TOWN OF PALM BEACH

Information for Town Council Meeting on: July 9, 2024

TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

FROM: H. Paul Brazil, P.E., Director of Public Works

RE: Requesting Approval to Reject Previously Awarded Resolution No. 146-2022, Approving RFQ No. 2023-01, Request for Qualifications, CMAR for Phipps Ocean Park Improvements to Burkhardt Construction Inc.
Resolution No. 067-2024

DATE: June 3, 2024

STAFF RECOMMENDATION

Town staff recommends Town Council approve Resolution No. 067-2024 requesting formal approval to reject previously awarded Resolution No. 146-2022, approving RFQ No. 2023-01, Request for Qualifications, CMAR for Phipps Ocean Park Improvements to Burkhardt Construction Inc.

GENERAL INFORMATION

Staff presented the recommendation to award a Construction Manager at Risk (CMAR) contract to Burkhardt Construction, Inc. (BCI) for the Phipps Ocean Park Improvements for a Guaranteed Maximum Price (GMP) amount not-to-exceed $30,018,930.15 and establishing a Construction Phase Budget of $33,027,930.15. This authorizes the Town Manager to execute a contract with Burkhardt Construction, Inc. contingent on the approval of the Phipps Ocean Park Capital Gifts and Operating Agreement at the March 12, 2024 Town Council Meeting. Since this meeting, the Capital Grant and Operating Agreement has not been executed, and bids received as part of the GMP have expired.

On May 28, 2024, the Town received a letter from Betsy Shiverick, Chair of the Executive Committee of the Preservation Foundation of Palm Beach, addressed to Kirk Blouin. In summary, the letter stated that the Preservation Foundation is unable to endorse the GMP. Within the letter, there were six (6) bullets identifying concerns or objections to the GMP. Town staff addresses each of these points below:

1. *A six-page memorandum was provided to the Town of Palm Beach by Kimley Horn, as the project manager on behalf of the Foundation, during the GMP negotiations on February 27, 2024. The memo requested information about lump sum costs, the GMP bidding process, and the project scope.* **At the February 27th meeting, the memorandum was discussed in detail with BCI. The items were addressed to the satisfaction of the Town staff. BCI indicated that in order to provide detailed responses to all comments they would need a couple of weeks. Staff recommended that the GMP be delayed until the April Town Council meeting. Preservation Foundation insisted the GMP be brought to the March Town Council meeting since it was Maggie Zeidman's last meeting. Staff did not object. BCI made modifications that could be made in two (2) days and resubmitted the GMP on February 29th. Town Council approved the GMP at the March 12, 2024 meeting contingent upon approval of the Phipps Ocean Park**

Capital Grant and Operating Agreement. At that point staff stopped working on the GMP.

2. *On April 16, 2024, a meeting was held with the Town of Palm Beach, Kimley Horn, Burkhardt, and the Foundation's Design Team to discuss the significant number of outstanding items listed in the memo.* **It is important to note that at the time of this meeting Kimley Horn was not under contract with the Town of Palm Beach but were part of the Foundation's Design Team. Representatives from Raymond Jungles and Fairfax and Sammons were also present. There was a two (2) hour meeting discussing how the implementation of a GMP would proceed. Raymond Jungles expressed some concerns but indicated that those concerns were primarily addressed once they understood they would participate in the tree selection process. There were no remaining concerns on the civil part of the GMP. The remaining concerns were with the values for bid items for the vertical construction (the buildings). BCI requested that the questions and comments regarding the buildings be collected and organized in a word document so that the responses could be provided within the document. On April 19th Town staff provided the requested vendor and subcontractor quotes used in the Phipps Ocean Park GMP. On May 1st, staff received the GMP questions and comments from the Preservation Foundation that we requested on April 16th. On May 10th, staff received responses to the questions and comments from BCI. These were provided to Zubatkin, the firm retained by the Preservation Foundation to serve as their representative, the same day.**

3. *Much of the requested information was not made available to the Foundation until later meetings held on May 15, 2024, and May 22, 2024 when the Foundation's owner representative Zubatkin met with the Town of Palm Beach and Burkhardt.* **The requested information was made available to the Foundation on May 10th as stated above in item no. 2. Town staff held meetings with Zubatkin on May 15th, 17th, and 22nd. The meeting on May 15th included Kimley Horn as the prime consultant for the construction services in support of the Phipps Ocean Park Improvements. The construction services contract was awarded to the team of Kimley Horn, Raymond Jungles, and Fairfax and Sammons on May 9, 2023. The requisition for construction services was approved by the Town Council at the May 14, 2024, meeting. The May 15th meeting was the first meeting that Kimley Horn attended where they were working directly for the Town. The objective of the meeting on May 15th was to answer any questions Zubatkin had after receiving the responses from BCI on May 10th and determine next steps for addressing additional concerns with the GMP. As a result of the meeting, it was determined that a meeting between the construction engineering services team and BCI was warranted. BCI suggested that the General Contactor (GC) for the vertical construction (the buildings) attend a meeting where the GC could address the outstanding questions. That meeting was set for May 22nd. There was an interim meeting without BCI where the Town met with the Kimley Horn team and requested that Fairfax and Sammons be prepared for the May 22nd meeting by having an opinion of probable cost (OPC) for the items they had expressed concerns about being unreasonably high. Town staff's standard operating procedure for design and bidding process includes that the Design Team provides an OPC. This provides a basis for comparison with bids received. Because the Design Team did not work for the Town, an OPC was never developed. At the May 22nd meeting, Kimley Horn, Raymond Jungles, and Fairfax and Sammons were all present. Also in attendance were BCI and Butler the GC for vertical construction. The following is a summary of this meeting provided by Town staff:**

a. **The civil estimates including site work, electrical, low voltage etc. seem to be in line with consultant's expectations for cost. No further discussion was necessary.**
b. **The Landscape Architect expressed a desire to continue to value engineer some elements including the fountain. All parties agree that additional cost savings are possible and will be explored as we move forward.**
c. **The vertical construction bid including subcontractors to the subcontractor (Butler Construction) and vendor costs were discussed. Bidding meets Town procurement policy and State Law that dictates public procurement.**
    i. **The vertical subcontractor provided information on all of the elements that the Architect outlined in the spreadsheet that we reviewed at the meeting. This included the number of bids solicited, bids received, and responsive (complete) bids received by vendor and/or material supplier.**
    ii. **The Architect and subconsultants expressed what they would have anticipated for bids and described some inquiries to vendors as to what the current market may be based on a verbal description of the work but not plan review. No actual bids were solicited by the Architect's team.**
    iii. **The difference between the actual bids received and the architect's anticipated costs were noted.**

It appears that the Architect's anticipated costs are approximately $2,112,983 less than the bids received. The GMP represents market value. It is important to note that the vertical construction makes up one third (1/3) of the GMP value.

4. *Limited subcontractor participation in the bidding process, notably with only one (1) or two (2) bidders for many packages, including the crucial vertical construction to a General Contractor.* **On July 3, 2023 the Town received the 90% construction plans. Bid packages were issued on July 19, 2023. It is important to note that the four (4) buildings amounted to possibly thirty percent (30%) of the project at the time of creating bid packages. BCI chose to package the buildings in one (1) package and require a Certified General Contractor (GC) to provide bids. BCI requested seven (7) qualified GC contractors with specific experience working in the Town to bid on this project. Hedrick Brothers was one of the seven (7), and Hedrick Brothers chose not to submit a bid. Bids were due on August 18, 2023. At this time, the Preservation Foundation was pushing to complete a GMP to get Town Council's approval in an effort to secure a donation from the Town towards the park improvements. Another meeting was held on September 7, 2023. The discussion at this meeting focused on the completeness of the design plans and the challenges BCI was experiencing in trying to get accurate pricing from subcontractors. At that same meeting, the team, including the Preservation Foundation, Kimley Horn, Fairfax and Sammons, and Raymond Jungles, were told there was only one (1) bidder for vertical construction. The Team confirmed with the manager of Procurement and Contract Management that BCI could continue to seek bids from the responsive bidders to date and did not have to initiate a new process. The Preservation Foundation specifically was asked if this was OK with them and they concurred with this approach. Therefore, at the September 7, 2023 meeting all team members knew that there was only one (1) responsive qualified bidder for the vertical construction. It is important to note that prior to putting the final package out for a final bid, there had been six (6) meetings which were all focused on value engineering to reduce the project costs and finalizing design details to ensure the bidders had clear plans for bidding.**

5. *A recent assessment on May 22, 2024, revealed more than $2 million in unforeseen additional costs, exceeding initial estimates.* **As stated previously, May 22nd was the meeting between the Design Team (now the Construction Services Team), BCI and the GC, Zubatkin and Town staff. Prior to the meeting, the Design Team had never provided "*initial estimates.*" The estimates provided by Fairfax and Sammons before this meeting were statements of their estimates of costs, they felt were high. During this meeting, Fairfax and Sammons provided verbal estimates that they admitted were only developed over a 2-day period. In comparing Fairfax and Sammons estimates and the actual competitive bids, it was determined that there was a difference of approximately $2,112,983 between the Architect's estimate and the bids. Staff would not characterize the difference as unforeseen additional cost nor would staff state that this exceeds initial estimates. Staff is unaware of any OPC available for this project as an initial estimate.**

6. *The exclusion of Addendum two (2) drawings for February 2024 in the proposed GMP may potentially result in unknown supplementary costs.* **There was a team meeting on January 22nd to once again review the plans. During this meeting additional edits to the drawings were discussed. At that time, it was noted that these changes may not be captured in the GMP. Some of the changes were captured. However, the changes discussed were predominantly related to quantity reductions that would ultimately reduce the cost of the project through deductive change orders as the work progressed. Changes that were understood to require an increase in cost were of a nature that could be handled within the project contingency.**

Finally, the letter from the Preservation Foundation requests that these issues be addressed to devise a GMP that is "fair, competitive, and reasonable." Town staff is confident that the GMP that was approved by the Town Council and endorsed by the Preservation Foundation at the March 12, 2024 meeting meets Town procurement policy and state law.

As a result of rejecting the GMP, Town staff will request a new scope of work from BCI to perform preconstruction services so that the project can be placed for bidding. Along with this scope, the engineering construction services team, which was awarded in May, will be requested to provide a scope for providing bid services support. Kimley Horn and Associates (KHA) is the prime consultant on this team and includes Fairfax and Samons and Raymond Jungle as subconsultants. This scope will include providing an opinion of probable cost, revise and finalize plans, review of bids, an analysis of final bids and comparison of bids to the opinion of probable cost for evaluation of the final recommended GMP.

FUNDING/FISCAL IMPACT:

The Palm Beach Preservation Foundation will be responsible for providing the funding for the preconstruction services provided from both BCI and KHA.

Attachment

cc: Carolyn Stone, Deputy Town Manager
Bob Miracle, Deputy Town Manager
Dean Mealy, Procurement and Contracts Manager
Paul Colby, Facilities Maintenance Division Manager
Michael Roach, P.E., Project Engineer