



License # 927544

March 4, 2013

Port of Los Angeles
Phong Ngo, PCM
425 S. Palos Verdes St.
San Pedro, CA 90731

Subject: **FORMAL BID PROTEST**
Project: Wilmington Marina Parkway; Spec No. 2744
Bid Date: February 21, 2013 at 2:45 p.m.

This letter is in regards to the validity of the proposal and the capability to perform without sufficient coverage submitted by the apparent first bidder, Pima Corp. After careful review of their proposal, KASA has discovered a substantial error and requirement omission that should deem the apparent low-bidder non responsive.

On Spec page 00012-2 it states, *"It has been determined that based on the work performed in this contract, the Small Business Enterprise participation shall be a minimum of 22% of which 4% shall be Very Small Business Enterprise participation."* Also on the pre-bid meeting agenda page 1 note C it states, *"Based on the work to be performed the Mandatory construction projects minimum percentage of SBE participation was determined to be 22% and of that 4% must be VSBE."* Per page 00030-2, VSBE the Harbor Department defines a VSBE based on the state of California's micro-business definition which is (1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous 3 years, or (2) a small business manufacturer with 25 or fewer employees.

Pima Corp. failed to meet the mandatory 4% VSBE requirement, per Spec page 00030-21 *Any bid submitted which fails to meet the small and very small business requirement as shown in the Notice Inviting Bids Section will result in rejection of the bid.*

Pima Corp does not meet the VSBE mandatory requirement, because they did not list a VSBE or Micro-Business and they themselves are not a VSBE or Micro-Business due to the fact that they have an average of 50 employees per their bid proposal. This alone will render the apparent low-bidder Pima Corp non-responsive.

Furthermore, per page 00022-6 of the specs it states, *"The bidder to be awarded the Contract must be capable of performing the various items or work bid upon. Bidders may be required to submit, before Award of the Contract, satisfactory evidence covering experience on similar*

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TRANSMITTAL 4

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work, a list of machinery, plant and other equipment available for the proposed work, and such statements of their financial resources as may be deemed necessary. If the available evidence of competency of any bidder is not satisfactory, the bid of such bidder will be rejected."

As I'm sure you realize, Pima's proposal has a grand total \$1,071,503.76 with the preference. Not taking into account the allowance items or the preference, their total is \$1,004,678 and their Lump Sum Item #1 has a total of \$630,848.

KASA's total price with the preference is a total of \$1,203,199, that's a difference of \$131,695.24 which is astronomical. Not taking the allowance items and the other items into account the Lump Sum difference for item #1 is an enormous total of \$114,652.

KASA's numbers were bid very aggressively and I'm sure the 3rd apparent low bidder did as well since our difference was only \$22,408.50. This tells me that either Pima made a clerical error in their formulations or they will be giving the Port of LA an unsatisfactory product because there is no way Pima can perform this scope of work with what was proposed by them. Pima just left too much money on the table to satisfactorily complete this project per plan and specs.

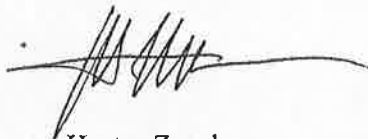
Additionally, did the apparent low-bidder Pima Corp submit the following documents within 4 business days after opening the bid?

- a. Ethnic Composition of Total Work Force form for each subcontractor.
- b. Contractor/Supplier Description Form.
- c. Subcontractor/Supplier ownership and Local Business Enterprise Affidavit for each subcontractor.
- d. Affirmative Action Plan forms for each subcontractor.
- e. Electrical Safety Policy form.
- f. Updated CEC Form 55 containing all required information

Pima Corp also neglected to notarize the Contractors signature on the Bid Bond page 00030-1.

Based on the above, KASA Construction kindly requests that the Agency makes a fair determination to find Pima Corporation non-responsive for the error and omissions and in turn, recommend for award the contract to KASA Construction. If there are any additional questions or concerns, please do not hesitate to contact me at any time at the numbers listed below.

Sincerely,



Hector Zavala
Estimator
KASA Construction, Inc.

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March 14, 2013

KASA Construction, Inc.
316 N. Corona Ave.
Ontario, CA 91764

Attention: Diana Kasbar, President

**SUBJECT: RESPONSE TO PROTEST OF PIMA'S BID
WILMINGTON MARINA PARKWAY
SPECIFICATION NO. 2744**

We are in receipt of your letter dated March 4, 2013, submitted via email, requesting that the bid proposal from PIMA Corporation (PIMA) for the subject project be deemed non-responsive for the following reasons:

1. PIMA failed to meet the mandatory 4% Very Small Business Enterprise (VSBE) or Micro-Business requirement.
2. PIMA either made a clerical error in their formulations or they will be giving the Port of Los Angeles an unsatisfactory product because PIMA cannot perform the scope of work for the amount of their bid.
3. PIMA neglected to notarize the Contractor's signature on the Bid Bond page 00030-1.

The Port of Los Angeles (Port) staff, in consultation with the Office of the City Attorney, has reviewed your protest, and concluded that it has no merit for the following reasons:

1. The subcontractor listed in PIMA's submitted documentation, Richard Smith Custom Concrete and Pave Stone, has been confirmed to be a VSBE, thereby exceeding PIMA's required minimum 4% VSBE participation level.

2. The differential between bid amounts provides insufficient justification to declare PIMA non-responsive or prove its inability to perform the work in accordance with the contract. Additionally, staff has confirmed the project references provided by PIMA.
3. The Bid Bond does not require notarization.

PIMA submitted all required documents within the 4 business days as required. The Electrical Safety Policy Form was waived since no electrical work will be done in this project.

Since the bid proposal document from PIMA met all the requirements, it is deemed responsive. We plan to recommend that the Board of Harbor Commissioners award the contract to PIMA Corporation at its meeting on April 4, 2013 at 8:30 a.m. at the Bannings Landing Community Center in Wilmington. You are welcome to attend the Board meeting and voice your concerns during the Board's consideration of this contract.

If you have any questions or require additional information, please contact Phong Ngo, Project Construction Manager, at (310) 732-2658.

Sincerely,



SHAUN SHAHRESTANI
Chief Harbor Engineer
Construction Division

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cc: City Attorney: Simon Kann
PIMA Corporation, 2001 S. Barrington Ave., Unit 312, Los Angeles, CA 90025