



office memorandum

DATE: March 22, 2022
TO: Nathan Madenwald, PE – Utilities Engineer
FROM: Kenneth J. Giannone, PE – Capital Projects Engineer *AB*
SUBJECT: Norman Municipal Authority
SA0021 – Sanitation Office Building
TCS Construction LLC – Evaluation of Bid

BID RESULTS

Bids for this project were opened on March 3, 2022, at 2:00 PM. The Bids consisted of a Base Bid amount and a single add alternate for an acoustic ceiling fixture. Since the Architect, The McKinney Partnership (TMP), recommends acceptance of the Add Alternate and since acceptance of the Add Alternate does not impact the low bidder or the order of any of the bidders, the Combined Bid (Base Bid Amount + Add Alternate = Combined Bid) will be used as the basis for this evaluation. Five contractors submitted bids on the project as shown in the following table:

Bidder	Base Bid Amount	Add Alternate	Combined Bid
TCS Construction LLC	\$2,631,390.00	\$21,300.00	\$2,652,690.00
Crossland Construction Company	\$2,763,000.00	\$19,000.00	\$2,782,000.00
Landmark Construction Group	\$2,774,200.00	\$17,000.00	\$2,791,200.00
W L McNatt General Contractor	\$2,831,300.00	\$21,000.00	\$2,852,300.00
Downey Contracting LLC	\$2,998,007.00	\$25,000.00	\$3,023,007.00

The Bids were competitive with only 5% separating the three (3) lowest Combined Bids, and less than 14% separating all five (5) Combined Bids. TCS Contracting LLC (TCS) was the low bidder with a Combined Bid of \$2,652,690.00.

CONTRACT REQUIREMENTS FOR BIDDER QUALIFICATIONS

For this project, requirements for Bidder’s qualifications were specified within the Special Provisions. The following is the excerpt from the Bidding Documents:

1.4 QUALIFICATIONS: In determining the Lowest and Best Responsible Bid, the following elements will be considered:

- A) The BIDDER maintains a permanent place of business;
- B) The BIDDER has adequate equipment to do the work properly and expeditiously;
- C) The BIDDER has suitable financial status to meet obligations incident to the work; and
- D) The BIDDER has appropriate, relevant, and recent technical experience.

For meet the technical experience requirements, the BIDDER shall have a minimum of five (5) years of experience as a General Contractor in office building construction and must have successfully completed, and must provide references for, at least five (5) projects of similar scope, with at least one contract greater than \$3,000,000, within the last 5 years.

Of particular concern for TCS as the low Bidder are the qualifications covered by Special Provisions Section 1.4.C) and 1.4.D) above.

BIDDER FINANCIAL STATUS/BONDS

As per Section 1.4.C), one of the elements to be considered in determining the Lowest and Best Repponsible Bid is whether “the Bidder has suitable financial status to meet obligations incident to the Work.” Typically, the financial status of any business entity is determined via an audit performed by Certified Public Accountants or other specially qualified and trained experts. However, it is neither technically nor financially feasible for a municipal entity like the City Norman to audit the financial condition of each Bidder on every City project for which Bids are solicited. Instead, the City affirms the Bidder’s financial status via his Surety. The Surety, who must provide the Bidder’s Bid Bond, and, in the case of the Lowest and Best Bidder who is awarded the Contract, the Performance, Statutory and Maintenance Bonds, therefore has a vested financial interest in the project and in the Bidder’s ability to complete the project. As a result, a Surety must regularly audit and continuously monitor the financial status of Contractors for which it provides bonds, and, consequently, their willingness to furnish bonds for a Bidder on a project without qualification is a reasonable proxy for a Bidder’s “financial status”.

For this project, Norman Municipal Authority’s (NMA’s) Bidding Documents include a form entitled “QUALIFICATION STATEMENT OF BIDDER’S SURETY”, which requires Bidder’s Surety to answer seven (7) questions related to the sufficiency of the surety related to the statutory bond requirements addressed in Oklahoma Statutes Title 61, Sections 1 and 113 and to the Surety’s opinion of the financial capability of the bidder to cover these bonds and the contract in question.

The relevant statutes set out that assurances regarding bond coverage, or assurance of surety required by contractors for construction projects exceeding \$100,000 must be irrevocable.

TCS’s Surety is Harco National Insurance Company (Harco). Harco answered the first six (6) questions regarding the firm affirmatively and in accordance with Contract Documents. However, the following is the Surety’s answer to Question No. 7:

7. Provided this bidder does not assume the commitments or that you do not acquire further information that in your opinion will materially affect the bidder's capacity to perform this contract, will you furnish the bonds as specified? If bid bonds are approved/provided, the surety fully expects to provide P&P bonds if TCS is low and awarded

REMARKS: Surety reserves the right to review terms and conditions of any proposals, contract documents, bond forms, financial arrangements and all other underwriting considerations. If for any reason, the surety does not issue bonds on a project(s), no third party liability is assumed by the surety company.

61 O.S. §1 sets out that bidders shall:

.... 1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or

2. Cause an irrevocable letter of credit, containing terms the Office of Management and Enterprise Services prescribes, to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.

While 61 O.S. §113 sets out:

...1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Office of Management and Enterprise Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project...

.... C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section...

In other words, anything less than an irrevocable assurance that the required bonds, or letter of credit or cash payment of the amount required causes this portion of the bid to not be met. As such, TCS Surety has failed to meet these requirements of the Bid.

However, 61 O.S. §113 (C) does allow the contractor to request up to sixty (60) days additional days in which to obtain the required bond(s), which the City can agree to allow. Therefore, not meeting this section of the bid requirements might not be the sole reason the City/Authority determines that a bidder is not the responsible choice for the project. However, it does raise questions about TCS’s current financial condition and near term capabilities and points toward places to look closer for additional information on TCS’s current financial capabilities.

Per the “QUALIFICATION STATEMENT OF BIDDER’S SURETY” included with TCS’s Bid, TCS has an aggregate Bonding Capacity of \$8,000,000. In addition, below is their list of TCS’s “Projects in Progress” that was submitted as an attachment to TCS’s Bid:



PROJECTS IN PROGRESS

Project	Owner	Architect	Contract Amount	% Complete	Completion	Contact
Spring Creek West	Sooner Investments	Goppold Architects	\$ 2,900,000	5%	Oct-22	Keith Paris
Fire Station 25 Bay Door Replacement	Oklahoma City	KFC Engineering	\$ 98,000	5%	12/1/2021	Chad Harrison
OKC Fire Dorm Renovation	Oklahoma City	Small Architects	\$ 278,000	5%	12/31/2021	Greg Little
Home Goods Yukon	Sooner Investments	Goppold Architects	\$ 2,600,000	20%	2022	Keith Paris
Kiamichi Tech - Poteau Campus	Kiamichi Technology Center	Michael Allen Riley	\$ 773,000	95%	2021	Michael Allen Riley
Kiamichi Tech - Talihina Campus	Kiamichi Technology Center	Michael Allen Riley	\$ 315,600	98%	10/31/2021	Michael Allen Riley
Pushmataha Family Medical Center	Pushmataha Family Medical Center	Michael Allen Riley	\$ 948,000	95%	2022	Michael Allen Riley
OKC Fire Admin Renovation	Oklahoma City	Guernsey	\$ 715,000	70%	2021	Chad Harrison
MoBettah & Swig Czech Hall	Sooner Investments	Goppold Architects	\$ 985,000	95%	2021	Keith Paris
Will Rogers Elementary	McAlester Public Schools	AIP	\$ 4,100,000	90%	4/1/2022	KC Buck
MoBettah MWC	Sooner Investments	Hornbeek Blatt	\$ 520,000	90%	7/1/2021	Keith Paris

Since this list gives both the contract amount and the percent complete, it should be a simple calculation to determine that amount of incomplete construction work TCS currently has under contract and determine how close they are to their current aggregate bonding capacity. The table below, entitled “SA0021 Sanitation Office Building, TCS Construction – Value of Incomplete Work Under Contract” takes the percent complete of each project and uses it to determine the percent remaining (100% - Percent Complete = Percent Remaining) and then multiplies the percent remaining times the contract value to determine Contract Value Remaining (Contract Value multiplied by Percent Remaining = Contract Value Remaining). When the Contract Value Remaining for each project is summed, we find that TCS has a total of \$6,010,312.00 worth of Contract Value Remaining. This is slightly more than 75% of their total aggregate bonding capacity, which is high but not excessive.

However, this analysis does not consider the impact of the Sanitation Office Building on this amount if the project were to be awarded to TCS. TCS’s low combined bid for this project is \$2,652,690.00. $\$6,010,312.00 + \$2,652,690.00 = \$8,663,002.00$. Since TCS’s aggregate bonding limit is \$8,000,000.00, immediate award of the Sanitation Office

Building to them would put them **OVER** their aggregate bonding limit. This is all detailed below in the table below:

**SA-0021 Sanitation Office Building
TCS Construction - Value of Incomplete Work Under Contract**

Project	Contract Value	Percent Complete	Contract Value Remaining
Spring Creek West	\$2,900,000.00	5.0%	\$2,755,000.00
First Station 25 Bay Door Replacement	\$98,000.00	5.0%	\$93,100.00
OKC Fire Dorm Renovation	\$278,000.00	5.0%	\$264,100.00
Home Goods Yukon	\$2,600,000.00	20.0%	\$2,080,000.00
Kiamichi Tech - Poteau Campus	\$773,000.00	95.0%	\$38,650.00
Kiamichi Tech - Talihina Campus	\$315,600.00	98.0%	\$6,312.00
Pushmataha Family Medical Center	\$948,000.00	95.0%	\$47,400.00
OKC Fire Admin Renovation	\$715,000.00	70.0%	\$214,500.00
MoBettah & Swig - Czech Hall	\$985,000.00	95.0%	\$49,250.00
Will Rogers Elementary School	\$4,100,000.00	90.0%	\$410,000.00
MoBettah MWC	\$520,000.00	90.0%	\$52,000.00
Total Uncompleted Work Under Contract =			\$6,010,312.00
Combined Bid for NUA Sanitation Office Building =			\$2,652,690.00
Total Uncompleted Work TCS Would Have Under Contract if Awarded Sanitation Office Building on 3/22/2022 =			\$8,663,002.00
Aggregate Bonding Capacity per Qualifications of Surety =			\$8,000,000.00

Therefore Total Uncompleted Work Under Contract > Aggregate Bonding Capacity

Per the table above, as of the date of bid opening, the incomplete portion of TCS’s existing project load combined with the proposed contract value of this project has a value of \$8,663,002.00. At the same time, TCS’s aggregate bonding capacity is \$8,000,000.00. In other words, if awarded this project, it would put them beyond their bonding capacity. Presumably this fact is part of the, if not the only, reason TCS’s Surety included a qualifying statement in their “QUALIFICATION STATEMENT OF BIDDER’S SURETY”

To summarize, NMA’s Bidding Documents and state law requires that Bidder’s Surety furnish bonds on projects their Bidders bid without qualification. On this project, TCS’s Surety has included qualifications that potentially set conditions on their willingness and ability to furnish bonds on this project. An analysis of TCS’s current workload reveals at least part of the reason their Surety is not certain they can bond the project: If awarded this project, it would put TCS beyond their aggregate bonding limits.

It should be noted that, regulation also allows NUA to give Bidder up to 60 days to furnish required bonds. In this case, 60 days may be sufficient for TCS to complete \$663,002.00 worth of work on their other projects, which, even when coupled with the cost of the Sanitation Office Building, would just barely bring them back to within the limits of their bond rating. However, even if TCS can complete sufficient work to get within their aggregate bonding capacity and even if TCS can convince their Surety that any other issues with their financial condition are not serious enough to merit withholding bonds from this project, the fact remains that TCS is currently at or very near the limits of their financial capabilities. Their bonds would protect the City of Norman in case TCS were unable to complete the project, but completing projects under the auspices of the bonding company after general contractor is unable to finish, while exponentially better than the alternative, is hardly ideal. The numerous milestones and deadlines and legal filings a bondholder must adhere to in order to declare a contractor in breach and to enlist the bonding company's assistance on a project, ensures that that, at minimum, any such project will incur substantial additional legal expenses as well as experience extensive additional delays (usually a year or more over and above any delays already incurred).

BIDDER TECHNICAL EXPERIENCE

As noted above, Special Provisions, Section 1.4.D) of the Bidding Documents covers requirements for Bidder's technical experience. It states:

D) The BIDDER has appropriate, relevant, and recent technical experience.

For meet the technical experience requirements, the BIDDER shall have a minimum of five (5) years of experience as a General Contractor in office building construction and must have successfully completed, and must provide references for, at least five (5) projects of similar scope, with at least one contract greater than \$3,000,000, within the last 5 years.

If you break the above down, there are three discrete requirements that must be met to meet the technical experience requirements:

1. "a minimum of five (5) years experience as a General Contractor in Office Building construction..."
2. "must have successfully completed, and must provide references for, at least five (5) projects of similar scope... within the last 5 years."
3. "must have successfully completed, and must provide references for... at least one project greater than \$3,000,000... within the last 5 years."

With regard to Item No. 1, TCS stated on their "Qualification Statement of Bidders" form that they had been in the business of office building construction for 6 years, and below

is their list of Recently Completed Projects, submitted as an attachment to their Qualification Statement:

RECENTLY COMPLETED PROJECTS



Project	Location	Owner	Architect	Contract Amount	Completion
Chandler Federal Credit Union	Chandler	Chandler Federal Credit Union	Hornbeek-Blatt Architects	\$ 1,160,000.00	2/28/2022
Variety Care Sequoyah	OKC	Variety Care Inc.	Hornbeek-Blatt Architects	\$ 670,000.00	8/1/2021
Czech Hall Retail Development	OKC	CHM Dev LLC	GC Architects	\$ 985,765.00	8/22/2022
OKC Fire Administration	Edmond	City of OKC	Geurnsey Architects	\$ 715,150.00	2/28/2022
University Town Center Development	Norman	University Town Center LLC	GC Architects	\$ 1,069,000.00	1/30/2022
Five Below	Midwest City	Five Below	Sargenti	\$ 918,670.00	

As per Special Provisions, Bidder is required to have 5 years experience in office building construction. On their “Qualification Statement of Bidders” form, TCS claimed 6 years experience. However, their list of “Recently Completed Projects” includes only five (5) projects with completion dates. Those completion dates range between 8/1/2021 and 8/22/2022. They don’t furnish construction start dates, nor do they furnish contact information key personnel on any of the projects so they could be verified. Absent such information, it is reasonable to assume that, even in the extreme case, these projects wouldn’t take more than two years to complete. Therefore, these projects only provide proof of approximately 2.5 years of experience. TCS has furnished no other proof of office building construction experience, and we, therefore, are unable to verify the required 5 years of office building construction experience.

Also, as per Special Provisions, Bidder is required to have successfully completed at least 5 projects of similar scope in the past five years. The term “projects of similar scope” is admittedly vague, and it is therefore our opinion that we must be fairly liberal in judging what constitutes a project of similar scope. This project consists of a 6,300 SF office building with meeting space, group employee areas, locker rooms, and a tornado shelter on a brownfield site including all sitework. A similar project need not be exactly the same size as this one, but it should include both a new office building of reasonable size and include all sitework on a greenfield or brownfield site. In order for a project to meet these basic requirements, NMA believes that a fair and reasonable cut-off is \$1,000,000.00. While this is substantially less than the Sanitation Office Building bid prices, it is believed that a project meeting this cut-off would include many of the same challenges and thus could be considered having “similar scope” in the context of the Contract Requirement.

In TCS’s case, only two of their completed projects exceeded this liberal cut-off of \$1,000,000.00. Another one is just below \$1,000,000.00 at \$985,765.00. Even if all three projects are counted, that means TCS is two projects short of the five (5) projects required. It should also again be noted that although references are explicitly required by the bidding documents, TCS did not furnish any so none of these projects could be verified.

Finally, as per the Special Provisions, Bidder “must have successfully completed one project of \$3,000,000.00.” As noted above, TCS’s list of “Recently Completed Projects” includes no projects greater in size than \$1,160,000.00, which is far less than the \$3,000,000.00 project required. Moreover, absent the required reference information, even this much-too-small project could not be verified.

REFERENCES

As noted above, while the Bidding Documents require Bidders to “provide references” to verify project experience, TCS merely furnished lists of recently completed projects and projects in progress with limited project information and no contact information whatsoever. As a result, references, could not be verified.

RECOMMENDATION

City of Norman Ordinance 8-205 (e) requires that acceptance will be made to the bid most advantageous to the City, considering price, quality, date of delivery, and other pertinent factors. Moreover, if an award is made to other than the lowest bidder, the awarding public agency must accompany its action with a publicized statement setting forth the reason for its action. Such statement shall be placed on file, open to public inspection and be a matter of public record (Per 61 O.S. §117). Therefore, all the factors considered that led the lowest bidder to not be the most advantageous one for the City need to be listed on a memo to be included with the bid award agenda item so it is part of the public record regarding the bid award. This memorandum shall serve as the “memo to be included with the bid award agenda item”

The Project Requirements included within this particular project were developed to ensure that the contract was awarded to a contractor who has both regularly completed these types of projects and has the financial wherewithal to complete this project. This practice has been commonly employed by the City of Norman and other municipalities.

Pursuant to the information provided by TCS as detailed in this memorandum: (1) even though NUA attempted to interpret the Bidding Documents as fairly as possible in TCS’s favor, TCS still cannot meet the experience requirements set forth in the Documents; and (2) based on analysis of TCS’s existing project load and TCS’s Surety’s unwillingness to furnish an unqualified guarantee regarding its ability to furnish bonds for the project, TCS is apparently at or are very near their maximum financial and resource capacity and therefore are NOT well-positioned to take on additional work, particularly a large, relatively-complex project like the New Sanitation Office Building. Therefore, although TCS was the low bidder, they were NOT the lowest responsible bidder as outlined in the requirements of the State of Oklahoma Competitive Bidding Act. **Consequently, the award of contract to Crossland Construction Company Inc. as the lowest responsible bidder is warranted.**