

# HERZOG CONTRACTING CORP.



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ALAN L. LANDES, PRESIDENT

May 31, 2012

Phuong Nguyen  
Port of Los Angeles Administration Office  
Construction Division Contract Administration Section, 3<sup>rd</sup> Floor  
425 South Palos Verdes Street  
San Pedro, CA 90731

Re: Berth 200 Rail Yard, Construction of the Yard Office Building and Diesel Engine Service Facility  
("Project")

Dear Mr. Nguyen:

Herzog Contracting Corp. ("HCC") is in receipt of correspondence from Shimmick Construction Company, Inc. ("Shimmick") wherein they indicate their protest of the Port's selecting Herzog's low bid for the Project. Herzog has reviewed Shimmick's stated basis for the protest to the award, its bid and the pertinent bidding documents and we find Shimmick's protest to be completely baseless and without merit. Herzog's bid was and is responsive in all respects for the confirming work. This letter will confirm that Herzog, through its subcontractor, Dynalectric, will install a PV system which is in conformance with the contract specifications for this Project, including the estimated 500,000 kilowatt hours per year criteria, as referenced in Q&A #8, item 251. Herzog's bid substantially conforms in all material respects to the requirements of the RFP and its Addendums. It is in the best interest of the Port and taxpayers to save over approximately \$937,000.00 on the Project cost by awarding the Contract to Herzog.

Shimmick has based their protest on the erroneous and unsupportable assumption Herzog intended to utilize Harbor Construction Co. Inc. ("Harbor Construction") to construct the photovoltaic system ("PV system") on the Project. While Herzog does intend to utilize Harbor Construction on the Project, they will not be the contractor installing the PV System. Prior to submitting its bid to the Port, Herzog obtained a quote from Dynalectric for a variety of electrical construction components, including the PV system required under the contract documents current at bid time (Addendums 1-5 and Q&A #1 thru #8). Following receipt of Dynalectric's quote for the PV system, Herzog spoke with Dynalectric and confirmed their quote for the PV system was based upon their review of the complete set of contract documents which had been previously provided by Port/Herzog. Herzog elected to utilize Dynalectric for the supply and install of the PV system, among other electrical components. As can be confirmed by reviewing Herzog's bid documents, Herzog properly listed Dynalectric as a subcontractor for the Project within its bid submittal. It is Herzog's understanding Dynalectric did not provide a quote for Shimmick.

There is no suggestion Dynalectric cannot or is not anticipating providing a PV system which is in conformance with the contract specifications. Likewise, there is no support for Shimmick's speculation Herzog overlooked a variance within the Q&A's and/or incorrectly bid the PV system. To the contrary, Herzog obtained a quotation from a qualified contractor for that aspect of the work and included the costs into its overall bid. The facts show that Herzog submitted the lowest bid in compliance with the Ports'

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prescribed procedures, which provided for fair and open competition. In doing so, Herzog came in approximately \$937,000.00 under Shimmick's bid.

The "responsiveness" of Herzog's bid must be assessed on the face of the bid at the time the bids were opened. By examining Herzog's bid there is no evidence that Herzog's bid does not include the PV System or the subcontractor who will perform that work. Shimmick's mistaken assumptions, conjecture and strained speculation are not sufficient to prove Herzog's bid materially deviated from the requirements of the RFP, as modified by the Addendums.

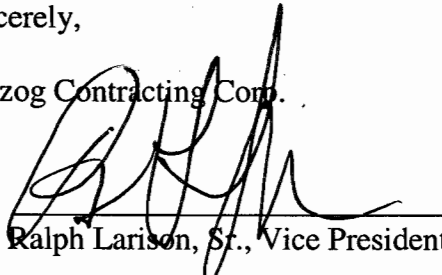
Shimmick, as the protester, has the burden of proof. As such, the Port should not conduct an investigation to establish the validity of a disappointed bidder's speculative allegations. Where, as here, the protester submits no evidence to support its allegations or the protest includes a number of unsupported and speculative assertions and is shown to rest on some incorrect factual assumptions, the protest should be denied and dismissed.

As demonstrated above, the alleged basis for Shimmick's protest is premised upon erroneous speculation, is meritless and should be denied. Herzog respectfully reserves the right to provide additional information and analysis as it deems necessary or appropriate. Herzog looks forward to an expeditious resolution of this protest so that it may proceed with work on the Project. Please contact Ralph Lairson at Herzog if we can be of further assistance or offer additional information or analysis.

Sincerely,

Herzog Contracting Corp.

By:

  
Ralph Larison, Sr., Vice President

cc: Shimmick Construction Company, Inc.