



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: General Services
Department No.: 063
For Agenda Of: April 7, 2009
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director(s)
Contact Info: Paddy Langlands, Assistant Director (568-3096)

Bob Nisbet, General Services Director (560-1011)

SUBJECT: Cuyama Aquatics Complex, Phase 2 - Award of Construction Contract
Cuyama Aquatics Complex, Project #8656
5th Supervisorial District

County Counsel Concurrence

As to form: Yes

Risk Management Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Award and execute a Fixed Price Construction Contract in the amount of \$357,000 to the lowest responsible bidder, Robert Jones General Engineering, Inc. of Santa Maria, California (a local vendor), subject to the provisions of the documents and certifications as set forth in the plans and specifications applicable to the project and as required by California Law; and
- B. Authorize the Director of General Services to approve change orders of an amount not to exceed 10% of a base amount of \$250,000 plus 5% of the bid in excess of the base amount, or \$30,350 for this contract.

Summary Text:

On June 24, 2008, approval was granted by the Board of Supervisors to competitively bid the Cuyama Aquatics Complex, and on October 28, 2008, the Board of Supervisors awarded a construction contract to Deferville Construction, Inc. for the construction of a swimming pool, pool equipment, restroom and shower facilities. To comply with newly identified Federal Housing requirements associated with the Community Development Block Grant (CDBG) portion of the project funding, \$395,000 of the work

Auditor-Controller Concurrence

As to form: Yes

originally associated with the Cuyama Aquatics Complex had to be bid as a separate phase of the project, designated as Phase 2. Work under Phase 2 consists of landscaping, parking lot asphalt and striping, restroom accessories, signage, a wading pool and possible shade structures, and will be performed concurrently with construction of the swimming pool and the pool equipment / restroom facility. Bids have been received and Robert Jones General Engineering, Inc., a local vendor, is the low bidder and their bid is within budget. With the Board of Supervisors approval, the portion of construction under this contract would begin in April and be completed in concurrence with the swimming pool in July of 2009. No additional funding is being requested or is needed, as the scope of work is part of the original plan set and bid documents previously approved by the Board of Supervisors for the Cuyama Aquatics Complex.

Fiscal and Facilities Impacts:

Budgeted: Yes **Fiscal Analysis:**

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund	\$ 1,700,000.00		
State	\$ 395,000.00		
Federal			
Fees			
Other:			
Total	\$ 2,095,000.00	\$ 168,000.00	\$ 2,395,000.00

Capital Cost: \$2 million has been designated for the Cuyama Aquatics Complex from general funds, of which \$1 million has already been spent to date on design, management, environmental and construction services. An additional \$395,000 from a Community Development Block Grant (CDBG) is available for specific, CDBG-eligible non-construction and construction activities of the project based on the May 14, 2008 approval by the Board of Supervisor's of the Community and Housing Development's (HCD) award action plan which identified the subject project as one of the recipient programs. To comply with newly identified CDBG requirements, \$395,000 of construction items were bid as a separate phase of Cuyama Aquatics Complex, aptly entitled Phase 2. Funds are available in Fund 0030, Department 063, Program 1930, Line Item 8200, Project 8656. The project is shown on Page B-229 of the current Capital Improvement Program, a component of which is the subject aquatic center.

Staffing Impacts:

<u>Legal Positions:</u>	<u>FTEs:</u>
0	0

Special Instructions:

Page 3 of 3

Please send two (2) signed duplicate originals of the Agreement, and a copy of the minute order to Jill Van Wie, General Services.

Attachments:

Three (3) duplicate originals of the Construction Agreement.

Authored by:

Jill Van Wie, General Services



COUNTY OF SANTA BARBARA AGREEMENT FOR:
General Services Project No. 8656
Cuyama Aquatics Complex – Phase 2
290 Wasioja Rd., New Cuyama, CA 93254

THIS AGREEMENT is made by and between the County of Santa Barbara, a political subdivision of the State of California, hereinafter called COUNTY, and ROBERT JONES GENERAL ENGINEERING, INC. referred to as CONTRACTOR, for the completion of the work identified herein, on the following terms, conditions and provisions:

1. **CONTRACT** This agreement incorporates by reference all of the Plans, General and Special Conditions and Specifications provided by COUNTY for the work identified above; and where consistent with this document, the proposal executed and submitted by the CONTRACTOR. CONTRACTOR acknowledges receipt of all such documents as were not already in Contractor's possession. Said incorporated documents, this agreement, any Notice to Contractors, the Bid Bond, the Faithful Performance Bond, and Payment Bond are referred to herein as the "Contract" or "Contract Documents." Copies of all said documents are on file in the Department of General Services Office of the COUNTY and have been and will be made available to the CONTRACTOR during the term of this Agreement.

2. **WORK** CONTRACTOR agrees, at his own proper cost and expense, to furnish all the work and all equipment and materials necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the Director of General Services of said COUNTY, all in strict accordance with the Plans and the Contract Documents provided.

3. **EXCAVATIONS** Before any pavement resurfacing, displacement or excavation of the ground that may be required by any performance under this Agreement, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or by such other means as may be required; shall conform to all requirements of Government Code Sections 4215 through 4217 regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under said Sections. There shall be no performance under this Agreement by either party unless and until the provisions of such Sections are complied with and the County Representative is notified regarding the compliance.

4. **COUNTY REPRESENTATIVE** The County Representative referred to in the Contract Documents is Jill Van Wie.

5. **PAYMENT** As full compensation for furnishing all labor, supervision, overhead, materials and equipment and for doing all the work completed and embraced in this Agreement and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the CONTRACTOR for satisfactory completion of all requirements of the Contractor under this Agreement is and shall be **THREE HUNDRED FIFTY-SEVEN THOUSAND DOLLARS (\$357,000)**, to be paid as provided in the Contract Documents dated April 7, 2009. The CONTRACTOR assumes and will provide against any and all loss or damage arising out of the nature of the work undertaken, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of the work, for well and faithfully completing the work and the whole thereof, in the manner and to the requirements of the Contract and directions of the County Representative, hereunder. The COUNTY will have the right to audit CONTRACTOR's project records. Records must be made available in a form satisfactory to the Santa Barbara County Auditor Controller.

6. **EXTRA WORK** Extra work, materials, resolution of disputes, corrections, and/or changes to the specifications as are required for the proper completion of the work or the improvement contemplated may be effected or authorized in writing and agreement made of compensation at the same rate per unit (or at a corresponding rate for work that is different from that provided for in the Contract Documents) by the County Representative, if compensation is not in excess of 10% of the original agreement amount. Compensation in such equitable amount as is appropriate for the requirements of the COUNTY or may be authorized by resolution or minute order of the Santa Barbara County Board of Supervisors. The County Representative may agree upon appropriate additional time to be allowed as required for such extra work, materials, resolution or changes.

7. **COMPLIANCE WITH LAW, AMENDMENTS** CONTRACTOR shall keep fully informed of all laws, ordinances and regulations which do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereon and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation, the CONTRACTOR shall immediately report same to the County Representative in writing. CONTRACTOR shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such laws, ordinances, regulations or decrees as the same now exists or may be hereafter amended and all superseding provisions thereof. CONTRACTOR acknowledges, particularly, the provisions of Sections 3196 and Sections 3247 and 3252, inclusive, of the Civil Code of California. CONTRACTOR shall protect and indemnify the County of Santa Barbara, the Board of Supervisors, the Director of General Services, and/or any officer, agent or employee of the COUNTY against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree whether by CONTRACTOR, or a subcontractor, agent or employee.

8. **PAYMENTS NOT ACCEPTANCE** No certificate given or payments made under this Contract, except the final payment shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract and the payment of amounts due for any work in accordance with any amendments of this Contract, shall release the County of Santa Barbara from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the work and the recordation of the Notice of Completion by the COUNTY, and CONTRACTOR shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the County Representative, is or becomes defective during the period of said guarantee without expense whatsoever to the COUNTY.

9. **PREVAILING WAGE RATES** Rates of wages, including overtime, holiday and Sunday rates provided for the work are subject to the effect of the California Labor Code, Sections 1770 et. seq. Executive Orders of the President of the United States No. 9240, dated September 9, 1942, and No. 9250, dated October 3, 1942, and to any modifications thereof and to any and all lawful orders of the President or any authorized Federal Officer or agency, insofar as the same may be applicable to this Contract.

10. **CONTRACT DOCUMENTS ACKNOWLEDGED** CONTRACTOR hereby declares that he has read the "Contract Documents" pertaining to the work to be accomplished hereunder, has carefully examined the plans and detail drawings of the work to be performed and fully understands the intent and meaning of the same.

11. **TIME FOR COMMENCEMENT, COMPLETION** The work to be done under this Agreement shall be completed within **ninety (90)** calendar days of the Contract start date. As soon as practicable after the Contract has been executed by both the CONTRACTOR and the COUNTY, a Notice to Proceed will be issued by the County Representative stating the starting date of the Contract time. The CONTRACTOR shall begin work within thirty (30) calendar days after receiving the Notice to Proceed, unless otherwise provided. Attention is directed to the provisions of this Agreement pertaining to Liquidated Damages for failure to complete the work within the allowed time.

12. WORKERS' COMPENSATION INSURANCE CONTRACTOR certifies as to knowledge of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code. CONTRACTOR will comply with such provisions before commencing the performance of the work of this Contract.

13. PROGRESS PAYMENT NO WAIVER FOR DELAY Any progress payment made after the scheduled completion date will not constitute a waiver of any liquidated damages heretofore agreed upon as part of this Contract.

14. GUARANTEE BONDS Before any performance under this Agreement, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for faithful performance of all terms and conditions of this Agreement, in an amount and form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement.

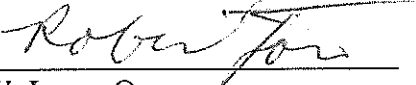
15. NON-DISCRIMINATION The CONTRACTOR acknowledges that this Agreement is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR agrees to perform all requirements of a contractor under the provisions of said Article and to pay all costs occasioned to the COUNTY by any noncompliance by the CONTRACTOR.

16. DISPUTES Should any dispute arise respecting the construction or meaning of any of the plans or specifications affecting the work or respecting the true value of any extra work or work omitted, the dispute shall be resolved by the Engineer/Architect whose decision shall be final and binding upon the parties. If, after the decision of the Engineer/Architect as provided herein, claims (as defined in Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY and those claims are in the aggregate amount of \$375,000 or less, said claims shall be resolved pursuant to Public Contracts Code Sections 20104 through 20104.8, inclusive.

17. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS The County Representative is authorized to act on behalf of the awarding authority in any matters requiring consent, notice or hearing in order to substitute materials or equipment specified or to substitute subcontractors.

ACCEPTED AND AGREED this 7th day of April, 2009.

“CONTRACTOR”:
ROBERT JONES GENERAL ENGINEERING, INC.



Robert W. Jones, Owner

Address: 5992 Sharon Court
City/State/Zip: Orcutt, CA 93457
License #: 614168 A
IRS#: 20-1276604

Dept 06 Fund 003 Program 1930 Account 8700 Project 8656

Agreement Acceptance (continued)

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST:

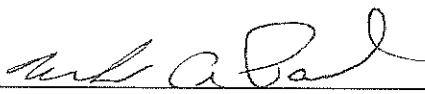
By: _____
CHAIR, BOARD OF SUPERVISORS

By: _____
MICHAEL F. BROWN
CLERK OF THE BOARD

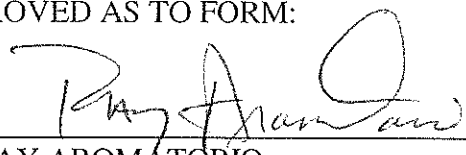
APPROVED AS TO FORM:
DENNIS MARSHALL,
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:

By:  _____
DEPUTY

By:  _____
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

APPROVED AS TO FORM:

By:  _____
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

Dept 06

Fund 003

Program 1930

Account 8700

Project 8656

COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Section 2-95. Prohibition of unlawful discrimination in employment practices. The COUNTY reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the COUNTY or by its joint powers, agencies, or agents with the consent of the other parties (hereinafter called "CONTRACTOR") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the COUNTY finds that the CONTRACTOR is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules, or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam war veteran/disabled, or age.

Such finding may only be made after CONTRACTOR has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing CONTRACTOR may introduce evidence, produce witness, and have the opportunity to cross-examine witnesses produced by the COUNTY. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, CONTRACTOR may move in the appropriate court of law for damages and/or to compel specific performance of a CONTRACTOR or agreement if any of the above procedures are not afforded to the CONTRACTOR. If CONTRACTOR is not found to have engaged in unlawful discriminatory practices, COUNTY shall pay all costs and expense of such hearing, including reasonable attorney's fees to CONTRACTOR in accordance with current Santa Barbara County Superior Court schedule of attorney's fees for civil trials. If CONTRACTOR is found to have engaged in such unlawful discriminatory employment practices, CONTRACTOR shall pay all such costs, expenses, and attorney's fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the CONTRACTOR shall forthwith reimburse COUNTY for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid CONTRACTOR under the terms of the contract or agreement.

Nothing in this Section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to CONTRACTOR, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits, and all other forms of compensation selection for training and apprenticeship and probationary periods.

CONTRACTOR shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests, and all other pertinent employment data and records, to the COUNTY, its officers, employees, and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to CONTRACTOR reasonably prior to the time CONTRACTOR is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees, and agents of the COUNTY. No records or copies of such records may be removed from the premises of CONTRACTOR and no disclosure, oral, or written of such record, may be made to third parties except as provided within the agreement.

Provided, however, that in the event of a hearing to determine whether or not CONTRACTOR is engaging in unlawful discrimination in employment practices as defined herein, the Board of Supervisor of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the COUNTY. All persons contracting with or who have contracts for goods or services with the COUNTY shall be notified that this chapter applied to their contract or agreement with the COUNTY (Ordinance No. 2946, SS1; Ordinance No. 2993, SS1; and Ordinance No. 3018, SS1).

Section 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the COUNTY having an affirmative action program which has been approved within twelve (12) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the COUNTY affirmative action officer. Loss of such approval shall be immediately reported by such party to the COUNTY affirmative action officer.

Section 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase orders:

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules, or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the COUNTY may forthwith terminate this order." (Ordinance No. 2946, SS 1)

Section 2-97. Affirmative action officer. At the discretion of the COUNTY affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the COUNTY is engaging, or during the term of a contract or agreement with the COUNTY has engaged, in any unlawful discriminatory employment practices as described in Section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, COUNTY counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the Board of Supervisors of the COUNTY, together with all damages, costs, and expense related thereto and incurred by COUNTY, for appropriate action by the Board of Supervisors in accord with the in tent and purposes of this article and of the affirmative action program of the COUNTY (Ordinance No. 2946, SS 1).