

## COMMISSION MEMORANDUM NO. 2017.5 [REVISED]

**DATE:** January 10, 2017

**TO:** SAWPA Commission

**SUBJECT:** Inland Empire Brine Line Reach V Rehabilitation and Improvement Project – Phase I

**PREPARED BY:** David Ruhl, Program Manager  
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### BACKGROUND

As described below, this item will be addressed in both a closed session and in open session. Per the Commission's action terminating the project contractor's work, finding an emergency condition, and authorizing the General Manager to contract with a replacement contractor to complete the project, staff worked to obtain proposals from Weka Inc. (general contractor) and Insituform (specialty subcontractor for CIPP installation) to complete the project. The Commission discussed the proposals in the past three meetings. At the Commission meeting on January 3, 2016, the Commission found that there is no longer an emergency condition. Staff was not prepared at that meeting to identify other bases for proceeding with the recommended contract action absent emergency, and recommended against taking action.

There are other legal bases for moving forward with a contract with Weka Inc. to complete the project as designed without seeking competitive bids that the Commission should consider and which will be presented at this meeting. In general, courts have excused agencies from the requirement to rely on competitive bids where seeking bids would not be expected to meet the needs of the agency and satisfy the purposes of the bidding requirement.

The purposes of the statutory competitive bidding requirement are to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition. Where seeking bids would not serve these purposes, courts have created exceptions to the bidding requirements, for example where competitive bidding would not benefit the best interest of the agency; would be undesirable, impractical, or impossible; or is of no use because no other contractor can or will do the work. Courts also look to an agency's own policies, and SAWPA's Procurement Policy allows no-bid contracting when obtaining bids "would fail to produce an advantage or when the competitive bid process would be undesirable, impractical, or impossible."

In our current situation, the following facts are noteworthy:

- SAWPA received only three bids for this project in 2014, reflecting that the work involved here is highly specialized and there are few capable or willing contractors making up the relevant industry;
- Of the three original bidders, two were part of the team that SAWPA terminated in August;
- Weka Inc, teamed with Insituform, was the second low bidder and the only remaining bidder of the bids submitted;

- SAWPA experienced difficulty in identifying other contractors with the requisite skills to complete the project who were willing to work on the project;
- Charles King Co., the terminated contractor, has written to SAWPA and in court documents that they sought a replacement supplier and installer and that none existed.

Because of the need for the Commission to consider in more detail the legal authorities and advice in support of the use of this approach, the Commission will be briefed by counsel in closed session prior to considering the recommendation for contract actions in open session.

## **RECOMMENDATION**

It is recommended that the Commission authorize the General Manager to:

1. Award a contract on the Inland Empire Brine Line Reach V Rehabilitation and Improvement Project – Phase 1 to Weka Inc. for an amount not to exceed \$12,950,113;
2. Execute Task Order No. VALI326-04 in an amount not-to-exceed \$1,252,400 with Vali Cooper & Associates, Inc. to provide Construction Management Services for the Inland Empire Brine Line Reach V Rehabilitation and Improvement Project – Phase 1.
3. Execute Task Order No. DUDK326-06 in an amount not-to-exceed \$134,900 with Dudek, to provide Engineering Services during Construction for the Inland Empire Brine Line Reach V Rehabilitation and Improvement Project – Phase 1.

## **DISCUSSION**

On August 2, 2016 SAWPA terminated Charles King Companies (CKC) work on the Inland Empire Brine Line Reach V Rehabilitation and Improvement Project – Phase 1 (Project). After termination, SAWPA contracted with Weka, Inc. to repair and place into service segments 1 through 16 (Reach 1 of the project) including removal of about 3,400 feet of deficient liner and PVC pipe, repair deficiencies from CKC's original construction and replace with new C905 DR 18 pipe. The removal and replacement work is anticipated to be complete in January 2017.

At the January 3, 2017, meeting staff was requested to review contract actions for completion of the Project. The Project includes rehabilitation of up to 12,800 feet of 24-inch PVC pipe, 9 new maintenance access structures, 3 isolation valves, modifications and replacement of 9 air vacuum release valves and 9 blow-off assemblies and CCTV and laser inspection of 12,800 feet of 24-inch pipe. The purpose of the project is to rehabilitate the pipeline in locations where extensive investigation has revealed poor compaction and over-deflection of the pipe, which led to the pipe failure and brine spill on October 18, 2011.

SAWPA staff has received a proposal in the amount of \$12,905,113 to complete the work on the project. SAWPA staff has reviewed the proposal and believes the costs are reasonable.

### **Construction Management Services**

In October 2014, the Commission authorized a contract with Vali Cooper and Associates (VCA) to provide Construction Management and Inspection Services for the project under the original Contractor. The original project completion under the previous Contractor was anticipated to be completed in March 2016. In January 2016, the Commission approved a change order with Vali

Cooper to include the Construction Management and Inspection services through November 2016 due to original contractor delays. The professional services of a construction management firm continues to be necessary through project completion in early 2018. At this time, it is necessary to authorize Vali Cooper to provided Construction Management and Inspection Services for the work remaining on the project. The attached scope of work and fee from Vali Cooper is for Construction Management and Inspection Services for the project.

### **Engineering Support Services during Construction**

In September 2013, the Commission approved a Task Order with Dudek for preliminary and final design services for the project. The attached scope of work from Dudek is for engineering support services during construction, including review of contractor's request for information (RFI), review of contractor submittals, technical support, preparation of record drawings and archeological monitoring. As part of the SRF Loan, SAWPA must comply with the recommendations in the cultural resources assessment which include maintaining a qualified biological monitor on-site during all ground disturbing activities. Staff has reviewed the proposal and has determined that it is sufficient to meet the needs of a construction job of this size. Because Dudek prepared the design drawings and specifications, it is desirable for them to provide the services during construction, as they are the most knowledgeable on the content of the drawings and specifications. Bringing a new consultant on board would not be cost effective due to the time associated with bringing the consultant up to speed with the project.

### **CRITICAL SUCCESS FACTORS**

1. Minimize disruptions to customers.
2. Maintain sufficient funding and reserves for current and future Capital and O&M costs through stable, predictable, and affordable rates and charges.
3. Protect and preserve and the useful life of Brine Line assets through strategic maintenance, repair, and capital improvements.
4. Operate the Brine Line to: (1) protect the OCSD treatment plant and the environment from non-compliant dischargers, and (2) eliminate any uncontrolled pipeline releases.

### **RESOURCE IMPACTS**

The Project is being funded by the Brine Line Reserve, and is supported by an SRF loan for part of the project cost. SAWPA intends to hold the contractor and the performance bond surety responsible for completing the project within the original bid price.

#### **Attachments**

1. Task Order No. VALI326-04
2. Task Order No. DUDK326-06