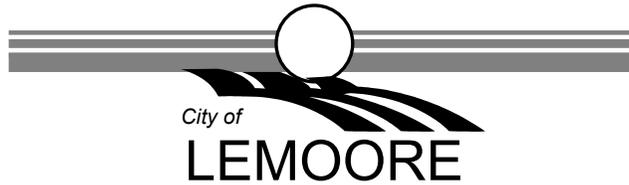


Mayor  
Willard Rodarmel  
Mayor Pro Tem  
John Plourde  
Council Members  
John Gordon  
John Murray  
William Siegel



**Public Works  
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## Staff Report

Item # 7

**To: Lemoore City Council**  
**From: Irma Martinez, Office Manager**  
**Date: May 9, 2011**  
**Subject: Bid Award – 2011 Street Paving Project**

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### **Background**

Recently, the City solicited bids from qualified contractors for the 2011 Street Paving Project. The scope of the work includes the overlay of various streets including Redwood Lane, Kenwood Lane, Cedar Lane, Alder Drive/Court, Brooks Drive/Court, East Spring Lane, Cambria Court, Montecito Court, Sycamore Lane, Linda Lee Circle, 19<sup>th</sup> Avenue and the parking lot at the Lemoore Cinnamon Municipal Complex.

The project also included a bid alternate for the repair of curb, gutter, sidewalk and valley gutters not completed by property owners.

Bids were opened on Thursday, April 21, 2011 and there were nine (9) bids received. The base bid range was from \$740,279.25 on the low end to \$968,596.20 on the high end.

The apparent low bidder at the time of the bid opening was Emmett Valley Construction ("Emmett") with a base bid of \$740,279.25. However, after reviewing Emmett's bid, it was discovered that a mandatory list, a required list of materials suppliers, had been omitted by Emmett. Later in the day, after bids were opened, Emmett supplied the mandatory list. The omitted list was described in the bid specifications as mandatory.

The second low bidder, RJ Berry, Jr., Inc ("RJ Berry"), with a base bid of \$744,062.50 included the required list of materials suppliers.

We have notified Emmett of the defect in its bid, and Emmett has responded with the attached letter dated April 27, 2011 from its legal counsel, David L. Emerzian. Emmett claims that the City has the discretion to overlook or waive the discrepancy and award the contract to Emmett despite its having not submitted the required suppliers list. Emmett's legal counsel takes the position that the materials list does not impact the price and, therefore, the City should accept the late submittal of the list of materials suppliers. Emmett also argues since materials must be approved by the project

engineer it does not matter that the materials suppliers list was not submitted with the bid.

RJ Berry has also provided input regarding the bid award in a letter of May 3, 2011. The RJ Berry letter urges the City to consider the Emmett bid as non-responsive. RJ Berry argues that failing to submit a materials suppliers list promotes “bid shopping” and creates the possibility for unfairness to other bidders who, on a timely basis, assembled their materials suppliers and disclosed them as part of their bid.

We have consulted with the City Attorney’s office with regard to these bidding issues. The City Attorney’s office has advised that if the omission of the suppliers list has the possibility of creating any unfairness, that the City is entitled to require strict adherence to the bidding instructions and reject the apparent low bidder as non-responsive. We believe that it is not appropriate to waive a mandatory bid submittal requirement and also agree that to do so could encourage “bid shopping” or collusion among bidders and suppliers.

Please note that the recommendation also includes awarding a bid alternate. The RJ Berry alternate bid proposal is for \$83,554. The Emmitt alternate bid proposal is for \$99,382.

**Budget Impact**

This project has been placed in the Streets and Buildings Capital Improvement Program. Proposition 1B Funding - \$347,045; Local Transportation Funds - \$177,189; Gas Tax - \$211,882; Facility Infrastructure Fund - \$91,500.

**Recommendation**

That the City Council adopts the attached Resolution No. 2011-19, which rejects the Emmett bid as non-responsive and awards the 2011 Street Paving Project to RJ Berry, Jr., Inc. as the lowest responsive and responsible bidder.