



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract
between Water Environment Services and Stellar J Corporation for the
82nd Drive Pipe/Pedestrian Bridge Improvements

Purpose/Outcomes	Execution of the contract between Water Environment Services and Stellar J Corporation for the 82nd Drive Pipe/Pedestrian Bridge Improvements.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$2,682,375.00
Funding Source	639-01-20100-481010-P632165 WES funding
Duration	260 calendar days from Notice to Proceed
Previous Board Action	N/A
Strategic Plan Assignment	This action supports both the County's and WES's Strategic Plan to build strong infrastructure.
Counsel Approval	June 11, 2019
Contact Person	Jessica Rinner, Civil Engineering Supervisor, 503-742-4551

BACKGROUND:

The 82nd Drive Pipe-Pedestrian Bridge is owned by WES and is a vital piece of infrastructure that supports multiple sanitary sewer force mains across the Clackamas River. The North Approach to the bridge is supported by wooden timbers that are no longer structurally sound.

This project includes completing structural upgrades to protect and support the sewer force mains and to increase the bridge's load capacity, which will allow it to be used for emergency vehicle traffic to cross the Clackamas River. In addition, seismic upgrades will be performed to make the bridge able to withstand a magnitude 9.0 earthquake.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on April 1, 2019. On April 30, 2019, three (3) bids were received: HP Civil, Inc., \$2,895,241.00; Cascade Bridge, LLC., \$3,178,002.00; and Stellar J Corporation, \$2,682,375.00. After review of the bids and all necessary documentation, Stellar J Corporation, was determined to be the lowest responsive bidder.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Stellar J Corporation for the 82nd Drive Pipe/Pedestrian Bridge Improvements Project for a total contract amount not to exceed \$2,682,375.00

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



WATER ENVIRONMENT SERVICES PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between Water Environment Services, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Stellar J Corporation**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2019-27 82nd Drive Pipe/Pedestrian Bridge Improvements**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **two million six hundred eighty-two thousand three hundred seventy-five dollars (\$2,682,375.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (11/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda #1 through #2
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

Contractor has named R.E. Kinghorn as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Jessica Rinner as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Jeffrey Carlsen shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Jake Oullette shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Mike Klassen shall be the Contractor's on-site job superintendent throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: 230 calendar days from NTP

FINAL COMPLETION DATE: 260 calendar days from NTP

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Change Order Authorization.

Throughout the performance of the Work under this Agreement, the Owner's Project Manager is hereby granted the authority to verbally authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Owner's Project Manager shall complete the change order form provided by Clackamas County Procurement ("Procurement"), obtain the signature of Owner's Director or other authorized signatory, and submit the form to Procurement for processing. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order in the future for up to \$10,000 following the same procedure above. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Agreement under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

6. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions and G.3.4.1 of the Supplemental General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County and Water Environment Services as additional insureds. Insurance certificates may be returned with the signed Contract or may emailed to Procurement@clackamas.us.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Owner's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Owner shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and Owner may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property,

whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Required Terms

In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Contract within 30 days after receiving payment from the Owner or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- B. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- C. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- D. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

10. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

11. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

12. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

