



LABOR-MANAGEMENT COOPERATIVE TRUST
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August 31, 2009

Jeff Brilltz, City Manager
City of Lemoore
119 Fox Street
Lemoore, CA 93245

Dear Mr. Brilltz:

The Northern California Electrical Construction Industry and A-C Electric protest or, in the alternative, asks for a careful review of the bids for the Bush Street and 19th Avenue Traffic Signal Project.. The parties are informed and believe that the low bid is a non-responsive bid.

The Northern California Electrical Construction Industry is a Labor-Management Cooperative Trust which is authorized to bring actions for Labor Code violations under Labor Code Section 1771.2. Our organization monitors projects in 22 northern California counties for, among other things, violations of labor laws, Public Contract Code violations and evidence of misuse of public funds or awarding of contracts to non-responsible bidders. The basis of our protest is that Lockwood General Engineering Inc. does not appear to be a responsive bidder as required by law and that their bid of \$233,444.00 should be rejected by the City of Lemoore. We also request that the bid be awarded to the lowest responsive bidder on the project. A-C Electric is an area electrical contractor which bid on the project.

By way of introduction and background, I have been an attorney for 28 years and engaged primarily or exclusively in public works litigation for over 20 years. From 1988-2001, I tried all or nearly all of the prevailing wage cases for the state Labor Commissioner. From 2001 to 2006 I was the Chief Counsel of the California Occupational Safety and Health Appeals Board. I am the only outside source listed as authority in the California Department of Transportation Labor Compliance Manual and have taught extensively in the area.

Please accept or direct this letter to the appropriate person as a bid protest for the Bush Street and 19th Avenue Project. We will also be sending the same letter to the City Council so that the appropriate individual may respond.

An agency has discretion to determine whether a low bidder is responsible i.e. whether the bidder has the fitness, quality, and capacity to perform the proposed work satisfactorily. (*City of Inglewood-L.A. County Civic Center Authority v. Superior Court* (1972) 7 Cal. 3d 861,867, 103 Cal. Rptr. 689.

The City, under its Municipal Code Section i-8-6-D can also reject any and all bids. A bid which substantially conforms to a call for bids may be accepted by the public entity, even though it is not strictly responsive, if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed to other bidders, that is, if the variance is inconsequential. *Valley Crest Landscape Inc. v. City Council* (1998) 41 Cal. App. 4th 1432, 49 Cal. Rptr. 2d 184.

But, in this case, the non-responsiveness is exactly what has allowed the low bidder to be the low bidder, i.e. if they had followed bid requirements that required them to perform 50 percent of the work on the project, they would not have been the low bidder.

Lockwood General Engineering, Inc. was the apparent low bidder with the bid results for the three lowest bids as follows: Lockwood Engineering, \$233,444 ;Richard A. Heaps, \$236,100 and A-C Electric, 248,560

The subcontractor listing sheet in the bid documents of Lockwood General Engineering reflected the following information:

<u>Work to be Performed</u>	<u>Subcontractor Name</u>
Electrical	Prestige Electric
Concrete/Partial	Angel Construction
Demolition/Partial	Wise Engineering
Underground	Mattos Underground
Irrigation	Target Landscape
Asphalt/Partial	Bill Martin Construction
Striping	Chrisp Co.

Please note the "Partial" designation following the description of the "Work to be Performed" for three of the subcontractors, but not for four of the seven, including the Electrical, Underground Irrigation and Striping subcontractors.

In reviewing the price for Bid Item N0. 6 - Furnish & Install Traffic Signal, Lockwood has entered a price of \$176,196 for this bid item.

Page FSP - 10 of the Federal Special Provisions, Section 1.11 SUBCONTRACTING, reads as follows:

"Attention is directed to the provisions in Section 8-1.01, "Subcontracting," and these special provisions." "He provisions in the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price, (is or is not) changed by the Federal Aid requirement specified under "Required Contract Provisions Federal-Aid Construction Contracts" in the Federal Contract Provisions that the Contractor perform not less than 30 percent of the original contract work with the Contractor's own organization." Standard specification section 8-1.01 of the Caltrans Standard. Specifications requires that the "Contractor shall perform, with the Contractor's own organization, contract work amounting to not less than 50% of the original total contract price,".

Calculating what the 50% amount of Lockwood's total bid price is, results in an amount of \$116,722. Referring back to the subcontractor listing sheet indicates that Prestige Electric is performing 100% of the electrical work on this project. Since the term "Partial" was not used in conjunction with the electrical work, this would indicate that more than half of the contract work would be performed by Prestige Electric.

Additionally, with the substantial amount of work that is described on the subcontractor listing sheet, the question is raised as to what work Lockwood General Engineering is actually performing "with the Contractor's own organization" on this job.

The Northern California Electrical Construction Industry and A-C Electric feel that documents substantiating what percentage of the overall contract amount Lockwood General Engineering is actually intending on performing with its own work forces need to be produced. Lockwood does not meet the bid specifications in this project whether one uses either a criteria of the general contractor performing either 30% or 50% of the work with its own forces.

Respectfully Submitted,

Douglas G. Nareau

Douglas G. Nareau
Attorney at Law
State Bar # 96540

Cc: City Council Members