

**City of Yuba City
Staff Report**

Date: July 7, 2009
To: Honorable Mayor & Members of the City Council
From: Utilities Department
Presentation By: William P. Lewis, Utilities Director

Summary

Subject: ICP-MS Spectrophotometer (FB 09-08) Bid Protest by Varian, Inc.
Recommendation: Rescind the award to purchase an ICP-MS Spectrophotometer in the amount of \$144,894.07 from Agilent Technologies of Wilmington, DE and reject all bids.
Fiscal Impact: None

Background:

On May 19, 2009 Council awarded Formal Bid 09-08 (FB 09-08) to Agilent Technologies of Wilmington, DE for an ICP-MS Spectrophotometer. The staff report for this award indicated that Varian, Inc. was a nonresponsive bidder because they did not meet minimum specifications by offering a collision cell ICP-MS Spectrophotometer as bid specifications required. The following day the General Services Department received a call from a representative of Varian Inc., Ms. Margaret Roderick, asking why Varian Inc. had not been awarded the purchase as their bid was the lowest. Upon explaining that staff found Varian's bid unresponsive, Ms. Roderick stated she wished to protest the bid award. Staff then explained the process she would need to follow.

On Friday, May 22, 2009 General Services received a written protest from Varian which outlined their contention that the instrument they had proposed did meet bid specifications and that their instrument was the lowest bid submitted at a total cost of \$139,042.92 as compared to Agilent Technologies at a total cost of \$144,894.07 (a difference of \$5,851.15).

Staff researched the items discussed in the protest letter and responded to Varian in writing on Friday, May 29, 2009 finding the Varian 820 ICPMS instrument contained in Varian's bid again to be in non-conformance to bid specifications.

On Tuesday, June 2, 2009 General Service's staff received a call from Ms. Roderick in which she asked where to deliver her Administrative Appeal. Wednesday June 3, 2009 Ms. Roderick delivered a written request for an Administrative Appeal to the City Manager's office and met with the City Manager to discuss the issues. She was informed that the City would issue a written decision within 30 business days.

Discussion:

The City, through its adopted procedures, "reserves the right, when specifications designate, to determine and approve any other as being equal or acceptable". The City did review Varian's submitted bid and determined the bid to be not equal or acceptable before recommending to Council on May 19, 2009 to award purchase of the ISP-MS to Agilent Technologies.

However, in fairness to all parties staff will further investigate Varian's bid protest and may choose to re-bid the equipment at a later date.

Based on Council's direction the City will respond to Varian's bid protest within 30 working days from the date of the protest letter, June 3, 2009.

Fiscal Impact:

None

Recommendation:

Rescind the award to purchase an ICP-MS Spectrophotometer in the amount of \$144,894.07 from Agilent Technologies of Wilmington, DE. and reject all bids.

Alternatives:

1. Support the Administrative Appeal and award the purchase to Varian, Inc of Walnut Creek, CA in the amount of \$139,042.92
2. Uphold Staff's original recommendation on 5/19/09 to award purchase of the ICP-MS to Agilent Technologies of Wilmington, DE in the amount of \$144,894.07.

Prepared By:



William P. Lewis
Utilities Director

Submitted By:



Steven R. Jensen
City Manager

Reviewed By:

General Service's _____

Finance _____

City Attorney _____