

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

City Clerk <city.clerk@sanjoseca.gov>

Mon 6/17/2024 12:53 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

 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

[External Email]

You don't often get email from [REDACTED] [Learn why this is important](#)

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]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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.”

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

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

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

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: _____