



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch

**SUBJECT:** See Below

**DATE:** July 22, 2024

Approved

Date:

8/1/24

**COUNCIL DISTRICT:** Citywide

**SUBJECT: Actions Related to the 10331: On-Call Landscape Construction Contract 23-24 Re-Bid Project**

**RECOMMENDATION**

Award of a contract for the on-call construction of capital improvement projects (10331 – On-Call Landscape Construction Contract 23-24 Re-Bid Project) to Suarez & Munoz Construction, Inc. pursuant to City of San José Charter, Section 1217 (h), for a maximum not to exceed amount of \$1,000,000 and a term of three years.

**SUMMARY AND OUTCOME**

No bids were received during the re-bid process for this on-call contract. Staff pursued a direct award and engaged in negotiations with Suarez & Munoz Construction, Inc., a reputable firm with a track record of successfully completing projects for the City. The negotiated overhead and profit markup is 19%.

Approval of the recommendation will enable the completion of potential projects, including the Penitencia Creek Trail Erosion Repair project and Los Gatos Creek Trail Erosion Repair project. Upon completion of these projects, remaining capacity within the \$1,000,000 allocation will address unforeseen small projects at various City facilities. Environmental status granted by the Planning, Building and Code Enforcement Department will be issued for each project.

**BACKGROUND**

The On-Call Landscape Construction Contract 23-24 project (Project) was initiated to procure one on-call construction contract in the amount of \$1,000,000 for a duration of three years. Task orders, up to \$750,000, will be issued for minor construction work,

including demolition, new construction, or remodeling of City facilities (parks, landscapes, or public buildings).

Projects with an Engineer’s Estimate over \$200,000 will require the Director of Public Works or his designee’s approval before task order negotiation.

***Two Public Bids***

The Project was initially advertised for bid on August 16, 2023. Bids were opened on September 14, 2023, with the following results that were evaluated on the basis of the lowest percentage markup.

<b>Contractor</b>	<b>Overhead Profit Percent</b>
Integra Construction Services (Pleasanton)	14.98
Suarez & Munoz Construction, Inc. (Hayward)	19.00
Marina Landscape, Inc. (Orange)	22.00

City staff did not execute the contract and decided to rebid the Project.

The Project was readvertised on December 6, 2023. No bids were received on the January 18, 2024 submittal deadline.

**ANALYSIS**

Under City of San José Charter, Section 1217(h), the City Council can decide not to further comply with the City’s competitive bidding requirements when no responsive bids are received. In practice, foregoing additional competitive bidding means selecting a contractor, negotiating a construction contract, and awarding that contract.

***Selection of Contractor***

Staff began the process of selecting a contractor by first examining the qualifications and pricing of the bidders from the initial procurement. Suarez & Munoz Construction, Inc., the second lowest bidder in the initial bid, demonstrated a strong track record with past projects, such as Iris Chang Park, Tamien Park Phase II, Welch Dog Park, and Commodore Park. Its performance, skills, and commitment align with the City’s expectations.

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Suarez & Munoz Construction, Inc. responded to the City's request for a quote with a 19% markup and overhead price consistent with its bid in the initial procurement. This markup is deemed reasonable for the Project scope.

### ***Wage Theft Prevention Policy Check***

The Office of Equality Assurance reviewed Suarez & Munoz Construction, Inc. for compliance with the City's Wage Theft Prevention Policy on May 8, 2024 and on July 15, 2024. No wage theft issues were identified.

### ***Project Labor Agreement Applicability***

The City's Project Labor Agreement is not applicable to this project because the Engineer's Estimate is under \$1.21 million.

### ***Local and Small Business Analysis***

The recommended contractor is not a local or a small business enterprise. However, the subcontractor, Bear Electric, is a local business enterprise and will handle the electrical scope, if needed.

### ***Policy Alternatives***

**Alternative # 1:** Do not directly award the contract and attempt a third public bidding process.

**Pros:** Allows for a standard public procurement process, inviting all qualified contractors to bid, potentially resulting in competitive prices.

**Cons:** No guarantee of receiving responsive bids.

**Reason for not recommending:** Two public bid procurements have already been attempted. San José Charter Section 1217(h) gives City Council the authority to directly award a project, which would allow the project to move forward as efficiently and quickly as possible.

## **EVALUATION AND FOLLOW-UP**

No additional follow-up action with the City Council is anticipated at this time.

## **COST SUMMARY/IMPLICATIONS**

No funding is needed to approve the on-call contract recommended for award in this memorandum. Funding sources will be identified prior to the issuance of task orders to

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the contractor as detailed scopes of work are defined and cost/schedules are negotiated, subject to the appropriation of funds.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney Office, the City Manager's Budget Office, and Planning, Building, and Code Enforcement Department.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the August 13, 2024 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

### **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/  
MATT LOESCH  
Director of Public Works

For questions, please contact Sal Kumar, Deputy Director of Public Works, at [sal.kumar@sanjoseca.gov](mailto:sal.kumar@sanjoseca.gov).