



Claire Shawver  
Construction Project Manager  
City of Yuba City  
Public Works Department  
1201 Civic Center Blvd.  
Yuba City, CA 95993

August 11, 2020

RE: Notice of Non-Responsive Bid  
City of Yuba City, Harter Tanks Coating Project  
Contract 20-06

Dear Claire:

We are in receipt of your letter regarding Cal Sierra's bid for your City of Yuba City, Harter Tanks Coating Project Contract 20-06. I read with some astonishment that our bid was being rejected after submitting what we felt was the legitimate low-cost bid. The ultimate goal of any public works request for proposal is to secure an experienced and competent contractor that can provide a long-term quality finished project in a timely manner and at the lowest competitive price offered. By any measure, we are that company.

That being said, please accept this letter as our response to addressing your staff's concerns. I apologize in advance for the lengthy nature of my response, but as you know due to current COVID restrictions, I will not be able to present my rebuttal in person. Although somewhat redundant, I will use portions of your letter in the following in an effort to achieve completeness.

We agree that the Notice to Contractors inviting sealed bids for the project provides that:

- "No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5." Section 2.2 also requires "No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)."



Additionally, your letter states that City staff has determined your bid to be non-responsive based on the following:

1. Unregistered Subcontractor: The prime subcontractor listed in your bid, Garrett Painting & Sandblasting, was not registered with the Department of Industrial Relations at the time the bid was submitted. Among others, this violates Section 2.2 of the Special Provisions and Labor Code sections 1725.5 and 1771.1.

To speak to that determination, I would submit the following.

- There is no such thing as a prime subcontractor. A prime contractor is the primary contractor on a project. This individual or firm is wholly responsible for the entire project. A subcontractor is hired by the prime contractor or project owner to complete a specific portion of the work. The prime contractor submitting a bid for this project is Cal Sierra Construction and as such was currently registered with the DIR at the time of submittal.
- At the time the Notice to Contractors was originally published, our 2 subcontractors were both actively registered with the DIR. When our coatings subcontractor, Garrett Painting & Sandblasting, attempted to pay his registration fee he was unable to contact the DIR due to COVID restrictions through multiple attempts. When he did finally reach a customer service agent with the DIR, they assured him that while his fees were due, his registration with the DIR was still in place due to their 30 day grace period after June 30<sup>th</sup> each year, as well as a lifting of restrictions due to the COVID overlay. All of Garrett Painting & Sandblasting's information on the DIR registration page, including his proofs of insurance and CSLB licensing, were still in place and accessible on the DIR website at the time of bid submittal. Garrett Painting and Sandblasting was not "disqualified" by the DIR. The DIR has since accepted his fee payment and he is again in "active" status. Please note that the wording of the law states that the contractor or subcontractor shall be registered with the DIR. Garrett Painting & Sandblasting was registered with the DIR at the time of bid submittal.
- In accord with Labor Code section 1725.5 and section 1771.1 in particular the following excerpt from the California Labor Code:  
(c) An **inadvertent error** in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest **or grounds for considering the bid nonresponsive**, provided that any of the following apply:  
(1) **The subcontractor is registered prior to the bid opening.**



- In further accord with Section 10164 or 20103.5 of the Public Contract Code I would bring forward the following excerpt:

PUBLIC CONTRACT CODE - PCC

DIVISION 2. GENERAL PROVISIONS [1100 - 22355]

( *Division 2 enacted by Stats. 1981, Ch. 306. )*

PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178]

( *Part 3 added by Stats. 1982, Ch. 465, Sec. 11. )*

CHAPTER 1. Local Agency Public Construction Act [20100 - 20929]

( *Chapter 1 added by Stats. 1982, Ch. 465, Sec. 11. )*

ARTICLE 1. Title [20100 - 20103.7]

( *Heading of Article 1 amended by Stats. 1984, Ch. 1128, Sec. 5. )*

**20103.5.**

- In all contracts subject to this part where federal funds are involved, **no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state.** However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

According to the City of Yuba City's own notes to its publicly disclosed and audited financial statements I would point out the following quote:

"The City has received various state and federal funds for specific purposes that are subject to review an audit by the grantor agencies."

Without further research it is not known if direct funds were received earmarked for this project, but most certainly any influx of federal funds into the City's coffers affects all financial decisions going forward including work such as this project.



Your letter goes on to state that City staff has determined your bid to be additionally non-responsive based on the following:

- The Notice to Contractors attached and required a mandatory bidder's bond in the form attached to the Notice. In conjunction with this requirement, Section 2.2 requires that "All proposal forms shall be directly purchased from the City of Yuba City and shall be made on the proposal forms included in these special provisions." (Emphasis added.)

1. Insufficient Bid Bond: Section 2.7 requires a 10% bidder guarantee in either by providing cash/cash equivalent, or by submission of a conforming bid bond. A conforming bid bond was attached to the Notice to Contractors as part of the proposal forms and was required to be used by any contractor show submitted a bid bond as bidder security. However, the conforming bid bond actually submitted with the bid was marked "sample," which is an irregularity indicating the submitted document is not valid or enforceable. Additionally, a separate bid bond was also submitted that was not conforming with the proposal forms. This non-conforming bid bond altered the form of the required bid bond and removed material provision(s) required in the conforming bid bond, including those related to the recovery of attorney's fees and costs in the event of certain disputes.

In response to this determination I would submit the following:

The original Notice to Contractors was provided to the general public upon its release in digital format, I assume for ease of distribution. In accord with the provisions stated above, Cal Sierra Construction paid the required fees to purchase the proposal forms directly from the City offices and received a single hard copy of what we assumed was the same document that had been distributed digitally. I sent my bid bond request to our surety using the provided digital format via email as their offices are in San Diego. I did not realize until I was packaging our bid and having our Notary perform her services that the word "sample" was watermarked on the digital version of the bid bond docs. As there was not time to replace the wet signed and legally sealed documents, we used them in our submittal. The bonding company was not sure what to do so they included their own form as back up. We submitted both forms as legally binding documents signed by the surety's "attorney in fact", their notary and their embossed seals and Cal Sierra Construction did the same. If there was any concern, a simple phone call would confirm that the bid bond was and is in force at the time of submittal and is still in force until the project is contracted as the payment and performance bonds then supplant the need for a bid guarantee. As to the "non-conforming" bid bond, it quite literally is a second bond to back up the first in case there was any concern about the word "sample" provided in the digital copy by the City. In essence, we have provided not one but two bid bonds for this project that are legally binding and materially correct.



Finally, your letter goes on to state that City staff has determined your bid to be additionally non-responsive based on the following:

- "Bids will be required to set forth the price of the items bid upon ... and a total figure for the price plus tax." "Unit prices shall be shown on bids submitted as well as the total price for each item bid upon."
- Per section 2.6, "Proposals may be rejected if they show any alternations of form, additions not called for, conditional or alternative bids, incomplete bids, erasures, or irregularities of any kind."
- "No bid" Response to "Metals:" No total figure or price was provided in response to the item description for "Metals."

At this point I would direct you to the questions put forward during the mandatory prebid at the project site. One of the questions posed was whether a "doorsheet" could be cut into the side of the tank to facilitate access to perform the work. The verbal answer was yes and that the "doorsheet" approach to managing the work would be an option going forward for the contractors if they so desired. We assumed from that exchange that the method of cutting a door into the side of the tank was optional but provided an alternative approach.

This point was further clarified in Addendum No 1 under "Other Requests for Qualifications" item 2:

"What is included in the Bid Item 4 for "Metals"?"

The City's Response:

"This item includes all work for approved steel repairs for contractor temporary access points. Metal repairs resulting from corrosion damage to tank elements will be paid for by change order."

Cal Sierra Construction's approach to this work is to access the tank conventionally through the existing access points and will not need temporary access points. We have found that not only are there structural concerns any time a doorsheet is cut into the side of a tank, the time and effort involved in performing the work correctly does not make cost effective sense for a simple remove and recoat project. A doorsheet can be useful when more substantial structural rehabilitation is required in a tank, such as rafter repair or replacement, etc. where larger equipment is necessary within the tank. We can actually complete the project faster and with less overall cost by not cutting in a doorsheet as is evidenced by our bid. "Unit prices shall be shown on bids submitted as well as the total



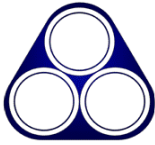
price for each item bid upon." We did not bid upon Item 4 since our quote was based on not utilizing the door sheet option, therefore there was no reason to assign a price to the item. Since we were not planning on performing this work, a submittal of "NO BID" is commonly used in quotes under these circumstances as we were not planning on performing that scope of work. The fact that no dollar figure was utilized did not change our bid in any way shape or form. Our total is what we quoted, and we have always stood by our numbers.

Included in your letter is the following excerpt and conclusionary statement:

"A bid must conform to the material terms of the bid package. (*Desilva Gates Constr. v Department of Transp.* (2015) 242 Cal. App. 4th 1409.) The responsiveness of a bid is determined solely on the face of the bid documents. (*Great W. Contractors, Inc. v Irvine Unified Sch. Dist.* (2010) 187 Cal. App. 4th 1425, 1450.) A bid that "substantially conforms" to a call for bids may, even if it is not strictly responsive, be accepted if the variance or defect in the bid proposal is minor or inconsequential. (*Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal. App. 4th 1181.) A bid may be responsive even if there is a discrepancy in the bid as long as the discrepancy is inconsequential, that is, the discrepancy must not (1) affect the amount of the bid; (2) give a bidder an advantage over others; (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. (*Ghilotti Constr. Co. v City of Richmond* (1996) 45 Cal. App. 4th 897.) Hence, technical or minor defects in a bid may be waived. The question of whether, in any given case, a bid varies substantially or only inconsequentially from the call for bids is a question of fact. These considerations must be evaluated from a practical, rather than hypothetical, standpoint with reference to the factual circumstances of the case. (*Id.* at 908.) Bidders may not make any changes to their bids due to mistake. (Pub. Contract Code § 5101(a).)"

"Taken together and separately, these irregularities constitute a substantial and consequential discrepancy from the City's call for bids because it affects the amount of the bid, gives a bidder an unfair advantage, and affects the ability to make bid comparisons."

I take great umbrage to these final statements as they are patently untrue. The conditions set forth above make it abundantly clear that they did not affect the amount of our bid in any way, our total is our total. There was no requirement to cut in a doorsheet into the tank as was made clear above. The fact that we chose what we think is a more cost-effective approach is not an unfair advantage, it is deep experience and knowledge of how to perform this type of work in the best interests of the owner. Each contractor is proposing their work based on their own methods and means. There is no effect to the ability to make bid comparisons. There are only five items in the quote. One item we do not need to perform in our approach to the work. The total remains the same no matter what.



The true bottom line is this. We are more than competent to perform this work on your behalf. After 44 years as General Engineering and Building contractor holding speciality licenses C-33, C-57, and a HAZ certificate we have performed over a thousand successful projects with total value in excess of a half a billion dollars without a single dissatisfied client or a project that did not achieve it's intended goals. We pride ourselves in treating every project as a personal effort and adopt the attitude that we treat the project as if we were the owners. We look out for the agency and incorporate value added engineering to save our client's money. If you check any of our references, you will find that our finished work is of the highest quality and the relationships that we build are formed with a long-term outlook.

As stated at the beginning of this letter, The ultimate goal of any public works request for proposal is to secure an experienced and competent contractor that can provide a long term quality finished project in a timely manner and at the lowest competitive price offered. Again, by any measure, we are that company.

We respectfully request that you exercise your discretion and waive those inconsequential discrepancies as they do not affect the offering in a bid that substantially conforms to the goal of the original request for proposals. We ask that you allow the legitimately lowest priced competent bidder in Cal Sierra Construction the opportunity to show you what we can do on your behalf. The project will be completed on time and under budget.

Thank you for your time and consideration of these matters. Your thoughtful analysis and your goal of providing the best value for your constituents is greatly appreciated.

Marco Lucich  
President, Cal Sierra Construction, Inc.