



## Legislation Text

File #: 18-0496, Version: 1

**Dept/ Agency:** Water and Sewer Utilities

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Type of Service:** Professional Services Contract

**Purpose:** Professional Engineering Services for Lead Service Line Replacement (LSLR) Program Management

**Entity Name:** CDM Smith, Inc.

**Entity Address:** 110 Fieldcrest Avenue, No. 8, 6<sup>th</sup> Floor, Edison, New Jersey 08837

**Contract Amount:** Not to exceed amount of \$7,340,740.00

**Funding Source:** Department of Water and Sewer Utilities Budget

**Contract Period:** Commencing upon the Issuance of Notice to Proceed to the completion of construction pursuant to N.J.S.A. 40(A):11-15(9)

**Contract Basis:** ( ) Bid ( ) State Vendor (X) Prof. Ser. ( ) EUS

( ) Fair & Open (X) No Reportable Contributions ( ) RFP ( ) RFQ

( ) Private Sale ( ) Grant ( ) Sub-recipient ( ) n/a

### Additional Information:

**WHEREAS**, under the Lead and Copper Rule (LCR) water sampling performed by the City of Newark, the results exceeded the 90<sup>th</sup> percentile Lead Action Level of 15 ppb (parts per billion); and

**WHEREAS**, water supplied by the City's water mains is lead-free, and lead in water is a direct result of property owner's lead service lines that connect City's water distribution mains to the internal plumbing in the home; and

**WHEREAS**, due to the said Lead Action Level exceedance, on January 30, 2018 the New Jersey Department of Environmental Protection (NJDEP) ordered that the City of Newark must replace or offer to replace at least 7% of the total lead water service lines within 1 year of the Lead Action Level exceedance or by June 30, 2018, and in addition, NJDEP required the preparation of an updated Lead Service Line inventory within 30 days, and failure to comply with these deadlines would result in violations and fines from NJDEP code enforcement; and

**WHEREAS**, for approximately two months the City of Newark negotiated and discussed with NJDEP the status of the Lead Service Line Replacement (LSLR) project and created a path forward to try to avoid potential violations, and agreed to expedite the Lead Service Line Replacement (LSLR) program with the aggressive goal to advertise bids for the construction of the first phase of the LSLR program by June 30, 2018; and

**WHEREAS**, it was determined that it would take approximately one year for the City of Newark to replace 1,500 lead service lines as required by the NJDEP; and

**WHEREAS**, due to the lengthy negotiations with NJDEP to create the specifications required to complete the program as directed by NJDEP and the need to secure the loan funding with New Jersey Infrastructure Bank (NJIB) (formerly NJEIT) by the June 30, 2018 deadline, it was not feasible to publicly bid the project; and

**WHEREAS**, the City of Newark wishes to do due diligence in improving water quality and protecting public health and avoid potential violations and fines, by developing and implementing a multi-phase LSLR program spanning over an 8-year period to replace all lead service lines in the City of Newark, and optimizing corrosion control treatment; and

**WHEREAS**, the New Jersey Infrastructure Bank (NJIB) has low-interest loan funding available which offers up to 90% principal forgiveness which will greatly reduce the financial burden to the City of Newark in undertaking the replacement of lead service lines and the City of Newark has filed necessary Environmental Planning Document and the funding application with NJIB and NJDEP; and

**WHEREAS**, a small portion of the cost of lead service line replacement will be passed on to the home owner since the water service line connecting the City of Newark's water main with the building's internal plumbing is owned by the home owner, for which the said low-interest loan funding secured by the City of Newark from NJIB will be used; and

**WHEREAS**, the NJIB funding requires the City of Newark to retain professional engineering services for the entirety of the Lead Service Line Replacement (LSLR) Program Management and the professional services contract needs to be executed prior to receiving NJIB funding approval; and

**WHEREAS**, CDM Smith, Inc., 110 Fieldcrest Avenue, No. 8, 6<sup>th</sup> Floor, Edison, New Jersey 08837, submitted a revised proposal/budget for LSLR Program Management for a total amount not to exceed \$7,340,740.00 (representing a \$1,121,830.00 reduction from their original proposal) with work to be performed in multiple phases: Phase 1 - \$887,860.00; Phase 2 - \$661,520.00; Phase 3 - \$674,750.00; Phase 4 - \$688,250.00; Phase 5 - \$702,010.00; Phase 6 - \$716,040.00; Phase 7 - \$730,370.00; Phase 8 - \$744,990.00; Phase 9 - \$759,870.00; and Phase 10 - \$775,080.00 which was found to be in the best interest of the City; and

**WHEREAS**, the City of Newark wishes to execute a Professional Services Contract with CDM Smith, Inc., to provide engineering services for Lead Service Line Replacement (LSLR) Program Management, in multiple phases: Phase 1 - \$887,860.00; Phase 2 - \$661,520.00; Phase 3 - \$674,750.00; Phase 4 - \$688,250.00; Phase 5 - \$702,010.00; Phase 6 - \$716,040.00; Phase 7 - \$730,370.00; Phase 8 - \$744,990.00; Phase 9 - \$759,870.00; and Phase 10 - \$775,080.00 for a combined total contract amount not to exceed \$7,340,740.00 and for a period from the issuance of Notice to Proceed through the completion of construction pursuant to N.J.S.A. 40(A) 11-15(9); and

**WHEREAS**, the Local Public Contracts Law N.J.S.A. 40A:11-5(1)(a) requires that notice of the award of contracts for "Professional Services" without competitive bidding be published in a local newspaper; and

**WHEREAS**, this contract is for an amount over \$17,500.00 and is being awarded as a non-fair and open contract pursuant to N.J.S.A. 19:44A-20.5; and

**WHEREAS**, CDM Smith Inc., has completed and submitted a Business Entity Disclosure Certificate which certifies that CDM Smith Inc. has not made any reportable contributions to a political or candidate committee in the City of Newark in the previous one year, and that the contract will prohibit CDM Smith Inc. from making any reportable contributions through the term of the contract; and

**WHEREAS**, the Municipal Council adopted the Contractor Pay-to-Play Reform Ordinance, R.O. 2:4-22C, which forbids the award of a contract to a Business Entity, as defined therein, which has made or solicited political contributions to Newark Municipal Candidates, office holders having ultimate responsibility for the award of a contract; Candidate committees of the aforementioned candidates; and political and political party committees of the City of Newark or the County of Essex; and continuing political committees or political action committees regularly engaged in the support of the City of Newark municipal or County of Essex elections; and certain other political party or candidate committees, in excess of certain thresholds.

**NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

1. The Municipal Council authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities, to execute a Professional Services Contract with CDM Smith Inc., 110 Fieldcrest Avenue, No. 8, 6<sup>th</sup> Floor, Edison, New Jersey 08837, to provide professional engineering services to the City of Newark, Department of Water and Sewer Utilities, for Lead Service Line Replacement (LSLR) Program Management, in a total contract amount not to exceed \$ 7,340,740.00, with work to be performed in multiple phases: Phase 1 - \$887,860.00; Phase 2 - \$661,520.00; Phase 3 - \$674,750.00; Phase 4 - \$688,250.00; Phase 5 - \$702,010.00; Phase 6 - \$716,040.00; Phase 7 - \$730,370.00; Phase 8 - \$744,990.00; Phase 9 - \$759,870.00; and Phase 10 - \$775,080.00, with a contract term commencing upon the issuance of Notice to Proceed through completion of construction, pursuant to N.J.S.A. 40(A):11-15(9).
2. This Contract is being awarded under a Temporary Budget. Attached hereto is a partial Certification of Funds issued by the Director of Finance of the City of Newark which states that funds in an amount of \$328,360.00 are available under Business Unit NW037, Department ID 750, Division/Project 7502, and Account # 71240. The remainder of the funding, in the amount of \$7,012,380.00, will be provided under a low-interest loan from New Jersey Infrastructure Bank (NJIB) formerly known as New Jersey Environmental Infrastructure Trust (NJEIT).
3. The Director of the Department of Water and Sewer Utilities shall file a copy of the Certification of Funds along with the original Resolution and the executed Contract in the Office of the City Clerk which shall be placed on file and made available for public inspection.
4. This contract was solicited and awarded pursuant to the non-fair and open procedures of the

Pay-to-Play Law N.J.S.A. 19:44A-20.5 and pursuant to the provisions of the Local Public Contract Law N.J.S.A. 40A:11-5(1)(a)(i), and is in compliance with the City's Pay-to-Play Reform Ordinance, R.O. 2:4-22C.

5. A copy of the Business Entity Disclosure Certification and the Determination of Value Letter shall be placed on file with the Resolution in the Office of the City Clerk.
  
6. This contract is awarded without competitive bidding as a "Professional Service" in accordance with N.J.S.A. 40A:11-5(1)(a)(i) of the Local Public Contracts Law, because the performance of the service required must be performed by a person (or persons) licensed to practice a recognized engineering profession by the State of New Jersey, whose performance required knowledge of an advance type in a field of learning acquired by a prolonged formal course of specialized instruction and study, as distinguished from general academic instruction.
  
7. CDM Smith, Inc., has completed and submitted a Business Entity Disclosure Certificate which shall be placed on file in the City Clerk's Office by the Director of the Department of Water and Sewer Utilities, certifying that CDM Smith, Inc., has not made any reportable contributions to a political or candidate committee in the City of Newark in the previous one year, and that the contract will prohibit CDM Smith, Inc., from making any reportable contributions through the term of the contract.
  
8. There shall be no amendment of this contract without prior approval of the Municipal Council.
  
9. There shall be no advance payment on this contract in accordance with N.J.S.A. 40A:5-16.
  
10. A notice of this action shall be published in the newspaper authorized by law to publish a legal advertisement and as required by law within 10 days of its passage.
  
11. If required by the State law, the City Clerk shall provide the appropriate notice of the award of this contract to the State Comptroller no later than 20 business days following such award, in accordance with N.J.S.A. 52:15C-10 and the Notice of the Office of the State Comptroller dated May 7, 2008.

## **STATEMENT**

This resolution authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities, to accept the proposal from CDM Smith, Inc., 110 Fieldcrest Avenue, No. 8, 6<sup>th</sup> Floor, Edison, New Jersey 08837, and execute a Professional Services contract to provide professional engineering services to the City of Newark, Department of Water and Sewer Utilities, for the Lead Service Line Replacement (LSLR) Program Management, for an amount not to exceed \$7,340,740.00, for a contract term commencing upon the issuance of Notice to proceed, until construction completion, pursuant to N.J.S.A. 40(A): 11-15(9).