



License #1018877 / DIR #1000043217
27216 Conant Court, Hayward, CA 94544
Certified Woman Owned Business

Alameda-Contra Costa Transit District

FILED

AUG 01 2019

Linda A. Nemeroff, District Secretary

[Signature] Deputy

SENT VIA EMAIL & REGULAR MAIL

August 1, 2019

AC Transit District Secretary
1600 Franklin Street, 10th Floor
Oakland, CA 94612

Re: PROTEST APPEAL (IFB 2019-1473)

Dear Respected Board Members:

We submit the following in support of this protest appeal for your consideration:

Procurement Protest Procedures:

The District's staff failed to follow the protest procedures under Board Policy No. 468. According to the procedures, there are several layers to the processes starting with a decision by the the Procurement Director and/or General Manager, with various time deadlines in between and culminating in potentially several appeals, including with the Federal Transportation Administration. In this instance, neither the Procurement Director or General Manager issued a written decision on our protest within the guidelines of the protest procedures.

Instead of following these potentially lengthy processes, the District rushed to place the project for rebid the same day the first Notice of Non-Award was issued, June 18, already determining our protest would not be successful. And moreover, the hearing that was conducted on July 24 followed the processes of a hearing on appeal and not an initial hearing by the Board, as it should have. We are now at the appeals stage of the Board's initial decision - which for all intense purposes - has already happened.

We have been working in the dark for a majority of the protest process. On June 18, we received the first of two Notices of Non-Award. The notice indicated that RSC and/or our subcontractors lacked the required "licenses." When we asked for clarification, we were rebuffed. We responded through our attorney disputing the claim. Our protest was then scheduled to be heard during the Board meeting on July 10. On July 8, we received a second Notice of Non-Award indicting RSC had not met the project's SBE goals. Despite our request to move forward with the July 10 Board meeting, our protest was pushed back to July 24. Having been provided little information to support the District's supplemental notice, we submitted a second protest through our attorney, again, disputing the claim. Late on July 23, information was posted online to the agenda for the Board meeting the following day. This was information we had never before received, including the General Manager's written rejection of our bid protest.

Most disturbingly, there were entirely new issues that were raised and had not been previously conveyed to us regarding alleged errors in our bid. Needless to say, we had little time to prepare for the hearing and no opportunity to respond to the new information prior to the Board meeting the following day. These maneuvers placed us at a severe disadvantage and again, did not follow the District's protest procedures.

Lastly, it's important to note the project is due to be rebid on Aug. 8. Depending on the Board's ruling on our appeal, we plan to file an appeal with the Federal Transportation Administration. It has been our position that it is improper for the District to place the project for rebid while our protest is still pending, including appeals.

SBE Certification:

RSC is a small, family run business. Contrary to assertions made by District staff, we are also a locally based company, with our primary business operations in Hayward and Castro Valley and we are signatory to the Roofers Union in Oakland. We have a Novato location, which we use for mailing purposes only.

On June 4, after we had received the Notice of Intent to Award, I exchanged emails with Michael Silk, Contracts Specialist, regarding the small business certifications. I informed him we were in process of gathering the information. In response, he responded, ***"The small business certification won't be a deterrent to starting the contract but we would like to have it before the work begins."***

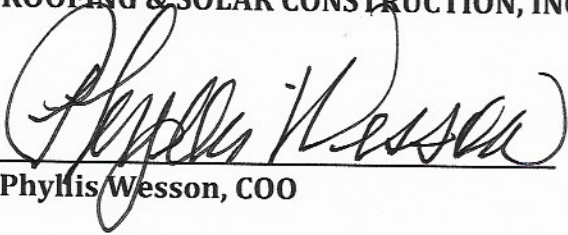
Unbeknownst to us, our SBE certification with the GSA had lapsed. We took steps to renew it and sent a form to expedite the renewal to the Contract Specialist asking that the District sign and return the form. No response was ever given. We subsequently provided the Contract Specialist with verification of SBE certification from our major supplier and one of our listed subcontractors. The District has taken the position that because our listed subcontractor was not certified at the time of bid, they cannot be used to meet the 15% SBE goals. However, the District has failed to prove that the certification was required at the time of bid versus time of award. Further, the District acknowledges that license and certification are interchangeable. If so, a subcontractor is not required to be licensed at bid, but rather at the time of award. We know this to be true, because we prevailed on the very same issue on a bid protest with the Santa Rosa Jr. College.

In closing, RSC is a small, local business and embodies the District's intentions of including small business participation in its procurement of goods and services to the greatest extent possible. We have exceeded the SBE goal requirements for this project and should rightfully receive the award. We, therefore, ask the Board to respectfully reconsider its initial decision and grant our request for appeal.

Thank you for your time and consideration in this matter. We look forward to receiving your decision.

Respectfully,

ROOFING & SOLAR CONSTRUCTION, INC.

A handwritten signature in black ink, appearing to read "Phyllis Wesson", is written over a horizontal line.

Phyllis Wesson, COO

Enclosures



Phyllis Wesson <phyllisannewesson@gmail.com>

Re: Notice of Non-Award - IFB No. 2019-1473 TEC Roof Replacement

10 messages

Phyllis Wesson <phyllisannewesson@gmail.com>

Tue, Jun 18, 2019 at 4:36 PM

To: Michael Silk <msilk@actransit.org>, geclark@actransit.org, sdennis@actransit.org, jwallace@actransit.org, Cassyfabiani <cassyfabiani@roofingsolarinc.com>, Cary Fabiani <caryfabiani@roofingsolarinc.com>

Michael,

Upon further review of your letter, you indicate the basis of the Notice of Non-Award is "*A Bid will be deemed nonresponsive and therefore disqualified if the Bidder (both prime and subcontractor(s) do not have the required licenses outlined in section 00 11 16 Notice Inviting Bids at the time of Bid opening.*" Attached is the section cited.


Can you please confirm which license(s) is lacking?

This is the first the District has notified us of any problem relating to licenses. We were previously responding to the SBE goal requirements. Nonetheless, we dispute the assertion. RSC alone has a roofing, electrical and general building classification. Our subcontractors possess the remaining required licenses and/or classifications.

Please confirm which license(s) are lacking, so we can respond accordingly either directly or through a formal protest.

Thank you,

PHYLLIS WESSON
Chief Operating Officer
Roofing & Solar Construction, Inc.
(415) 233-0629
phyllis@roofingsolarinc.com

 **Section 00 11 16 .pdf**
339K

Michael Silk <msilk@actransit.org>

Wed, Jun 19, 2019 at 9:07 AM

To: Phyllis Wesson <phyllisannewesson@gmail.com>

Cc: Cary Fabiani <caryfabiani@roofingsolarinc.com>, Cassyfabiani <cassyfabiani@roofingsolarinc.com>

Hi Phyllis,

Thank you for your email. The period to protest the notice of non-award has begun so no further communication will take place outside of the protest process.

Cc: Denise Standridge <DStandri@actransit.org>

Dear Ms. Wesson:

Because of notification/process requirements, we were not able to address your protest during this week's Board meeting. However it is being placed on the following Board calendar agenda , which is July 10th.

In the meantime, I will be carefully reviewing the facts of this matter, which includes the information that you provided to us.

Sincerely,
Gene Clark
Director of Procurement & Materials Management

Sent from my iPhone

[Quoted text hidden]

<Section 00 11 16 .pdf>

Phyllis Wesson <phyllisannewesson@gmail.com>

Tue, Jun 25, 2019 at 8:17 AM

To: Gene Clark <geclark@actransit.org>

Cc: Denise Standridge <DStandri@actransit.org>, Cassyfabiani <cassyfabiani@roofingsolarinc.com>

Good morning Gene,

Thank you for your email.

Our immediate concern is that the project has already been published for re-bid and the new bid date is July 8. This is not the usual course of action when there is a pending protest over the award of the original bid. Is the July 8 bid going to proceed?

The protest procedures indicate you have 10 days to respond to our initial protest. Will you be responding to our protest within the 10 days or will the Board be making the decision following the July 10 meeting?

Thank you,
Phyllis

[Quoted text hidden]

Gene Clark <geclark@actransit.org>

Tue, Jun 25, 2019 at 4:12 PM

To: Phyllis Wesson <phyllisannewesson@gmail.com>

Cc: Denise Standridge <DStandri@actransit.org>, Cassyfabiani <cassyfabiani@roofingsolarinc.com>

Hi Phyllis,

Thank you very much for our chat earlier today. As committed, I wanted to provide one more update for what's next:

- The matter is scheduled to be on the Board Agenda at the July 10 meeting; per policy this prevails over the 10 day requirement to respond

- Posting of the solicitation will remain actively posted (until following the Board's decision on this matter)

Sincerely,

Gene

From: Phyllis Wesson <phyllisannewesson@gmail.com>

Sent: Tuesday, June 25, 2019 8:18 AM

To: Gene Clark <geclark@actransit.org>

Cc: Denise Standridge <DStandri@actransit.org>; Cassyfabiani <cassyfabiani@roofingsolarinc.com>

Subject: Re: Notice of Non-Award - IFB No. 2019-1473 TEC Roof Replacement

Good morning Gene,

[Quoted text hidden]

[Quoted text hidden]

Phyllis Wesson <phyllisannewesson@gmail.com>

Tue, Jun 25, 2019 at 5:18 PM

To: Gene Clark <geclark@actransit.org>

Cc: Denise Standridge <DStandri@actransit.org>, Cassyfabiani <cassyfabiani@roofingsolarinc.com>, Jonathan Bowne <jmbowne@lf-lawyers.com>

Hello Gene,

Thank you for the update.

If I understand you correctly the rebid will occur on July 8, while the Board meeting will take place on July 10?

As I'm sure you know, depending on the Board's determination, we would have an opportunity to appeal under the District's protest policy.

Lastly, can you please provide the exact section of the bid documents or legal citing the District is relying on that requires the prime contractor be certified as an S/DBE at the time of bid.

Thank you,
Phyllis

[Quoted text hidden]

Phyllis Wesson <phyllisannewesson@gmail.com>

Mon, Jul 15, 2019 at 2:54 PM

To: Jonathan Bowne <jmbowne@lf-lawyers.com>

FYI...

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Phyllis Wesson <phyllisannewesson@gmail.com>

RE: IFB No. 2019-1473 TEC Roof Replacement

2 messages

Gene Clark <geclark@actransit.org>
To: Phyllis Wesson <phyllisannewesson@gmail.com>

Mon, Jul 8, 2019 at 11:15 AM

Dear Ms. Wesson:

Please be advised that the District's General Counsel has requested that your protest be continued to July 24th to allow you to supplement your protest based upon your request on page two of your June 19th letter. Although there were emails and discussions between R & SC and the District regarding the failure to meet SBE/SLBE minimums as well as no evidence of Good Faith Efforts (GFE), our counsel wants to allow you the extra time per your request to supplement the protest. If you choose not to supplement your protest, please advise me immediately so that we can have your protest heard this Wednesday, July 10th at the Board meeting. Thank you.

Gene

Phyllis Wesson <phyllisannewesson@gmail.com>

Mon, Jul 8, 2019 at 12:48 PM

To: Gene Clark <geclark@actransit.org>, Cassyfabiani <cassyfabiani@roofingsolarinc.com>

Hello Gene,

Thank you for your email.

RSC has received only one Notice of Non-Award from the District that cited the lack of licenses as the reason for non-award. In our recent phone discussion, you confirmed that was incorrect and RSC does in fact possess the correct licenses to perform the project.

We have not received a formal notice relating to not meeting the SBE goals or the legal basis for non-award. Should the District issue a supplemental notice, we will gladly respond.

We have objections to postponing our protest to the Board meeting on July 24, as the District has already placed the project out for rebid on July 18. It's our position that a rebid and/or award should wait until **after** our protest has been thoroughly vetted according to the District's protest policies.

As a result, we would like to continue with the July 10 Board meeting.

Thank you,
Phyllis

PHYLLIS WESSON
Chief Operating Officer
Roofing & Solar Construction, Inc.
(415) 233-0629

phyllis@roofingsolarinc.com

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Current Bid Opportunities

Procurement Detail

AC Transit Number:	2019-1473
Issued:	06/18/2019
Closing:	08/08/2019 at 1:00 pm
Title:	IFB 2019-1473 Training and Education Center Roof Replacement
Procurement Administrator:	Umiika Wright uwright@actransit.org Phone: Fax:
Description:	<p>AC Transit (the "District") is seeking bids from qualified construction firms for the removal, replacement of the existing roof and mechanical systems at the Training and Education Center (TEC) located at 20234 Mack Street, Hayward, CA 94545.</p> <p>The bid submission due date has been extended to August 8, 2019 at 1 pm.</p>
Procurement Instructions:	<p>To be considered for award, bids must be delivered prior to the date and time for bid opening. All bids shall be in a sealed envelope properly endorsed as to the bid number (2019-1473) and project title (TEC Roof Replacement).</p> <p>Shortly after 1 pm on August 8th, 2019, the District will open, examine and publicly declare all bids received. Bidders, their representatives, and others interested are invited to be present at the opening of bids. A notice of intent to award will be issued within a reasonable time after bids have been opened, reviewed for responsive/responsibility and tabulated.</p>
Submittal Info:	<p>Bids must be received by 1 pm. Pacific time on August 8, 2019 at the:</p> <p>Purchasing Department AC Transit District 1600 Franklin Street Oakland, CA 94612 Attn: Umiika Wright</p> <p>The bid opening will tentatively take place on the 3rd floor conference room.</p> <p>Faxed or electronic bids will not be accepted.</p> <p>A 2nd pre-bid conference will be held at 11 am on July 22, 2019 at District's Training and Education Center located at <i>20234 Mack Street, Hayward CA 94545</i>. Please email to uwright@actransit.org to confirm your attendance if you plan to attend the pre-bid meetings.</p> <p>Interested parties must submit any written questions concerning this IFB to Umiika Wright by July 26, 2019.</p> <p>Requests for Approved Equals must be received by the District, in writing, via email at uwright@actransit.org or by mail to the attention of the Contracts Specialist noted in Section 00 11 16, NOTICE INVITING BIDS, no later than 4:00 p.m. PT on July 26, 2019. No such requests will be considered by the District if received after this date.</p>
Scope of Work:	See attached IFB
RFP/IFB	
Attachments/Documents:	<ol style="list-style-type: none">IFB Manual 2019-1473 IFB ManualJob Walk Attendee list 06.21.19 Pre-bid conference sign in sheet2019-1473 Drawings 2019-1473 TEC Roof Replacement -Drawings2019-1473 Specifications 2019-1473 TEC Roof Replacement -Technical SpecificationsIFB 2019-1473 Training and Education Center (TEC) Roof Addendum Number 1 IFB 2019-1473 Training and Education Center (TEC) Roof Addendum Number 1IFB 2019-1473 Training and Education Center Roof Replacement - Addendum No. 2 IFB 2019-1473 Training and Education Center Roof Replacement - Addendum No. 2IFB 2019-1473 Training and Education Center Roof Replacement Addendum No. 3 IFB 2019-1473 Training and Education Center Roof Replacement Addendum No. 3IFB 2019-1473 Training and Education Center Roof Replacement Addendum No.4



Purchasing Office

VIA FAX/E-MAIL

May 3, 2019

Claudia Chavez
President
Stronger Building Services
580 Harlan Street
San Leandro, CA 94577
Fax: (510) 487-8246

RE: Bid Protest–Bid#1194—Lounibos Hall Roofing

Ms. Chavez:

With respect to the pending bid protest on the Lounibos Hall roofing project, the District, in consultation with the Project Architect and Project Manager, received and reviewed the following correspondence and supporting documentation:

- March 26, 2019 Bid Protest submitted by Stronger Building Services ("Stronger") against Roofing & Solar Construction, Inc. ("RSC") and Best Contracting Services, Inc. ("Best").
- March 26, 2019 Response submitted by RSC to Stronger's Bid Protest
- March 26, 2019 Response submitted by Best to Stronger's Bid Protest
- March 27, 2019 Bid Protest submitted by Best against RSC
- March 28, 2019 Response submitted by RSC to Best's Bid Protest
- March 28, 2019 response to RSC Response submitted by Stronger
- March 29, 2019 supplemental response from RSC
- March 29, 2019 response to Best Response submitted by Stronger
- March 29, 2019 supplemental response from Best

Our understanding of Stronger's position is that RSC's bid is nonresponsive because it listed an asbestos abatement subcontractor license number that did not include a C-22 classification or asbestos certificate.

The District's bidding documents require that each *bidder* possess at the time the bid is *awarded* the appropriate classification under the California State Contractor's Licensing Board. And,

while the bidding documents state that Contractors and Subcontractors are required by law to be licensed and regulated by the California Contractors' License Board, they do not expressly require that subcontractors be licensed and certified at the time they are listed in a bid so long as licensure requirements are met by the time the contract is awarded.

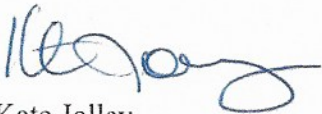
Nor is the District aware of any authority in the Business and Professions Code or the Public Contract Code that expressly requires subcontractors be licensed and certified at the time they are listed in a bid.

Moreover, in reviewing the materials submitted by RSC, Stronger and Best related to the abatement scope of work, the District has determined that the scope of work for the abatement is less than 1/2 of 1% of the total bid.

As such, the Roofing & Solar Construction, Inc. bid is responsive and the District will recommend proceeding with award to Roofing & Solar Construction, Inc. at the May Board of Trustees meeting.

Given this determination, it is unnecessary for the District to address Stranger's Bid Protest against Best.

Thank you,



Kate Jolley
VP of Finance & Administrative Services
Sonoma County Junior College District Purchasing Department
1510 Mendocino Avenue Santa Rosa, CA 95401

Cc: Bid File
Roofing and Solar Construction
Best Contracting Services, Inc.