

2764

REYES CONSTRUCTION, INC.

Via Email and Certified Mail

June 29, 2016

CITY OF LOS ANGELES
RECEIVED

Port of Los Angeles Administrative Offices, Construction Division
Contract Administration Section
3rd Floor
425 South Palos Verdes Street
San Pedro, CA 90731

JUL - 5 2016

CONTRACT ADMINISTRATION
SECTION

Re: Letter of Protest – Berths 196-199 Wharf Rehabilitation, Specification No. 2766

File-2583

Dear Mr. Phong Ngo,

Reyes Construction Company ("Reyes"), as the second low bidder and we believe the low responsive bidder hereby submit this protest to the Port of Los Angeles ("POLA") of the non-responsive bid submitted by Vortex Marine Construction, Inc ("Vortex") on the above-referenced contract.

Reyes has reviewed the bid and found that it is incomplete and fails to follow the directions to bidders. As a starting point, the bid form is incomplete in that the sections for confirming the bid values in written form were not completed as directed. In addition, there are inconsistencies between the unit prices and extensions which do not match up with the unit prices. This problem is compounded by the fact that there are no written figures to clarify illegible unit prices. Finally, if, as the instructions state, unit prices prevail over incorrect extension prices, Bid Item 13 is overstated by almost a million dollars creating a highly unbalanced bid proposal. For all of these reasons, POLA should deem the Vortex bid non-responsive.

Bids Are To Comply With the Bid Instructions

The requirement that public bids comply with the bidding requirements is well established in California. As the Court in *MCM Construction v. City and County of San Francisco* (1998) 66 Cal.App.4th 359 explained:

Because of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside. This preventative approach is applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money. [Citations.] The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements.

The Vortex bid fails to comply with various elements of the bid requirements and accordingly, must be rejected as non-responsive.

General Contractor • License No. 507561

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TRANSMITTAL 2

REYES CONSTRUCTION, INC.

The Vortex Bid Is Incomplete

The top of the Bid Proposal Schedule advises bidders at the outset that "Bidders must fill in blank spaces and give the price bid in both words and figures." The purpose of this is to assure there is no uncertainty in the amount submitted for each bid item. The Vortex bid fails to follow these instructions in that it provided no written pricing for any item. As a result, they also failed to fill in all blank spaces leaving numerous uncertainties in the bid form. For example, many bid items like item 2 require that the bidder write in the bid unit price and then show the same figure in numeric form to the right. Then below that the bidder was to show the total extended price again in written form and numerical form. Instead of following this format, Vortex provided one numeric unit price where the written figure was to be provided and a different "unit" price in the space for repeating the written unit price in numerical format. As a result, the two spaces below for providing the extended total price are left blank. The result of this failure to follow direction is technically two unit prices and no extended price. While Vortex will contend that the second "unit" price is the extended price, albeit in the wrong location, this is not what the form called for and the failure to follow directions creates uncertainty as to what the bid really offers.

The confusion caused by the failure to complete all blanks and to use written figures is best highlighted by bid item 13. As with the other unit price bid items, Vortex failed to complete all the spaces or provide written figures. The absence of such written figures is particularly important here because the figure written appears to be \$42,000 (although not clearly written). Alternatively, the figure could be \$420.00; it is simply impossible to know for sure and there is no written figure to confirm what was intended. To further complicate matters, the second "unit" price (which should be the numerical version of the written unit price) is \$121,800 which presumably is supposed to be the extended total price, but that figure does not match up with a unit price of \$420 or \$42,000. Thus, there is no way to interpret the proper unit price or extended price making the bid hopelessly uncertain and non-responsive.

Other bid items are also uncertain and again there are no written words to confirm what was intended. Each of the bid items below have a unit price that is inconsistent with the extended price:

Bid Item 11 - \$300 unit price provides an extension of \$60,000, not \$65,000.

Bid Item 16 - \$3,500 unit price provides an extension of \$10,500, not \$7,500.

Bid Item 43 - \$3,500 unit price provides an extension of \$7,000, not \$5,000.

While the unit price is to govern when there are discrepancies between the unit price and the extension, the lack of any written entries fails to provide the certainty needed to confirm that the numeric unit price is correct. Again the uncertainty caused by the incomplete entries, the lack of written figures and inconsistency between unit prices and ostensible extended prices make the bid non-responsive.

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REYES CONSTRUCTION, INC.

The Bid is Unbalanced

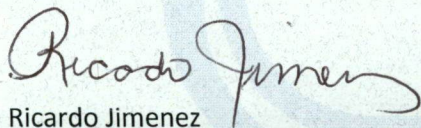
Bidders are advised in Section 18(c) of the Instructions to bidders that bids "which have prices shown on the Proposal Schedule that are obviously unbalanced" may be rejected. Here, the unit price for bid item 13 is written as \$42,000.¹ Since the unit price governs the final pricing, the correct total price is \$1,218,000 which is an exorbitant amount for this bid item. By contrast, Reyes bid the item for a total of \$232,000 and Connely Pacific bid the item for a total amount of \$121,800. Thus, the addition of roughly \$1,000,000 extra dollars for this bid items creates an extremely unbalanced bid which is further cause for rejecting the bid.

Conclusion

The purpose of the bid process is to assure fair bids and a process that is fair to all bidders and assures no bidder gains an unfair advantage though non-responsive or incomplete bid forms. Here, Vortex has either purposely or carelessly left its bid form incomplete and ambiguous to the extent they could simply withdraw the bid on a claimed "calculation error." This gives Vortex the option to see other bids and then decide whether to proceed with the work or back-out. Such an unfair advantage is improper. Moreover, the bid fails to follow the bidding instructions throughout and bid item 13 creates an extremely unbalanced bid which is improper and could lead to front loading of the contract. For all of these reasons, POLA should deem the Vortex bid non-responsive and the bid should therefore be rejected.

If you have any questions or comments, please contact me at (909)622-2259.

Sincerely,



Ricardo Jimenez
Vice President

¹ While the figure written for the unit price is poorly written, it arguably was intended to be \$420.00. However, the extended price of \$121,800 is substantially more than an extended price of \$420.00 times 29 and thus it does not appear that a figure of \$420.00 was intended nor would such a figure be consistent with the costs to perform a unit of bid item 13 work.

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