

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS REJECTING THE BID OF CONTRACTOR AS NON-RESPONSIVE, WAIVING MINOR BID IRREGULARITY AND AWARDING CONTRACT TO AJF/BHM JOINT VENTURE FOR THE ALVISO ADOBE RENOVATION PROJECT, PHASE IV, PROJECT NO. 5055, AND RELATED ACTIONS

WHEREAS, the above captioned Project was advertised for bid and bids were received on November 8, 2011 as detailed in the accompanying administrative report and it was determined that the bid of BEST Contracting Services Inc., was non-responsive, based upon the facts and circumstances described in the administrative report and the letter, attached hereto as Exhibit A, to counsel for BEST Contracting Services Inc.; and

WHEREAS, the lowest responsive responsible bidder was determined to be that of AJF/BHM Joint Venture in the amount of \$2,176,774.85, and it was further determined that in its bid there was a minor bid irregularity which could be and was resolved by City staff without need for additional information beyond that submitted by AJF/BHM in its bid, all as further set forth in the accompanying administrative report; and

WHEREAS, it was determined that there were sufficient funds in the project budget to include add alternatives set forth in the project bid package as described in detail in the administrative report in the amount of \$66,000, and that it is staff's recommendation to include these add alternatives in the contract award; and

WHEREAS, change order authority in the amount of \$350,000, which does not exceed the construction contingency, would assist in the timely cost-effective completion of the work, as described in detail in the administrative report.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it, including the attached letter. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The bid of BEST Contracting Services Inc. is hereby rejected based on sufficient facts concluding that the irregularities in its bid are not minor deviations which should be waived but constitute undesirable material deviations from the contract specifications which would give BEST Contracting Services Inc. an unfair competitive advantage compared to other potential bidders were these deviations waived; therefore the deviations are hereby not waived and based thereon the bid of BEST Contracting Services Inc. is deemed non-responsive and is rejected.
3. The minor deviation in the bid of AJF/BHM is deemed waivable and is hereby waived based on the evidence before us and it is determined that AJF/BHM is the lowest responsive responsible bidder and on that basis the contract for the Alviso Adobe Renovation Phase IV, Site Improvements, Project #5055, including three add alternatives in the total contract amount of \$2,242,774.85, is hereby awarded to AJF/BHM Joint Venture.

4. Staff is authorized to execute change orders to the Alviso Adobe Renovation Phase IV, Site Improvements, Project # 5055, provided that the change orders do not exceed the established construction contingency amount for the project.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A



CITY OF MILPITAS

OFFICE OF THE CITY ATTORNEY

TEL: (408) 586-3040 FAX: (408) 586-3056

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479

December 21, 2011

VIA Email & U.S. Mail

Rafik Ayvazi, Esq.
Law Offices of Rafik Ayvazi
15915 Ventura Blvd., Penthouse 2
Encino, CA 91436

RE: Alviso Adobe Renovation, Phase IV; Project No. 5055

Dear Mr. Ayvazi:

The City is in receipt of your letter dated December 19, 2011, to Steve Erickson, Acting CIP Manager for the City of Milpitas. Thank you for your thoughtful comments. The City does appreciate the perspective of your client, BEST Contracting Services, but must respectfully disagree with your conclusion that the bid irregularity of your client is an inconsequential deviation which should be overlooked and that, as such, the Alviso Adobe Renovation Project should be awarded to Best Contracting.

We note that the project specifications require that not more than fifty (50) percent of the work be subcontracted if, in the opinion of the City, such extensive subcontracting is undesirable. (Project Specifications, Section 6, document 00200, page 2). The 50% cap on subcontracting was again pointed out to BEST in item 6 of the Pre-Bid Conference Agenda attached to this letter. BEST's bid exceeds the 50% threshold. The City finds the 55.8% attributable to subcontractors, as set forth in your client's Subcontractor List (document 00430) submitted as part of its bid, to be undesirable because it reduces the control a bidder has over the forces doing the work and jeopardizes overall project accountability. Project accountability is an important factor to the City and, as a result, exceeding the 50% subcontractor limitation is a substantial deviation.

Additionally, were the City to waive the deviation, this would create an unfair advantage to BEST versus all other potential bidders. The other potential bidders would be disadvantaged by their reasonable assumption that they needed to comply with the 50% requirement. This has the potential of having an effect on the total bid amount or even on the decision of whether to submit a bid at all. Such a waiver would create an unlevel playing field and an unfair competitive advantage from the perspective of the other bidders, who would be justified to cry foul were the City to waive this irregularity. By itself, this irregularity is a basis for rejection of your client's bid as non-responsive.

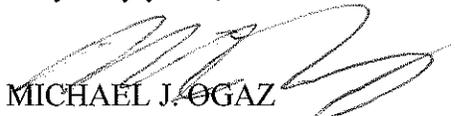
However, in addition to the aforementioned nonconformity with the bid requirements, we note your client has also failed to list the registration numbers of historic structures as required under Document 00255, Bidder Qualifications. As noted in that document, "bids from General Contractors not meeting these requirements shall be determined to be non-responsive." Therefore, solely on the basis of the failure to list the registration numbers of the listed historic structures, the bid is found to be non-responsive.

Finally, we would point out that the bid opening was on November 8, 2011, and we did not thereafter hear from BEST that they had made an error in their subcontractor percent calculation until December 7, 2011, almost a full month after the bid opening. Public Contract Code Section 4107.5 requires a claim of inadvertent clerical error in the listing of a subcontractor be made within two working days of the bid opening. Consequently, any claim of clerical error by BEST was not timely made and cannot be considered. Moreover, your client's claimed error in designating the wrong percentage of work to be performed by one of the subcontractors listed by BEST cannot be resolved from the bid itself and thus would require information from outside the bidding process. Allowing submission of such outside information after bid opening would violate the integrity of the bid process.

In your letter you request notification of when the "Board" is slated to take action on this award. The City of Milpitas is not governed by a Board, so I assume you mean the City Council. This matter is scheduled for vote on approval at the Council meeting scheduled for 7:00 pm, January 3, 2012, in the Council Chambers located at City Hall, 455 E. Calaveras Blvd., Milpitas CA, 95035.

We hope this letter addresses the concerns of your client, BEST Contracting Services. Please feel free to contact me if you have any questions.

Very truly yours,



MICHAEL J. OGAZ
City Attorney, City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
(408) 586-3040

Enclosure: Pre-Bid Conference Agenda

cc: Steve Erickson, Acting CIP Manager
Michael Boitnott, Assistant Engineer
Greg Armendariz, Public Works Director/City Engineer
Tom Williams, City Manager



Engineering Division
455 E. Calaveras Boulevard
MILPITAS, CA 95035

AGENDA

PRE-BID CONFERENCE

Alviso Adobe Renovation – Phase IV “Site Improvements”

October 25, 2011

2:00 PM

1. **INTRODUCTIONS**

Please see the sign-in sheet.

2. **PROJECT OVERVIEW**

Three Volumes of Plans (Job Copy issued by Building Department)

Four Volumes of Specifications (zero-three)

11, base bid items & 3, additive alternate items (Section 00400) **Must** spell out each bid item

Historical Significance (Section 01110)

No vibratory tools (Section 01110)

Summary of work (Section 01110)

Contractor will be responsible for pulling the City Building Permit, City to pay the fees

Closeout Procedures (Section 01770)

Plan Holders List, Plans and specs can be purchased from Prints Charles Reprographics, 1643 S Main St, Milpitas CA 95035, phone (408) 240-3330

3. **Bid Date: November 8, 2011 at 2:00 PM**

Bidders wishing to submit bids **prior to 12:00 p.m. on November 8, 2011** must contact (408) 586-3300 to arrange drop off.

4. **BIDDER QUALIFICATIONS (Section 00255)**

General Contractors bidding on the Job must have successfully completed 2 historic projects within the last 10 years. (bidder to supply form 00255 with bid)

5. **WORK HOURS (Section 00700)**

Regular work hours: 8:00 am to 5:00 pm, Monday through Friday

6. **SUBCONTRACTING**

a. General shall perform at least 50% of work (Section 00200)

b. Subcontractor list to be submitted with bid (Section 00430) bidder to supply form with bid **MUST** complete all categories

7. **INSURANCE REQUIREMENTS (Section 00822)**

\$2.0 MILLION

8. **CONSTRUCTION SCHEDULE (Section 00520 & 01320)**

Project completion: 250 Calendar Days + 20 adverse Weather days + 20 Archeological discovery days = 290 days

Project substantial completion: 240 Calendar Days + 20 adverse Weather days + 20 Archeological discovery days = 280 days

10 calendar days for project closeout

Plant establishment starts when the planting is installed and continues 120 calendar day after City Council initially accepts the project.

Adverse weather and Archeological discovery Days need to be approved by the City prior to use.

9. **SUMMARY OF WORK**

- **Reconstruction of three out buildings (Water Tower, Cutting Shed, Garage)**, typically found in Volume I
- **New restroom structure**, typically found in Volume II
- **Pest Repairs to the Adobe Porch**, typically found in Volume III
- **Site Improvements**, typically found in Volume I
- **Hazmat Abatement**, section 02010, 02202 and appendix C
 - Lead impacted soil**, shall be performed by a California Class A Hazardous Contractor
 - Structures**, shall be performed in accordance with Federal, State, and Local regulations
- **Archaeological & Native American Monitoring** (Section 02011 and appendix D)
Contractor shall provide Archaeological and Native American Monitoring thru Archeological Resource Service (bid item 10) when disturbing any soil for example when grubbing, excavation, trenching, grading, planting, etc.
Archeological Monitoring Bid Allowance (bid item 11) and Archeological discovery days will only be used for items defined in section 1.04.B & 1.04.C of Section 02011. The bid allowance will be used for the actual cost relating to 1.04.B & 1.04.C of Section 02011 plus 10% markup, any monies left in bid item 11 will be deducted from the contract, if the allowance is exceeded the City will issue a CCO.

10. **COMMUNICATION**

The following address should be used: City of Milpitas
Engineering Division
455 East Calaveras Blvd.
Milpitas, CA 95035
Attn: Michael Boitnott
(408) 586-3315, (408) 586-3305 (FAX)
mboitnott@ci.milpitas.ca.gov

11. **QUESTIONS**

Refer questions to Project Manager in writing either fax, or email. Deadline for RFIs prior to bid is 7 days prior to bid opening.

