

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	

DATE: NOVEMBER 10, 2004

TO: CITY MANAGER/CITY COUNCIL

FROM BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: AWARD OF A CONTRACT TO NOBEST, INCORPORATED FOR THE CONSTRUCTION OF THE HISTORICAL CONCRETE REPAIR AND REPLACEMENT PROJECT, FY 03/04

RECOMMENDED ACTION:

That the City Council (1) award a contract to Nobest, Incorporated for the construction of the Historical Concrete Repair and Replacement Project FY 03/04; (2) authorize the expenditures for various construction support, administration and management expenditures as outlined in the Fiscal Impact Section of this report; (3) authorize the transfer of \$99,122 from the Lantern Village Landscaping Improvement Project, Account Number 1078, to the Historical Concrete Repair and Replacement Project, FY 03/04; and (4) authorize the transfer of \$81,000 from the Annual Traffic Safety Improvement Program Project, Account Number 1175, to the Historical Concrete Repair and Replacement Project, FY 03/04.

ISSUES:

Based upon City Council approval on June 23, 2004, the Historical Concrete Repair and Replacement Project FY 03/04 was advertised for construction bids, and the project bid opening was held on September 9, 2004. However, staff did not receive any construction bids at the bid opening. As a result and pursuant to Public Contract Code Section 20166, staff has requested and received competing bids for construction with Nobest, Incorporated and with Topline Construction. Staff recommends that the City Council award a contract to **Nobest, Incorporated** to construct the project.

BACKGROUND:

The City of Dana Point, on an annual basis, prioritizes and completes improvements to address necessary minor concrete repairs citywide.

In an effort to plan for future projects, the Council authorized staff to perform a field survey of public streets to document all damaged sidewalk, curb and gutter citywide. A report including the criteria utilized to evaluate damage, damage found and

recommendations for repairs was completed. Specific drainage deficiencies were not evaluated. Additional data collected and documented in the report included public right-of-way (ROW) information, sidewalk width, existence of parkways, curb types and location of utilities.

On August 13, 2003, the City Council authorized staff to prepare a design for the necessary citywide concrete repairs. Based on the City Council's direction, staff prepared the design and advertised the project for construction bids. Construction bids were received on February 20, 2003 for the project and a contract was awarded on March 26, 2003. The construction of the overall project was completed and a Notice of Completion was filed on March 24, 2003.

A portion of the work, however, was deleted during the construction of the project. The work that was deleted from the contract was in the Lantern Village and adjacent areas where historic sidewalk exists. The repairs, however, are still necessary. City staff wanted to provide a better means to more effectively match historic sidewalk texture, panels and color, if possible. Therefore, this is a follow-up contract to make the necessary repairs to meet the City's desire to match historic sidewalk.

DISCUSSION:

The design for the Historical Concrete Repair and Replacement Project FY 03/04 was completed and the City Council authorized the advertisement for construction bids on June 23, 2004.

The City held a bid opening on September 9, 2004, and did not receive a single bid. City staff feels that the reason for this is due to the difficulty and uncertainty of this repair project, as it requires specialty work to reasonably match the historic features that currently exist in differing conditions. It should be noted that although we will make our best attempts to watch the form, surface texture and color, an exact match will not be economically feasible. Further, the existing patchwork of differing colors and textures makes this infeasible unless much of the existing serviceable concrete is removed which is not included in this scope. Only concrete which is not serviceable, be lifted up, doesn't drain, etc. is in this repair scope – not cosmetics.

Public Contract Code Section 20166 reads in part as follows:

20166. **If no bids are received, the legislative body may have the project done without further complying with this chapter.**

When a public agency attempts to publicly bid a project and does not receive any bids, the following two options can be used to move the project forward:

1. Readvertise the project and set a follow-up bid opening date.
2. Pursuant to Section 20166 of the Public Contract Code, the City can complete the project without complying with any other bidding requirement, and

negotiate a bid with any contractor that can perform the scope of work and comply with all contract requirements.

Staff selected option number 2 to more expeditiously move the project forward. Two contractors were contacted and bids were requested and received as follows:

Nobest, Incorporated	\$ 396,320.00
Topline Construction	\$ <u>485,220.00</u>

Based on the information received from both contractors, City staff has determined that the bid received from Nobest, Incorporated is reasonable based on the scope of work. Therefore, staff is recommending that a contract be awarded to Nobest, Incorporated in the not-to-exceed amount of \$396,320 for construction of the Historical Concrete Repair and Replacement Project FY 03/04. The recommendation also authorizes the City Manager or his designee to approve additional payment not to exceed ten percent of this amount for change orders and contingencies. The City's estimate of cost for this work is \$400,000.

To effectively construct this project, construction support services and materials testing are required. The Fiscal Impact section of this report outlines the necessary services and the recommended expenditures.

NOTIFICATION/FOLLOW-UP:

Nobest, Incorporated
Topline Construction

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the strategic plan initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods, this project's goal is to complete concrete repairs in the Lantern Village and adjacent areas.

FISCAL IMPACT:

The Concrete Repair and Replacement Project FY 03/04 funding request is as follows:

General Fund:	\$ 400,000.00
Lantern Village Project (#1078) (Per Recommended Action)	\$ 99,122.00
Annual Traffic Safety Improvement (#1175)	\$ <u>81,000.00</u>
TOTAL CURRENT PROJECT BUDGET:	\$ 580,122.00

The available balance remaining for Lantern Village Park is \$290,000.00. To date, the City has expended \$56,160 for various costs relative to the project including design, project management, printing and other items.

Anticipated costs necessary to construct the project are as follows:

Construction	\$ 396, 320.00
Construction Management	\$ 71,030.00
Construction Support	\$ 8,791.00
Materials Testing	\$ 8,000.00
Contingency	<u>\$ 39,632.00</u>
 TOTAL ADDITIONAL PROJECT COSTS	 \$ 523,773.00

Based on the costs incurred to date and the anticipated costs to build the project, additional funding is required. Therefore, in order to move the project forward, City staff has included recommended budget transfers.

ALTERNATIVE ACTIONS:

1. Other alternatives as deemed appropriate by City Council.

ACTION DOCUMENTS:

PAGE

- | | |
|---|---|
| A. Contract Agreement for Nobest, Incorporated..... | 5 |
|---|---|

SUPPORTING DOCUMENTS:

None

Action Document A – Contract Agreement

CITY OF DANA POINT

CONTRACT AGREEMENT
FOR**HISTORICAL CONCRETE REPAIR AND REPLACEMENT PROJECT FY 03/04**

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this 10th day of November, 2004, BY AND BETWEEN the City of Dana Point, as AGENCY, and Nobest, Incorporated, as CONTRACTOR.

WITNESSETH that AGENCY and CONTRACTOR have mutually agreed as follows:

ARTICLE I

The contract documents for the aforesaid project shall consist of the Notice Inviting Sealed Bids, Instructions to Bidders, Proposal, General Specifications, Standard Specifications, Special Provisions, Plans, and all referenced specifications, details, standard drawings, and appendices; together with this Contract Agreement and all required bonds, insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, or extending the work contemplated as may be required to ensure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein.

ARTICLE II

For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to furnish all materials and perform all work required for the above-stated project, and to fulfill all other obligations as set forth in the aforesaid contract documents.

ARTICLE III

CONTRACTOR agrees to receive and accept the prices set forth in the Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole

thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. Said compensation shall not exceed Three Hundred Ninety-Six Thousand Three Hundred and Twenty Dollars (\$396,320) provided that the City Manager or his designee may approve additional payment not-to-exceed ten percent (10%) of this amount for change orders and for contingencies.

ARTICLE IV

AGENCY hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work and fulfill the obligations according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the contract documents.

The CONTRACTOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Contract. The CONTRACTOR shall at all times observe and comply with all such laws and regulations. The AGENCY, and its officers, employees, and agents shall not be liable at-law or in-equity occasioned by failure of the CONTRACTOR to comply with this Section.

ARTICLE V

CONTRACTOR acknowledges the provisions of the State Labor Code requiring every employer to be insured against liability for worker's compensation, or to undertake self-insurance in accordance with the provisions of that code and certifies compliance with such provisions.

CONTRACTOR further acknowledges the provisions of the State Labor Code requiring every employer to pay at least the minimum prevailing rate of per diem wages for each craft classification or type of worker needed to execute this Contract as determined by the Director of Labor Relations of the State of California.

ARTICLE VI

CONTRACTOR hereby agrees to comply with the State Labor Code and acknowledges that, in accordance with Labor Code Section 3700, he/she/it will be required to secure the payment of compensation to his/her/its employees.

ARTICLE VII

CONTRACTOR acknowledges that, in accordance with Labor Code Section 1777.5, he/she/it will be held responsible for compliance with the provisions of this Section for all apprenticeable occupations.

ARTICLE VIII

CONTRACTOR hereby waives for himself/herself/itself and for CONTRACTOR's Subcontractors any right CONTRACTOR may now or in the future possess in relation to this Contract and these Contract Documents and the work there under, to utilize the provisions of Civil Code Section 47(b) in any action, proceeding, or prosecution pursuant to California False Claims Act, Government Code Section 12650 *et seq.*

ARTICLE IX

CONTRACTOR acknowledges and agrees that CONTRACTOR must have all appropriate CONTRACTOR's licenses. CONTRACTOR further warrants and represents that he/she/they has/have the appropriate CONTRACTOR's license to pursue the work hereunder. CONTRACTOR's failure to have or maintain all appropriate licenses during the entire term of this Contract, or any period thereof, shall be cause for the immediate and summary termination of this Contract by AGENCY. CONTRACTOR shall be liable for all AGENCY's costs to complete the work and this Contract.

ARTICLE X

Hazardous Waste or Other Unusual Conditions. If the Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, CONTRACTOR shall promptly, and before the following conditions are distributed, notify AGENCY, in writing, of any:

- A. Hazardous Waste.** Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Differing Conditions.** Subsurface or latent physical conditions at the site differing from those indicated.
- C. Unknown Physical Conditions.** Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract.

AGENCY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's costs of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this Contract.

In the event that a dispute arises between AGENCY and CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE XI

Any notices which either party may desire to give to the other party under this Contract must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To AGENCY: CITY OF DANA POINT
Attention: City Clerk
33282 Golden Lantern # 203
Dana Point, CA 92629

To CONTRACTOR: Nobest, Incorporated
Attention: Mr. Mike Lewis
P.O. Box 874
Westminster, CA 92684-0874

ARTICLE XII

The AGENCY and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the municipal, superior, or federal district court with jurisdiction over the AGENCY.

ARTICLE XIII

Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the AGENCY. CONTRACTOR covenants and agrees that he/she has made himself/herself aware of Public Contract Code Sections 4100 *et seq.* pertaining to the identification and use of Subcontractors in the bid submitted and CONTRACTOR is fully aware and knowledgeable of the liability to the CONTRACTOR for violations of said Sections of the Public Contract Code.

ARTICLE XIV

CONTRACTOR is and shall at all times remain as to the AGENCY a wholly independent contractor. The personnel performing the services under this Contract on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Contract. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY in any manner.

No employee benefits shall be available to CONTRACTOR in connection with the performance of this Contract. Except for the fees and other payments paid to CONTRACTOR as provided in the Contract, AGENCY shall not pay salaries, wages, or other compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

ARTICLE XV

CONTRACTOR agrees to protect, indemnify, defend and hold harmless AGENCY and all of its officers, agents and employees from any claims, demand or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the work undertaken by CONTRACTOR hereunder.

ARTICLE XVI

CONTRACTOR agrees to endorse general and umbrella liability coverage required herein to include the City as additional insured under the insurance coverage required here using standard ISO endorsement number CG 20 10 attached to an ISO-CGL policy with an edition date of 1991 or earlier and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project and which allows coverage to apply to the additional insured to the full extent provided by the policy. In no event will the CONTRACTOR use an additional insured endorsement with an edition date of 1993 or later. CONTRACTOR also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this Contract Agreement to do likewise.

ARTICLE XVII

This Contract is entered into for the sole benefit of AGENCY and CONTRACTOR, and their successors, transferees, and assigns. No other person shall have any right of action based upon any provision of this Contract and no third party beneficiaries shall be created thereby.

ARTICLE XVIII

If any term, provision, condition, or covenant of this Contract, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Contract as amended shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XIX

This Contract may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed an original or deemed or presumed delivered unless and until the counterpart executed by the other party to this Contract is in the physical possession of the party seeking enforcement thereof.

ARTICLE XX

This Contract contains the complete, final, entire, and exclusive agreement between the parties with respect to the subject matter hereof, and no waiver, alteration, or modification of any of the modification, amendment, or alteration in violation hereof shall be void.

ARTICLE XXI

CONTRACTOR affirms that the signatures, titles and seals set forth hereinafter in execution of this Contract Agreement represent all individuals, firm members, partners, joint venturers, and/or corporate officers having principal interest herein.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract Agreement to be executed in duplicate by setting hereunto their names, titles, hands, and seals this ____ day of _____, 20____.

CONTRACTOR: _____

(Title)

Contractor's License No. _____ Class _____

Federal Tax Identification No. _____

CONTRACTOR'S SIGNATURE MUST BE NOTARIZED. SEE FOLLOWING PAGE FOR NOTARY ACKNOWLEDGEMENT.

CITY OF DANA POINT

By: _____
Doug Chotkevys, City Manager

ATTEST:

By: _____
Sharon Street, City Clerk

APPROVED AS TO FORM:

By: _____
Patrick Munoz, City Attorney

