

11/7/2005

75-R-05

A RESOLUTION

Authorizing the City Manager to Enter into a Tender Agreement with Fidelity and Deposit Company of Maryland to Perform Work to Construct Bid Item B – Low Lift Pump Unit of the City of Evanston Water Treatment Facility and to Enter into a Contract for such Project with R. Machata Construction, Inc.

WHEREAS, on or about May 4, 2004, Advance Mechanical Contractors, Inc. (“AMC”) entered into an agreement (“Original Agreement”) with the City of Evanston (“City”) to perform all work as set forth in the construction documents, plans, and specifications and change orders to construct and perform the construction of Bid Item B – Low Lift Pump Unit at the City of Evanston Water Treatment Facility (the “Project”) for the price of four hundred seventy-five thousand dollars (\$475,000.00), a copy of the Original Agreement is attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS, on or about May 4, 2004, Fidelity and Deposit Company of Maryland (the “Surety”) issued a separate Performance Bond and Labor and Material Payment Bond (“Payment Bond”), each bearing number 08673962, in the penal sum of four hundred seventy-five thousand dollars (\$475,000.00), with the City as obligee, AMC as the principal, and Fidelity and Deposit Company of Maryland as the Surety. Copies of the Performance Bond and Payment Bond are attached hereto and incorporated herein by reference as Exhibit B and Exhibit C, respectively; and

WHEREAS, AMC commenced performance of the Original Agreement; and

WHEREAS, on or after January 17, 2005, AMC abandoned work on the Project; and

WHEREAS, by letter dated April 27, 2005, the City declared AMC in default of the Original Agreement "as a result of [AMC's] 'persistent failure to perform in accordance with the contract documents, including but not limited to, failure to adhere to the progress schedule pursuant to paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04' ...". A copy of said letter is attached hereto as Exhibit D; and

WHEREAS, subsequent to the date of the letter of termination (Exhibit D), the City made demand upon the Surety to take action under the Performance Bond; and

WHEREAS, the City represents and warrants to the Surety that the unpaid balance of the Original Agreement is four hundred seventy-five thousand dollars (\$475,000.00) (the "Balance of the Contract Price") and that the City has, as of the date of this Agreement, made no payments to AMC and has not otherwise charged any amount against the Balance of the Contract Price except as required by 770 ILCS 60/23; and

WHEREAS, the City has agreed to pay the Balance of the Contract Price to the Surety or its designee; and

WHEREAS, R. Machata Construction, Inc., ("RMC" or the "Completion Contractor"), a contractor acceptable to the City, has submitted a written proposal dated August 4, 2005 to complete the Original Agreement for the sum of four hundred seventy-eight thousand four hundred seventy-eight dollars (\$478,478.00), which is RMC's cost to complete the Original Agreement. A copy of RMC's written proposal and an executed contract is attached hereto as Exhibit E; and

WHEREAS, the Surety may, at its option, enter into ratification agreements with certain labor and/or material suppliers to AMC, whereby such labor and material suppliers agree to continue to perform subcontract work or supply materials on the Project,

and the Surety contemplates that it shall assign any such ratification agreements to RMC; and

WHEREAS, the Surety has elected to tender RMC to the City to perform the Original Agreement, subject to the conditions and limitations contained in this Agreement, and without waiving its rights and equities against AMC arising out of the Original Agreement, and reserving all rights, defenses, and equities which are available to the Surety under applicable law and existing agreements including, without limitation, that a certain General Agreement of Indemnity executed by AMC and others in favor of the Surety; and

WHEREAS, the acceptance of this Tender Agreement is the best interests of the citizens of the City of Evanston; and

WHEREAS, the RMC proposal and executed contract (Exhibit E) to complete the project is in the best interest of the City; and

WHEREAS, the City has agreed to accept the tender of RMC as the Completion Contractor in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

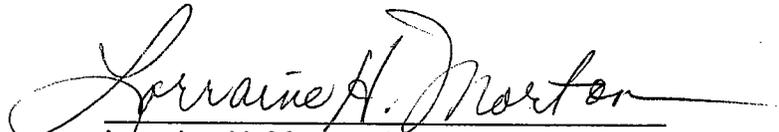
SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston a contract between RMC and the City of Evanston (Exhibit 2) for the completion of the project.

SECTION 2: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston a Tender Agreement between the City and Fidelity and Deposit Company of Maryland. Such

Tender Agreement shall be in substantial conformity with the Tender Agreement marked as Exhibit 1 attached hereto and incorporated herein by reference.

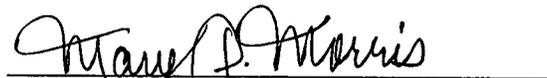
SECTION 3: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the Tender Agreement as may be determined to be in the best interests of the City.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.



Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Adopted: December 12, 2005