



**Date of Council Meeting:** October 25, 2016

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** Construction contract for the Battlefield Parkway—Route 15 to Dulles Greenway project

**Staff Contact:** Renée LaFollette, Director, Public Works & Capital Projects  
Tom Brandon, Capital Projects Manager, Public Works & Capital Projects  
Octavia Andrew, Chief Procurement Officer, Finance & Administrative Services  
Barbara Notar, Town Attorney

**Council Action Requested:** Award a construction contract for the Battlefield Parkway—Route 15 to Dulles Greenway Project to General Excavation, Inc. in the amount of \$11,951,477.70.

**Staff Recommendation:** Staff recommends that Town Council award the construction contract for the Battlefield Parkway project to General Excavation, Inc. in the amount of \$11,951,477.70.

**Commission Recommendation:** Not applicable.

**Fiscal Impact:** The Battlefield Parkway—Route 15 to Dulles Greenway Project is fully funded in the Town's Capital Improvements Program for Fiscal Years 2016-2021 with funding for the project provided through the Virginia Department of Transportation, the Northern Virginia Transportation Authority, and Loudoun County. The construction contract is \$11,951,477.70. No additional funding is necessary.

**Work Plan Impact:** None. This contract is part of the current work plan for the Battlefield Parkway—Route 15 to Dulles Greenway Project.

**Executive Summary:** The construction for this last section of Battlefield Parkway between South King Street (Route 15) and the Dulles Greenway will complete the 6.7 mile long roadway around the east side of Leesburg extending from North King Street to South King Street. Once the contract is awarded, construction of the project is anticipated to begin in December of 2016 with completion anticipated in the Spring of 2018.

At the Town Council meeting of October 11, 2016, the owner of Phillips Construction, LLC who was the initial low bidder, but who is now the second lowest bidder, spoke during the petitioner's section. Mr. Phillips asked Council to correct the errors in his company's bid which, when corrected had placed the bid in second place. Under state procurement law, the Town is unable to correct these errors. Phillips Construction, LLC may wish to file a bid protest within the permitted timeframe. Even if they file a protest, Council may proceed with award of the contract if there is a written determination that proceeding without delay is necessary to protect the public interest. The resolution attached to this memorandum sets forth these reasons.

**Background:** The Battlefield Parkway—Route 15 to Dulles Greenway Project is a fully funded capital project. The  $\frac{3}{4}$  mile segment between South King Street and Evergreen Mill Road will consist of a four lane divided street on a new alignment with multi-use trail along the north side and a sidewalk along the south side of the road. The  $\frac{1}{4}$  mile section between Evergreen Mill Road and the Dulles Greenway will involve widening the existing two-lane road to a four-lane divided highway. The improved roadway will include a wide landscaped median. The project also includes improvements to the existing Battlefield Parkway intersection with Evergreen Mill Road, which is experiencing continued increasing congestion.

In response to a public solicitation for the construction of the Battlefield Parkway project, the Town received three responsive bids on August 25, 2016, as follows:

- |                                 |                 |
|---------------------------------|-----------------|
| • General Excavation, Inc.      | \$11,951,477.70 |
| • Phillips Construction, LLC    | \$13,075,451.74 |
| • Independence Excavating, Inc. | \$13,597,380.10 |

The bids were evaluated by the Capital Projects Manager and Chief Procurement Officer in accordance with the Town’s Procurement Policy. As part of this evaluation and in accordance with the bid documents given to each bidder, Town staff recalculated the arithmetic of all sealed bids after they were opened. As a result of this required step, several mathematical errors were found in the sealed bid submitted by Phillips Construction, LLC (“Phillips”). After the mathematical errors were corrected, Phillips’ bid increased from \$11,797,697.56 (formerly the low bid) to \$13,075,451.74. As a result, the bid of General Excavation, Inc. (“GEI, Inc.”) of Warrenton, Virginia, was determined to be the lowest responsive and responsible bidder. The Virginia Department of Transportation (VDOT) reviewed the bids and has authorized the Town to award the contract to GEI, Inc. Phillips has notified Town staff that it intends to protest the award of the contract to GEI, Inc..

Under Virginia Code § 2.2-4319(B), “a public body may waive informalities in bids”. Virginia Code § 2.2-4301 defines informality as, “a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, **which does not affect price**, quality or quantity or delivery schedule for the goods, services or construction being procured”. Virginia caselaw confirms that errors concerning price are not informalities which can be waived or “corrected” as Phillips requests.

Under Virginia Code § 2.2-4362, a contract award need not be delayed if a timely bid protest occurs so long as “there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.” In the event a timely bid protest is filed with the Town, the resolution to award the contract sets forth the following reasons why proceeding without delay is necessary to protect the public interest:

1. The construction of the project has already been delayed for a period of eight months due to Council’s direction to work with certain landowners and redesign the project; and

2. If the Town re-bids the project, there is a significant chance that the bids will be higher. During the past two years, bid prices have been increasing at a rate much higher than inflation. In many cases, VDOT and other northern Virginia localities have seen bid prices increase as much as 20% to 25% per year. It would be anticipated that bid prices received from a re-bid of the project would experience similar increases. Also, the original bids were received in late summer, which has been shown to be an optimum time to receive bids because contractors are attempting to plan work for the upcoming construction season. If the project is re-bid, many contractors will have already lined up their work for the upcoming year, and therefore will not submit a bid. The inflation increases and the reduced competition could result in higher contract prices; and
3. The contract to be awarded is within the Town's budget for the project; and
4. The bids will expire on October 25, 2016, and unless the contract is awarded by Council, all bids will expire and the contract must be re-bid.

**Attachment:** Resolution

PRESENTED October 25, 2016

RESOLUTION NO. 2016-

ADOPTED \_\_\_\_\_

A RESOLUTION: AWARDING THE CONSTRUCTION CONTRACT FOR THE BATTLEFIELD PARKWAY—ROUTE 15 TO DULLES GREENWAY PROJECT TO GENERAL EXCAVATION, INC. IN THE AMOUNT OF \$11,951,477.70.

WHEREAS, the Battlefield Parkway—Route 15 to Dulles Greenway project is a fully funded Capital Project; and

WHEREAS, in response to a public solicitation for bids for construction of the Battlefield Parkway—Route 15 to Dulles Greenway project, the Town received responsive bids on August 25, 2016 from the following firms:

- General Excavation, Inc. \$ 11,951,477.70
- Phillips Construction, LLC \$ 13,075,451.74
- Independence Excavating, Inc. \$ 13,597,380.10

WHEREAS, the bids were evaluated by the Capital Projects Manager and the Chief Procurement Officer in accordance with the Town Procurement Policy; and

WHEREAS, the Virginia Department of Transportation has reviewed the bids and concurs with the award; and

WHEREAS, General Excavation, Inc. was determined the lowest responsive and responsible bidder; and

WHEREAS, this is a unit price contract and the estimated quantities multiplied by the unit price have established the not to exceed contract price; and

WHEREAS, change order procedures are detailed in the bid specifications; and

WHEREAS, no additional funding is needed to award this contract; and

A RESOLUTION: AWARDING THE CONSTRUCTION CONTRACT FOR THE BATTLEFIELD PARKWAY—ROUTE 15 TO DULLES GREENWAY PROJECT TO GENERAL EXCAVATION, INC. IN THE AMOUNT OF \$11,951,477.70.

WHEREAS, the Director of Public Works and Capital Projects recommends awarding the construction contract to General Excavation, Inc.; and

WHEREAS, under Virginia Code § 2.2-4362, a contract award need not be delayed if a timely bid protest occurs so long as there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire; and

WHEREAS, in the event a timely bid protest, proceeding with the award of the contract to General Excavation, Inc., without delay is necessary to protect the public interest for the following reasons:

1. The construction of the project has already been delayed for a period of eight months due to Town Council's direction to work with certain landowners and redesign the project; and
2. If the Town re-bids the project, there is a significant chance that the bids will be higher.

During the past two years, bid prices have been increasing at a rate much higher than inflation. In many cases, VDOT and other northern Virginia localities have seen bid prices increase as much as 20% to 25% per year. It would be anticipated that bid prices received from a re-bid of the project would experience similar increases. Additionally, the original bids were received in late summer which has been shown to be an optimum time to receive bids because contractors are attempting to plan work for the upcoming construction season. If the project is re-bid, many contractors will have already lined up their work for the upcoming year, and therefore will not submit a bid. The inflation increases and the reduced competition could result in higher contract prices; and

A RESOLUTION: AWARDING THE CONSTRUCTION CONTRACT FOR THE BATTLEFIELD PARKWAY—ROUTE 15 TO DULLES GREENWAY PROJECT TO GENERAL EXCAVATION, INC. IN THE AMOUNT OF \$11,951,477.70.

3. The contract to be awarded is within the Town's budget for the project; and
4. The bids will expire on October 25, 2016, and therefore unless the contract is awarded by Council, bidders may withdraw their bids, and the contract must be re-bid, unless the bidders agree to extend their bids.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute a contract in a form approved by the Town Attorney with General Excavation, Inc. in the amount of \$ 11,951,477.70 for the construction of the Battlefield Parkway—Route 15 to Dulles Greenway project.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
David S. Butler, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council