

Jeff Hart

From: don act1const.com <don@act1const.com>
Sent: Friday, May 6, 2022 1:51 PM
To: Robert Vestal
Subject: Fw: Act 1 Construction - Beaumont Westside Fire Station Bid (CIP 2017-028) - Formal Bid Protest
Attachments: Kenaston Flooring \$216,529.00.pdf; Byron Epp Letter.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Mr. Vestal,

ACT 1 is in receipt of the letter drafted by AMG's attorney, however we are concerned that the city attorney has not reviewed this response in accordance with our bid protest concerns or in accordance with the bid specifications as the city advertised in the bid solicitation. In the RFB solicitation for this project, the city specified to "Please list all subcontractors that exceed \$500" (see attached screenshot.). AMG's attorney failed to address this discrepancy, and this shall not be dismissed without addressing the bid solicitation and contract documents as the verbiage in the solicitation shall supersede any general PCC as this is being specifically dictated by the City of Beaumont to follow. Furthermore, PCC (or reference documents as indicated by item #13 in the general specs of the contract documents states that the order of precedence shall be as follows (see screenshot below) but the special provisions and general conditions/NIB supersedes and shall be based upon the \$500 rule for listing subcontractors.

b. **Interpretations.** The Contract Documents are intended to be fully cooperative and to be complementary. If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

1. Change Orders or Work Change Directives
2. Addenda
3. Special Provisions (or Special Conditions)
4. Technical Specifications
5. Plans (Contract Drawings)
6. Contract
7. General Conditions
8. Instructions to Bidders
9. Notice Inviting Bids
10. Contractor's Bid Forms
11. Greenbook Standard Specifications (Sections 1-9 Excluded)
12. Standard Plans
13. Reference Documents

GENERAL SPECIFICATIONS

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With reference to the Drawings, the order of precedence shall be as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda or Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over Standard Drawings
5. Contract Drawings govern over Shop Drawings

c. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.

At this point, it's concerning that the city would accept the response from AMG without reviewing our bid protest concerns, as we presented valid arguments that directly violate the rules and procedures of a public works solicitation and the quality assurance requirements being requested by the City in the first place. AMG's attorney failed to address all the violations in their clients bid packet and only addressed underlining violations in an attempt to falsely validate their submission as responsive- despite many major violations. For example, Comment #4 response by AMG only addresses that AMG intends to self-perform the structural steel work, but as pointed out in our protest, the fabricator and installer needs to be AISC certified, which AMG is not. The city solicited in the specs under section 1.6 quality assurance that the qualified installer is to be AISC certified, is the city waiving this requirement? That presents an unfair bid advantage to AMG after the fact if all other bidders listed a qualified structural steel subcontractor only for it to no longer be required- as it would lower all bidders price for the structural steel as they wouldn't need to obtain a qualified subcontractor for this scope. In a similar instance, AMG's attorney falsely disregards the quality assurance specifications as defined in the flooring specifications as they are not a certified installer per the bid specifications so they would have needed to list a qualified subcontractor. The flooring scope of this project is also in excess of \$200k (see attached quote). Specifically, the anti-skid epoxy flooring is in excess of \$100k, not 30k as mentioned by AMG.

The "Legal Analysis" presented by AMG in their response is also irrelevant as AMG's bid is non-responsive due to major quality assurance violations, solicitation violations and PCC violations, not due to a minor technicality. In fact, it should be a concern of the City of Beaumont to compare the line items and see that AMG is missing a large portion of the scopes of work for the flooring, structural steel and furnishings, as AMG will not be able to adequately cover the costs of the missed expenses which may compromise the quality of the work that the City of Beaumont is expecting. AMG's attorney mentions that their deviations/irregularity's do not affect the amount of their bid or gives them an advantage over other bidders, but this is completely false. Other bidders and the City of Beaumont should be able to easily conclude that deviations from the specified folding doors (doors that will largely impact the response times of FD personnel leaving the stations in their firetrucks, which need to be reliable and fast in order to not delay the FD's exit- as any deviation in the response may directly impact the survival of a citizen in need) or that such deviation to a cheaper door gives AMG an advantage over other bidders. AMG argues that National Garage door will be subcontracting out this scope to a specified subcontractor, but that isn't possible when the cost of the correct doors are more than the subcontractors allocated %. Additionally, the claim that National Garage door will be subcontracting out to an approved door subcontractor is false as we reached out to Electric Power Door and they declined to bid on this project (see below) and we also have a letter from the only other approved folding apparatus door subcontractor at bid time, Byron Epp, stating that they do not partner with subcontractors, will not sublet/sub tier, or partner to allow others to install their proprietary doors (see attached letter).

From: Corey Mills <cmills@electricpowerdoor.com>
Sent: Wednesday, May 4, 2022 12:05 PM
To: don act1const.com <don@act1const.com>
Subject: West Side Fire Station

Hello Don,

I checked with the team here at EPD about the West Side Fire Station project.

It looks like EPD declined to bid on this project.

Corey Mills
Sales & Marketing
Telephone 1-800-346-5760 Extension #133
Email: cmills@electricpowerdoor.com



**ELECTRIC
POWER DOOR**
522 West 27th Street
Hibbing, MN 55746
Telephone #: 1-218-263-8366 Toll Free #: 1-800-346-5760
Fax #: 218-262-6478

"This message is intended only for addressee. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited."

Additionally, by not listing a qualified AISC structural steel subcontractor or a certified installer for the flooring scopes of work, a non-qualified subcontractor would most certainly be cheaper than a certified subcontractor as defined by the bid solicitation and they would not be able to give the correct manufacturer's warranty. Furthermore, the City of Beaumont shall review the concerns addressed in our original bid protest as AMG's attorney did not address all our points. **It is up to the city to review these concerns as AMG's bid should either be deemed as non-responsive or the**

City's bid solicitation shall be deemed in violation of PCC and should be withdrawn and put back out to bid once the issues are resolved. Such issues, which are of major importance, would be addressing whether bidders should follow the RFB verbiage to "list all subcontractors that exceed \$500" or to follow PCC in section 4100 (subcontractor listing law) which states to list subcontractors only if they are in excess of ½ of 1%. Additionally, the City of Beaumont shall address if they are waiving the quality assurance requirements for the applicable scopes after the fact, as that would give AMG an unfair bid advantage and thus result in this RFB from being withdrawn as it would violate PCC. Please advise.

City of Beaumont
Request for bid



Westside Fire Station
CIP 2017-028

DESIGNATION OF SUBCONTRACTORS CIP 2017-028 WESTSIDE FIRE STATION

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount of \$500 or more.

*** Please list all subcontractor that exceed \$500***

In closing, by circumventing the quality assurance requirements and failing to list the required subcontractors when their scope of work is above \$500 as required by the RFB, AMG is able to bid shop and bid peddle after the closing of the bids. Section 4101 of PCC states that "The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils". As indicated in our original bid protest letter, AMG did not claim any inadvertent errors in their bid submission within the allotted time and thus shall not engage in substituting or shopping out subcontractors after the bid closing. We strongly urge the city to re-look at our findings and want to sincerely express that we are not looking to cause any trouble or impede in the construction of this project, but as an experienced public works contractor we must identify unfair bid advantages and violations as they emerge during the bid process. If you have any questions, comments, or concerns please let me know.

Thank You,



Don Trenholm

Act 1 Construction

Office: 951-735-1184

Cell: 951-538-1963

Fax: 951-737-5342

CA License # 657517

Class A, B, C8, C12, C29

From: Robert Vestal <rvestal@beaumontca.gov>
Sent: Tuesday, May 3, 2022 9:24:28 AM (UTC-08:00) Pacific Time (US & Canada)
To: Edward Fransen <edf@act1const.com>; Jeff Hart <jhart@beaumontca.gov>
Cc: bids act1const.com <bids@act1const.com>
Subject: RE: Act 1 Construction - Beaumont Westside Fire Station Bid (CIP 2017-028) - Formal Bid Protest

Dear Mr. Trenholm:

Thank you for your bid protest letter of April 24, 2022 in regards to the Westside Fire Station bid process. In response to your letter, we received a letter from attorney Barbara R. Gadbois who represents AMG the low bidder a copy of which is attached. This letter satisfactorily addresses all of the concerns that you raised in your protest letter. Staff will be writing a recommendation to the City Council for the June 7, 2022 meeting based on the information provided. Thank you again for your concern.

Sincerely,
ROBERT L. VESTAL, PE
*Assistant Director of Public Works |
Assistant City Engineer*

City of Beaumont
550 E. 6th Street, Beaumont, Ca 92223
Desk (951) 769-8522 ext. 358



26062 Merit Circle, Suite 107
Laguna Hills, CA 92653
Corporate Office Phone: (877) 377-6030
Corporate Office Fax: (877) 377-6032
Website: www.byronepp.com
Federal ID#: 95-3563829
DIR#: 1000014101
LA Vendor ID Number 39288
SF Vendor ID Number 03985

Date: May 4, 2022

To whom it may concern,

Byron Epp is an independent manufacturer and certified installer for our proprietary folding dooring systems. Byron Epp does not engage in sub tiering activities with other firms, nor shall accept any other companies to install/warranty our products. In regard to the City of Beaumont Westside Fire station, we did not accept any partnership or deal with any other door companies allowing them to install our manufactured products. If you have any questions, comments, or concerns please feel free to contact me.

Sincerely,

BYRON EPP, INC.

A handwritten signature in black ink that reads "Byron Epp". The signature is written in a cursive style with a long horizontal line extending to the right.

Byron Epp
President



Kenaston Flooring
 19835 Kendall Drive
 San Bernardino, CA 92407
 License #378302/Bonded
 Phone (909)884-8788

Estimate

Date	Estimate #
4/15/2022	10558

Name / Address
Act 1 Construction

Item	Description	Total
	Job Name: Westside Fire Station	
	Job Site: 2000 Western Knolls Ave. Beaumont CA 92223	
Lump Sum Contract	Furnish and Install polished concrete with Anti Skid Finish in rooms 100, 102, 103, 104, 105, 106, 107, 119, 121, 122 and 124	49,000.00
Lump Sum Contract	Furnish and Install polished concrete with Anti Skid Epoxy Finish in 123 apparatus room	104,125.00
Lump Sum Contract	Furnish and Install carpet in 114, 115, 116 and 117	4,600.00
Lump Sum Contract	Furnish and Install Ceramic Tile on floors and walls as specified in plans	49,415.00
Lump Sum Contract	Furnish and Install rubber flooring in room 118	6,200.00
Lump Sum Contract	Furnish and Install Vinyl Base throughout polished concrete, rubber flooring and carpet areas	3,189.00
	NOTE: THIS ESTIMATE IS BASED ON PREVAILING WAGE RATE AS SET BY THE DIRECTOR OF THE DIR.DIR#1000040213	
	Lump Sum Contracts - Tax paid when purchased	0.00
Total		\$216,529.00

Customer Signature _____