



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

November 23, 2016

Ms. Selina Singh, President
Federal Solutions Group
2440 Camino Ramon, Suite 343
San Ramon, CA 94583

Subject: Bid for Crisis Residential Treatment Center, Contract No. 16-S-05

Dear Ms. Singh:

We regret to inform you that the bid your firm submitted for the above mentioned project has been deemed non-responsive by the Department of Public Works and Planning due to various discrepancies between the words and figures on the proposal sheet, specifically: line 1 (Base Bid), line 3 (Additive Bid 2), and line 5 (Additive Bid 4).

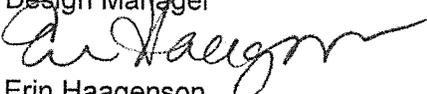
As is expressly stated in the bid documents, "[i]n case of a discrepancy between words and figures, the words shall prevail." However, application of this interpretative directive cannot resolve the various discrepancies in your firm's bid between the amounts listed in words and figures for several bid items. This is because there also is a discrepancy between the bid amounts stated in words on various lines of your firm's bid. The sum total of the amounts set forth in words on lines 1 to 5 would equal a bid of \$4,133,435, which is \$344,765 less than the "Total Bid" amount written on line 6.

Therefore, the Department will recommend to the Board of Supervisors on January 10, 2016 at 9:00 am that the contract be awarded to the lowest responsive bidder, Zumwalt Construction. The Agenda Item to recommend the project award will be publicly available a few days prior to the Board meeting. Your firm may attend this meeting and pull the item from the consent agenda to address the Department's recommendation with the Board. In addition, you may wish to respond to this letter and provide any information you would like to be shared with the Board prior to the meeting.

If you have any questions, please contact me at 559-600-4528 or ehaagenson@co.fresno.ca.us.

Sincerely,

Mohammad Alimi, PhD, P.E.
Design Manager


Erin Haagenson
Senior Staff Analyst



December 2, 2016

RE: Crisis Residential Treatment Facility Subcontractor Listing

Ms. Haagenson,

Please accept this as a formal response to your concern regarding the inadvertent listing of two concrete subcontractors on the bid day documentation for Contract 16-S-05. Bid day for a General Contractor is a fast pace and time sensitive circumstance where the contractor constantly receives quotes up until a minute before the bid submittal deadline. Zumwalt Construction, Inc. (ZCI), listed JMA Concrete for building and a different subcontractor for site concrete early in the listing process.

As we continued to fill out the appropriate information for the remaining subcontractors we received a lower quote for the complete concrete package from Maurin Construction with only minutes to spare before the closing time for our bid. In the haste of completing the bidders listing process, our bid runner overlooked the JMA Concrete listing and therefore did not cross out their information as was done for the other concrete contractor listed below JMA. This was a simple, inadvertent clerical error, which was corrected on the required updated listing information allowed per lines 13-14 on 004336-1. One can also reference the subcontractor listing on lines 16-20 of the bid day documentation 004336-3 which were crossed out to update to the subcontractor on lines 6-10 on 004336-5 on the bid day documentation.

We hope that this can help bring this matter to a close and we are available to you should you require additional supporting information. Feel free to reach out if you have further questions.

Sincerely,

A handwritten signature in black ink, enclosed within a hand-drawn oval border. The signature is cursive and appears to read 'Eddie Murillo'.

Eddie Murillo
Estimator

Cc: JMA Concrete
Maurin Construction



General Engineering & Building Contractor

December 5, 2016

County of Fresno
Erin Haagenson

Reference: Crisis Residential Treatment Facility
Subject: Question of Zumwalt Construction Bid

Ms. Haagenson,

After review of all past communications between our office and yours concerning the subject project, we felt compelled to respond with this letter. We believe there is legitimate reason on our part to question the validity of the bid submitted by Zumwalt Construction.

After reviewing the copy of the handwritten subcontractor list submitted by Zumwalt, we discovered that they listed (2) subcontractors for concrete work. JMA Construction on page 1 of the list and Maurin Construction on page 4. California Public Contract Code section 4104, 2(b) states:

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

By listing (2) concrete subcontractors for this work, they have violated the contract code in submission of their bid package and thus are non-responsive. The code does give provision for clerical error corrections. We believe this is a clerical error, but rather than exercise that option, Zumwalt chose to submit their formal list with only Maurin Construction listed, appearing to correct their error in the most discreet manner possible. We also received bids from both JMA Construction and Maurin Construction, and neither of the firms anticipated sharing the work involved for their trade with another subcontractor.



General Engineering & Building Contractor

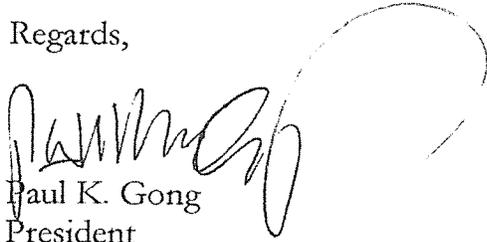
In addition, we see that Zumwalt did not list a subcontractor for the Accordion Door installation. From our conversations with the specified manufacturer, the option for the prime to contractor to install the doors with their own forces was not available. The doors had to be installed by an authorized subcontractor, and the value of their work exceeded the requirement to list subs outlined in the Public Contract Code, section 4104, (a). We believe this to be another clerical error that should be questioned.

Finally, this is a matter of clarification, Zumwalt did not list a subcontractor for rough carpentry/framing, is it the intent that Zumwalt will self perform all rough carpentry/framing?

This letter is not intended to slander to shame the good name of our competitor. They have a wonderful reputation and track record in our industry. But their reputation should not excuse them from the requirement to submit a bid package that is complete and compliant. And we clearly see that theirs was not. Marko Construction Group, Inc. contends that the only option your agency has is to either dismiss their bid as non-responsive, or release the project for re-bid.

Please contact our office if you have any questions.

Regards,


Paul K. Gong
President



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January 6, 2017

County of Fresno
Department of Public Works and Planning
2220 Tulare Street, 6th Floor
Fresno, CA 93721

Attention: Mohammad Alimi (Design Manager), Erin Haagenson (Senior Staff Analyst),
County of Fresno Board of Supervisors

Subject: Bid for Crisis Residential Treatment Center, Contract No. 16-S-05

Mr. Alimi,

This letter is in response to the letter FSG received from your office dated November 23, 2016 regarding deeming FSG's bid as non-responsive for the Crisis Residential Treatment Center. Your office has determined that the Department will recommend to the Board of Supervisors, in its meeting on January 10, 2017, for the contract be awarded to the lowest responsive bidder, Zumwalt Construction.

In your letter, you have highlighted following discrepancies in FSG's bid to determine it being non-responsive:

1. Discrepancies between words and figures on the proposal sheet specifically line 1 (Base Bid), line 3 (Alternate bid 2), line 5 (Alternate bid 4)
2. Discrepancy between bid amounts stated in words on various line items on the bid. The sum of the bid amounts stated in words in line item 1-5 would equal to \$4,133,435.00 which is \$344,765.00 less than the Total Bid amount written on line 6.

A closer look at the bid breakout sheet makes it clear that the discrepancies in words and figures in line items 1, 3 and 5 were minor typographical errors. During the submission of any bid, changes in pricing from subcontractors continue to come in till the last few minutes of the bid day, adjustments to the final submitted numbers need to be made based on these adjustments in pricing received. The numbers in numeric figures were corrected to represent the updated amount inclusive of the last-minute subcontractor pricing adjustments, however, due to the limited time constraint, the words were left out to be corrected to match the numbers, hence this discrepancy. This was found to be the issue with line 3 (Alternate bid 2) and line 5 (Alternate bid 4). In regards to the base bid, line 1, the word "Thousand" was missed out due to a clear typographical error. The intent was clear when writing out the numbers in words in line 1 to match the number numerically written alongside. The word



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“Thousand” was left out and in its place was mentioned “Even”, however the intent was always to match the words with the numbers as the numbers were always written first on the bid sheet.

Although there were a few minor typographical errors found on the bid document for the individual line items mentioned above, the final number inclusive of all the bid line items, both in words and in numbers, matched. The County of Fresno was planning on awarding the project inclusive of all options to the lowest bidder as written in line 6, “Total Bid”. FSG’s final amount, inclusive of all options, was the lowest bid. The bid amount in line 6, both in numbers and in words is accurate, and hence should be considered as the lowest responsive bid. The only minor discrepancy found in our proposal is in the bid amounts written in words on line items 1, 3 and 5 as specified above. Since the total bid amount in line 6 in words and figures matches, and equally as important, the sum of the individual line items written in numbers adds to the final number written correctly in both words and numbers, FSG’s submitted bid amount of \$4,478,200.00, should be considered as a responsive bid. This was a minor typographical error in not being able to correctly write the numbers in words in line items 1, 3 and 5. Overall, however, the final bid price, both in written out in words as well as numbers matches. Moreover, since there is no variance between the total bid amount in words and in figures in the final line item, it gives no advantage to FSG in regards to price or otherwise over the other bidders. In a similar circumstance in the past, it has been determined by courts that:

“The Public Agency may even allow such immaterial errors or omissions to be corrected, explained or ignored, even after the Bid Opening! In making such a determination and in deciding whether to accept a bid despite supposed immaterial non-responsiveness or a mere technical omission and the like, it is important to remember that the public bidding laws and requirements were adopted by the Legislature for the benefit of the public and the public agencies, and not for the financial benefit or gain of any of the bidders.”

One test often used to determine whether a bid fails to materially comply with the bidding documents is whether the failure to comply gives the bidder a substantial economic advantage or benefit not enjoyed by other bidders. It is apparent from the explanation above that this mistake does not give FSG any price or other advantage over the other bidders and its bid amount \$ 4,478,200.00 (Four Million Four Hundred Seventy Eight Thousand Two Hundred) is same in words and figures which is the main criterion of comparing bids.

FSG would request the Board of Supervisors to consider FSG’s bid as responsive, ignoring the very minor typographical errors noted above, which would also help the County of Fresno save their taxpayers over \$90,000.00 to complete this project. We are sure these funds could be used elsewhere to better help Fresno County support its people and infrstrucutre.



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Sincerely,

A handwritten signature in black ink, appearing to read 'Kabir Singh', written in a cursive style.

Kabir Singh
Business Manager

cc: MP Singh (FSG)
Dean Reese (FSG)
Board of Supervisors (County of Fresno)
Mohammad Alimi (County of Fresno)
Erin Haagenon (County of Fresno)