DuPage Water Commission
MEMORANDUM

TO: Chairman Rathje and Commissioners

FROM: Maureen A. Crowley
Staff Attorney

DATE: November 11, 2008

SUBJECT: Resolution No. R-61-08
Contract PSD-7/08

Enclosed is additional information regarding the three lowest bidders on the above-noted project. As the Board considers this information, outside counsel and I thought it appropriate to highlight for you the proper factors for consideration in evaluating these bids.

CRITERIA FOR AWARD

As required by state statute, the Board established all requirements for the awarding of the contract pursuant to Resolution No. R-26-08: A Resolution Directing Advertisement for Bids on a Contract for the Construction of Electrical Generation Facility and Office/Garage Expansion for the DuPage Pumping Station. Pursuant to Resolution No. R-26-08, the Board provided that the contract would be awarded to "the bidder whose proposal is deemed by the Commission to be in the best interests of the Commission and the public." Resolution No. R-26-08 additionally established that the bidder who is to receive the award would be determined in accordance with Article VIII of the Commission By-Laws and the Instructions to Bidders included in the Bid Package for the contract.

Subsection 14A of the General Instructions to Bidders included in the Bid Package for the contract provides that the Commission's intent is to award the contract to a bidder who provides "satisfactory evidence that it has the requisite experience, ability, capital facilities, plant, organization and staffing to enable it to perform the Work successfully and promptly and to complete the Work for the Contract Price and within the Contract Time."

The criteria to be considered in determining the bidder who is to receive the award are spelled out in more detail in Article VIII, Subsection 11(b) of the Commission's Bylaws and specifically include, in addition to price, the following:

(i) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(ii) Whether the bidder has the requisite facilities, plant, organization and staffing to enable the bidder to perform the contract or provide the service successfully and promptly, within the time specified, without delay or interference;

(iii) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(iv) The quality of the bidder's performance of previous contracts or services;

(v) The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or services;

(vi) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;

(vii) The quality, availability, adaptability and capabilities of the supplies, material or work to the particular use required; and

(viii) The ability of the bidder to provide future maintenance and service for the subject of the contract.

Although the Commission is not vested with unbridled discretion in awarding the contract, courts will generally defer to the discretion of public officials except where fraud, corruption, unfair dealing or favoritism, gross injustice, illegality, palpable abuse of discretion, or arbitrary, capricious action is shown.

BIDDER QUALIFICATIONS

The enclosed chart summarizes the information obtained from the bidders as well as information obtained from others, such as the references they have provided regarding other contracts they have performed, and independent sources, such as the A.M. Best Guide ratings of the surety companies identified as providers of the bonds for the project. Additional information received this week has not yet been fully evaluated and the evaluation of that additional information, together with the information summarized on the enclosed chart, will form the basis of Staff's and Camp Dresser & McKee's award recommendations to be provided at the November 13, 2008, meeting.

As you discuss these materials at the November 13, 2008, meeting, please be aware that some of the information provided by the bidders, particularly financial statement information, may be considered confidential by those bidders. Since representatives of one or more bidders may be present, we urge that you exercise care in revealing the specifics of that information in your public comments.

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	EVS Construction Co.		J. P. Bruno Corporation		Williams Brothers Construction Inc.	
Bid Price	$15,950,000 ($6,008,847 below Engineer's Estimate)		$16,699,000 ($5,259,847 below Engineer's Estimate)		$16,970,000 ($4,988,847 below Engineer's Estimate)	
Experience						
PSD-7 involves 10,000 kW paralleled generation at single site (divided among four 2,500 kW generators) Paralleling requires precise synchronization between multiple generators		• No experience with generation or paralleled generation (per references and responses to Request for Additional Information)	• Installed generators ≤400kW at five separate school sites (unparalleled)	• No experience with paralleled generation (per references and responses to Request for Additional Information)	• Installed generators ≥1,000kW at 10 water and wastewater treatment plants and for 8 other users (all unparalleled)	• No experience with paralleled generation (per references and responses to Request for Additional Information) However, customary electrical sub, the electrical sub committed for this project, Morse Electric, does have experience with paralleled generation
PSD-7 target is Silver Level LEED's Certification		• No experience with LEED's certification and, as of 11/5 interview, no plan for handling		• No experience with LEED's certification but does plan on hiring a LEED's coordinator	• Worked on LEED projects for the University of Illinois and Bradley University	

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PSD-7 project is large scale, technically complex (b/c of paralleling), and management intensive (b/c of requirements for simultaneous trade work and criticality of preserving operational integrity of DPPS and security on site)	• Referenced projects in the $14.137MM to $7.338MM range	• Referenced projects were two-story 79k s.f. ($14.137MM) and 33k s.f. ($7.338MM) classroom and gym additions or renovations involving sequential trade work	• Referenced projects in the $6.7MM to $1.8MM range	• Referenced projects were an Office Building renovation ($6.7MM) and a Classroom and Lab renovation ($1.88MM) involving sequential trade work	• Referenced projects in the $36.7MM to $13.68MM range, that were comparatively technically complex and management intensive (operating wastewater treatment plant additions for treatment and plant capacity)	
	• Positive References		• Positive References		• Positive References	
Technical Ability						
	• During the past three years, 25% of its work has been performed by its own forces	• Does not have commitment with key trade (Electrical) At 11/5 interview, advised that had talked to Sharlen and was "thinking" about approaching Morse Electric	• During the past three years, none of its work has been performed by its own forces	Does not have commitment with key trade (Electrical) but identified five possible subs (Aldrige, Huen, Broadway, High Voltage Electric, and Morse Electric) in response to Request	• During the past three years, 40% of its work has been performed by its own forces • Does have commitment with key trade (Morse Electric) and brought them to 11/5 interview	

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	• Plans to perform the concrete, utility, and carpentry work on PSD-7, which would jibe with project experience			• No apparent plans to perform any work with its own forces	• Plans to perform the concrete, excavation, and masonry work on PSD-7, which would jibe with project experience	
	• Has customary relationships with HVAC, Window, Misc. Metals, and Masonry subs	• Does not have customary relationship with key trade (Electrical)	• Has customary relationships with HVAC, Electric, Plumbing, and Demolition subs	• Not using the customary electric sub	• Has customary relationships with HVAC, Electric, and Drywall subs • Does have customary relationship with key trade committed to PSD-7 (Morse Electric)	
	• DWC approval of all subs required		• DWC approval of all subs required		• DWC approval of all subs required	
Capital / Financial Ability						
	• Pays bills on time (per D&B)		• Pays bills on time (per D&B)		• Pays bills on time (per D&B)	

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	• Not in danger of insolvency (per D&B)		• Not in danger of insolvency (per D&B)		• Not in danger of insolvency (per D&B)	
PSD-7 Contract requires bonding companies to be rated A- X or better in Best's Insurance Guide	• A+ X Bonding Co. Berkeley Regional Insurance Co Best's Financial Strength Rating of A+ (Superior) Best's Financial Size Category of X ($500 Million to $750 Million) "Stable" Outlook as of 10/14/08 Rating Date		• A+ XV Bonding Co. North American Specialty Insurance Co Best's Financial Strength Rating of A+ (Superior) Best's Financial Size Category of XV ($2 Billion or greater) "Stable" Outlook as of 03/20/08 Rating Date		• A XV Bonding Co. Fidelity & Deposit Co of MD and Zurich American Insurance Company Best's Financial Strength Rating of A (Excellent) Best's Financial Size Category of XV ($2 Billion or greater) "Positive" Outlook as of 12/11/07 Rating Date	

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	EVS Construction Co.	J. P. Bruno Corporation	Williams Brothers Construction Inc.
	• $1.932MM Stockholder Equity (2007 Audit)	• $1.795MM Stockholder Equity (2007 Audit) • $1.882MM Stockholder Equity (current period ending 6/30/08--unaudited)	• $13.117MM Stockholder Equity (2007 Audit) • $13.325MM Stockholder Equity (current period ending 6/30/08--unaudited)
	• $5.737MM Total Liabilities and Equity (2007 Audit) • $4.090MM Total Liabilities and Equity (per unaudited sworn statement data)	• $3.712MM Total Liabilities and Equity (2007 Audit and current unaudited) • $2.872MM Total Liabilities and Equity (current period ending 6/30/08--unaudited)	• $34.431MM Total Liabilities and Equity (2007 Audit) • $42.696MM Total Liabilities and Equity (current period ending 6/30/08--unaudited)
	Dun & Bradstreet Report	Dun & Bradstreet Report	Dun & Bradstreet Report
	Total Assets $5,737,994 Total Revenue $17,078,893 Risk of Financial Stress: 1 (1 = Lower than average risk that company will suffer financial hardship (discontinue operations or file bankruptcy) during the next 12 months (using a 1-5 classification)) Credit Capacity: 3A2 (3A = 1,000,000 to 9,999,999) (2 = Good)	Total Assets $3,712,423 Total Revenue $??? Balance Sheet Risk of Financial Stress: 1 (1 = Lower than average risk that company will suffer financial hardship (discontinue operations or file bankruptcy) during the next 12 months (using a 1-5 classification)) Credit Capacity: 2R3 (2R = ?????) (3 = Fair)	Total Assets $34,431,414 Total Revenue $133,730,783 Risk of Financial Stress: 1 (1 = Lower than average risk that company will suffer financial hardship (discontinue operations or file bankruptcy) during the next 12 months (using a 1-5 classification)) Credit Capacity: 1R3 (1R = 10,000,000 to 49,999,999) (3 = Fair)

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Facilities / Plant						
	• Aurora, IL		• Mundelein, IL		• Peoria Heights, IL	
		• Minimal Construction Equipment; will purchase as needed - 3 pick up trucks - Bob cat - Mini Excavator - Survey Equip - Misc Concrete and Carpentry Equip		• No Construction Equipment owned, to be purchased, or to be leased for the PSD-7 project	• 30 Items of owned Heavy Construction Equipment	
Organization and Staffing						
	• Contractor referenced project management and superintendence was verified as being positive		• Contractor referenced project management and superintendence was verified as being positive		• Contractor referenced project management and superintendence was verified as being positive	

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	• Intelligent Pre-Bid Requests for Technical Information	• Unaware of key legal requirements (no trailing waivers; no payments for uninstalled work)	• Intelligent Pre-Bid Requests for Legal Requirements			• No Pre-Bid Requests but, in 11/5 interview, explained that PSD-7 project documentation is clear and company philosophy is to give the Owner and Engineer what they want without change orders
Impressions	Relatively young company (1996) with no generation project experience Financially small company Question judgement and/or whether underbid because of suggestions made during 11/5 interview indicating lack of regard for DWC operational needs and site security such as: • Aggressive 12-month schedule for completion • Suggested changes to save negligible $$ (duct bank relocation)		Relatively young company (1997) with no generation project experience of comparable generator size or with any type of project of comparable $$ value Financially small company Seems motivated to do its best because wants to use performance on the PSD-7 project as an introduction to larger caliber projects. On the other hand, in 11/5 interview, did not provide a lot of specifics as to how it would accomplish the work.		Established company (1973) with generation project experience Financially large company Showed foresight, planning, good judgement, and regard for DWC operational needs and site security during 11/5 interview, including: • Brought Morse Electric (committed key trade) to interview • Had worked on a "Plan B" with Patten to provide stand-by generation to the DPPS in the event construction	

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	• Suggested changes to location and/or number of employee parking spaces to be maintained contrary to specification requirement b/c "not needed" • Suggested maintaining existing site security and access to avoid installing temporary fence or driveway which may not be feasible given other site work required $749K - $1,020,000 price differential does allow significant room for errors/mistakes	$271K price differential does not allow significant room for errors/mistakes	requires power disruptions to DWC operations Is $1,020,000 price differential worth it, especially in light of potential delay due to litigation