

FW: Agenda Item 3.9 - June 18th City Council Meeting

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Mon 6/17/2024 12:53 PM

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 1 attachments (4 MB)

Agenda Item 3.9 - Vanguard Documents.pdf;

From: Bob Purdy [REDACTED]

Sent: Monday, June 17, 2024 12:19 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Cc: [REDACTED]

Subject: Agenda Item 3.9 - June 18th City Council Meeting

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Attached please find written documents I would like provided to the Council members for review and preparation of my 2 minutes comments on Agenda Item 3.9. Please provide confirmation of receipt of this email.

Thank you

Bob

Robert Purdy
FBD Vanguard Construction
[REDACTED]

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

SPECIFICATIONS AND CASE LAW

City of San Jose Standard Specifications

Section 2-1.06 Rejection of Proposals

- *The City may, in its sole discretion, waive any informalities or minor irregularities in the bid or proposal.*

City of San Jose – Specifications for 10179 – SJC New Taxiway V – Phase 2 Project Re-Bid

Section 20-09 – Irregular proposals

- *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.*

California State Court of Appeals Decisions

- Valley Crest Landscape Inc v City Council of the City of Davis (C020089)
- MCM Construction Inc. v. City of San Francisco (A079068, A079232)
- Ghilotti Construction Company v. Ghilotti Brothers Construction Inc (A071235)

In Valley Crest – the Court found that:

“Waiver of an irregularity in a bid should only be allowed if it would not give that bidder an unfair advantage by allowing the bidder to withdraw its bid without forfeiting its bid bond.”

“Under the statutes for relief of bidders, a bidder could be released only for typographical or arithmetic errors, not mistaken submission of a bid.”

In MCM the Court found:

“[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.”

In Ghilotti the Court found:

“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. However, if 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 a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.”

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: Dominic Sposeto
Submitter Name

925-245-1300
Phone Number

dsposeto@vc-inc.net
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 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.

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

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Contact Information of Bidder: _____
Submitter Name Phone Number Email

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____ 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: _____