certain development interests which further warrant expansion of the water line improvement project; and

WHEREAS, the aforesaid factors have caused the City to review the scope of the project to include an additional 1,600 feet of water line and a bore under Highway 20; and

WHEREAS, an award of the present contract, with its much smaller scope and differing construction specifications, would require a substantial Change Order to meet the demands of the new project; and

WHEREAS, the Change Order process is not a cost-effective way of substantially increasing a project's scope or scale.

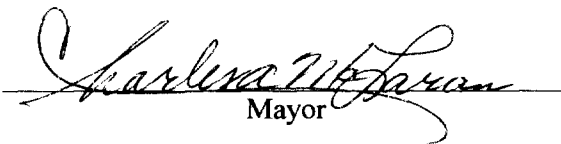
NOW, THEREFORE, BE IT RESOLVED that the Albany City Council, acting as the City's Contract Review Board, finds as follows:

1. Subsequent to the original solicitation of bids, the scope and construction detail of the proposed project were substantially increased.
2. The City's solicitation of bids specifically notes the City's authorization to reject all bids when it is deemed to be in the public's interest.
3. State Law similarly authorizes the rejection of all bids when it is in public's interest.
4. It would not be cost effective in the public's interest to award the revised contract to the apparent low bidder and negotiate the additional work as a Change Order because the apparent low bidder would have no competitive pressure to perform the extra work at the lowest cost.
5. It would not be cost effective in the public's interest to award the original project and form a second project for the additional component because a single contractor who is already mobilized on the site can perform the work at a lower cost than two separate contractors on two separate projects and, in addition, the larger project may attract additional bidders and provide economies of scale not available to smaller projects.

6. Completing the work with two separate projects would create additional public inconvenience because a longer overall completion time that would likely result.

BE IT FURTHER RESOLVED that based upon the aforesaid findings and the memorandum from Diane Taniguchi-Dennis and Mark Shepard dated April 3, 2001, and the testimony provided at the Bid Protest Hearing on April 16, 2001, the Albany City Council acting as the City's Contract Review Board, hereby rejects the bid protest of R&G Excavating and further rejects all bids for WL-00-03, Goldfish Farm Road Water Line.

DATED THIS 16TH DAY OF APRIL 2001.


Mayor

ATTEST:



City Recorder



TO: Albany City Council

VIA: Steve Bryant, City Manager
Floyd W. Collins, Public Works Director

FROM: Diane Taniguchi-Dennis, P.E., Assistant Public Works Director/City Engineer *DD*
Mark W. Shepard, P.E., Civil Engineer II *MWS*

DATE: April 12, 2001, for April 16, 2001, Council Work Session

SUBJECT: WL-00-03, Goldfish Farm Road Water Line
Rejection of All Bids and Bid Protest

Action Requested:

Staff recommends that the City Council, acting as the City's Contract Review Board, hold a Bid Protest Hearing for the above-referenced project and adopt a Resolution rejecting the Bid Protest and all bids on this project.

Discussion:

Staff recommends rejection of all bids for this project. Attached is a memorandum explaining the reasons for this recommendation. This memorandum was originally sent to Council for the April 11, 2001, Council meeting. Subsequent to finalization of the Council agenda for the April 11, 2001, meeting, staff received a protest of the rejection of all bids. The protest came from the low bidder on the project, R & G Excavating.

The proper process for dealing with bid protests is to hold a Bid Protest Hearing before the City's Contract Review Board (City Council). At the April 11, 2001, City Council meeting, Council agreed to hold this hearing at the April 16, 2001, Council Work Session. The City Attorney will outline the procedure to follow for the hearing at the Work Session.

A Resolution will be available at the April 16, 2001, Council Work Session.

Budget Impact:


No budget impact is anticipated from holding this Bid Protest Hearing.


MWS:kw

Attachments (3)



TO: Albany City Council

VIA: Steve Bryant, City Manager
Floyd W. Collins, Public Works Director 

FROM: Diane Taniguchi-Dennis, P.E., Assistant Public Works Director/City Engineer
Mark W. Shepard, P.E., Civil Engineer II 

DATE: April 3, 2001, for April 11, 2001, City Council Meeting

SUBJECT: WL-00-03, Goldfish Farm Road Water Line
Rejection of All Bids and Re-bid of Project with Additional Scope

Action Requested:

Staff recommends that Council reject all bids from the March 27, 2001, bid opening for the above-referenced project.

Discussion:

On March 27, 2001, bids were opened for WL-00-03, Goldfish Farm Road Water Line. There were 12 bids submitted for this project. The project was bid with two options for the water line crossing of Cox Creek. The first option was for boring under the creek. The second option was for open-cut construction of the water line across the creek. The bids ranged from \$307,690 to \$398,435 for the boring option and from \$275,355 to \$364,000 for the open cut option. The Engineer's estimate was \$411,000 and \$358,000 for the options respectively. The project budget is \$400,000. A bid summary is attached.

The original scope of this project was to extend the 24-inch water line between Dogwood Avenue and an existing 12-inch water line approximately 800 feet north of Highway 20 (see attached map).

Issues have developed after the project went out to bid that impact the project scope:

1. Recent discussions with Linn County regarding the status of street improvements on the south end of Gold Fish Farm Road indicate that they would like to complete the improvements in the summer of 2002. Improvement of Gold Fish Farm Road in this location will require extension of the 24-inch water line to Highway 20.
2. There has been some recent development interest in properties on the south side of Highway 20 in the vicinity of Gold Fish Farm Road. These developments, if they proceed, will require that the 24-inch water line in Goldfish Farm Road be extended south under Highway 20.

Staff considered three options for constructing the improvements associated with the increase in project scope. The options considered were 1) Reject all bids on the original project and re-bid the project with the increased scope; 2) Add the additional work as a change order on to the current low bidder's contract; and 3) Design, bid, and build the additional scope as a separate project.

Staff recommends that the existing bids be rejected and the project re-bid with the increased scope. This will ensure better schedule control, less inconvenience to the public, and a competitive price for all phases of the work.

The option to bid the additional scope as a separate project would necessitate impacting traffic and residences on Gold Fish Farm road at two different times with two different contractors. Attempting to undertake two separate projects with separate contractors at the same time in the confines of Gold Fish Farm Road would likely be problematic. Therefore, this option is not recommended.

The option to add the increased scope of the project to the low bidder's contract would require a change order of approximately 40 percent of the value of the original contract. Because of the size of the additional scope, securing favorable prices for the additional work is best done by competitive bid. Therefore, this option is not recommended.

It is anticipated that the project, with the increased scope, will be ready to bid in mid April and the overall project schedule will see only a limited impact. Staff is currently designing the additional 24-inch water line on Goldfish Farm and the 12-inch water line will be extended along Highway 20 to make a connection between an existing water line and the new 24-inch line in Gold Fish Farm Road. The design will include a bore across Highway 20 at Goldfish Farm Road. Construction of the modified project would still occur in the Spring/Summer of 2001.

Budget Impact:

The original project was budgeted at \$400,000, with 65 percent of the project costs budgeted under Water System Capital (11-941) and the remaining 35 percent of the project budgeted under Water SDC Improvement (11-498).

The additional scope of the project has been identified in the 2001-2002 budget in the amount of \$150,000 with the same percentage split between the Water Capital (11-941) and SDC Improvement Funds (11-498).

It is anticipated that in the current bidding climate, the entire project can be constructed within the total budget of \$550,000.

SLV:MWS:kw
Attachment

**CITY OF ALBANY, OREGON
Public Works Department**

Construction Contract Bids

Project Number: WL-00-03

Project Name: Goldfish Farm Road Water Line

Bid Date: March 27, 2001

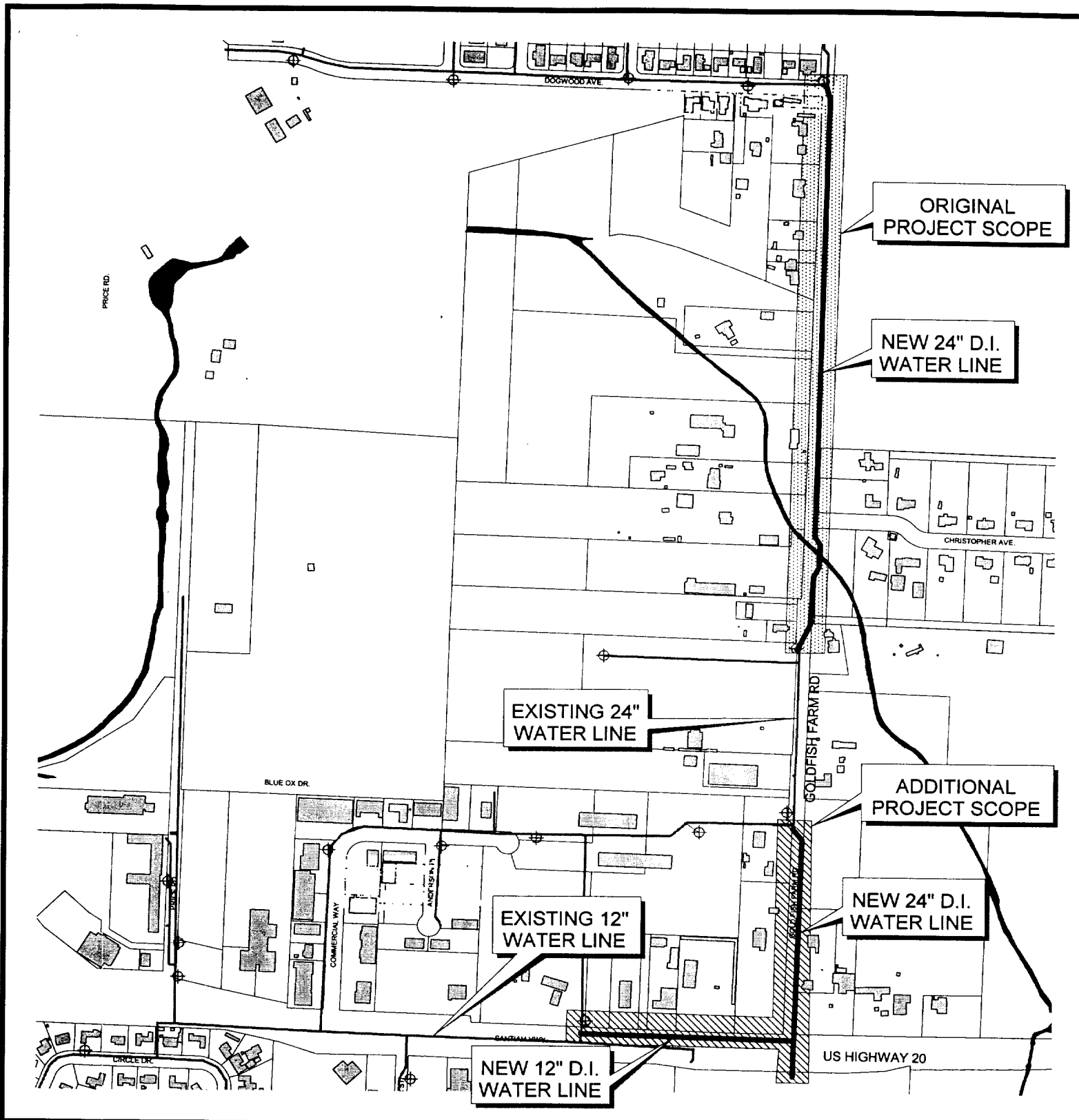
Engineer's Estimate:

Boring Option \$411,000

Open Cut Option \$358,000

Bid Time: 11:00 a.m.

Contractor	Bid Totals	
	Boring Option	Open Cut Option
R & G Excavating	307,354.50	275,354.50
Gelco Construction	316,679.13	280,898.13
Kerr Contractors Inc.	317,690.00	289,790.00
Emery & Sons	322,365.00	277,865.00
H & J Construction	340,720.00	319,720.00
Morse Bros.	347,280.00	328,280.00
Werbin West	349,100.00	319,100.00
3 Dimensional Contracting	359,175.00	353,275.00
Canby Excavating	384,638.35	363,843.35
Sullivan Construction	389,999.85	363,999.85
Siteworks	391,707.00	345,707.00
Western Oregon Excavation	398,435.00	358,435.00



Goldfish Farm Road Water Line

NOT TO SCALE



Engineering

Staci Vargas

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Mar 29, 2001

The City of Albany's infrastructure records, drawings, and other documents have been gathered over many decades, using differing standards for quality control, documentation, and verification. All the information provided represents current information in a readily available format. While the information provided is generally believed to be accurate, occasionally this information proves to be incorrect, and thus its accuracy is not warranted. Prior to making any property purchases or other investments based in full or in part upon the information provided, it is specifically advised that you independently field verify the information contained within our records.



W. WALLACE OGD AHL • Attorney at Law

515 High St. SE • PO Box 2248 • Salem, OR 97308 • (503) 399-9511 • Fax (503) 399-7904

April 3, 2001

Staci Vargas
Engineering Associate I
City of Albany
P O Box 490
Albany, OR 97321-0144

**RE: WL-00-03, Goldfish Farm Road Water Line
Protest to Rejection of All Bids**

Dear Ms. Vargas:

Please be advised I represent the interests of R & G Excavating, Inc., the low bidder in your submission for bids of the above-described public works contract.


As you know, the offering for submission of bids on this public works project was clear and unequivocal and several of the bidders bid very close to my client's bid and several of those bids, including my client's bid, were substantially below the estimate for the bids on the job.

I understand from your letter of March 29, 2001, that you now wish to increase the scope of the public contract, reject all bids and re-advertise for bids altogether. We formally "Protest" the City's proposed resubmission of this public works project.

As you know, ORS 279.029(1) provides that after the bids are open and a determination is made that a contract is to be awarded, the contracting agency shall (emphasis added) award the contract to the lowest responsible bidder. This responsibility of the City of Albany is mandatory and while there have been cases where the specifications in the proposal by the public agency were ambiguous, where the ambiguity was admitted to by the lowest bidding contractor, the contracting agency was able to throw out all bids, that is not the case in our instant situation in the proposal submitted by the City of Albany and the City of Albany is obligated to accept the lowest responsible bidder, R & G Excavating, Inc. See the case of Matter of: Grot, Inc., 97-2 CPD50, B276979 (1997). If the City of Albany wants to expand the scope of the work, the City of Albany can submit a change order to R & G Excavating proposing to add to the work, or advertise any additional work that the City wishes to add to the job in a separate and subsequent bid offering.

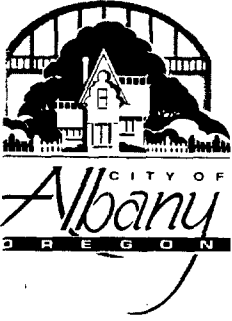
Thank you for your understanding of our position.

Sincerely yours,


W. WALLACE OGD AHL

kf

cc: Gary Zellner



April 11, 2001

CITY ATTORNEY'S OFFICE

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City Prosecutor

Mr. W. Wallace Ogdahl
515 High Street SE
PO Box 2248
Salem, OR 97308

**Re: WL-00-03, Goldfish Farm Road Water Line
Protest to Rejection of All Bids**

Dear Mr. Ogdahl:

As you are aware, the City of Albany's Public Works Staff is prepared to recommend to the City Council the rejection of all bids in the above-referenced matter. I have received your April 3, 2001, protest. Based upon your protest, the rejection of the all bids issue will not be presented to the City Council on its upcoming Council Meeting on April 11, 2001. Instead, staff will ask the Council to set the matter for a Public Hearing and give you the opportunity to present your protest. On April 11, 2001, we will ask the Council to provide a date and time for that hearing. Once the Council has announced a date and time for the hearing, we will, of course, provide you with written notice. I anticipate that the hearing may be scheduled for a Monday Work Session, the earliest of which would be on April 16, 2001. Again, we will let you know when the matter is scheduled.

Very truly yours,

/s/ JAMES V. B. DELAPOER

James V. B. Delapoer
Albany City Attorney

JVBD:mp

cc: Mark Shepard ✓

The Community Incentive Fund was established for awarding money to cities to conduct leverage work for downtown redevelopment. Our Urban Renewal Program would provide a good source of leverage once we get it going. There is skepticism that the legislature would accept such a large amount from lottery dollars. There is also resistance for borrowing against future lottery income.

Also, it may be recommended that the positions be cut for the people in the field that offer technical assistance for Community Development issues.

The Telecom bill is up tomorrow and the City is concerned about that because cities like Ashland should be allowed to provide Internet services to their citizens. If this passes, cities would have to charge rates that reflect a public entity's costs, as opposed to private entity's costs. There is also no clear determination as to where the money from those revenues would go.

Senator Smith is working on issues that pertain to the Willamette River, e.g., water quality, developing open space, protecting fish, greenway issues, wet weather overflow reductions, etc. The projected flows on the Willamette River are going to be much lower and discharges from treatment plants into the river will be much more noticeable. If people conserve on water consumption, the loss to City revenues will generate rate increases. Bryant said that his understanding is that there will be no accessible boat ramps on Detroit reservoir all summer. He mentioned several other reservoirs that will be affected.

Senator Smith may be able to get projects earmarked for funding by working with his office. Bryant said he would encourage our City to start working toward that, particularly with water/wastewater issues.

Marilyn Smith, Management Assistant/Public Information Officer, reported that a 15-month delay in deregulation had been presented. On Tuesday there will be a rally on the Capitol steps in which Congressman DeFazio will participate related to deregulation.

There is an initiative related to senior citizen (age 65) property tax exemption (not deferral). This would cost local governments about \$429 million per year, or about 15 percent of the General Fund. The Mayor will be testifying against this initiative and Council indicated their support for that testimony.

GOLDFISH FARM ROAD WATERLINE BID PROTEST

City Attorney Jim Delapoer outlined the process for the bid protest.

Mark Shepard, Civil Engineer II, presented the staff report. On March 27, 2001, bids were opened for the Goldfish Farm Road Waterline project. Subsequent to the advertisement for the bids, staff was aware of two items that significantly changed the scope of the project and thus the bid specifications. The items were: staff recently became aware of development interests that would require water service and recent commitments from Linn County related to water lines/road construction schedules.

Staff recommended that a change order for this work would not be in the best public interest as the competitive environment would be eliminated due to having only one contractor. If the project is bid in two projects there would be two contractors and two separate road closures.

Staff recommended a rejection of all bids on the original project and would then have bidders resubmit bids on the new scope of the project.

Shepard reviewed the rejection of bids clause that has been established in our standard construction specifications and said that there is similar language in ORS.

Shepard also commented on the size of the waterlines. Some construction will be conducted in state right-of-way. We do not want to be in a position to tear up what the County will be doing before our project starts.

Wally Ogdahl, Attorney at Law, said that he is representing the low bidder, R&G Excavating, Inc. He reviewed the history of the company and said that this company was substantial and competent. He said that costs are primarily related to the costs of the pipe. If this project is re-bid, it may be that R&G is not able to get the same prices for the pipe due to the rise in oil costs.

Gary Zellner, owner of the company, said that whenever they've bid a job before, the engineers have talked with them and been willing to negotiate. They feel that the engineers should have come to them to negotiate this time. He said that he felt that when one is the low bidder, and way below the estimate, that the bid shouldn't be thrown out.

Delapoer said that Council does have the right to reject bids if it is in the public interest to do so. Delapoer also pointed out that the City cannot legally negotiate with a bidder like might happen in private industry.

The resolution prepared by staff recommended that all bids should be rejected.

Diane Taniguchi-Dennis, Assistant Public Works Director/City Engineer, mentioned that the project is still under design and therefore the alternate option for a second piece wouldn't have been possible at the time of the bid opening. The design is on target for Phase II to be finished in about two weeks.

Floyd W. Collins, Public Works Director, reported that any time a change order exceeds 10 percent, staff must seek Council approval. He said he did not feel comfortable with the idea of negotiating a change order, as this project change would be above the 10 percent (40 percent) range.

Shepard clarified that the City has 60 days from the time of opening to award a contract.

Brett Stark with R&G reported that they've had two or three contracts extended for change orders in the past with other companies.

Councilor Linhart said that the scope of the change order is of concern to him and that Council would not be representing the best public interest if the Council/staff would negotiate such a large change.

Councilor Konopa felt the funding issue needed to be re-addressed, based on this not being in the CIP, now that the scope of the project has changed and what funding sources are paying for in the project.

Councilor Reid said that in the past, rejected bids that have been re-bid have turned out both better and worse. He felt that based on the size of the change, he'd prefer to reject the bids and move forward with a re-bid, even though there is a risk.

Killin moved that the resolution be accepted to reject the bids WL-00-03 and that the project should be re-bid. Reid seconded the motion. The motion passed 5-0 and the resolution was designated as Resolution No. 4414.

Public Works will complete their design for Phase II and the entire project will be re-bid. Collins said that the next time Council would see this issue would be when staff brought this bid to Council for award of contract. Collins said that Councilor Konopa's question regarding funding sources would be addressed during the budget process.