

August 1, 2018

Sent via Email and FedEx

Mr. Robert Eisenbeisz, PE
Public Works Director / City Engineer
City of Rialto
335 Rialto Avenue
Rialto, CA 92376

Re: Fire Station 205, Phase I – bid protest

Dear Mr. Eisenbeisz:

As you know, the City requested bids for the construction of the new Fire Station 205 Phase I which were due July 23, 2018. Neither the Invitation to Bid, nor the Instructions to Bidders provided instructions on how or where bid protests were to be presented, or when they were due, so this protest is considered timely and proper.

R.C. Construction Services, Inc (RC) submitted its bid per the bid instructions and per California Public Contract Code. RC came in close second place to Pacific Hydro Tech Corporation (PHT) who also submitted its bid, but failed to fully comply with the instructions on the List of Subcontractor and the requirements of the Subcontractor Fair Practices Act. More specifically, PHT failed to list the addresses of each subcontractor as required by the City and failed to list the DIR registration number for its subcontractors on the List of Subcontractors.

Public Contract Code 4104 sets forth the minimum legal requirements for subcontractor listing which are:

1. The name of the subcontractor
2. The location of the place of business
3. The Subcontractor's contractor license number
4. The public works contractor registration number issued by the DIR

For sake of ease, I have included and underlined the pertinent portions of PCC 4104 for your review:

Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

- (a) (1) The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.*

"Do a job big or small, Do it right or not at all"

(2) – omitted as it does not pertain to this issue

(3) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name, location of business, the California contractor license number, and the public works contractor registration number, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

As State law allows no leeway in the requirements of what must be listed to comply with public bidding requirements, their bid must be deemed non-responsive. It does not matter that the City failed to list the DIR Registration Number requirement on its "List of Subcontractors" form which was a material part of the bid package. The legal requirements supersedes the bid forms.

Furthermore, their failure to list the address of each subcontractor as required by the City deems their bid non-responsive per the City listing form. The instructions on the List of Subcontractors read "As required by Section 4100 et seq., of the Public Contract Code, the Bidder shall list below the name and business address of each subcontractor..." and again on the last column header which reads "Subcontractor's Name & Address".

As RC Construction fully complied with all legal requirements, and all City requirements for bidding this project, we respectfully request that Pacific Hydro Tech's bid be properly rejected and that RC Construction Services be awarded the project.

We very much look forward to working with the City and your department to provide the residents of Rialto this important new temporary Fire Station for their safety and protection.

If you have any questions regarding this matter, please feel free to contact me at 909-829-3688 Ext. 221 or Marie.Up@RCConstruction.com.

Sincerely,



Marie J Updegrove
Contract Manager

Cc: Barbara McGee, Rialto City Clerk
Mathew Kraus, Attorney at Law
Robert W. Clapper, President

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