



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Loesch
Mukesh (Mookie) Patel
Jim Shannon

SUBJECT: SEE BELOW

DATE: May 28, 2024

Approved

Date

6/6/24

**SUBJECT: ACTIONS RELATED TO 10179 - SJC NEW TAXIWAY V-PHASE 2
PROJECT RE-BID**

RECOMMENDATION

- (a) Report on bids and award of a contract for the construction of 10179- SJC New Taxiway V-Phase 2 Project Re-Bid to the lowest responsive, responsible bidder, A. Teichert & Son, Inc. dba Teichert Construction, for the base bid and Bid Alternate No. 1 in an amount of \$21,483,490.
- (b) Approve a 10% contingency in the amount of \$2,148,349.
- (c) Adopt the following 2024-2025 Funding Sources Resolution and Appropriation Ordinance amendments in the Airport Capital Improvement Fund:
 - (1) Increase the estimate for Revenue from Federal Government by \$1,793,000; and
 - (2) Increase the Airfield Configuration Updates appropriation to the Airport Department by \$1,793,000.
- (d) Adopt the following 2024-2025 Appropriation Ordinance amendments in the Airport Renewal and Replacement Fund:
 - (1) Decrease the Unrestricted Ending Fund Balance by \$2,808,000; and
 - (2) Increase the Airfield Configuration Updates appropriation to the Airport Department by \$2,808,000.

SUMMARY AND OUTCOME

This memorandum summarizes the bids received and requests award of a contract for the construction of the 10179-SJC New Taxiway V Phase 2 Project Re-Bid (Project).

Award of the contract to A. Teichert & Son, Inc. dba Teichert Construction, will enable the San José Mineta International Airport's (Airport) New Taxiway Victor Phase 2 project to proceed. Approval of a 10 % contingency will provide funding for any unanticipated work necessary for the proper completion and construction of the Project.

BACKGROUND

The federal Bipartisan Infrastructure Law is a once-in-a-generation investment in America's transportation network. It will modernize infrastructure, increase equity in transportation, help fight climate change, strengthen the supply chain, and create jobs. The Bipartisan Infrastructure Law's Airport Infrastructure Grant provides \$15 billion for airport-related projects as defined under the existing Airport Improvement Program (AIP) and passenger facility charge criteria over five years from federal fiscal years 2021-2022 through 2025-2026. The funds can be invested in projects that increase airport safety and expand capacity. The program will provide reimbursement of 81% of eligible project costs to the Airport.

Airport staff periodically assembles a priority list of capital improvement projects that meet eligibility requirements for the Federal Aviation Administration's (FAA) AIP grant funding. This Project will be funded under the Bipartisan Infrastructure Law's Airport Infrastructure Grant which requires the same eligibility criteria as AIP. This priority list is submitted to the FAA for review and prioritization based on 16 general requirements for project funding, as outlined in FAA's AIP handbook. To be justified as eligible for funding, proposed projects must pass three basic criteria outlined below.

1. Demonstrate the advancement of one of the following AIP policies: airport safety, airport security, airport capacity, meeting an FAA standard, preserving airport infrastructure through reconstruction or rehabilitation, protecting, and enhancing the environment, minimizing aircraft noise impacts, and airport planning.
2. Be an actual need based off the criteria outlined above.
3. Have appropriate scope that aligns with the AIP policies listed above.

This Project fits the criteria for FAA AIP grant funding outlined above as it will enhance the safety of the existing runways by preserving airport infrastructure through reconstruction or rehabilitation. The Project will implement airfield safety and address a previous Modification of Standards issued for the west side of the airfield related to an insufficient taxiway object free area. Additionally, when complete, the program will eliminate the Airport's two published hotspots for runway incursions and address airfield geometry concerns on the west side associated with direct aircraft access from the apron to runway. A hotspot is designated because of a history of airfield incidents or is based on an airfield geometric configuration that is determined to create the potential for incidents to occur.

The Project is part of a multi-year Taxiway Victor program that replaces the former Runway 11/29, which was determined to officially close as part of the recommendations from the Airport's Runway Incursion Mitigation study completed in 2021. The program will be a full-length Aircraft Design Group III / Taxiway Design Group III taxiway constructed parallel to the existing Taxiway W. It will address direct access from apron to runway and have six taxiway connectors, connecting to a future apron-edge taxi lane and an expanded apron.

The Project includes a base bid and one bid alternate. The base bid includes installation of approximately 132,000 square feet of new pavement on Taxiway V and Taxiway V4 connector (**Attachment A** – Location Map 10179 – SJC New Taxiway V Phase 2 Project Re-Bid), associated signage and lighting, drainage improvement, and grinding or demolition of existing pavements. Bid Alternate No. 1 includes installation of approximately 193,000 square feet of new pavement on Taxiway V and Taxiway V3 connector, associated signage and lighting, drainage improvement, and grinding or demolition of existing pavements.

The Project was originally advertised on February 22, 2023, with the bids opened on March 23, 2023. The City received three bids, with a variance ranging from 1% under to 4% over the Engineer's Estimate. However, due to the unavailability of federal funding, the City was unable to award the Project at that time.

The Project was re-advertised on February 7, 2024, in alignment with the availability of FAA funding for the Project.

The Project is scheduled to begin construction in October 2024 with projected completion by October 2025.

ANALYSIS

Bids were opened on March 14, 2024, with the following results.

Contractor	Base Bid	Bid Alternate No. 1	Total Bid	Variance Amount	Over/ (Under) Percent
FBD Vanguard Construction Inc. (Livermore) (non-responsive)	\$ 11,646,136	\$ 9,248,194	\$ 20,894,330	(\$ 105,670)	(1)
Engineer's Estimate	\$ 11,967,000	\$ 9,033,000	\$ 21,000,000	----	---
A. Teichert & Son, Inc. dba Teichert Construction (Pleasanton)	\$ 11,704,124	\$ 9,779,366	\$ 21,483,490	\$ 483,490	2
Granite Construction Company (Santa Clara)	\$ 11,722,052	\$ 10,137,000	\$ 21,859,052	\$ 859,052	4

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In accordance with FAA procurement regulations, bidders were required to submit two certification forms: Federal Certification 1 (Certification of Compliance with FAA Buy American Preference) and Federal Certification 2 (Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions). The bid from FBD Vanguard Construction, Inc. was deemed non-responsive for failing to submit portions of Federal Certification 1 and the entirety of Federal Certification 2. The bid also failed to use a proposal form that was updated by the City via addendum to correct the Project name.

With regards to Federal Certification 1, the FAA-provided form language states “as a matter of bid responsiveness, the bidder must complete, sign, date, and submit this certification statement with their proposal.” In addition, also in accordance with FAA guidelines, Attachment 8 of the procurement documents states: “The City will reject as non-responsive any bid or offer that does not include a completed certification of compliance with FAA’s Buy American Preference and BABA” (Federal Certification 1).

Although the FAA does not stipulate the same language be contained in Federal Certification 2, it is the City’s practice to require all forms to be submitted at the time of bid, thereby providing a transparent process and even playing field for bidders.

On March 14, 2024, the City issued a notice of intent to award notifying FBD Vanguard Construction, Inc. that its bid was non-responsive and stating the City’s intent to award the contract to the lowest responsive, responsible bidder, A. Teichert & Son, Inc. dba Teichert Construction. On March 15, 2024, FBD Vanguard Construction, Inc submitted a written protest to the City (**Attachment B** -- Protest submitted by FBD Vanguard Construction, Inc.) requesting that the City waive the irregularities in its bid and accept the late submittal of the federal certification forms. On March 21, 2024, the Public Works Department responded to FBD Vanguard Construction, Inc. by declining its request and stating that the department would continue to recommend award to A. Teichert & Son, Inc. dba Teichert Construction (**Attachment C** - City’s response to FBD Vanguard Construction, Inc. Bid Protest).

Section 3-1.01D of the City of San José Special Provisions specifies how the City will determine the low bid when bid alternates are included. The section requires the City to determine the low bid by adding the base bid to any bid alternates until a ceiling price is reached. If, for all the bidders, the addition of the base bid to the bid alternate results in a figure greater than the ceiling, the low bid is determined by the base bid alone. In this instance, the ceiling price was set at \$21,000,000, and the low bid was therefore determined by adding the base bid to both bid alternates.

The base bid amount and Bid Alternate No.1 amount submitted by A Teichert & Son, Inc. dba Teichert Construction is 2% over the Engineer’s Estimate for the Project. Staff considers this reasonable and acceptable for the work involved in the Project.

Contractor Responsibility Analysis

A. Teichert & Son, Inc. dba Teichert Construction has completed several projects for the City in recent years, including 10164: 2022 Local Streets Resurfacing Project and 8674: Coyote Creek (Story Road to Phelan Avenue) Project. In addition, it has completed an apron reconstruction project at City of Palo Alto and apron construction at the Monterey Airport.

Contingency

San José Municipal Code Section 27.04.050 provides for a standard contingency of 10% on all public works contracts except those involving the renovation of a building or buildings. The standard 10% contingency is appropriate for this Project.

Wage Theft Prevention Policy Check

The Office of Equality Assurance reviewed bidders for compliance with the City's Wage Theft Prevention Policy on March 14, 2024, and again on April 25, 2024. No wage theft issues were identified.

Project Labor Agreement Applicability

The City's Project Labor Agreement is applicable to this Project because the Engineer's Estimate is over \$1.22 million.

Local and Small Business Analysis

The recommended contractor is not a local or a small business enterprise. In addition, no local or small business enterprises were listed as subcontractors.

EVALUATION AND FOLLOW-UP

No additional follow-up action with the City Council is expected at this time.

COST SUMMARY/IMPLICATIONS

Funding for the Project is currently included in the 2024-2025 Proposed Capital Budget and the 2025-2029 Airport Capital Improvement Program. The Project will be funded through the Airport Capital Improvement Fund (Fund 520) and the Airport Renewal and Replacement Fund (Fund 517). Federal grant funding allocated in Airport Capital Improvement Fund will be used to offset a portion of the costs of the Project. This Project has been reviewed and was determined that it will have no significant adverse impact on the Airport operating budget.

1. TOTAL COST OF PROJECT:

Project Delivery*	\$5,350,679
Construction	\$21,483,490
Contingency	\$2,148,349
TOTAL PROJECT COSTS	\$28,982,518
Prior Years' Expenditures and Encumbrances	\$2,147,518
REMAINING PROJECT COSTS	\$26,835,000

*Project delivery includes \$2,323,338 for design services and \$3,027,341 for construction management and inspection services.

2. COST ELEMENTS OF CONTRACT:

Base bid

Mobilization	\$ 1,129,500
Safety and Security	\$ 1,248,500
Excavation and Demolition	\$ 1,836,334
Concrete/Pavement items	\$ 4,980,535
Electrical	\$ 1,251,844
Drainage and Miscellaneous Items	\$ 1,257,411

Bid Alternate #1

Mobilization	\$ 900,000
Safety and Security	\$ 679,400
Excavation and Demolition	\$ 2,012,615
Concrete/Pavement Items	\$ 3,980,585
Electrical	\$ 808,029
Drainage and Miscellaneous Items	\$ 1,398,737
TOTAL AGREEMENT/CONTRACT AMOUNT	\$ 21,483,490

BUDGET REFERENCE

The table below identifies the funds and appropriations to fund the contract recommended as part of this memorandum and remaining Project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn Name	Total Appn	Rec. Budget Action	Amt. for Contract	2024-2025 Proposed Capital Budget Page*	Last Budget Action (Date, Ord. No.)*
520	R110	Revenue From Federal Government (Airfield Configuration Updates)	\$17,918,000**	\$1,793,000	N/A	502	N/A
520	401F	Airfield Configuration Updates	\$17,918,000**	\$1,793,000	\$17,313,545	510	N/A
527	8999	Ending Fund Balance	\$6,406,043	(\$2,808,000)		N/A	N/A
527	401F	Airfield Configuration Updates	\$4,316,000**	\$2,808,000	\$4,169,945	510	N/A

*The 2024-2025 Proposed Capital Budget is scheduled for City Council approval on June 11, 2024 and formal adoption on June 18, 2024.

**Amounts are inclusive of adjustments recommended in Manager's Budget Addendum #29, *Approval of Various Budget Actions for Fiscal Year 2024-2025*.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

Since the project is funded in part with a United States Department of Transportation grant, the federal Disadvantaged Business Enterprise (DBE) program regulations found in 49 CFR Part 26 will apply. The City's current DBE participation goal for AIP grant funded Airport capital projects in federal fiscal years 2023-2025 is five percent annually. The City's DBE program for AIP grant funded Airport capital projects is a race neutral program that does not include project specific DBE participation goals.

Staff performed extensive outreach to encourage DBE participation. Outreach efforts included:

- Identification of potential/ possible subcontracting opportunities – one work area identified with 284 certified DBEs in that one subcontracting work area;
- Emails sent to the 284 certified DBEs;

- Emails sent to ethnic chambers, San José Chamber of Commerce, and other interested organizations, including Minority Business Consortium - providing project information, subcontracting opportunities (North American Industry Classification System Codes and Caltrans Work Codes), bid date and time, and DBE certification requirements; and
- Posting of contracting opportunity on: Biddingo, FAA Opportunities, Airport Minority Advisory Council, National Air Transportation Association, Airports Council International – North America, and the Minority Business Development Agency.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

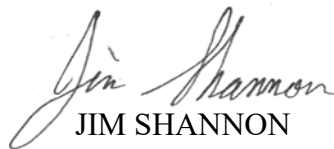
Determination of Consistency with the San José Mineta International Airport Master Plan Amendment Environmental Impact Report, File No. ER22-021, New Taxiway Victor Project at the San José Mineta International Airport.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
MATT LOESCH
Director of Public Works

/s/
MUKESH (MOOKIE) PATEL
Director of Aviation


JIM SHANNON
Budget Director

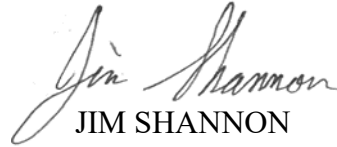
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I hereby certify that there will be available for appropriation in the Airport Capital Improvement Fund in the Fiscal Year 2024-2025 moneys in excess of those heretofore appropriated wherefrom, said excess being at least \$1,793,000.

A handwritten signature in cursive script, reading "Jim Shannon".

JIM SHANNON

Budget Director

For questions, please contact Sal Kumar, Deputy Director of Public Works, at sal.kumar@sanjoseca.gov.

ATTACHMENTS:

Attachment A – Location Map 10179 – SJC New Taxiway V Phase 2 Project Re-Bid

Attachment B – Protest submitted by FBD Vanguard Construction, Inc.

Attachment C – City's response to FBD Vanguard Construction, Inc. Bid Protest

Attachment A
Location Map 10179- SJC New Taxiway V Phase 2 Project Re-bid





550 GREENVILLE ROAD
LIVERMORE, CA 94550
(925) 245-1300 OFFICE

March 15, 2024

City of San Jose
Department of Public Works
200 East Santa Clara Street
San Jose, CA 95113

Attn: Lauren Profeit, CIP Procurement

Subject: 10179-SJC New Taxiway V – Phase 2 Project Re-Bid
Bid Date - March 14, 2024

Ref: Protest Notice of Intent

Dear Ms. Profeit,

Pursuant to Section 27, Part 6 -Bid Protest, of the San Jose Code of Ordinances, FDB Vanguard Construction (Vanguard) protests the City's Notice of Intent to award the above referenced project to A. Teichert & Son, Inc. dba Teichert Construction, the second lowest bidder on the project.

The process and goal of competitive bidding acts as a "guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent waste of public funds; and to obtain the best results for the public." *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 170-171; *see also, Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th305, 314[citing *inter alia, Domar Electr.*] "***Competitive bidding laws are passed for the benefit and protection of the taxpaying public, not for the benefit and enrichment of bidders.***" *Domar Electric*, at pp.170-171. (Emphasis added).

Vanguard's bid was \$531,172.00 less than the second bidder and it would be contrary to the purpose of competitive bidding if the City threw out Vanguard's bid in favor of the second bidder.

The City claims two minor irregularities as cause for determining Vanguard's bid is non-responsive and subject to rejection. Those are:

1. Federal certification forms missing
2. Did not use Proposal Forms as updated via Addendum No. 2

Missing Federal certification forms

Vanguard discovered a minor issue with its submitted Bid Proposal which omitted two pages of the Bid Proposal. The two missing pages (pages 26 & 27 of our total bid package submittal) were:

1. The signature page of the Federal Certification Form, Certification of Compliance with FAA Buy America Preference – Construction Projects

2. Federal Certification Form Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions.

Vanguard informed the City of San Jose immediately upon discovery and forwarded the missing pages to the City, albeit after the bid opening. Significantly, the inadvertent omission of the two pages did not provide Vanguard with any kind of unfair bid advantage. The two omitted pages do not change the bid price for either the base bid or the alternate bid. The omission was clearly the result of a clerical (scanning operation) error which should not disqualify Vanguard's bid.

Did not use Proposal Forms as updated via Addendum No. 2

The original Bid Proposal Forms consisted of 3 pages with a revision date of 1/01/24. These three pages were numbered "Page 1 of 4", "Page 2 of 4" and "Page 3 of 4". There was no page 4. Addendum No 2 Bid Proposal form also contained 3 pages and corrected this page numbering error and re-labeled the pages "Page 1 of 3", "Page 2 of 3" and "Page 3 of 3". There were absolutely no other changes to the Bid Proposal Documents, not even the revision date of 1/01/24 at the bottom of the forms. The Bid Proposal document submitted by Vanguard contained exactly the same language and information that would have been contained in the Addendum #2 Bid Proposal documents. The substance of information is the same. There is no material effect to the Bid Proposal other than the change in the page number labels.

The City Has the Power to Waive Minor Irregularities and Inconsequential Variances

Pursuant to the City of San Jose Standard Specifications Section 2-1.06, Rejection of Proposals, the City has the authority to accept Vanguard's Bid Proposal as submitted.

2-1.06 Rejection of Proposals. -The City, in its sole discretion, may reject any or all bids or proposals presented. Proposals may be rejected if (among other things) they show any alteration of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind, or a disproportionate amount of payment being made on any item of work during any phase of the project, or fail to provide a price on all bid items, including all alternates or proposals submitted which are not in strict compliance with the directions in the Notice to Contractors. **The City may, in its sole discretion, waive any informalities or minor irregularities in the bid or proposal.**(emphasis added)

Proposals not submitted in strict compliance with the directions in the Notice to Contractors may, in City's sole discretion, be deemed non-responsive and rejected on that basis.

To further emphasize the City's ability to waive inconsequential errors in the bid proposal submittal, the Project Special Provisions reiterate the City's authority.

20-09 Irregular proposals. Proposals shall be considered irregular for the following reasons:

- a. If the proposal is on a form other than that furnished by the Owner, or if the Owner's form is altered, or if any part of the proposal form is detached.
- b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind that make the proposal incomplete, indefinite, or otherwise ambiguous.
- c. If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.

- d. If the proposal contains unit prices that are obviously unbalanced.
- e. If the proposal is not accompanied by the proposal guaranty specified by the Owner.
- f. If the applicable Disadvantaged Business Enterprise information is incomplete.

The Owner reserves the right to reject any irregular proposal and **the right to waive technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.**
(emphasis added)

"A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted. [Citations.] However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted *if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders* or, in other words, if the variance is inconsequential. [Citations.]" (*Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 454 quoting 47 Ops.Cal.Atty.Gen. 129, 130-131 (1966), italics in *Konica*.)" *Valley Crest Landscaping v. City Council of Davis* (1996) 41 Cal.App.4th 1432, 1441-1442.

Vanguard's bid substantially conforms to the specifications. The omissions and errors did not give it an advantage or benefit not allowed the other bidders – if they did, the City would have heard about it. The irregularities and variances were *inconsequential* and can be waived.

Accordingly, the project should be awarded to Vanguard whose bid was \$531,172.00 less than the second bidder. Indeed, it would be contrary to the express purpose of competitive bidding if the City threw out Vanguard's bid in favor of the second bidder.

Vanguard requests that the City of San Jose exercise its right to waive minor irregularities and accept its Bid Proposal since it is in "the best interest of the City and conforms to local laws and ordinances pertaining to the letting of construction contracts."

Thank you for your consideration in this matter.

Sincerely,



Billie Sposeto, President

- Encl. Exhibit 1 - Bid Proposal Form (Original document)
 Exhibit 2 - Bid Proposal Form – Addendum #2
 Exhibit 3 - Federal Certification form, Signature page
 Federal Certification Form Certification of Offeror/Bidder

EXHIBIT 1

PROPOSAL TO CITY OF SAN JOSE FOR

Project 10179 – SJC NW TAXIWAY V-PHSE 2 PROJECT RE-BID

Name of Bidder: FBD Vanguard Construction, Inc.

Contact Information of Bidder:	<u>Dominic Sposeto</u>	<u>925-245-1300</u>	<u>dsposeto@vc-inc.net</u>
	Submitter Name	Phone Number	Email

The representations herein are made under penalty of perjury.

To: The City of San José, State of California

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans and Specifications approved by the Director of Public Works on February 1, 2024, entitled 10179 – SJC NW TAXIWAY V-PHSE 2 PROJECT RE-BID approved for advertising and opening by the Director of Public Works on February 1, 2024 on file in the office of the Director of Public Works of the City of San José in City Hall, 5th Floor, San Jose, California; that the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Director of Public Works, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the City of San José, in the form of the copy of the contract on file in the office of the Director of Public Works, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City or Director of Public Works as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all other things required of the Contractor by the contract; and will take in full payment therefor the following price or unit prices as shown in the Schedule of Quantities on the next page(s).

If this proposal shall be accepted and the undersigned shall fail to contract, and to give the Contractor's Bond For Faithful Performance and the Contractor's Payment Bond required by the specifications and contract and by law, and to provide all insurance as required by said contract, within eight (8) days after the bidder has received notice from the City of San José, the City may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of San José.

Accompanying this proposal are the following documents completely filled in by the bidder and the same are incorporated herein by reference;

1. A bidder's bond in an amount equal to no less than ten percent (10%) of the total amount bid including all alternatives or ten percent (10%) of the contract value, if applicable, as indicated in the Notice to Contractors.
2. A "Statement of Bidder's Experience".
3. A "List of Subcontractors".
4. A "Wage Theft Prevention Policy Disclosure".
5. California Air Resources Board Certificate(s) of Reported Compliance.

6. Certification of Compliance with FAA Buy American Preference – Construction Projects and/or Equipment/Building Projects; and Certification Of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions

City may at its option, request additional supplemental information after bid opening.

Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.

The undersigned, as bidder, declares under penalty of perjury as follows.

1. In accordance with Public Contract Code Section 10232, no more than one final unappealable finding on contempt of court by a federal court has been issued against the bidder within the immediately preceding two year period because of the bidder's failure to comply with an order of a federal court which orders the bidder to comply with an order of the National Labor Relations Board.
2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid
3. In accordance with Title 23, United States Code, Section 112, the bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract. Bidders are cautioned that making a false certification may subject certifier to criminal prosecution.
4. In listing subcontractors in this bid, the bidder did not discriminate or give any preference to any person or firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. The bidder understands that any such discrimination or preference violates Chapter 4.08 of the Municipal Code.
5. Before submitting its bid, (a) the bidder affirmatively checked to confirm it had all the procurement documents – including addenda, notices, requests for information and the City's response to any requests for information, (b) the bidder reviewed such procurement documents and is knowledgeable about their contents and (c) the bid is based on and incorporates all such procurement documents.
6. Before submitting its bid, the bidder affirmatively checked its wage and hour compliance history and is in compliance with the City's "Wage Theft Prevention Policy."
7. The information contained in this proposal and all accompanying documents are true and correct.
8. The undersigned is a duly authorized representative of the bidder and has authority to sign documents on its behalf.

Signing this proposal on the signature portion thereof shall constitute signature of these statements.

Executed on 3/14/24

FBD Vanguard Construction, Inc.
Legal Company Name

A California Corporation

Billie Sposeto - President Barbara Welch-CFO
Dominic Sposeto - CEO & Secretary

Indicate Type of Entity: Sole Proprietorship,
Partnership (General/Limited Partners), Corporation,
Joint Venture, etc.

By: 
Title: Billie Sposeto - President

City Business Lic. No.: TBD - Pending award of project

Expiration Date: TBD - Pending award of project

State Contractor Lic. No.: 833032

Expiration Date: 02/28/2026

Classification: A, B, C-8

DIR Registration Number: 1000008493

Expiration Date: 06/30/2025

Federal I. D. No.: 90-0249076

Address: 550 Greenville Road
Livermore, CA 94550

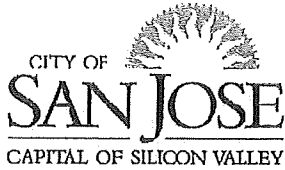
Telephone: 925-245-1300

Email: dsposeto@vc-inc.net

EXHIBIT 2

Department of Public Works

Airport Division



**ADDENDUM NO. 2
TO
PROCUREMENT DOCUMENTS
FOR THE
10179-SJC New Taxiway V-Phase 2 Project Re-bid**

Issue Date: 2/15/2024

Notice is given that the following changes are hereby made to the procurement documents for the above-referenced project.

Approved By:



Sal Kumar
Interim Deputy Director,
Department of Public Works

THIS ADDENDUM CONTAINS 8 PAGES
(Including attachments)

SPECIFICATIONS:

1. **Replace** PROPOSAL TO CITY OF SAN JOSE in its entirety with revised PROPOSAL TO CITY OF SAN JOSE attached and included in this addendum.
2. **Replace** BIDDER'S BOND in its entirety with revised BIDDER'S BOND attached and included in this addendum.

PROPOSAL TO CITY OF SAN JOSE

FOR

Project 10179 – SJC NEW TAXIWAY V-PHASE 2 PROJECT RE-BID

Name of Bidder: _____

Contact Information of Bidder: _____
Submitter Name Phone Number Email

The representations herein are made under penalty of perjury.

To: The City of San José, State of California

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans and Specifications approved by the Director of Public Works on February 1, 2024, entitled 10179 – SJC NEW TAXIWAY V-PHASE 2 PROJECT RE-BID approved for advertising and opening by the Director of Public Works on February 1, 2024, on file in the office of the Director of Public Works of the City of San José in City Hall, 5th Floor, San Jose, California; that the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Director of Public Works, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the City of San José, in the form of the copy of the contract on file in the office of the Director of Public Works, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City or Director of Public Works as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all other things required of the Contractor by the contract; and will take in full payment therefor the following price or unit prices as shown in the Schedule of Quantities on the next page(s).

If this proposal shall be accepted and the undersigned shall fail to contract, and to give the Contractor's Bond For Faithful Performance and the Contractor's Payment Bond required by the specifications and contract and by law, and to provide all insurance as required by said contract, within eight (8) days after the bidder has received notice from the City of San José, the City may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of San José.

Accompanying this proposal are the following documents completely filled in by the bidder and the same are incorporated herein by reference;

1. A bidder's bond in an amount equal to no less than ten percent (10%) of the total amount bid including all alternatives or ten percent (10%) of the contract value, if applicable, as indicated in the Notice to Contractors.
2. A "Statement of Bidder's Experience".
3. A "List of Subcontractors".
4. A "Wage Theft Prevention Policy Disclosure".
5. California Air Resources Board Certificate(s) of Reported Compliance.

6. Certification of Compliance with FAA Buy American Preference – Construction Projects and/or Equipment/Building Projects; and Certification Of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions

City may at its option, request additional supplemental information after bid opening.

Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.

The undersigned, as bidder, declares under penalty of perjury as follows.

1. In accordance with Public Contract Code Section 10232, no more than one final unappealable finding on contempt of court by a federal court has been issued against the bidder within the immediately preceding two year period because of the bidder's failure to comply with an order of a federal court which orders the bidder to comply with an order of the National Labor Relations Board.
2. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof the effectuate a collusive or sham bid
3. In accordance with Title 23, United States Code, Section 112, the bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract. Bidders are cautioned that making a false certification may subject certifier to criminal prosecution.
4. In listing subcontractors in this bid, the bidder did not discriminate or give any preference to any person or firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. The bidder understands that any such discrimination or preference violates Chapter 4.08 of the Municipal Code.
5. Before submitting its bid, (a) the bidder affirmatively checked to confirm it had all the procurement documents – including addenda, notices, requests for information and the City's response to any requests for information, (b) the bidder reviewed such procurement documents and is knowledgeable about their contents and (c) the bid is based on and incorporates all such procurement documents.
6. Before submitting its bid, the bidder affirmatively checked its wage and hour compliance history and is in compliance with the City's "Wage Theft Prevention Policy."
7. The information contained in this proposal and all accompanying documents are true and correct.
8. The undersigned is a duly authorized representative of the bidder and has authority to sign documents on its behalf.

Signing this proposal on the signature portion thereof shall constitute signature of these statements.

____ City Business Lic. No.: _____

Executed on _____

Expiration Date: _____

State Contractor Lic. No.: _____

Expiration Date: _____

Legal Company Name _____

Classification: _____

DIR Registration Number: _____

Expiration Date: _____

Indicate Type of Entity: Sole Proprietorship,
Partnership (General/Limited Partners), Corporation,
Joint Venture, etc.

Federal I. D. No.: _____

Address: _____

By: _____

Telephone: _____

Title: _____

Email: _____

EXHIBIT 3

10179 – SJC New Taxiway V-Phase 2 Project Re-bid

Required Documentation

Type 2 Waiver (Nonavailability) – The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of the sources.

Type 3 Waiver – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the "facility/project". The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver (Unreasonable Costs) Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

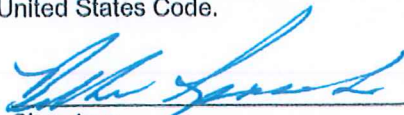
- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

3/14/24

Date
FBD Vanguard Construction, Inc.

Company Name



Signature
Billie Sposeto - President

Title

FEDERAL CERTIFICATION - 2

FEDERAL CERTIFICATION FORM CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

For purposes of this federal certification form only, "applicant" means "proposer".

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

1. The applicant represents that it is (☐) is not (☒) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
2. The applicant represents that it is (☐) is not (☒) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.



Department of Public Works

March 21, 2024

Billie Sposeto
FBD Vanguard Construction, Inc.
550 Greenville Road
Livermore, CA 94550
bpurdy@vc-inc.net

SUBJECT: PW 10179 – SJC New Taxiway V Phase 2 Re-Bid Protest

Dear Mr. Sposeto,

This letter is to inform you that City staff has evaluated your letter dated March 15, 2024, entitled “Protest Notice of Intent” and will be making the following recommendation to the City Council. Pursuant to the San Jose Municipal Code, the City Council has the authority to resolve bid protests made during this procurement.

RECOMMENDATION:

City staff will recommend upholding the intent to award the construction contract to A. Teichert & Son, Inc. dba Teichert Construction.

BACKGROUND:

On March 14, 2024, bids were opened for the PW 10179 – SJC New Taxiway V Phase 2 Re-Bid Project. Three bids were submitted:

1. FBD Vanguard Construction, Inc. (base bid: \$11,646,136.00, bid alt total: \$9,248,194.30);
2. A Teichert & Son, Inc. dba Teichert Construction (base bid: \$11,704,124.00, bid alt total: \$9,779,365.60); and
3. Granite Construction Company (base bid: \$11,722,052.03, bid alt total: \$10,001,137.46).

After reviewing the bids for responsiveness, the City determined that the bid from FBD Vanguard Construction, Inc. was non-responsive for failing to include required federal certification forms and for failing to use a Proposal form that had been updated via Addendum No. 2. On March 14, 2024, the City issued a Notice of Intent to Award the contract to A Teichert & Son, Inc. dba Teichert Construction, the bidder who submitted the lowest responsive and responsible bid.

PROTEST:

On March 15, 2024, FBD Vanguard Construction, Inc. submitted a protest requesting the City award the construction contract to FBD Vanguard Construction, Inc. The protest asserted that the City should waive as minor irregularities the deficiencies in FBD Vanguard Construction, Inc.'s bid and deem FBD Vanguard Construction's bid responsive.

ANALYSIS: FBD VANGUARD CONSTRUCTION, INC.'S PROTEST IS BASELESS

1. *FBD Vanguard Construction, Inc. was required to submit two federal certification forms at the time of bid and failed to do so.*

The City consistently holds that failing to submit a complete bid package via Biddingo by the date and time indicated in the Notice to Contractors is grounds for being considered non-responsive, as permitted by Section 2-1.06 of the City's Standard Specifications.

The Submittal Checklist for Bidders clearly indicates that bidders are required to submit two federal certification forms: FC – 1 and FC – 2. FBD Vanguard Construction, Inc's bid package contained a portion of FC – 1 and omitted FC – 2 in its entirety. As such, the bid is non-responsive.

Contrary to FBD Vanguard Construction, Inc's argument, their failure to submit a complete bid package to the City via Biddingo by the March 14, 2024, at 11:00 a.m. deadline – as instructed in the Notice to Contractors – is not cured by the forms' submittal to the City via email more than two hours later (March 14, 2024 at 1:16 p.m.).

The City is not responsible for any late or incomplete submissions, including those due to user errors or technical issues with Biddingo. According to a March 14, 2024, letter from FBD Vanguard Construction, Inc. president Billie Sposeto to the City, the failure to submit the required forms was due to an issue with the company's "scanning process," an issue the City is under no obligation to correct by treating FBD Vanguard Construction, Inc.'s failure to submit all required documents at the time of bid as a waivable minor irregularity. Doing so would be inconsistent with the City's practice and contrary to our commitment to ensuring a fair, transparent, and competitive procurement process.

2. *FBD Vanguard Construction, Inc. was required to use any revised forms that were provided by the City via addenda and failed to do so.*

Addendum No. 2, issued by the City on February 15, 2024, corrected an error in the project name on two procurement documents: the Proposal form and the Bidder's Bond. Both forms convey important obligations onto the bidder and surety and ensuring that there are no errors that could render the documents unenforceable is the reason why the City issued Addendum No. 2.

While FBD Vanguard Construction, Inc. included the updated Bidder's Bond in its bid package, it failed to include the updated Proposal form. Failure to use the Proposal form, with the correct project name, as furnished by the City is not a minor irregularity and, consistent with Section 2-

SUBJECT: PW 10179 Re-Bid Protest

Page 3

1.05 of the Special Provisions, bids that include irregular forms “may, in the City’s sole discretion, be deemed non-responsive and rejected on that basis.”

As stated above, the City Council has the authority to resolve bid protests made during this procurement. FBD Vanguard Construction, Inc. will be afforded the opportunity to formally present its case to the City Council when this item is agendaized for City Council action. Alternatively, FBD Vanguard Construction, Inc. may withdraw its protest.

Thank you,

Lauren Profeit
CIP Procurement Manager
San José City Hall, 5th Floor
200 E. Santa Clara Street
San José, CA 95112
lauren.profeit@sanjoseca.gov