



**DATE:** February 8, 2022

**CATEGORY:** Consent

**DEPT.:** Public Works

**TITLE:** **Rengstorff Park Aquatics Center Replacement, Project 18-38 – Various Actions**

### **RECOMMENDATION**

1. Accept the bid withdrawal of the apparent low bidder, Thompson Builders Corporation, of Novato, for Rengstorff Park Aquatics Center Replacement, Project 18-38, without forfeiting its bid security on the basis that a material and clerical error was made in assembling the bid, as provided in Sections 5101 and 5103 of the California Public Contract Code.
2. Appropriate and transfer \$1,000,000 from the Park Land Dedication Fund (as detailed in Attachment 1 to the Council report) to Rengstorff Park Aquatics Center Replacement, Design and Construction, Project 18-38, for a total project budget of \$29,000,000. (Five votes required)
3. Award the construction contract for Rengstorff Park Aquatics Center Replacement, Design and Construction, Project 18-38, to Bobo Construction, Inc., for \$21,488,000, including a \$1,954,000 construction contingency.

### **BACKGROUND**

The Rengstorff Park Aquatics Center (Aquatics Center) opened in 1959 and is located on the northeast side of Rengstorff Park along Crisanto Avenue. The project will replace the existing 5,200 square foot building and two pools with new facilities intended for year-round use. On October 27, 2020, as recommended by staff and the Parks and Recreation Commission (PRC), Council approved the schematic design and the Heritage tree mitigation plan and directed staff to proceed with the detailed design of the project.

On June 22, 2021, the City Council authorized staff to begin a general contractor prequalification process to solicit qualifications from prospective bidders. At this meeting, the Council also approved the three Visual Arts Committee-recommended artists and art proposals to be incorporated into the project.

On [October 26, 2021](#), the City Council approved the plans and specifications for the project, approved the prequalified bidder list, authorized staff to advertise the project for monetary bids, and award the project if bids were within the available budget. The project was advertised with the following two add-alternates that would be included in the construction contract if the monetary bids were within the project budget: (1) complete replacement of the waterslide; and (2) fence material enhancements to the pool equipment enclosure.

The October 26, 2021 Council report also noted that staff had submitted an application for Statewide Park Development and Community Revitalization Program Grant Funds in the amount of \$8.5 million through the State of California Proposition 68 Program. If the grant was received, it was to be used to cover the construction costs if the bids exceeded the Engineer’s Estimate, pay for the add-alternates, and/or reduce the use of Park Land Dedication Funds on the project. Unfortunately, staff received notice on December 15, 2021 that the City of Mountain View was not awarded the grant.

### **ANALYSIS**

Staff advertised the project on November 8, 2021, and three bids were received on December 15, 2021 (see Table 1).

**Table 1: Bid Results**

<b>Rank</b>	<b>Contractor</b>	<b>Base Bid Amount</b>	<b>Add Alternates</b>
	Engineer’s Estimate	\$20,832,000	\$510,000
1	Thompson Builders Corporation	\$19,817,600	\$549,000
2	Bobo Construction, Inc.	\$21,334,000	\$470,000
3	Gonsalves & Stronck Construction	\$21,868,140	\$587,000

The lowest bid was \$19,817,600 from Thompson Builders Corporation (TBC), which includes a \$1,800,000 construction contingency.

### **Bid Protest and Relief of Bid Request**

On December 20, 2021, Bobo Construction, Inc. (BCI) submitted a formal bid protest to the City, which alleged TBC’s bid did not properly list certain subcontractors as required by Section 4104 of the California Public Contract Code (CPCC). After receipt of the

protest, staff requested a response from TBC to evaluate the facts and merits of the alleged bid defects.

On December 21, 2021, TBC submitted a request to withdraw their bid due to an inadvertent clerical mistake in their bid and has not responded to the bid protest. The CPCC (Division 2, Part 1, Sections 5101 through 5103) allows a bidder to withdraw a bid if the bidder can demonstrate: (a) a mistake was made; (b) the bidder gave the City written notice of the mistake within five working days after bid opening, specifying in detail how the mistake occurred; (c) that the mistake made the bid materially different than intended; and (d) that the mistake was made filling out the bid rather than an error in judgment, site inspection, or reading the plans or specifications. Staff prepared a memo documenting the facts establishing the existence of each of these elements (see Attachment 2). For these reasons, staff recommends the bidder be allowed to withdraw its bid.

The request to withdraw the bid is considered before evaluation of the bids, including the bid protest. Should Council accept the bid withdrawal, the bid protest item becomes moot, and no further action is required in response to the bid protest.

### Award Options

The options to move the project forward are to either reject all bids and rebid the project or to award the contract to the next lowest responsible bidder. If the project is rebid, State law precludes TBC from submitting a bid on the project. **Staff does not recommend rebidding the project for the following reasons:**

- Three bids were received demonstrating competitiveness, and the second low bid was responsive and within 2.4% of the Engineer's Estimate.
- Delays from rebidding the project may risk obtaining fewer bidders as a result of other competing projects.
- Rebidding the project may result in higher bids due to recent material price increases from inflation and ongoing supply chain disruptions.

Staff recommends awarding the contract to BCI at the base bid of \$21,334,000, which includes a construction contingency of \$1,800,000, and adding \$154,000 to the construction contingency to provide a contingency near 10% of the construction cost. Staff does not recommend including the two add-alternates in the construction contract because the base bid already exceeds the project budget and the add-alternates are not essential to the project. The existing waterslide was refurbished and reinstalled four

years ago to meet compliance requirements and could have 10 to 20 years of useful life remaining, and the project will plant landscaping that will eventually grow onto the enclosure to provide additional screening. Therefore, the recommended total construction contract award to BCI is \$21,488,000, including a \$1,954,000 construction contingency.

### Programming During Construction and Schedule

Should Council approve the staff recommendations, construction is anticipated to commence in early April 2022, with anticipated completion in fall 2023. While the Rengstorff Aquatics Center is under construction, the aquatics programming will continue to operate at Eagle Park Pool as the regular year-round facility through summer 2023. Staff anticipates offering all typical aquatics programming at Eagle Park Pool such as lap swim, swim lessons, recreation swim, and aquatic fitness classes (aquacise and drop-in water exercise).

### FISCAL IMPACT

Rengstorff Park Aquatics Center Replacement Design, Project 18-38, is funded with \$28 million from the Park Land Dedication Fund. Based on the second low responsive bid received, staff is recommending increasing the budget by an additional \$1 million for the construction phase. The funding request covers the higher bid as well as contingency, project management, inspection, and administrative cost increases. If the recommended funding adjustment is granted, the total project budget will be increased to \$29 million as shown in Table 2.

**Table 2: Total Design and Construction Project Cost**

Construction (including contingency)	\$21,488,000
Consultant Services	3,671,000
City Project Management	700,000
Construction Inspection and Testing	275,000
Public Art	255,000
Fixtures Furnishing and Equipment (FFE)	165,000
Moving/ Activation	96,000
Permits, Printing, Miscellaneous	316,000
<u>Project Contingency</u>	<u>264,000</u>
Subtotal	\$27,230,000

City Administration	<u>1,770,000</u>
TOTAL ESTIMATED COST	\$29,000,000
CURRENT FUNDING	<u>28,000,000</u>
REQUESTED FUNDING	\$1,000,000

Project 18-38 is funded with \$28 million from the Park Land Dedication Fund, using funding from the San Antonio Park Area. The Rengstorff Park Aquatics Center is a community recreational facility and can be funded by Park Land Dedication Funds from any Park Area in the City. Staff recommends that the additional \$1 million required be funded from the Sylvan-Dale Park Area, which currently has an uncommitted balance of \$12.8 million. The San Antonio Park Area's current uncommitted balance is \$7.4 million which should be reserved for the construction of the new City park at California Street and Pachetti Way and for other upcoming park and recreational needs in the San Antonio Park Area.

### **ALTERNATIVES**

1. Direct staff to reject all bids and rebid the project.
2. Direct staff to reduce the scope and rebid the project.
3. Provide other direction.

**PUBLIC NOTICING** – Agenda posting.

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DOP/TS/1/CAM  
978-02-08-22CR  
201699

Attachments: 1. Recommended Park Land Dedication Fund Commitments  
2. Staff Memo of Bid Relief Request and Supporting Documents

cc: CSD, APWD – Arango, PCE – Gonzales, PCE – Shah, SMA – Doan, SMA –  
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