

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 23, 2007

CALL TO PODIUM:

Jim Arnoult

RESPONSIBLE STAFF:

Jim Arnoult

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

Resolution of the Mayor and City Council authorizing the City Manager to enter into a Contract for Dredging the Watkins Mill Storm Water Management Pond (\$302,000)

SUPPORTING BACKGROUND:

This contract is for the dredging of the Watkins Mill Storm Water Management Pond. The pond was originally constructed in about 1991. Over the years sediment suspended in storm water runoff has been deposited in the pond. In 2005 a bathometric survey determined that just over 2,700 cubic yards of sediment had been deposited and more than 60% of the storage capacity had been lost.

The following bids were opened on May 16, 2007:

MRC Construction	\$ 255,500.00
Baltimore Pile Driving	\$ 274,665.00
Concrete General Inc	\$ 375,700.00
Highway Safety & Supply	\$ 405,800.00
EQR	\$ 428,505.00
Pickens & Sons	\$ 493,720.00

The budget estimate was \$ 400,000.00.

After a thorough review of the qualifications of the low bidder, MRC Construction, staff was not satisfied that they were properly qualified to perform the work. Initially, we were concerned that their bid was too low and that their schedule of values was unbalanced. A meeting between staff and representatives of MRC and a check of their references raised additional concerns, such as they wanted to expand the disturbed area to include parts of the dam, revise the method of handling sediment control, work on Saturdays, etc. Many references were for unrelated work, were outdated, and did not include a dredging project. Upon learning of the City's intention to award the contract to Baltimore Pile Driving and Marine Construction, MRC filed a letter of protest with the City Manager. The City Manager's office responded by letter dated June 21, 2007 (attached). To date the City has not heard anything from MRC on this matter.

The second low bidder, Baltimore Pile Driving and Marine Construction, was evaluated in a similar manner. They appear to be properly qualified. Therefore, staff recommends award to the second low bidder. Staff also recommends that an additional \$27,335 (approximately 10%) be encumbered for unforeseen contingencies for a total of \$302,000.

The funding for this project is available in CIP 82-1.

DESIRED OUTCOME:

Vote on Resolution

Resolution Request Form

REQUEST FORM FOR RESOLUTIONS PERTAINING
TO EXPENDITURES FROM THE CITY BUDGET
(CONTRACTS/PURCHASES, TRANSFER FUNDS)

(Please attach the Mayor and Council Agenda Cover Sheet to this Form. For contracts/purchases, the Cover Sheet MUST include a list of all bidders and bid amounts.)

Requested by: Jim Arnoult Date of City Council Meeting: July 23, 2007

AUTHORIZING

Purchase _____ Award Contract Transfer Funds _____ Negotiate / Execute a Contract _____

RFP / IFB INFORMATION:

Advertisement Date April 4, 2007

Newspaper(s) Gaithersburg Gazette

Bids Received (date) April 25, 2007

DESCRIPTION OF ITEM(S):

(Be specific; include quantity, item name, model number, etc.)

Dredging the Watkins Mill SWM pond to remove about 2700 CY of sediment. – includes a 10% contingency

CONTRACTED/PURCHASE FROM:

Company Name: Baltimore Pile Driving & Marine Construction Inc.

Street Address: 5102 Norrisville Rd

P. O. Box Number: _____

City/State/Zip: White Hall, MD 21161

CONTRACT/PURCHASE AMOUNT: \$302,000.00

Check One: In the Estimated Amount of Not to Exceed _____

FUNDS TO BE EXPENDED FROM: Operating Budget _____ Capital Improvements Budget

Storm Water Management; CIP #82-1
Org: 3312 Object: 598000 Project: 82-1

(For Finance Department use only; not to be included in the Resolution)

VERIFICATION OF AVAILABILITY OF FUNDS Available Not available _____

[Signature] 7/18/07
Finance Dept. Date

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT
FOR DREDGING THE WATKINS MILL STORMWATER MANAGEMENT POND

WHEREAS, An invitation to bid for construction of storm water quality structures was duly advertised in the April 4, 2007 issue of the *Gaithersburg Gazette*, and sealed bids were opened and tabulated on April 25, 2007; and

WHEREAS, the Mayor and Council have determined to award a contract for the work to the lowest qualified bidder meeting City specifications:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Gaithersburg, that the City Manager be and he hereby is authorized to award a contract for DREDGING THE Watkins Mill Stormwater Management Pond to Baltimore Pile Driving & Marine Construction, Inc., 5102 Norrisville Road, White Hall, Maryland 21161, in the estimated amount of Three Hundred Two Thousand Dollars (\$302,000), said funds to be expended from the Capital Improvement Budget.

ADOPTED by the Mayor and City Council this 23rd day of July, 2007.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in public meeting assembled on the 23rd day
of July, 2007.

David B. Humpton, City Manager



June 21, 2007

Michael W. Siri, Esq.
Bowie & Jensen, LLC
6th Floor
29 W. Susquehanna Avenue
Towson, Maryland 21204

CERTIFIED MAIL

Re: Response to Bid Protest - City of Gaithersburg
Project: CIP No. 82-1 - 2007-017, Watkins Mill Pond Dredge

Dear Mr. Siri:

This is in response to your letter of June 1, 2007, protesting the award of the above noted bid. The purpose of this letter is to respond to your bid protest.

COMAR Section 21.01.03.01 A (7) indicates that, as a municipality, the City of Gaithersburg is exempt from the applicability of Title 21 State Procurement Regulations. Nevertheless, I have reviewed the procedures used in awarding this bid and find as follows:

1. Six bids were received by the City in response to the Invitation to Bid.
2. In reviewing your client's bid, the Director of Public Works noted several red flags of concern. For example:

- **Bid Inaccuracy.** There was a concern that the bid was too low to be accurate. The City's design engineer indicated that the project would cost between \$75 and \$100 per cubic yard for the dredge alone; with 2708 cubic yards of dredge material, the cost for dredging would be between \$203,000 and \$270,000, and the total job would cost \$385,000 to \$400,000. Your client's bid of \$255,000 for the total job appeared too low for the scope of work and as a result an interview was scheduled and references were requested.

Schedule of Values. The schedule of values submitted with the bid appeared to be unbalanced. MRC's dredge cost was \$70,000, versus the City's engineer's estimated cost of \$203,000 to \$270,000 for the

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitthersburgmd.gov • www.gaitthersburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marralis, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humpton

Michael W. Siri, Esq.

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dredge. In addition, MRC's bid was consistently too high on upfront items, such as \$50,000 for the temporary path versus the City engineer's estimate of \$5,000 for the same work. In order to ensure a fair evaluation of your client's bid, your client was given the opportunity to revise the schedule of values. Your client did submit a revised schedule of values on May 4, 2007.

- **Interview.** In an effort to evaluate your client's qualifications to perform the work, City staff conducted an interview with representatives of MRC on May 1, 2007. Items that arose during the interview with your client also raised concerns. MRC indicated that it wanted to work outside the limits of disturbance designated on the plans, placing wet dredge material on the face of the dam to drain. The City is concerned that this could damage the face of the dam. MRC wanted the City to start draining the pond prior to June 15, 2007, although the State permit prohibits the City from any in-stream work prior to June 15, 2007. MRC wanted to locate the silt bags above the pump around, which would cause dirty water to mix with clean water being pumped around the work area. When asked about the disposal site, MRC clearly did not have a plan in place, and responded that "we have a few places in mind."
- **References.** No specific references for pond dredging work were provided. Many of the references that were provided were for unrelated work. Several of the references were for very old jobs, and the contacts could not be reached. Of the references that could be reached, none of them provided "glowing references." Several of these did not want to go on record with their comments, or did not have favorable comments to make.

As stated above, the City is not bound by the State Procurement Regulations found in COMAR. Section 57 of the City's Charter reads, in part, "The city manager shall be required to advertise for sealed bids for all contracts or purchases in excess of fifteen thousand dollars (\$15,000.00). The Invitation for Bids for the Watkins Pond Dredge project was a sealed bid, done in accordance with Section 57.

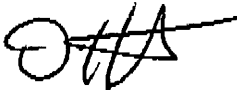
On page 2 of the invitation to Bid (IFB) it states "The City may, reject any or all bids or parts of bids" Also included in the IFB, on page 3, is a paragraph entitled "Qualification of Bidders." This paragraph states: "The City reserves the right to reject any bid if the evidence submitted or investigation fails to satisfy the City that a Bidder is properly qualified to carry out the obligations contemplated in the Contract." Following a full

Michael W. Siri, Esq.
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investigation of your client's bid, including requesting a revised schedule of values, interview and reference checks, the Director of Public Works, Parks, Maintenance and Engineering was not satisfied that your client was "properly qualified to carry out the obligations contemplated in the Contract."

My review of this process followed in this matter indicates that this process was handled in a fair and equitable manner under procedures established by the City. As such, I find no reason for your protest to be upheld.

Sincerely,



David B. Humpton
City Manager

cc: Sidney A. Katz, Mayor
James D. Arnoult, Director Public Works & Engineering