

FOR CONSIDERATION

June 15 , 2010

TO: The Directors

FROM: Dennis Mullen

SUBJECT: Rochester (Monroe County) – Midtown Plaza Redevelopment – Demolition and Site Preparation Services

REQUEST FOR: Authorization to Enter into a Contract with Ontario Specialty Contracting, Inc. for Demolition and Site Preparation Services and to Take Related Actions

I. Contract Summary

Contractor: Ontario Specialty Contracting, Inc.

Scope of Services: The purpose of this contract is to secure the services of a qualified contractor to demolish a series of buildings collectively known as “Midtown Plaza” in Rochester, NY. The contract will also involve a limited amount of hazardous materials remediation.

Contract Term: Seventeen (17) months

Contract Amount: Not to exceed \$9,561,200 inclusive of all reimbursable expenses and a 10% percent contingency.

Funding Source(s): \$55 million Upstate City-by-City (Re-appropriated in FY 2009- 10. Awaiting reappropriation for FY 2010-11

II. Background

On October 16, 2007, New York State (“State”) and City of Rochester (“City”) entered into a Memorandum of Understanding to acquire, remediate, demolish and redevelop 1.5 million square feet of blighted office and retail space in downtown Rochester known as Midtown Plaza. Once the site is cleared, the Midtown Plaza site will be redeveloped as mixed-use urban space that will include a new corporate headquarters for PAETEC Communications for the development of its new national headquarters building. The plan was introduced as part of the Governor’s Upstate “City-by-City” initiatives.

The Midtown Plaza site is located at the main intersection of downtown Rochester with frontage on three major streets: Main Street, South Clinton Avenue and Broad Street. The Midtown Plaza site is comprised of the former Midtown Mall, a 17-story Midtown Tower, McCurdy's Building, Euclid Building, Seneca Building, B. Forman Building, a 3-level subsurface parking garage, a service tunnel located beneath the Midtown Plaza Site, and three skywalks attached to the Midtown Plaza

To facilitate a development-ready Midtown parcel, a total of \$69,970,000 in public funding has been committed to date. This includes a 2009-2010 New York State Budget re-appropriation of \$55 million Upstate City-by-City funds for all costs associated with making the Midtown site shovel ready, including all asbestos abatement and demolition costs; \$900,000 from ESD's UCDP funds toward predevelopment costs such as site master planning, EIS, and engineering studies; \$18,000 from EDF to assist the City in the financial structuring of the PAETEC project using various federal equity, bond and loan programs; and approximately \$14 million from the City of Rochester toward the acquisition of the Midtown properties (8.5-acre site) through condemnation and relocation of the building's 49 tenants.

In August 2008, LaBella Associates from Rochester, NY was approved by ESD Directors for a \$550,000 for demolition engineering and design contract, and in September 2008, ESD Directors approved a \$2.5 million contract with LiRo Engineers (LiRo) for construction management services. The site is currently undergoing extensive abatement and soft demolition under a \$34 million ESD contract with Cambrian Contracting, Inc., which was approved by the ESD Directors in May of 2009. The abatement is approximately two-thirds (2/3) completed and will be ready for the first phase of demolition in June 2010.

On January 8, 2010, Empire State Development (ESD) awarded Christa Companies/Morgan Management a \$1.2 million grant toward the adaptive reuse of Midtown Tower. The award was part of \$22.4 million total Upstate Regional Blueprint Funding package for 23 projects to revitalize New York's Upstate economy. These funds will assist the Christa/Morgan team in converting the Midtown Tower into 186 residential market-rate apartments, 24 market-rate condominium units and some minor commercial space. The commercial space in the Tower that will be renovated equals about 12,000-square-feet with the balance of the Tower's 297,000-square-feet dedicated to residential development.

Negotiations with PAETEC to relocate its headquarters to the Midtown site are ongoing.

III. Contractor Selection Process

Notice of availability for Contract Documents and Specifications was advertised in the February 22, 2010 *NYS Contract Reporter*, the ESDC website www.nylovesbiz.com. Addendum #1 was issued on March 8, 2010 and Addendum #2 was issued on March 11, 2010. Eleven (11) sealed bids were submitted by the March 23, 2010, 11:00 a.m. deadline.

The contract documents and specifications stated that the contract would be awarded based on cost from bidders meeting a minimum set of qualifications. The lowest responsible bidder was determined through the verification of the lowest bidder's qualifications and the lowest bid amount. The lowest bid was determined by the sum of the base bid and Alternate bids #1 and

#2. Alternate #3 bids are not being accepted at the request of the property owner (City of Rochester) as the City and its preferred developer for the subject property specified in Alternate #3, have decided to maintain the brick façade as a cost saving measure to the overall project. Alternate #3 would have removed the brick façade. The City has further requested that Alternates #1 and #2 remain as part of this contract.

Contractor	Base Bid (LS)	Alternate 1	Alternate 2	Alternate 3	Base with Alternates #1, 2
Ontario Specialty Contracting	\$7,917,012.00	\$420,300.00	\$354,688.00	\$1,239,908.00	\$8,692,000.00
NASDI	\$8,787,000.00	\$48,000.00	\$208,000.00	\$724,000.00	\$9,043,000.00
Homrich Inc.	\$9,430,000.00	\$205,000.00	\$160,000.00	\$585,000.00	\$9,795,000.00
Manafort Brothers Incorporated	\$9,657,000.00	\$265,000.00	\$385,000.00	\$1,760,000.00	\$10,307,000.00
Titan Wrecking & Environmental	\$9,939,608.00	\$679,696.00	\$699,413.00	\$747,877.00	\$11,318,717.00
Nuprecon L.P.	\$10,974,200.00	\$284,500.00	\$269,000.00	\$524,000.00	\$11,527,700.00
Empire Dismantlement Corp.	\$10,741,000.00	\$580,000.00	\$580,000.00	\$1,200,000.00	\$11,901,000.00
Independence Excavating, Inc.	\$11,960,000.00	\$446,700.00	\$397,800.00	\$517,300.00	\$12,804,500.00
Cambria	\$12,800,000.00	\$285,000.00	\$275,000.00	\$535,000.00	\$13,360,000.00
Dore & Associates Contracting	\$15,540,200.00	\$392,700.00	\$332,400.00	\$1,974,400.00	\$16,265,300.00
Gramercy Group, Inc.	\$16,731,000.00	\$420,000.00	\$840,000.00	\$600,000.00	\$17,991,000.00

After an evaluation of the experience, reputation, and financial condition of the two lowest bidders (NASDI and Ontario Specialty), Ontario Specialty Contracting, Inc. was determined to be the lowest responsible bidder.

Ontario Specialty Contracting, Inc. headquartered in Buffalo, NY and is a full-service demolition, dismantlement, recovery, salvage, environmental remediation, recycling, and site preparation services company.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has considered proposed contractor's ability to perform the services provided for in the proposed contract; and has b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

I. Scope of Work

The base bid includes all labor, materials, tools, equipment, supervision, permit fees, handling and disposal costs to remove/separate, characterize and dispose of wastes which do not qualify as clean fill or construction and demolition debris, to demolish the Midtown Plaza Complex, as shown in the bid drawings, with associated utilities and appurtenances.

The base bid consists of the demolition and remediation of the Midtown Plaza Complex consisting of the following structures:

1. Three pedestrian skyway bridges
2. B. Forman Building
3. Partial Demolition of Midtown Mall
4. Partial Demolition of Midtown Tower
5. Partial Demolition of the Seneca Building
6. Complete Demolition of Citizens Bank
7. Complete Demolition of Scheer Building
8. Complete Demolition of Wendy's Building
9. Complete Demolition of McCurdy's Buildings
10. Complete Demolition of Euclid Building
11. Partial Demolition of Service Tunnel

Additional work in the base bid includes:

1. Mobilization/Demobilization
2. Insurance/Bonding and all permit costs
3. Furnishing and maintaining field office
4. Site preparation
5. Utility terminations
6. Pedestrian and Traffic control
7. Temporary shoring and Dewatering
8. Vibration monitoring
9. Air monitoring program
10. Crushing (off-site) and/or Furnishing and installing all backfill material
11. Backfill and compaction
12. Environmental and Safety controls
13. Final grading
14. Site perimeter fencing and security
15. Tunnel operations, safety and security

For the partial demolition and alternates, the City of Rochester has requested additional time to determine if existing building structures and systems can be incorporated into the new, planned developments on the site. The determination has been made that Midtown Tower structure and

the Seneca Building floors 1-4 will remain. Alternate #1 provides for the complete demolition of Midtown Mall (the former atrium area) and Alternate #2 provides for the complete demolition of Midtown Mall (the former Wegmans). Alternate #3 removes the curtain wall from Midtown Tower.

The demolition work is to include the removal of all contents from the site, subject to certain exceptions. Contractor is responsible for the legal disposal of all materials removed from the site. The demolition work includes the design, furnishing, installing, maintaining and removal of any and all shoring required to support construction loads overall all structures identified as "to remain." The demolition contract provides the contractor with the option of crushing all concrete and masonry debris for reuse in the backfilling of basements, sub-basements and final grading. Demolition work includes pest control and termination of utilities.

The demolished site is to be restored to a finish condition to include drainage and backfill to defined grades and the contractor shall provide as-built topography surveys of the site post demolition and prior to backfilling.

V. Contract Term, Price and Funding

Ontario Specialty Contracting, Inc. will be compensated for its services on lump sum for both the base bid and Alternates #1 and #2 not to exceed the specified contract amount of \$9,561,200. In the event additional fill materials or contaminated soil removal are added or deleted from the work scope, ESD will rely on bidder's unit cost quotes to negotiate the value of the work. ESD reserves the right to add or reject Alternates #1 and #2. The contractor agrees to pay liquidated damages of \$5,000 per day should it not comply with the project schedule.

All costs associated with Ontario Specialty Contracting, Inc.'s services will be paid for with Upstate City-by-City funds appropriated in the 2008-2009 New York State Budget for the Midtown Project and re-appropriated in 2009-2010. It is anticipated that these funds will be reappropriated in the 2010-11 NYS Budget. No funding shall be disbursed under this contract until such funds are reappropriated.

VI. Non-Discrimination/Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. Ontario Specialty Contracting, Inc. shall use its best efforts to achieve Minority and/or Women-owned Business Enterprise participation of not less than 10% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with this contract, and to include minorities and women in any job opportunities.

VII. Environmental Review

The City of Rochester ("City"), as lead agency, completed an environmental review of the proposed Midtown project, which involved a draft and final generic environmental impact statement (GEIS) pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. Based upon the GEIS, the Board of Directors issued an involved Agency Findings Statement for the Midtown Project at their meeting of May 21, 2009. In addition, because portions of the project area contain resources eligible for listing on the State and National Registers of Historic Places, ESDC and the City entered into and have complied with the requirements of a Letter of Resolution with the NYS Office of Parks, Recreation and Historic Preservation in accordance with Section 14.09 of the State Parks, Recreation and Historic Preservation Law.

The ESDC Findings Statement and Letter of Resolution address all aspects of the proposed Midtown project. Therefore, no further environmental review is required in connection with this action.

VIII. Design and Construction

The Design and Construction ("D&C") staff has reviewed the bid process, and will advise on the management of the abatement contract and review invoices for compliance with D&C standards and procedures. D&C will remain actively involved in all phases of the work and will review all project documents, budgets, and design of asbestos removal, decontamination and demolition of the buildings collectively known as "Midtown Plaza".

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize ESDC to enter into a contract with Ontario Specialty Contracting, Inc. for an amount not to exceed \$9,561,200 to provide demolition and site preparation services for the Midtown Plaza building abatement and hazardous material disposal; and (3) to authorize the Corporation to issue a Notice to Proceed in an amount not to exceed \$100,000 to immediately commence the services under this contract.

X. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

XI. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

XI. Attachments

Resolution

June , 2010

EMPIRE STATE DEVELOPMENT CORPORATION – Authorization to Enter Into a Contract with Ontario Specialty Contracting, Inc. to Provide Demolition and Site Preparation Services and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Ontario Specialty Contracting, Inc. to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with **Ontario Specialty Contracting, Inc.** in an amount not to exceed **\$9,561,200** for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the Corporation is hereby authorized to issue a Notice to Proceed in an amount not to exceed **\$100,000** to immediately commence the services under this contract; and be it further

RESOLVED, that the President and Chief Executive Officer-Designate of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

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