

2724



General Engineering Contractor
State License No. 594575

OFFICE OF PORT ADMINISTRATION
RECEIVED

May 25, 2012

Phuong Nguyen
Port of Los Angeles Administration Office
Construction Division Contract Administration Section, Third Floor
425 South Palos Verdes Street
San Pedro, CA 90731

MAY 2 2012

CONSTRUCTION
DIVISION
HARBOR DEPARTMENT
V12-1597

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Re: Berth 200 Rail Yard, Construction of the yard Office Building and Diesel Engine Service Facility

Dear Sir or Madam:

Shimmick Construction Company, Inc. (SCCI) is a bidder on the Berth 200 Rail Yard, Construction of the yard Office Building and Diesel Engine Service Facility. SCCI's bid was responsive and regular, and SCCI was the second low bidder.

Upon review of the bid documents submitted by the apparent low bidder, Herzog Contracting Corp. (Herzog), it appears to SCCI that Herzog's bid is not and cannot be regular and responsive, and SCCI therefore protests any award to Herzog. The basis of the protest is as follows:

Project drawing E-106 concerns a photovoltaic system (PV system). Prior to bid, on May 15, 2012, by Question and Answer # 8, item 251, it was clarified that section B, Performance Requirements, took precedence over the drawing and required that the PV system provided shall be estimated to produce 500,000 kilowatt per hour AC of energy per year.

In preparing its bid, SCCI obtained a quote from Harbor Construction Co., Inc. (Harbor) for, among other things, the PV system. That quote provided that the PV system was based on Q & A #6, item 184, not the later Q&A #8, item 251. Q&A #6, item 184, suggests that the PV system need only comply with the lesser requirements of the drawings. SCCI recognized that Harbor would thus not supply a system that conformed to the contract requirements, and also recognized that by simply listing Harbor and not accounting for the added costs of a complying PV system that SCCI's bid would be non-responsive.

In our review of Herzog's bid, we note that it, too, listed Harbor as a subcontractor. It further appears to us that of the subcontractors listed only Harbor could provide a PV system. But, because the price Herzog attributes to Harbor on the form entitled section 00030, Bidding Documents, 09A, Bidder's List of Subcontractors, is far below the price Harbor quoted to SCCI plus the added cost necessary to provide a PV system that complies with the contract, it is clear that Herzog cannot have quoted to provide a system that the bidding documents require. Although it seems that Harbor's price to Herzog is slightly different than ours (Herzog listed Harbor for \$217,000 more), Harbor excluded the PV work required (and clarified by Q&A #8 from POLA). Harbor and other sources

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confirmed that this excluded work is substantially larger than the price difference between the apparent low bidder and apparent 2nd low bidder. SCCI added the cost of the added PV work to its bid once Harbor stated that it was well in excess of \$1,000,000 to add this work and SCCI received corresponding supplier bids that the PV was well in excess of \$1,000,000.

As the bid of Herzog is not for conforming work, the bid is irregular and is not responsive. It is possible that Herzog mistakenly overlooked the "gap" in Harbor's quote however, if that is the case, Herzog's error --- one that would permit it to withdraw its bid --- gives it an unfair advantage over other bidders. As such, Herzog's bid irregularity cannot be waived. If, though, Herzog did not err, but decided instead to bid the PV system based on the plans but not the specifications, specifically Q&A #8, item #251 (as Harbor's quote suggests) then the bid is non-responsive and cannot be accepted.

SCCI asks that the Port investigate this matter and, if it is determined that Herzog's bid is irregular and non-responsive, that it reject that bid and award the contract to SCCI.

We are available to discuss this matter at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Andrew Sloane, III". The signature is written in a cursive style and is positioned above the printed name.

W. Andrew Sloane, III
Vice President

Cc: Herzog Contracting Corp.



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May 31, 2012

Shimmick Construction Co., Inc.
16481 Scientific Way
Irvine, CA 92618

Attn: W. Andrew Sloane, III, Vice President.

**SUBJECT: RESPONSE TO PROTEST OF HERZOG CONTRACTING CORP. BID
BERTH 200 RAIL YARD - SPECIFICATION NO. 2724**

The Port of Los Angeles has reviewed your letter of protest dated May 25, 2012 along with the supplemental material attached to your email of May 29th, suggesting that the bid proposal from Herzog Contracting Corp. for the subject project is irregular and non-responsive.

Herzog advises that its bid does conform to the specification's photovoltaic system performance requirements of 500,000 kilowatt hours per year. We recognize the discrepancy between Drawing E-106 and Specification Section 26 and we note, however, that the specification takes precedence over the drawings, and that the Port's response to question 251 correctly recited the specification's performance requirement.

Staff will therefore be recommending that the Board of Harbor Commissioners award the contract to Herzog Contracting Corp. at their meeting on June 7, 2012 at 8:30 A.M. at the Harbor Administration Building. You are welcome to attend the Board meeting and voice any additional criticism or concerns at that time.

If you have any questions, please contact Phuong Nguyen, Project Construction Manager, at (310) 732-3537.

Sincerely,

SHAUN SHAHRESTANI
Chief Harbor Engineer
Construction Division

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