



WEST DES MOINES WATER WORKS BOARD OF TRUSTEES MEETING COMMUNICATION

DATE: May 17, 2023

ITEM:

7. Construction Project Actions
 - a. Resolution – Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements (Water Works Project No. 00800-120-22014)
 1. Motion – Approving a Settlement and Release Agreement
 2. Resolution – A Resolution Rescinding the Award Of Construction Contract to Kline Electric, Inc. for the Motor Control Center, Automatic Transfer Switch and Generator Controls Improvements Project
 3. Resolution – Making Award of Contract
 4. Motion – Approving Change Order No. 1

FINANCIAL IMPACT:

Receipt of \$43,152.25 from Kline Electric for withdrawal of their bid. WDMWW will incur additional costs related to moving to the next lowest responsive bidder and the resulting project delays to this project. Van Maanen has asked for an additional amount \$41,385.00.

SUMMARY:

This project was awarded to Kline Electric in January 2023. Kline has expressed an interest in withdrawing their bid at the pre-construction meeting on April 21, 2023, due to their inability to perform all the work included in the project bid documents. Water Works staff, with the assistance of our legal counsel, have prepared an agreement to accept a penalty in an amount equivalent to the bid bond. Water Works directed the project manager from Fox Strand to reach out to the next lowest, responsive bidder to determine their interest in taking the project. Van Maanen Electric, Inc. has expressed an interest in completing the project provided acceptance of an appropriate change order for costs and time due to the delayed start time. Fox Strand has reviewed these proposals for reasonableness and is supportive of the change order. They believe the expected increased costs and time extension still outweigh the other option of rebidding the project. Legal counsel has indicated that this is in line with allowances provided for within the bid documents.

BACKGROUND:

In 2021, the West Des Moines Water Works and Fox Engineering prepared the AC Ward Water Treatment Plant Facility Plan and Needs Assessment. This document identified and provided a recommended sequence for several repairs and upgrades to the AC Ward facility. In 2022, WDMWW hired Fox Strand to provide design services of the elements included in this bid package.

RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:

To adopt: 1) the Motion entitled "Approving a Settlement and Release Agreement" and; 2) the Resolution entitled "A Resolution Rescinding the Award Of Construction Contract to Kline Electric, Inc. for the Motor Control Center, Automatic Transfer Switch and Generator Controls Improvements Project." and; 3) the Resolution entitled "Making Award of Contract and; 4) the Motion entitled "Approving Change Order No. 1"

Prepared by: William J. Maluce

Approved for Content by: Clay Murphy

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made and entered into as of the _____ of _____, 2023 by and between West Des Moines Water Works (hereinafter “WDMWW”) and Kline Electric, Inc. (hereinafter “Contractor”).

WHEREAS, Contractor submitted a bid for Construction Contract with WDMWW dated February 8, 2023 (the “Bid”), for the completion of work associated with the 2022 Motor Control Center, Automatic Transfer Switch and Generator Controls Improvements Project (the “Project”);

WHEREAS, Contractor desires to withdraw said Bid and WDMWW desired to allow such withdrawal;

WHEREAS, Contractor agrees to pay the Penal Sum to WDMWW as defined in the Bid, which amount is 5% of the gross bid amount or Forty Three Thousand One Hundred Fifty-two Dollars and Twenty-five Cents (\$43,152.25); and

WHEREAS, WDMWW agrees not to file with bid bond company as defined in the Bid and agrees not to seek additional compensation.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

1. WDMWW shall allow Contractor to withdraw Bid.
2. Contractor shall pay to WDMWW the Penal Sum of Forty-Three Thousand One Hundred Fifty-two Dollars and Twenty-five Cents (\$43,152.25) upon execution of this Agreement.
3. WDMWW shall not file with bid bond company as defined in the Bid and shall not seek additional compensation for any costs incurred in connection with the withdrawal of Bid.
4. In the event the Project is made available for rebidding, Contractor shall not submit a bid for the Project.
5. WDMWW and Contractor represent and certify that each has carefully read and fully understands all of the provisions and effects of this Agreement, and that none of the parties, nor their agents, representatives or attorneys, made any representations concerning the terms or effects of this Agreement, other than those contained herein.
6. This Agreement is made and entered into in the State of Iowa and shall in all respects be interpreted, enforced and governed under the laws of Iowa. The language of all parts of this Agreement shall in all cases be considered as a whole, according to its fair meaning and not strictly for or against any of the parties.

7. This Agreement sets forth the entire agreement between the parties hereto and supersedes any and all prior agreements or understanding between the parties hereto pertaining to the subject matter hereof.

IN WITNESS WHEREOF, and intending to be legally bound hereby, WDMWW and Contractor have executed the foregoing Agreement.

West Des Moines Water Works

Date _____, 2023. By: _____
Scott M. Brennan, Chairperson

Attested by: _____
Christina Murphy, Secretary

Kline Electric, Inc.

Date: _____, 2023. By: _____
Name: _____
Title: _____

RESOLUTION

**A RESOLUTION RESCINDING THE AWARD OF CONSTRUCTION CONTRACT TO
KLINE ELECTRIC, INC. FOR THE MOTOR CONTROL CENTER, AUTOMATIC
TRANSFER SWITCH AND GENERATOR CONTROLS IMPROVEMENTS PROJECT**

WHEREAS, West Des Moines Water Works desires to construct and complete work associated with the 2022 Motor Control Center, Automatic Transfer Switch and Generator Controls Improvements Project (the “Project”);

WHEREAS, the contract documents for the Project were made available for bidding, with the Notice to Bidders and Notice of Public Hearing published;

WHEREAS, the City received a proposal from Kline Electric, Inc. (“Kline Electric”) in the amount of \$863,045.00 and Kline Electric was determined to be the lowest responsive, responsible bidder;

WHEREAS, on January 25, 2023, the Board of Trustees approved the awarding of the construction contract to Kline Electric in the amount of \$863,045.00, for the Project;

WHEREAS, Kline Electric has informed West Des Moines Water Works that it intends to withdraw the bid; and

WHEREAS, West Des Moines Water Works desires to allow Kline Electric to withdraw its bid and to rescind making award of the construction contract to Kline Electric in exchange for execution of the Agreement attached hereto as Exhibit “A” and payment as indicated therein by Kline Electric.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of West Des Moines Water Works that the action taken making award of the construction contract to Kline Electric in the amount of \$863,045.00 for the Project is hereby rescinded upon execution of the Agreement and payment as indicated therein by Kline Electric.

BE IT FURTHER RESOLVED by the Board of Trustees that the Board Chairperson is authorized to execute the Agreement and West Des Moines Water Works staff is authorized to do all things necessary to carry out the Agreement and to proceed to determine whether the Board should award the bid to the second lowest responsible bidder or to proceed to rebid the Project.

DATED this ____ day of May 2023.

Scott M. Brennan, Chairperson

ATTEST:

Christina Murphy, Secretary

**RESOLUTION MAKING AWARD OF
CONSTRUCTION CONTRACT**

WHEREAS, The Board of Trustees of the West Des Moines Water Works has heretofore directed advertisement for bids for the following described project:

Motor Control Center, Automatic Transfer Switch, and Generator Controls
Improvements (Water Works Project No. 00800-120-22014)

and,

WHEREAS, bids were received and opened by the Engineering Project Manager and placed on file with the Board of Trustees; and

WHEREAS, the bid of Kline Electric in the amount of \$863,045.00 was the lowest bid received for the project for the selected alternatives and has subsequently withdrawn their bid; and

WHEREAS, the bid of Van Maanen Electric, Inc. in the amount of \$980,700.00 was the second lowest bid received for the project for the selected; and

Therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE WEST DES MOINES WATER WORKS, that a contract for the Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements (Water Works Project No. 00800-120-22014) is hereby awarded to Van Maanen in the amount of \$980,700.00 and the bond of said bidder for the project is hereby fixed in the same amount.

BE IT FURTHER RESOLVED, that work on the said project may commence as soon as the final contract and bond have been approved by the General Manager and have been signed by the General Manager and after the contractor is given a written notice to proceed by the Engineering Project Manager.

PASSED AND APPROVED, this 17th day of May, 2023.

THE BOARD OF TRUSTEES, WEST DES MOINES WATER WORKS

Scott Brennan
Chair

Attest:

Christina Murphy
Secretary

NOTICE OF AWARD

Date of Issuance: May 17, 2023

Owner: West Des Moines Water Works Owner's Project No.: 00800-120-22014

Engineer: FOX Strand Engineer's Project No.: 7190.001

Project: Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements, West Des Moines Water Works, West Des Moines, Iowa, 2022

Contract Name: Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements, West Des Moines Water Works, West Des Moines, Iowa, 2022

Bidder: Van Maanen Electric, Inc.

Bidder's Address: 500 Iowa Speedway Drive, Newton, Iowa 50208

You are notified that Owner has accepted your Bid dated December 22, 2022, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements, West Des Moines Water Works, West Des Moines, Iowa, 2022

The Contract Price of the awarded Contract is **\$980,700.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Three (3) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner three (3) counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent:
 - a. Before you may start work at site; paragraph 2.01.B of the General Conditions provides that you must deliver to the Owner certificates of insurance which you are required to purchase and maintain in accordance with the Contract Documents.
 - b. Paragraph 2.03 states that before starting construction, a preliminary progress schedule, a preliminary schedule of submittals, and a preliminary schedule of values are required.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

Copy: Engineer



FOX Strand
414 South 17th Street, Suite 107
Ames, IA 50010
(P) 515.233.0000
www.strand.com

May 11, 2023

Board of Trustees

West Des Moines Water Works
1505 Railroad Avenue
West Des Moines, Iowa 50265

Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements, West Des Moines Water Works, West Des Moines, Iowa, 2022 - Recommendation of Award

FOX Strand Ref No: 7190.001

West Des Moines Water Works Project Number: 00800-120-22014

Dear Board of Trustees:

West Des Moines Water Works received bids on December 22, 2022, for the project **Motor Control Center, Automatic Transfer Switch, and Generator Controls Improvements, West Des Moines Water Works, West Des Moines, Iowa, 2022**. The scope of this project includes moving and replacing Motor Control Center 2 (MCC-2) in Building 1 from the second level filter area to the existing garage, replacement of the standby generator automatic transfer switch (Building 4), and replacement of the standby generator controller (Building 4).

Water Works received four (4) bids on the project. The engineer's opinion of probable construction cost was \$865,200.00. The bids ranged from a high bid of \$1,438,940.00 to a low bid of \$863,045.00. A Bid Tabulation Summary is enclosed for your reference.

Kline Electric of Des Moines, Iowa, submitted the low base bid of \$863,045.00. The low base bid was 0.25% lower than the Engineer's opinion of probable construction cost. During contract review and execution, Kline Electric disclosed that they only included the electrical scope of work in their bid and could not complete the work required by the contract for the bid price they submitted.

The second low bidder was Van Maanen Electric, Inc, with a base bid of \$980,700.00. Their base bid was 13% higher than the Engineer's opinion of probable construction cost. Van Maanen Electric, Inc. confirmed that they have included all project scope in their bid, have no errors, and confirmed they would like to be awarded project.

Due to the nearly five months that have passed between bidding and award to Van Maanen Electric, Inc., they have requested an increase of \$41,385.00 or approximately 4% of their bid price to cover increases in labor rates that occurred early in 2023 and increase in material costs that have occurred since the project bid. Van Maanen will subcontract construction of the electrical room and modification to the existing fire suppression pipeline in Building 1. About two-thirds of the requested cost increase is due to reduced availability of subcontractors to complete this work and increases in subcontractor material and labor costs.

Van Maanen Electric, Inc. has also requested that the substantial completion be extended from May 17, 2024, to December 1, 2024, and the final completion date be extended from July 19, 2024, to January 31, 2025. Current estimated delivery time for electrical equipment is 30 to 50 weeks. Van Maanen Electric, Inc. is also required to keep all treatment processes in service during peak demand months, which start in May and continue through the summer months. The revised completion dates allow them approximately the same contract duration to complete construction plus a few months to allow for working around the water production schedule of the peak demand months.

Van Maanen Electric, Inc. has been a subcontractor on other recent FOX Strand projects. Based on our experience, we believe Van Maanen Electric, Inc. has a practical knowledge of the work, adequate equipment, and the necessary supervisory personnel to complete the work. Performance of the work will be backed with a 100% performance and payment bond. We also believe that their proposal reasonably reflects the current bidding climate and construction cost.

The bidding documents established that the contract will be awarded to the lowest responsive, responsible Bidder; therefore, we recommend that the contract for the project be awarded to Van Maanen Electric, Inc. We have enclosed the Notice of Award for your use. If approved, please sign and return to FOX Strand. FOX Strand will then prepare the Contract Documents and send to Van Maanen Electric, Inc.

Prior to the Board of Trustees approving the contract, the Water Work's insurance counsel should review the Contractor's insurance certificates and performance and maintenance bonds for conformance with the Water Works requirements.

Also enclosed is a proposed Change Order No. 1, including the change in cost and contract dates requested by Van Maanen Electric, Inc., that is recommended to be approved by the Board of Directors once Contract Documents are executed.

Please contact us with any questions or comments regarding this recommendation.
Sincerely,

FOX Strand



Jennifer Ruddy, P.E.

cc: Josh Hetzler, Van Maanen Electric, Inc.

Enclosures: Bid Tab
Notice of Award
Proposed Change Order No. 1

CHANGE ORDER NO.: 1

Owner: West Des Moines Water Works Owner's Project No.: 00800-120-22014
 Engineer: FOX Strand Engineer's Project No.: 7190.004
 Contractor: Van Maanen Electric, Inc. Contractor's Project No.:
 Motor Control Center, Automatic Transfer Switch, and Generator Controls
 Project: Improvements, 2022
 Contract Name: West Des Moines Water Works, West Des Moines, Iowa
 Date Issued: Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

Description: Due to duration between bidding in December 2022 and awarding the contract to Van Maanen in May 2023, additional material and labor costs have been incurred by Van Maanen. Subcontractor pricing for masonry, painting, and other non-electrical work have also increased due to increasing market pricing and reduced availability of subcontractors to complete this work. The project completion dates shall also be extended to accommodate the time of award and additional time to coordinate with peak water plant operations.

Attachments: None

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>980,700.00</u>	Original Contract Times: Substantial Completion: <u>May 17, 2024</u> Ready for final payment: <u>July 19, 2024</u>
{Increase} {Decrease} from previously approved Change Orders No. 0 to No. 0: \$ <u>0.00</u>	{Increase} {Decrease} from previously approved Change Orders No.0 to No.0: Substantial Completion: <u>None</u> Ready for final payment: <u>None</u>
Contract Price prior to this Change Order: \$ <u>980,700.0</u>	Contract Times prior to this Change Order: Substantial Completion: <u>May 17, 2024</u> <u>July 19, 2024</u> <u>July 19, 2024</u>
[Increase] {Decrease} this Change Order: \$ <u>41,385.00</u>	[Increase] {Decrease} this Change Order: Substantial Completion: <u>201 days</u> Ready for final payment: <u>196 days</u>
Contract Price incorporating this Change Order: \$ <u>1,022,085.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>December 1, 2024</u> Ready for final payment: <u>January 31, 2025</u>

Recommended by Engineer (if required)		Accepted by Contractor	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____
Authorized by Owner		Approved by Funding Agency (if applicable)	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____