



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

Alameda-Contra Costa Transit District

**FILED**

**AUG 01 2019**

**SENT VIA EMAIL**

August 1, 2019

AC Transit District Secretary  
1600 Franklin Street, 10<sup>th</sup> Floor  
Oakland, CA 94612

Linda A. Nemeroff, District Secretary

**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, in an attempt to forego several steps and rush a rebid, the District placed 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 June 24 followed the processes of a hearing on an 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 transpired.

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 wanting 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 provided a second protest through our attorney, again disputing the claim. Late on July 23, we were able to pull information online from 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."***

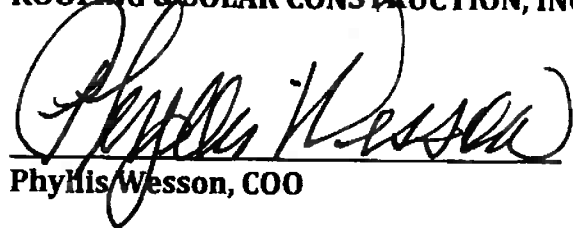
Unbeknownst to us, our SBE certification with the GSA had lapsed. We took steps to renew it and sent a form to expedite the renewal to the Contract Specialist asking that the District sign and return the form. No response was ever given. We subsequently provided the Contract Specialist with verification 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>

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

10 messages

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**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](mailto:phyllis@roofingsolarinc.com)



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

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**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.