

# CITY OF HOBART SANITARY DISTRICT BOARD OF COMMISSIONERS

## Resolution No. 2016-01

### **A Resolution Determining the Lowest Responsible and Responsive Bidder and Award of the Contract for the Fourth Street Reconstruction Project from Main Street to Center Street**

WHEREAS, the Board of Commissioners ("Board") of the City of Hobart Sanitary District ("District") previously authorized the preparation of plans and specifications for the reconstruction and installation of improvements to the sanitary sewers and related appurtenances on Fourth Street from Main Street to Center Street in downtown Hobart ("project"); and

WHEREAS, said plans and specifications were duly prepared by the Department's consulting engineers, First Group Engineering, Inc. of Indianapolis, Indiana ("First Group"); and

WHEREAS, the Board, at its meeting of February 25, 2016, approved Solicitation to Bidders in the proper form and authorized the publication of same for the project in the manner required by law, and said Solicitation was duly published as required by I.C. 5-3-1 two times each in *The Times* and *Post-Tribune* on March 3, 2016 and March 17, 2016; and

WHEREAS, Pursuant to said Notice, bids were due to be delivered to the Offices of the Clerk-Treasurer of the City of Hobart in City Hall not later than 10:00 a.m., April 27, 2016 and such bids were, at that time, opened and read aloud by the Clerk-Treasurer and taken under advisement pending the award of the contract for the project at the Board's public meeting scheduled for June 8, 2016 at 5:00 p.m. at Hobart City Hall; and

WHEREAS, six (6) bids were received for the project and are detailed and summarized on the tabulation which is attached hereto and made a part hereof; and

WHEREAS, the putative low bidder for the project is Rex Construction Co., Inc. of Schererville, Indiana in the base bid amount of \$ 444,605.48 and the putative second-lowest bidder is Walsh & Kelly, Inc. of Griffith, Indiana with the base bid amount of \$448,232.49; and

WHEREAS, the Board has received the recommendation of Philip E. Gralik, P.E., City Engineer as to whether the putative low-bidder's bid meets the plans and specifications for the project, based on the bid received, and whether said bidder possesses the skill and capacity to construct the project as required by the plans and specifications; and

WHEREAS, said bids were submitted to Anthony DeBonis, Jr., City Attorney, for legal review and the rendition of his opinion as to the City's compliance with the bid process required by law and the award of the contracts; and

WHEREAS, the Board has received the report on the technical review of the bids by the City Engineer and the written opinion of the City Attorney, as to the award of the contract and compliance of the City with the bid process, laws and applicable ordinances; and

WHEREAS, the Board, in evaluating said bids, is required to determine the lowest responsible and responsive bidder as required by I.C. §36-1-12-4 (b)(8), and must do so taking those factors into account specified in I.C. §36-1-12-4 (b)(10) and (11); and

WHEREAS, in making its determination of whether the putative low bidder is the lowest “responsible bidder,” the Board is also required to apply the provisions of the City of Hobart Responsible Bidding Practices Ordinance, HMC §33.200 *et seq.*, as added by Ordinance No. 2015-28, as amended by Ordinance No. 2016-06 (“Ordinances”); and

WHEREAS, the Board, having reviewed the report and Opinion noted above, and having obtained the evaluation of the documents submitted by the putative low-bidder in accordance with said ordinances by the City Attorney, now desires to make its findings as to the lowest responsible and responsive bidder, to award the project contract to such bidder, and to spread same upon the public record.

THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Hobart Storm Water Management Department that:

a. The Board finds that the lowest base bid was submitted by Rex Construction Co., Inc. in the amount of \$444,605.48. Phillip E. Gralik, P.E., City Engineer has advised the Board that the Rex bid conforms to the engineering specifications for the bid.

b. The City Attorney has rendered his written opinion (Opinion No.2016-02) concerning the bid of Rex Construction Co., Inc. In that opinion, the City Attorney found that the bid of Rex was deficient in complying with 6 out of the 13 items required by the Responsible Bidding Practices Ordinance cited above. Specifically, the bid submission did not comply with items number 1, 5, 6, 7, 8 and 9, and did comply with items 2, 3, 4, 10, 11, 12 and 13 of the Responsible Bidding Practices Ordinance and Submission Requirements Checklist which was included in the bid package which each bidder was to complete and submit. The City Attorney summarized these deficiencies as follows:

[C]hecklist Item number 1, which requires a copy of a printout of the Indiana Secretary of State’s online records for the bidder dated within sixty (60) days of the submission of said document showing that a bidder is in existence and current with the Indiana Secretary of State’s Business Entity Reports are outdated. The Certificate of Existence provided is dated more than a year prior on January 19, 2015 and the Business Entity Report Filing Statement was dated February 9, 2016, again, more than sixty (60) days prior to the submission date.

Item number 5 on the checklist requires evidence of participation in apprentice and training programs and requires evidence which includes a copy of all applicable apprenticeship certificates or standards for these training programs. Rex responded to this requirement by simply saying, in a sheet in the bid package, that this was “union regulated.” Nothing else was supplied. This is not sufficient to meet the explicit statement in the Ordinance which requires a copy of

apprenticeship certificates or a statement of the standards for these training programs.

A similar result concerns Item number 6 on the Ordinance list and checklist which requires a copy of a written plan for employee drug testing. Again, Rex answered this question by stating “union regulated.” However, Rex did not supply the plan so that no judgment could be made as to whether it meets the legal standards in the Ordinance.

The seventh Item in the Ordinance and on the checklist requires the name and the description of the management experience of each of the bidders’ project managers and superintendents that the bidder intends to assign to work on the project. Rex responded to this requirement simply by naming the two superintendents of the company, and two project managers. There is no description of management experience.

Item number 8 in the Ordinance and the checklist requires proof of any professional or trade licenses required by law for trade or specialty areas in which the bidder is seeking the contract award and the disclosure of any suspension or revocation within the previous five years of any such license. Although Rex stated that a City of Hobart Contractor’s License was attached, I found none in the bid package. In addition, there was no statement of any prior revocation or suspension or not.

The Ordinance also requires what appears on the checklist as Item number 9-evidence that the contractor is utilizing a surety company which is on the United States Department of the Treasury listing of approved sureties. Rex responded to this requirement by stating “See Bid Bond.” An examination of the Bid Bond revealed no language whatsoever which would establish that the surety company was qualified under the Department of Treasury listing. This language did not appear in any of the other bonds submitted (performance and payment bonds) with the bid submission.

City Attorney Opinion No. 2016-02, June 2, 2016, pp.2-3.

c. The Board accepts the findings of the City Attorney as to the failure of compliance of the bid submission of Rex with the legal requirements necessary to establish that Rex is a “responsible bidder” under the above-cited legal authorities, and the Board adopts the City Attorney’s findings quoted above as its own.

d. The Board, based upon such findings concludes that the absence of the required information on the deficient items is significant, and seriously impairs the ability of the District to evaluate the bid, and provide information necessary for contract administration. Lacking details concerning apprenticeship programs standards, the drug testing plan to be applied to employees of the project, a description of the experience of the management personnel who will supervise the project, the absence of any license to act as a contractor on this project, and the

absence of a surety's qualification to support Rex's bond are all significant matters which bear on the City's ability properly to be assured of the contractor's capacity to perform and to allow the Sanitary District to have information that will aid its management of the project.

e. Additionally, the Board finds that, even though the Rex submission complied with engineering requirements, it is also not responsive within the meaning of the law on account of the same bid deficiencies noted above. The Ordinance requirements are part of the specifications contained in the bid documents and the failure to meet them is an issue of responsiveness under the above-cited statutes.

f. Both the City Attorney and the City Engineer have reviewed the bid submission of Walsh & Kelly, Inc., the next lowest bidder, and have found that submission to comply with all engineering requirements, and all legal requirements, respectively. Specifically, the City Attorney's Opinion sharply contrasted the materials submitted by Walsh & Kelly, Inc. with those submitted by Rex on the deficient points in the submission of Rex.

g. Based on the foregoing findings and conclusions, the Board now determines that the bid of Rex Construction Co., Inc. is neither responsible nor responsive within the meaning and intent of applicable law, and that bid is hereby disqualified and rejected.

c. Based on the recommendation of the City Engineer and City Attorney, the Board finds and determines that Walsh & Kelly, Inc. has submitted all documents required by the Ordinances, and that it otherwise complies with the Ordinances and applicable laws of the State of Indiana for the determination of responsible bidders, and that Walsh & Kelly's bid is in conformance, in all material respects, with all bid requirements and specifications. Accordingly, the Board further determines that Walsh & Kelly, Inc. of Griffith, Indiana is the lowest responsible and responsive bidder and awards the contract for the performance of the project to Walsh & Kelly, Inc. The contract shall consist of the bid documents submitted by the successful bidder, together with and including the plans, specifications, notice and instructions to bidders, and the form of contract submitted subject to approval by the City Attorney. The Executive of the City or his designee is authorized to execute the contract documents and issue Notice to Proceed accordingly.

e. The Clerk-Treasurer is requested to notify all bidders of the Board's action, to return the bid bonds or other bid security posted by the unsuccessful bidders, and to thank them for their participation in the bid process.

ALL OF WHICH is adopted as the Resolution of the Board of Commissioners of the City of Hobart Sanitary District on this 8th day of June, 2016.



ROBERT B. FULTON, President

ATTEST:   
PHIL GRALIK, P.E., Secretary

# Exhibit

CITY OF HOBART, INDIANA; HSD BOARD/COMMISSION  
 SOLICITATION OF COMPETITIVE BIDS  
 BID OPENING: 4/27/16 @ 9:00 AM For: 4th St

| Name & Address                                                           | Phone Number | Contact | Received Date | Time Received | Bid Band Included? | BID Amount               | # of copies? |
|--------------------------------------------------------------------------|--------------|---------|---------------|---------------|--------------------|--------------------------|--------------|
| Rietz + Riley<br>7500 W. 5th Ave<br>Gary, IN 46406                       |              |         |               | 9:28          |                    | \$ 492,045 <sup>41</sup> |              |
| Rex Construction<br>700 Stiller Ave<br>Schlesville, IN 46375             |              |         |               | 9:29          |                    | \$ 444,605 <sup>48</sup> |              |
| Gariup Construction Co<br>3905 Harrison St/PO Box 4879<br>Gary, IN 46401 |              |         |               | 9:32          |                    | \$ 517,500 <sup>00</sup> |              |
| Grimmer Const.<br>2619 Main St<br>Highland IN 46322                      |              |         |               | 9:35          |                    | \$ 449,484 <sup>31</sup> |              |
| Hasse Construction Co.<br>PO Box 300<br>Calumet City, IL 60409           |              |         |               | 9:46          |                    | \$ 484,716 <sup>00</sup> |              |
| Nalsh + Kelly<br>1700 E Main St<br>Griffith IN                           |              |         |               | 9:49          |                    | \$ 448,232 <sup>49</sup> |              |
|                                                                          |              |         |               |               |                    |                          |              |
|                                                                          |              |         |               |               |                    |                          |              |
|                                                                          |              |         |               |               |                    |                          |              |
|                                                                          |              |         |               |               |                    |                          |              |

Clerical / Forms / Bid Tab Form