

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 7/10/2019

Staff Report No. 19-105a

TO: AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager
SUBJECT: Procurement Protest

ACTION ITEM

RECOMMENDED ACTION(S):

Consider the procurement protest filed by Roofing & Solar Construction, Inc. in connection with the District's Training and Education Center Roofing Project.

BUDGETARY/FISCAL IMPACT:

Roofing & Solar Construction, Inc. submitted the \$250 protest fee with their protest. If their protest is upheld, the check will be returned to them. If the protest is denied, the District will deposit the check.

BACKGROUND/RATIONALE:

An Invitation For Bid (IFB) was issued April 19, 2019, for a contractor to remove and replace the roofing material and mechanical components of the District's Training and Education Center (TEC) located at 20234 Mack Street in Hayward. The Procurement Department received two bids by the due date/time of May 23, 2019, at 1:00 pm. Two bids were presented after 1:00 p.m. but were rejected because they were untimely.

The two timely bids were opened but the lowest priced bidder withdrew their bid, leaving only the second bidder. However, after discussions with the Contracts Services Manager, Contracts Compliance Manager, and the Capital Projects Manager, the Contract Specialist recommended issuing a non-award to the second bidder, Roofing & Solar Construction, Inc., due to the lack of evidence of the 15% Small Business Enterprise (SBE) goal attainment, and lack of good faith effort (GFE) submission at the time bids were due, which was a requirement of this solicitation. A letter of non-award was issued on June 18, 2019. Thereafter, on June 19, 2019, Roofing & Solar Construction, Inc. filed a timely protest, attached hereto as Attachment 2.

Upon a detailed analysis performed by the Director of Procurement and Materials Manager and General Counsel, the recommendation is to deny the protest. This is based on the following assessment:

- (1) Within the Invitation for Bid boilerplate language, "the District has the right to reject any and all Bids. Bids may be rejected if they show such items as any alteration of form; additions not called for; conditional Bids; incomplete Bids; irregularities which make the Bids incomplete, indefinite or ambiguous".
- (2) In the IFB boilerplate language, stated in bold, "There is a 15% SBE goal for this contracting opportunity" (see #5 below for further GFE requirements).
- (3) After the bid was opened, email and phone communications occurred between the Contract Specialist

and the Contractor, whereby SBE Certification was discussed and documentation sought.

- (4) Validations made by the Contracts Compliance Administrator revealed evidence that there was no SBE Certification on file at the time the Bid was submitted; there was no percentage of SBE listed on the bid; indeed, per the State of California Office of Small Business and DVBE, an SBE application was initiated after the requested bid date.
- (5) There was an absence of Good Faith Effort (GFE) documentation showing all practicable steps taken to satisfy the SBE goal. IFB language 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 the Bid to be deemed non-responsive". A small business certification was presented June 14th well after the bids were opened on May 23rd, however, this business entity, Peggy S. Brooks Company, Inc., was not listed on the original bid.
- (6) Roofing and Solar Construction, in submitting their check to file a protest, paid the dollar amount required for a non-certified SBE firm; this further substantiated RSC's admission that they were not a small business.

For these reasons, the Board is requested to deny the protest filed by Roofing & Solar Construction, Inc. and direct the General Counsel to issue a written response within five (5) business days.

ADVANTAGES/DISADVANTAGES:

The need for supporting the decision to find the second bidder, Roofing and Solar Construction Inc., non-responsive is to preserve the consistency and fairness of the procurement process. Each bidder must adhere to the same rules, regulations and standards that apply to each solicitation.

Disadvantages of not deeming the second bidder non-responsive include counter protests from other vendors who fully conform to the procurement requirements. Additionally, if the District begins making exceptions to its procurement requirements, it is subject scrutiny through audits, and enforced regulations as set forth by the Federal Transit Administration.

ALTERNATIVES ANALYSIS:

Because the Board Policy requires the Board to hear this protest, no alternatives were considered.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy 468 - Procurement Protest Procedures

ATTACHMENTS:

- 1. Justification of Non-Award
- 2. Protest Filed Roofing & Solar Construction, Inc.

Approved by:

Michael A. Hursh, General Manager

Denise C. Standridge, General Counsel

Claudia L. Allen, Chief Financial Officer

Reviewed by:

Phillip Hailey, Contracts Compliance Administrator

Prepared by:

Gene Clark, Director of Procurement and Materials