



## Ladera Recreation District Staff Report Special Meeting (June 14, 2022)

**AGENDA TITLE:** Consider bid protest; CEQA exemption; and award construction contract for Aquatic Facility Renovation to Tricon Construction Inc. dba Tricon Aquatics (“Tricon”).

### **RECOMMENDATION:**

District staff recommends that the Board: (1) find the Aquatic Facility Renovation project is exempt from the California Environmental Quality Act; (2) Determine that the bid submitted by the apparent low bidder, CWS Construction Group, Inc. (“CWS”), is nonresponsive; (3) Award the construction contract to the lowest responsive, responsible bidder, Tricon, for an amount of \$3,649,872; (4) Authorize the General Manager to execute the contract on behalf of the District, subject to approval as to form by the District Counsel.

### **DISCUSSION:**

In accordance with the Local Agency Public Construction Act (Public Contract Code §§ 20100-20929), the District advertised for bids for the Aquatic Facility Renovation (“Project”) on March 25, 2022. The Project includes the removal and replacement of the existing 6-lane competition swimming pool and pool deck, a new pool equipment enclosure and bio retention basin, toilet room alterations, and associated site improvements. Construction of the Project generally consists of: furnishing all labor, materials, equipment, services, testing, permits, temporary controls and construction facilities, and all general conditions, general requirements and incidentals related to complete the Project.

Three bids were received and opened on May 6, 2022. The Engineer’s Estimate for the work was \$3,250,000. The work is on a lump sum basis.

Bidder	Total Bid, \$
CWS Construction Group, Inc.	3,487,700/4,654,700
Tricon Construction, Inc. dba Tricon Aquatics	3,649,872
Wickman Development & Construction	3,659,140

On May 12th, 2022, Tricon submitted a bid protest to the District, asserting CWS’ bid contained the following errors: (1) discrepancies between CWS’ stated total bid and the total amount of each individual item; (2) CWS’ failure to submit a schedule as required under section 2.05 of the Instructions to Bidders; (3) CWS’ lack of a C-53 specialty license as required under section 2.18(B) of the Instructions to Bidders; and (4) CWS’ failure to list Addendum D on the acceptance of addenda acknowledgment.

On May 13th, 2022, CWS submitted a letter responding to Tricon’s protest, asserting: (1) its bid of \$3,487,700 was calculated correctly; (2) its failure to submit a project schedule does not provide it an unfair advantage over the other bidders; (3) the C-53 license requirement is being



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fulfilled through one of its subcontractors, Western Water Features; (4) its failure to acknowledge addendum D does not provide an unfair bid advantage.

District Staff, in consultation with the Pool Committee, reviewed the three bids, Tricon's bid protest, and CWS' response. At the request of District staff, District Counsel provided an opinion letter, attached hereto (attachment A), which explains that the District is legally prohibited from awarding the contract to CWS because CWS' bid contains at least one nonwaivable error—the discrepancy between CWS' stated "Total Base Bid" and the cost of the individual items listed in its bid. Consequently, District Staff determined that Tricon is the lowest responsive, responsible bidder.

On June 6, 2022, District Staff sent the District Counsel's opinion letter to Tricon and CWS. Also on June 6, 2022, District staff posted and transmitted to all bidders a Notice of Intent to Award the contract to Tricon, also attached hereto (attachment B).

### **CEQA:**

Staff has evaluated the Project with respect to the California Environmental Quality Act (CEQA) and found it categorically exempt under multiple sections of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.):

- Section 15301/Class 1, exempting projects consisting of the "operation, repair, [and] maintenance ... of existing public ... facilities."
- Section 15302/Class 2, exempting projects consisting of the "replacement or reconstruction of existing structures and facilities."
- Section 15061/Common Sense, exempting projects "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

### **NEXT STEPS:**

Upon award of the subject construction contract, the contract will be sent to Tricon to sign and to provide the required insurance and bond documents. Upon review and approval by the District's Counsel, the construction contract will be executed and a Notice to Proceed transmitted to Tricon. Per General Condition 1-32, Tricon shall commence work within seven calendar days after the receipt of Notice to Proceed and shall complete construction of the Project within 243 calendar days thereafter.

### **ATTACHMENTS:**

- A. District Counsel, Attorney Opinion Letter Responding to Tricon's Bid Protest
- B. Notice of Intent to Award Contract to Tricon



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Prepared and Reviewed By:

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