



General Engineering Contractor

RE: CIP 2017-028 Westside Fire Station
SUB: Formal Bid Protest Letter
DATE: 4.24.2022

To whom it may concern,

Regardless of the circumstances, our last intentions are to cause any inconveniences to which inhibits the construction of this project or to cause any hardships for the City of Beaumont. In our past experiences bidding, we have had our bid determined non-responsive in an exact case such as this one, as we feel it is proper protocol to bring this to your attention. I just wanted to follow up with the below information, which should help you properly qualify the submitted apparent low bidders (Dalke & AMG) in deeming them responsive or nonresponsive. Act 1 Construction is submitting this letter as a formal Letter of Protest to the above-mentioned Public Works Project. After careful review of bids, bid documents, and public contract code below are the listed reasons Act 1 feels this formal protest is in order.

To this date, The City of Beaumont has not released to the public if any bidders have declared an inadvertent clerical error following the guidelines as defined by PCC 4107.5 within the time allocated (2 working days), thus the deficiencies below shall not be dismissed via a "clerical error" once identified. The following deficiencies in the apparent low bidder, as explained below, shall be deemed incurable and result in the non-responsiveness of both Dalke's and AMG's submission:

1. At bid time, Dalke & Sons failed to list unit prices and total costs for 47 of 65 line items on the required bid form, or more than 72% of the project line items. Additionally, Dalke chose not to list the percentage (%) of work for multiple and substantial scopes of work including, but not limited to, grading, asphalt, concrete, landscape, painting, masonry and specialties like the fuel tank and water proofing. Even critical line items like structural steel were left blank. These two fundamental requirement deficiencies of the City mandated bid forms, should automatically deem Dalke's bid submission as constituting an unfair bid advantage which shall be incurable and should deem Dalke's bid submission as Non-Responsive.
2. At bid time, AMG failed to list an approved installer for the Manufacturer's as specified in the Special Provisions- Folding Doors 083513-4 subsection 2.1 "Acceptable Manufacturer", as they did not list Electric Power Door or Byron Epp, Inc. By listing "National Garage Door" at bid time, AMG gained an unfair bid advantage by listing a cheaper electric four-fold door subcontractor which deviates from the guidelines set forth in the special provisions. To our knowledge and after consulting with Byron Epp, Inc. the door specifications for this scope are very unique and "National Garage Door" will not be able to supply the specified doors per the bid documents, which not only is cause for concern for the finish product for the end users, but also is against the bid specifications as it clearly defines in Section 1.5 (083513-3) that, "Substitutions will not be considered unless they conform exactly with following salient features", which National Garage Door will not be able to meet. This deficiency and unfair bid advantage shall be incurable and should deem AMG's bid submission as Non-Responsive.
3. At bid time, AMG failed to list a qualified flooring subcontractor. Per the architectural finish schedule and per the special provisions, this project has specialty concrete floor finishes and Spec Section 033600-2 takes this into consideration under section 1.4 Quality Assurance Note A & B - which states:
 - A. *Installer Qualifications:*
 1. *Use an experienced installer and adequate number of skilled workmen who are thoroughly trained and experienced in the necessary craft.*
 2. *The special concrete finish manufacturer shall certify applicator.*
 3. *Applicator shall be familiar with the specified requirements and the methods needed for proper performance of work of this section.*
 - B. *Manufacturer's Certification:*
 1. *Provide letter of certification from concrete finish manufacturer stating that installer is certified applicator of special concrete finishes, and is familiar with proper procedures and installation requirements required by the manufacturer.*To our knowledge, AMG is not a certified installer for Advanced Floor Products, Inc. and will be unable to perform this scope of work with it's own forces. In the NIB page 22, it specifies that per the Subletting and Subcontracting Fair Practices Act of the

444 Sixth Street
Norco, CA 92860
(951) 735-1184 phone
(951) 737-5342 fax
www.act1const.com

Public Contract Code of the State of California that each subcontractor who will perform work or labor or render service to the Contractor in an amount of \$500 or more shall be listed. AMG failed to list a qualified flooring subcontractor/certified installer for this scope of work (which is an excess of \$50,000.00) and this deficiency shall be incurable and should deem AMG's bid submission as Non-Responsive.

4. At bid time, AMG failed to list a licensed surveyor for this project and Per California Public Works contract code 1720, any subcontractor doing "construction" on a project shall be listed as a subcontractor and shall possess a valid DIR number. For purposes of this paragraph, "construction" includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post construction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems. Additionally, as explained in note #2 above, this project required any subcontractor who renders service to be listed for any scope over \$500, which this scope is in excess of this amount. Also, Special Provision section 017300-1 subsection 1.3- Quality Assurance states, "*Land Surveyor Qualifications: A professional land surveyor who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing land-surveying services of the kind indicated.*", which AMG failed to list a licensed land surveyor for this project and this deficiency shall be incurable and should deem AMG's bid submission as Non-Responsive.
5. At bid time, AMG failed to list a qualified structural steel subcontractor as outlined in Section 051200-2 subsection 1.6- Quality Assurance which states, "*A. Fabricator Qualifications: A qualified fabricator that participates in the AISC Quality Certification Program and is designated an AISC-Certified Plant, Category STD. B. Installer Qualifications: A qualified installer who participates in the AISC Quality Certification Program and is designated an AISC-Certified Erector, Category CSE.*". To our knowledge AMG meets neither of these quality assurance requirements and will be unable to perform the extensive structural steel scope of this project with it's own forces. This scope of work is not the sheet metal portion (Line item #26- wall flashings, gutters, downspouts, etc.. which AMG listed American Sheet Metal Specialties for) but is defined by line item #27- Structural steel per the bid documents which, includes the structural steel for the exterior trellis that runs down the length of the main building per plan. This deficiency shall be incurable and should deem AMG's bid submission as Non-Responsive, as they failed to abide by the PCC Subletting and Subcontracting Fair Practices Act and will need to employ the services of a qualified installer, which they did not list at bid time.
6. At bid time, AMG incorrectly listed Plymovement as the qualifying subcontractor for the Vehicle Exhaust Removal System. Plymovement is strictly a manufacturer and is not licensed to do work or install per the CSLB or PCC, nor meets the DIR requirements to be listed. PCC section 4107 specifies that a prime contractor bid may not be accepted "when the listed subcontractor is not licensed pursuant to the Contractors License Law" via section 6. Plymovement is not licensed pursuant to CSLB, PCC or the DIR but rather employs subcontractors or certified installers to install it's system as specified. AMG did however list Elite Aire, which we have their quote, which includes both the building HVAC and the Vehicle Exhaust Removal System scope. Per Public Contract Code section 4106 states, "If a prime contractor fails to specify a subcontractor or if a prime contractor **specifies more than one subcontractor for the same portion of work** to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and **that the prime contractor shall perform that portion himself or herself.**". If AMG indeed intend to list both Elite Aire and Plymovement (even though they are not licensed to perform the work on-site), then they indeed specified more than one subcontractor for the same portion of work and must perform these scopes by their own forces, which they are not capable of doing so with their own forces. This deficiency shall be incurable and should deem AMG's bid submission as Non-Responsive.
7. At bid time, AMG listed K&J Plastering Inc (CSLB #1021758), but this subcontractor has a suspended license. Pursuant to PCC section 4107 which specifies that a prime contractor bid may not be accepted "when the listed subcontractor is not licensed pursuant to the Contractors License Law" via section 6. K&J Plastering is not licensed according to PCC and by having a suspended license at bid time not only violates PCC, but also gives AMG an unfair bid advantage to disqualify this subcontractor and seek a licensed subcontractor after bid time at a different monetary value, which is an example of bid peddling/shopping. This deficiency shall be incurable and should deem AMG's bid submission as Non-Responsive.

Based on the above findings Act 1 Construction asserts both Dalke and AMG should be deemed non-responsive, therefore making Act 1 Construction the lowest responsible Bidder. We are competitive in our field and we pride ourselves in putting together complete and thorough bids in order to ensure efficient project operations. As an experienced Public Works general contractor, we also feel a responsibility to ensure equal competition on bidding public works projects and emphasize that we are not looking to cause any inconvenience to the City in any manner, however Act 1 spends a lot of time and money to ensure our bids are thorough and complete and adhere to bid documents as well as public contract codes and equal care must be taken by all to ensure fair and equal bid opportunities.

Sincerely,
Don Trenholm
President

 (4.24.22)

444 Sixth Street
Norco, CA 92860
(951) 735-1184 phone
(951) 737-5342 fax
www.act1const.com