

RESOLUTION NO. 4103

A RESOLUTION DENYING THE BID PROTEST OF S2F CORPORATION AND AWARDING THE CONTRACT FOR ST-98-02, 1999 STREET REHABILITATION AND ST-98-05, SALEM AVENUE REHABILITATION, TO THE LOW BIDDER, NORTH SANTIAM PAVING COMPANY IN THE BID AMOUNT OF \$1,864,725.50.

WHEREAS, on or about April 14, 1999, the City went out to bid on street renovation projects ST-98-2 and ST-98-5; and

WHEREAS, the bids were opened on May 3, 1999; and

WHEREAS, two bids were received, one from S2F Corporation, received at 10:50 a.m. at the offices of the Finance Department of the City of Albany, in the amount of \$1,953,129.35 and one from North Santiam Paving Company, received at 10:58 a.m., at the offices of the Finance Department of the City of Albany, in the amount of \$1,864,725.50; and

WHEREAS, subsequent to the bid opening, a Notice of Bid Protest was received from S2F Corporation, alleging that the apparent low bidder had not submitted his bid prior to 11:00 a.m. as called for in the bid specification; and

WHEREAS, a bid protest hearing was held on May 12, 1999, before the City Council of the City of Albany acting as the local contract review board; and

WHEREAS, notice of the protest hearing was mailed to both bidders; and

WHEREAS, prior to the commencement of the bid protest hearing, rules of procedure were announced and accepted without objection by any party; and

WHEREAS, arguments were presented in support of and in opposition to the bid protest.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany, acting as the local contract review board, finds as follows:

1. The official Invitation to Bid provided, in part, as follows:

Bids submitted shall be filed in a sealed envelope not later than 11:00 a.m., Monday, May 3, 1999, at the office of the Finance Director in City Hall, 333 Broadalbin SW, Albany, Oregon 97321.

2. The "office of the Finance Director" for the purpose of bid submissions is, and traditionally has been, the Finance / City Manager counter in the lobby on the first floor of the Albany City Hall;
3. Kathy Flanagan is the City employee who customarily receives City bids. She testified that such bids are always received at the Finance / City Manager counter in the lobby of the first floor of the Albany City Hall;
4. Ms. Flanagan further testified that the only clock which has been used for determining the timeliness of bid submissions is the clock which hangs on the wall at the Finance / City Manager counter;
5. Gary Holliday, the City employee who then served as the Finance Director of the City of Albany, testified that the "office of the Finance Director" for the purpose of bid submissions has always been the Finance Department's public counter. Mr. Holliday further testified that the official clock for

determining the timeliness of City bids has always been the clock which was publicly visible at the work station of the City employee who was charged with the responsibility of receiving the bids. Mr. Holliday further testified that the reason for this procedure was so that bidders had a central clock that all could see so that they would know whether or not competitive bids were timely received. Mr. Holliday further explained that bid openings are customarily held in a conference room or in the Council Chambers, in either event, at a location different than the Finance / City Manager counter wherein the bids are received. Mr. Holliday testified that it has never been the City's practice to accept the bids at the place of bid opening, but rather, to require that the bids first be submitted to the Finance / City Manager counter so that they could be formally received and their time of submission noted;

6. Representatives of the bid protestor, S2F Corporation maintain that they believed it was the customary practice of the City of Albany to use the clock in the room wherein bids were opened to determine timeliness of bid submissions and argued that this clock should be the one used for computing timeliness even though bids were received by the City at the Finance / City Manager counter which is separate and apart from the bid opening room;
7. Mr. Holliday testified that bidders may, in the past, have had the mistaken impression that the City was relying upon the clock in the bid opening room because bid openings were usually preceded by statements to the effect that, "This is now the time and place for bid opening..." Mr. Holliday explained that such statements were not, however, an indicator that the clock in the bid opening room was being used as the official clock for timing bid submissions since bids were first received and their timeliness noted at the Finance / City Manager counter using the clock located therein;
8. Mark Yeager testified that he was previously employed as the Public Works Director for the City of Albany. Mr. Yeager testified that it has always been his experience and understanding that the official clock used for determining the timeliness of bid submissions is, and always has been, the clock located at the work station of the City employee charged with formally receiving the bids;
9. Representatives of S2F Corporation presented their bid at the Finance / City Manager counter shortly after 10:50 a.m. on May 3, 1999, and the filing thereof was noted by Kathy Flanagan on the outside of the bid envelope, a copy of which is attached hereto and by this reference incorporated herein as Exhibit "A";
10. Following the submission of their bid, representatives of S2F Corporation proceeded to the Calapooia Room to await the bid opening. While in the Calapooia Room, representatives of S2F Corporation were advised by the Finance Director of the City of Albany that the clock in the Calapooia Room was not the official clock for purposes of receiving bids;
11. Representatives of S2F Corporation did not see whether or not the bid of North Santiam Paving Company was submitted prior to 11:00 a.m. as time was computed by the clock at the Finance / City Manager counter wherein the bid was received;
12. At 10:58 a.m. on May 3, 1999, North Santiam Paving Company submitted the bid at the Finance / City Manager counter in the Albany City Hall. The bid was marked by Kathy Flanagan showing the time of bid submission as 10:58 a.m. on May 3, 1999, using the publicly displayed clock at her work station. A copy of the aforesaid bid is attached hereto as Exhibit "B";
13. The clocks at Albany City Hall are not linked. Minor time discrepancies exist between all of the clocks in City Hall. At the time of bid submission, the official clock is and was that positioned at Kathy Flanagan's work station. This clock is visible to members of the public standing at the Finance / City Manager counter, but is not visible to persons seated in the Calapooia Room; and --
14. The testimony of Ms. Flanagan, Mr. Holliday, and Mr. Yeager is believable and convincing.

BE IT FURTHER RESOLVED that the following conclusions are adopted:

1. The office of the Finance Director, for purposes of bid submission is the Finance / City Manager counter in the lobby of the first floor of the Albany City Hall;
2. The official clock for determining the timeliness of the bids is the clock publicly displayed at the work station of the City employee charged with the responsibility for receiving bids;
3. At the time of bid submission in the present case, Kathy Flanagan was the City employee charged with receiving bids; any
4. The bid of North Santiam Paving Company was properly submitted prior to the 11:00 a.m. deadline on May 3, 1999.

BE IT FURTHER RESOLVED that the bid protest of S2F Corporation is hereby denied.

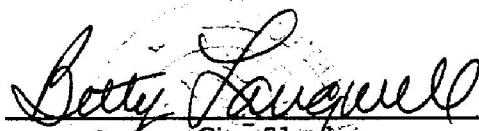
BE IT FURTHER RESOLVED that bid of North Santiam Paving Company concerning ST-98-02 and ST-98-05 is hereby accepted.

DATED THIS 12th DAY OF MAY 1999.



Council President

ATTEST:



City Clerk

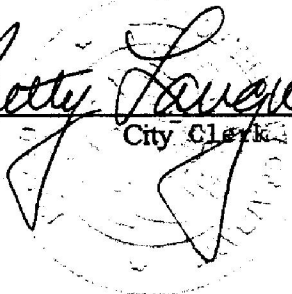


EXHIBIT A

Unrecorded

Heavy Construction
Site Work



Rock Products
Excavation

30815 Highway 34 • Albany, Oregon 97321-9420

TO: ALBANY ALASKA

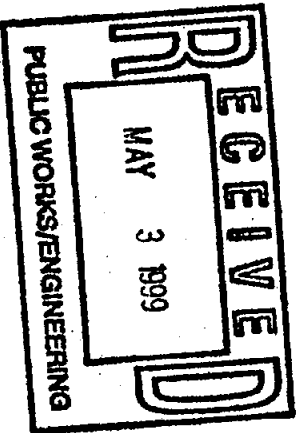
GENERAL INVESTIGATION PERMITS

EXPIRES: MONDAY MAY 03, 1999

TIME: 11:00 A.M.

FOR USE ONLY

S. J.
5:01
fyd



North Sunbeam Paving Co.
41203 Kingston-Lyons Dr.
P. O. Box 616
Stayton, OR 97383

CONTRACTORS LICENSE NO. 53247

Sunbeam Paving

CITY OF ALBANY
FINANCE DIRECTOR
CITY HALL
333 BROADALBIN SW
ALBANY, OR 97321

EXHIBIT B

BID PROPOSAL: SCHEDULE 1 - ST-98-2, STREET REHABILITATION AND
RECONSTRUCTION ON SALEM AVENUE FROM BURKHART
STREET TO LAKE STREET

SCHEDULE 2 - ST-98-5, SALEM AVENUE REHABILITATION,
FROM LAKE STREET TO ALBANY CITY LIMITS

BID : 11:00 A.M., MONDAY, MAY 3, 1999

May 31, 1969

10:55-8

Prof