

Staff's Justification to Deny the Protest Filed by Roofing & Solar Construction, Inc.

District Response:

“After reviewing the vendor’s documents and the requested supplemental information, it was determined that the bid was non-responsive to the IFB requirements. Attention is directed to section 00 20 00, Part 3 (B)

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.” Note: Licenses and Certifications are used interchangeably, as was explained to Roofing and Solar Construction via email and phone conversations.

Section 00 11 16 referenced in the Notice of Non-Award states: “Evidence of goal attainment must be provided via the District’s Prime and Subcontractor Report form as provided in Attachment herein. The absence of evidence of goal attainment requires the submittal of Good Faith Effort (GFE) documentation showing all practicable steps taken to satisfy the SBE goal, including, but not limited to direct solicitations to SBE firms and/or SBE focused media; two-way communications between prime Bidder and potential SBE firms, and clear documentation of genuine negotiations between Bidder and potential subcontractor(s) that did not result in a contractual agreement. Lack of evidence of the SBE goal attainment coupled with a lack of District-determined genuine GFE to satisfy the SBE goal is grounds for a Bid to be deemed non-responsive.”

The email that transmitted the Notice of Non Award (attached email “RE: SBE/DVBE Supplier Verification”), included a detail reasoning of the non-award: “Specifically because of the lack of proof of small business goal attainment or a substantiated Good Faith Effort at the time of the bid due date”

R&SC’s interpretation did not include the additional review of Section 00 11 16, in its entirety which clearly states “Lack of evidence of the SBE goal attainment coupled with a lack of District-determined genuine GFE to satisfy the SBE goal is grounds for a Bid to be deemed non-responsive.” (page 2 of 131 Section 00 11 16). R&SC’s interpretation does not address ongoing correspondence from the District requesting the small business certification, which began on May 24th.

The District found that R&SC and their listed subcontractors held valid licenses from the California Contractors State License Board and they were registered with the Department of Industrial Relations at the time the bids were due. The District found that R&SC did not meet the Small Business goal or Good Faith Effort of this IFB.

A fourth subcontractor (Peggy S Brooks Company Inc) was presented on June 14, 2019 by Phyllis Wesson of R&SC, twenty-one days after the bid due date. Consistent with the IFB requirements and California Public Contract Code Sections 4100 through 4113 inclusive, R&SC was required to list all subcontractors or suppliers at the time the bids were due. In presenting a subcontractor twenty-one days after the bids were due, the District would be suspicious of Bid Shopping.

District Response: On May 24th, 2019 the Contracts Specialist contacted R&SC's small business certifying agency (see attached email "RE: Training and Education...") in an attempt verify responsiveness to the IFB SBE requirements. Shortly after, Phillip Halley (Contracts Compliance Administrator) called all three subcontractors listed on R&SC's Prime and Subcontractor/Supplier form (in the presence of Michael Silk, Brooklyn Greene and Stephen Stanley). None of the subcontractors acknowledged to being a certified small business enterprise. The Contracts Specialist received a phone call from R&SC after the second request for their small business certification and Phyllis Wesson assured the Contracts Specialist that they were a small, woman-owned business. Under the belief that R&SC was indeed a small business, the Contracts Specialist granted the firm additional time to provide small business certification. In an effort to expedite this process the Contract Specialist followed up with the certifying agency (the State of California, Office of Small Business and DVBE Services) and the certifying agency indicated that R&SC began their recertification process on 6/5/19, nine days after bids were due.