



MARIPOSA COUNTY

Public Works • (209) 966-5356



RESOLUTION - ACTION REQUESTED 2016-197

MEETING: April 26, 2016

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

RE: Contract Award for the Triangle Road Reconstruction Project

RECOMMENDATION AND JUSTIFICATION:

Approve and Award the Construction Contract to Reconstruct 1.56 Miles of Triangle Road to Emmett's Excavation, Inc., and Authorize the Board of Supervisors Chair to Sign the Agreement.

On October 13, 2015 the Public Works Department was granted authority to solicit bids in conjunction with the Triangle Road Reconstruction Project, which will reconstruct 1.56 Miles of Triangle Road. The Department advertised for bids on this project with bids received on November 10, 2015. The Department received four (4) bids for this project with Emmett's Excavation, Inc. being the lowest responsive bidder with a bid of \$652,422.50.

Due to misunderstandings internal to Public Works, an incorrect contract was prepared in November 2015 with a not-to-exceed amount of \$7,602 although the scope and bid amount was correctly reflected in Exhibit "A" of that document. This erroneous contract amount did not trigger Department processes and procedures to request Board action to approve the contract as prescribed in the authorization given on October 13, 2015 by the Board.

No work has yet been accomplished via this contract, and the bid from Emmett's Excavation, Inc was previously judged to be reasonable. The Department therefore recommends award of this contract, for a total cost of \$652,422.50 and further requests that the Chairman of the Board of Supervisors be authorized to sign the agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On December 10, 2013, the Board adopted the 2014 Regional Transportation Improvement Program (RTIP), LTC-2013-15, which included funding for the Triangle Road project.

On October 13, 2015, the Board of authorized solicitation of bids for this project.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could choose to direct an alternative approach to resolving this issue. If the project does not go forward into construction, funding may be in jeopardy.

FINANCIAL IMPACT:

Funding for this project is included in Fund 511 - County Road Projects.

ATTACHMENTS:

Emmett's Excavation (PDF)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hodson, CAO

4/21/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Kevin Cann, District IV Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

16-008

CONTRACT FOR SERVICES

This Contract made this 26 day of April, 2016 between:

COUNTY: Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: Emmett's Excavation, Inc.
6207 East Clinton Ave.
Fresno, CA. 93727

ARTICLE I. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on April 18, 2016 and shall terminate December 30, 2016, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Contract.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 3.02** Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.
- 3.03** Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

- 4.01** Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of \$652,422.50. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

Total sum to be paid upon completion of services.

or

Incremental payments based on the following schedule:

Funding Source: 511-1311-781-0649

- 4.02** Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference contract number.

- 4.03** Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 General Liability and Automobile Insurance: During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing

coverage as set forth in paragraphs 5.03 and 5.05 which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.05 Workers' Compensation: During the term of this Contract Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.

5.06 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.07 State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

5.08 Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made

available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

- 5.10** Assignability of Contract: It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

- 6.01** Cooperation of County: County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor's duties under this Contract.
- 6.02** Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF CONTRACT

- 7.01** Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Contractor;
 2. Death of Contractor.
- 7.02** Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County's option, may terminate this Contract by giving written notification to Contractor.
- 7.03** Termination for Convenience of County: County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.
- 7.04** Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in

its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

- 8.01** Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02** Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.
- 8.03** Partial Invalidity: If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04** Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.
- 8.05** Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06** Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 Governing Law: This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

COUNTY:
Board of Supervisors

John Carrier 4-27-16
John Carrier, Chair (date)

CONTRACTOR:
Emmett's Excavation, Inc.

Lucretia Emmett 4/18/16
(signature) (date)
Lucretia Emmett V/P, Sec., Treas.

APPROVED AS TO FORM:

By: Steven W. Dahlem
Steven W. Dahlem (date)
County Counsel

ATTEST:

By: Rene LaRoche 4-27-16
Rene LaRoche (date)
Clerk of the Board

TRIANGLE ROAD REHABILITATION**EXHIBIT "A"****Project # 07-12 (013)****Bid Schedule**

ITEM	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE (\$)	EXTENSION (\$)
1	CONSTRUCTION AREA SIGNS	LS	1	5,000.00	5,000.00
2	TRAFFIC CONTROL	LS	1	40,000.00	40,000.00
3	PULVERIZE BITUMINOUS SURFACE & FINISH GRADING TO REQUIRSED WIDTH	LS	1	32,000.00	32,000.00
4	CULVERTS	EA	6	5,000.00	30,000.00
5	AGGREGATE BASE (CLASS 2)	TON	4000	35.00	140,000.00
6	BASE COURSE-ASPHALT CONCRETE TYPE "B" 3/4" (MAX-MED)	TON	3400	80.00	272,000.00
7	CONFORMS	EA	5	5,000.00	25,000.00
8	SHOULDER BACKING	TON	1850	42.00	77,700.00
9	PAINTED TRAFFIC CENTERLINE STRIPES (2 COATS)	LF	8250	2.25	18,562.50
10	PAVEMENT MARKINGS DOUBLE COAT)	SQ / FT	36	60.00	2,160.00
11	BLASTING	LS	1	10,000.00	10,000.00

TRIANGLE ROAD REHABILITATION TOTAL IN FIGURES: \$ 652,422.50

AMOUNT OF BID, WRITTEN OUT: SIX HUNDRED FIFTY TWO THOUSAND FOUR HUNDRED TWENTY TWO AND FIFTY CENTS ONLY.

Signature of Bidder:


LUCRETIA EMMETT - VICE PRESIDENT