



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer
Jaime McNeil, Engineering Manager

DATE: August 10, 2023

RE: Board of Directors to Consider Authorizing Award of Contract, Execution of Construction Agreement with Talley Oil Inc. for DMC Road Maintenance Chipseal (MP 14.80-39.21), and Expenditure of up to \$311,000 from the FY24 EO&M Budget

BACKGROUND

The entire length of the Delta-Mendota Canal O&M road is traveled daily by operations and maintenance personnel and in some areas, the general public. To extend the life of the O&M road and reduce overall maintenance and/or repair costs, the O&M Technical Committee approved the O&M Road Maintenance Program in 1998. The objective of the O&M Road Maintenance Program is to maintain a chipseal on the DMC O&M roadway. The FY24 budget includes funds for contracting the installation of 24.41 miles of a chip seal coat to the 12' wide O&M Road between MP 14.80 and 39.21.

The Water Authority solicited for the DMC Road Maintenance Chipseal (MP 14.80-39.21) project and received two bids.

ISSUE FOR DECISION

Whether to authorize award of contract, execution of construction agreement with Talley Oil Inc. for DMC Road Maintenance Chipseal (MP 14.80-39.21), and expenditure of up to \$311,000 from the FY24 EO&M Budget.

RECOMMENDATION

Staff recommends authorizing award of contract, execution of construction agreement with Talley Oil Inc. for DMC Road Maintenance Chipseal (MP 14.80-39.21), and expenditure of up to \$311,000 from the FY24 EO&M Budget.

INVITATION FOR BID (IFB) PROCESS & DETAILS

The Water Authority formally solicited for sealed bids to provide all labor, equipment and services for the DMC Road Maintenance Chip Seal (MP 14.80 – 39.21) project and received two bids. The solicitation included the following critical dates:

June 27, 2023	Formal Solicitation released
July 06, 2023	Optional Pre-Bid Conference/ Site Visit
July 07, 2023	Last day to submit questions
July 12, 2023	Deadline for responses to questions
July 19, 2023	Bids Due
July 20, 2023	Notice of Intent to Award

The Formal Bid was publicly posted on Public Purchase and in several newspapers on June 27, 2023. The newspapers included: The Stockton Record, Modesto Bee, and Tracy Press. In addition, the Bid was sent directly to (3) interested contractors. One (1) contractor attended the Optional Pre-Bid Conference and Site Visit. Bids were received by Talley Oil, Inc. and American Pavement Systems, Inc. Talley Oil's bid was accepted by SLDMWA staff on July 19, 2023. The Notice of Intent to Award was transmitted to Talley Oil Inc., on July 20, 2023.

Authorizing execution of this construction agreement is for the rehabilitation of an existing facility involving negligible expansion of the existing use and will not result in a direct change in the environment or a reasonably foreseeable indirect change to the environment and shall, therefore, be exempt from the provision of the California Environmental Quality Act per CEQA Guidelines Sections 15301(a)(b) and(d).

BUDGET IMPLICATIONS

The proposed expenditure of up to \$311,000 will be funded utilizing approved budgeted funds from Fiscal Year 2024 EO&M budget. Note: \$562,000 was the budgeted amount for this contract.

ATTACHMENTS

1. Draft Construction Agreement
2. Notice of Intent to Award

CONSTRUCTION AGREEMENT
For
DMC Road Maintenance Chip Seal (MP 14.80 – MP. 39.21)

THIS AGREEMENT, dated for identification as of _____, 2023, is between the **SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**, a California Joint Powers Agency, (hereinafter called "SLDMWA"), and **TALLY OIL INC.**, a California Corporation (hereinafter called "Contractor").

The parties hereto mutually agree to the terms and condition set forth herein.

I. SOLICITATION DOCUMENTS

- A. The Solicitation Documents referred to herein are incorporated herein by reference as if set forth in full in this Agreement.
- B. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Solicitation Documents. The table of contents, titles and headings contained herein and in said documents are solely to facilitate reference to various provisions of the Solicitation Documents and in no way affect or limit the interpretations of the provisions to which they refer.
- C. The Solicitation Documents shall include the entire Invitation for Bid package, including, but not limited to, Notice Inviting Bids, Addenda, Bid Form, Agreement, the Bid Guarantee, the Performance Bond, the Payment Bond, Guarantee Form, the General Conditions, the Special Provisions, Specifications, Exhibits, Permits from other agencies that may be required by law, the Contract Drawings and Plans, the Contract Schedule, and any and all supplemental agreements amending or extending the Work contemplated and which may be required to complete the Work in an acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the Solicitation Documents and include Change Orders, Construction Change Directives, Field Directives, Field Orders, Bulletins and supplemental drawings.

II. DEFINITIONS

Unless otherwise specifically provided herein, all works and phrases defined in the General Conditions shall have the same meaning and intent in this Agreement.

III. AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in other Solicitation Documents, the terms and conditions set forth in this Agreement shall prevail.

IV. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and material and transportation necessary to perform and complete in a good and workman like manner to the satisfaction of SLDMWA, all the work required for the Contract for the Project entitled:

V. CONTRACT AMOUNT AND PAYMENTS

SLDMWA agrees to pay and Contractor agrees to accept, in full payment for the above work **Three Hundred Ten Thousand Two Hundred Twenty-Nine Dollars and Seventy-Two Cents (\$310,229.72)** as the stipulated sum price which Contractor bid in its Proposal Form, subject to additions and deductions by Change Order(s) as provided in the General Conditions.

VI. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be in accordance with the General Conditions.

VII. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this contract, SLDMWA shall charge any sum of money against Contractor, SLDMWA shall deduct and retain the amount of such charge from the amount of the next succeeding progress estimate, or from any other moneys due or that may become due to the Contractor from SLDMWA. If, on completion or termination of the Contract, sums due contractor are insufficient to pay SLDMWA's charges against him, SLDMWA shall have the right to recover the balance from Contractor or his sureties.

VIII. TIME OF COMPLETION

- A. The entire Work shall be brought to completion in the manner and within the time period provided for in the Solicitation Documents, commencing on the date of issuance of the Notice to Proceed.
- B. Failure to complete the Work by the completion date and in the manner provided for by the Solicitation Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement. Time is of the essence in these Solicitation Documents.

IX. INSURANCE

Contractor shall maintain in full force and effect at all times during the term of the Agreement, at its sole expense, policies of insurance in accordance with the General Conditions.

X. NO WAIVER OF REMEDIES

- A. Neither the inspection by SLDMWA or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by SLDMWA, nor any extensions of time, nor any position taken by SLDMWA or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to SLDMWA or any right to damages herein provided, nor shall any waiver of any breach of the Agreement be held to be a waiver of any other or subsequent breach.
- B. All remedies provided in this Agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and SLDMWA shall have any and all equitable and legal remedies which it would in any case have.

XI. DETERMINATION OF DAMAGES

- A. The actual fact of the occurrences of damages and the actual amount of the damages which SLDMWA would suffer if the work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.
- B. Damages which SLDMWA would suffer in the event of delay include loss of the use of the Project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration, inspection, and supervision; and the loss suffered by the public within the San Luis & Delta-Mendota Water Authority by reasons of the delay in the completion of the Project to serve the public at the earliest possible time.
- C. Accordingly, the parties hereto agree, and by execution of this Agreement, Contractor acknowledges that it understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be that amount of damages sustained by the failure of Contractor to complete the entire work within the times specified.

XII. LIQUIDATED DAMAGES

- A. The amount of the liquidated damages to be paid by Contractor to SLDMWA for failure to complete the entire work in the specified number of Working or Calendar Days (as extended, if applicable) will be (\$1,000) for each **Calendar day**, continuing to the time at which the Work is completed.
- B. Such amount is the actual cash value agreed upon as the loss to SLDMWA resulting from Contractor's delay.

XIII. TERMINATION AFTER ALLOTTED WORKING OR CALENDAR DAYS

- A. In addition to any rights it may have, SLDMWA may terminate this Contract, the Contractor's control or the Contractor's right to proceed at any time after the allotted number of Working or Calendar Days as adjusted by any extensions of time for excusable delays that may have been granted.
- B. Upon such termination Contractor shall not be entitled to receive any compensation for services rendered by it before or after such termination, and it shall be liable to SLDMWA for liquidated damages for all periods of time beyond such termination date until the work is completed.

XIV. CONTRACTOR BANKRUPT

- A. If Contractor should commence any proceeding under the Bankruptcy Act, or if contractor be adjudged a bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the SLDMWA Board may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Contractor and his surety according to the provisions of Article 5 of the General Conditions.
- B. SLDMWA shall have the right to complete, or cause completion of the work, all as specified in Article 5 of the General Conditions.

XV. PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall, before beginning said work, file two bonds with the SLDMWA, each made payable to the SLDMWA. These bonds shall be issued by a Surety Company authorized to do business in the State of California, and shall be maintained during the entire life of the Contract at the expense of the Contractor.
 - 1. One bond shall be the Performance Bond in the amount of one hundred percent (100%) of the Contract and shall guarantee the faithful performance of the Contract.
 - 2. The second bond shall be the Payment Bond required by Part 4, Title 15, Chapter 7, Division Three of the Civil Code of the State of California and shall be in the amount of one hundred percent (100%) of the Contract.
- B. Any alteration or alterations made in any provision of this Contract shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of Section 2819 of the Civil Code.
- C. Bonds shall only be accepted from an "*Admitted surety insurer*", which means an insurer to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state. ***Contractor must submit all of the following with the bonds:***
 - 1. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.

XVI. SUBSTITUTION OF SECURITIES OF MONEY WITHHELD

- A. At any time prior to final payment, Contractor may request substitution of securities for any money withheld by the SLDMWA to ensure performance of the Contract.
- B. At the expense of the Contractor, securities equivalent to the money withheld may be deposited with the SLDMWA or with an approved financial institution as escrow agent according to a separate Security Agreement.
- C. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code or bank or savings and loan certificates of deposit. A fee set by the SLDMWA Board shall be charged for such substitution.

XVII. LABOR CODE COMPLIANCE

SLDMWA affirmatively identifies this project as a “public work” as that term is defined by Labor Code section 1720, and the project is, therefore, subject to prevailing wages under Labor Code section 1771. Contractor and its subcontractors shall fully comply with all the provisions of the California Labor Code governing the performance of public works contracts including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records, posting of wages at job site and prohibitions against discrimination.

XVIII. UNFAIR COMPETITION

- A. The following provision is included in this agreement pursuant to California Public Contract Code §7103.5.

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assigning to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

XIX. ASSIGNMENT

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of SLDMWA first obtained.

XX. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely between the SLDMWA and Contractor. There are no third party beneficiaries, intended, unintended, or otherwise to this Agreement.

////SIGNATURE PAGE FOLLOWS////

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR:

(California Corporations: must be signed by company’s CEO, President, or Vice President as well as the Secretary or CFO.)

_____ Date

_____ Tax I.D. Number

_____ Signature

_____ Signature

_____ Print Name

_____ Print Name

_____ Title

_____ Title

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, A Joint Powers Agency:

_____ Date

ATTEST:

_____ Pablo Arroyave, Chief Operating Officer



NOTICE OF INTENT TO AWARD NON-SELECTED BIDDER

Date: 7/20/2023

To: F24-DMC-012 Bidders

Project Title: DMC Road Maintenance Chip Seal (MP 14.80 – MP 39.21*)

Project Specification Number: F24-DMC-012

On July 19, 2023 the San Luis & Delta-Mendota Water Authority (SLDMWA) received two (2) bids for the subject project from Tally Oil Inc. and American Pavement Systems Inc.

The Authority has deemed Tally Oil Inc. as the lowest, most responsive, responsible bidder to provide the road maintenance services for this project for a total contract amount of **\$310,229.72**.

You are hereby notified that on August 10, 2023 SLDMWA Staff will recommend to the SLDMWA Board of Directors, award of the contract for DMC Road Maintenance Chip Seal (MP 14.80 – MP 39.21*) to Tally Oil Inc.

SLDMWA appreciates the time and effort that all of the participating firms dedicated in consideration for this project.

Sincerely,

Travis Roberts

Travis Roberts

Contract Specialist