

Internal Memorandum

DATE: May 19, 2009
TO: Bill Fellows, City of Minneapolis
FROM: Wanda Kirkpatrick, Director Office of Diversity and Equal Opportunity
CC: Chris Gran, Purchasing and Craig Lamothe, UPA Manager
SUBJECT: UPA: Marquette and 2nd Avenue Shelters
Contract #7143

This memo is to advise you that the Office of Diversity (ODEO) has reviewed the Disadvantaged Business Enterprise (DBE) Goal commitment documentation and subcontractor information for the above project.

Three bids were received and evaluated by ODEO. The overall DBE goal on this project is 15%.

Meisinger Construction: Meisinger proposed to meet 11.5% DBE participation through the use of Sanders Steel Erection (shelter erection) and Maverick Logistics (trucking). Sanders Steel Erection is a certified DBE through the Minnesota Unified Certification Program (MnUCP) and verbal verification was made by ODEO of their solicitation and bid dollar amounts to Meisinger. Maverick Logistics is certified as a WBE and not a DBE, therefore this participation cannot be counted toward the DBE goal. As a result Meisinger's DBE participation has been adjusted to 7%.

Since Meisinger did not propose to meet the full DBE goal established a review of the good faith efforts was made by the Office of Diversity.

- ODEO confirmed the completion of the Part B Good Faith Effort document.
- Meisinger submitted detailed documentation of their solicitation to DBE firms.
- Meisinger identified three areas of construction sub-contracting.
- Meisinger has solicited 16 DBE's.
- Meisinger received two proposals, two passes, and twelve non-responsive. Of the two proposals two of them came in as the lowest responsible bid.

Meisinger passes the combination of numeric DBE participation and Good Faith Efforts as established.

Thomas and Sons Construction, Inc.: Thomas and Sons proposed to meet **9%** DBE participation through the use of Safety Signs (traffic control and signage) and Sanders Steel (shelter installation). Both of these firms are certified DBE's through the Minnesota Unified Certification Program (MnUCP) and verbal verification was made by ODEO of their solicitation and bid dollar amounts to Thomas and Sons.

Since Thomas and Sons did not propose to meet the full DBE goal established a review of the good faith efforts was made by the Office of Diversity.

- ODEO confirmed the completion of the Part B Good Faith Effort document.
- Thomas and Sons submitted detailed documentation of their solicitation to DBE firms.
- Thomas and Sons identified areas of work for potential DBE participation. A copy of each DBE's written quotation was provided.
- Thomas and Sons has solicited 37 DBE's and followed up to determine whether or not they would bid.
- Thomas and Sons did not reject any DBE bids.

Thomas and Sons Construction, Inc. passes the combination of numeric DBE participation and Good Faith Efforts as established.

Lund Martin Construction, Inc. Lund proposed to meet **0%** DBE participation.

Since Lund Martin did not propose to meet the full DBE goal established a review of the good faith efforts was made by the Office of Diversity.

- ODEO confirmed attendance by Lund Martin at the pre-bid meeting and their completion of the Part B Good Faith Effort document.
- Lund Martin provided documentation of the faxed solicitations to DBE's.
- Lund Martin has attended several DBE Meet and Greets to build relationships with DBE's.
- Lund Martin solicited over 150 DBE's. They were soliciting DBE's for 3 separate bids at the same time. Although they solicited a large quantity of DBE's some of the DBE's that were solicited for this bid was not applicable. For example excavation companies.
- Lund Martin did reject a bid from a DBE for shelter installation due to a non-DBE that was able to provide supplies and installation. In Lund Martin's Document 485 Part B they mentioned in #5 that they did not reject any DBE's. This is concerning to ODEO.
- ODEO found that no DBE participation to be a significant variance in comparison to the other two bidders that were able to achieve significantly larger participation.

Lund Martin fails the combination of numeric DBE participation and Good Faith Efforts as established.

Summary –

Meisinger passes the combination of numeric DBE participation and Good Faith Efforts as established.

Thomas and Sons Construction, Inc. passes the combination of numeric DBE participation and Good Faith Efforts as established.

Lund Martin fails the combination of numeric DBE participation and Good Faith Efforts as established.

WFK/tj



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City of Lakes

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May 28, 2009

Mr. Jonas Payne
Director of Preconstruction
Thor Construction
5400 NE Main Street, Suite 203
Minneapolis, MN 55421-1132

RE: Response to Award Phase Protest
Marquette Ave. and 2nd Ave. Transit Shelters
City of Minneapolis Bid No. 7143

Dear Mr. Payne:

This letter is in response to your May 01, 2009 letter sent to David Ybarra regarding an Award Phase Protest for bid #7143 for the Marquette and 2nd Avenue transit shelters. Below is the City's response to the two subjects you questioned.

Evaluation of Bus Shelter

This was not and is not a "design build" project. The addendum did not alter the original intent of the bid documents. The intent for this bid package was to, originally and equally after the addendum, provide a specific shelter design with performance based criteria and requirements for a vendor/contractor which included a fabricated 'prototype' and shop drawings that would be analyzed and approved for the type of products and materials integrated into the prototype --- prior to fabrication of any of the other shelters. This was clearly identified within the original bid documents and not modified in addendum 1 specifications and drawings.

After review - the original drawings were not modified by the addendum. A question that was asked at the pre-bid meeting regarding the alternative materials / design (question # 11) and was documented in Addendum #1 as follows:

11. *Question: Do alternative materials/design techniques need to be approved prior to bidding? Is it acceptable to bid an alternate material / design technique that meets the criteria in the bidding documents if it has not been approved by the owner?*
Answer: There is no material approval process, prior to receiving a bid. It is the responsibility of the bidder to meet the requirements of the bid package (criteria, performance requirements). The prototype's identified materials will be approved by the client thru submission of the prototype pre-submittals and discussion with the client prior to fabrication of the prototype.

Note: Thor Construction did not sign in at the pre-bid meeting, thus we can only assume Thor did not participate. We would strongly encourage that Thor attend pre-bid meetings on future projects.



There are specifications that are relevant to your questions. We would encourage you to review – *Volume 1-- 0700 Contracting Requirements, Article 6. Contractor's Responsibilities* which responds to your questions. In addition, here are specifications and requirements relevant to the shelter prototype.

- *Volume 2 -- Section 01100, section 1.4, 1.7, 3.1F*
- *Volume 2 -- Section 01330, section 2.4.*

Once again these sections do not create a "design build" project.

Public Safety / Traffic Control

The contract documents reflect the requirement for safely securing the project site, and providing proper traffic control and safe practices in accordance to OSHA for the installation of the shelters.

The installation of shelters can be done without impacting public safety and with reasonable impacts to traffic flow. The bid documents specifically cite that one of the products is a Traffic Management and Control Plan (Section 01330- part 2.3). As with other construction projects, which is standard for the industry, the bidder/contractor is responsible for such a Plan and is responsible for proper project and construction safety. As such the bidder/contractor is responsible for provide a price for the Traffic Control bid item that would effectively include all such costs and work associated with the shelter installation.

In summary, the City interprets the protest to be invalid and rejects the protest.
If you have any further questions or response, please contact me.

Sincerely,

CITY OF MINNEAPOLIS



Jon Wertjes, P.E., PTOE
Director of Traffic and Parking Services
Department of Public Works
City of Minneapolis

Cc: Gary Warnberg, David Ybarra, Craig Lamothe

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Friday, May 01, 2009

City Of Minneapolis Purchasing Department
330 2nd Ave. South – Suite 552
Minneapolis, MN 55401

Attn: David Ybarra

Re: Marquette Ave. and 2nd Ave. Transit Shelters
City of Minneapolis Project No. 7143

Subject: Award Phase Protest

Dear Mr. Ybarra:

Thor Construction is protesting the potential award of this project based on a sincere concern that the bid can not be evaluated on the basis of lowest cost alone. This concern is founded on full review of the Subcontractor proposals we received during the bid that ranged from excellent to grossly incompetent in terms of their project approach. The range was most apparent on the following:

Evaluation of Bus Shelter:

Several days prior to the bid, Addendum 1 opened up the "Plans and Spec.'s" requirement of the bid to a general understanding of bidding a "Performance Spec." for the most significant part of the project, the supply of the Transit Shelters. In essence, the bid changed from a "per Plans and Spec.'s" proposal to a "Design Build" proposal.

It is not possible to determine the winner of such a bid process without full disclosure on the part of all bidders of the specific product they intend to supply, as the products may not necessarily be "As Equal" to either each other. The winning bid is therefore based on best price for best product as opposed to best price alone.

Public Safety / Traffic Control:

We have grave concerns regarding the approach to public safety to be utilized during the installation phase of the project. There were no specific guidelines given as to the safety requirements for the project, therefore this critical item may be wholly inadequate (or even non existent) in some or all of the bids. Again, without full disclosure, or specific requirements as to what is required, the winning bid can not be based on the lowest bid, but rather when safety of the public is involved, based on the lowest competent price.

We would greatly appreciate an opportunity to compete with the other bidders in an open environment to evaluate the Best Project at Best Price. Please contact us with any questions or concerns you may have.

Sincerely,

Jonas Payne
Director of Preconstruction
Thor Construction