

DATE: July 2, 2014

TO: Bruce A. Rudd, City Manager

SUBJECT: FINDINGS AND RECOMMENDATION ON APPEAL OF DAVE CHRISTIAN
CONSTRUCTION CO., INC., REGARDING BID FILE NO. 3339.

Procedural History

The City invited bids for the Fresno Street pavement overlay project, Bid File Number 3339. City staff issued a determination that designated AS Dezin, Inc. dba Asphalt Design (“Asphalt Design”), as the lowest responsive and responsible bidder, in compliance with specifications set forth in the Bid Files.

The second lowest bidder, Dave Christian Construction (“Dave Christian”) (Appellant), timely appealed the determination. An appeal hearing was conducted on July 2, 2014 at 1:30 pm in Fresno City Hall by Independent Administrative Hearing Officer Edward Johnson.

Issues on Appeal

Appellant’s appeal letter alleged that the contract award was to a bidder other than the lowest responsive and responsible bidder. Their grounds were that (1) the issue date for Asphalt Design’s contractor’s license was missing; (2) the list of subcontractors did not include an electrical subcontractor; (3) and (4) the Certification for Prime Contractor Self Performance was deficient; (5) bonding companies were not listed for at least two subcontractors; and (6) Form 15-G was missing key information.

Analysis

Terri Emmett, Curtis Emmitt, and Matt Von Rembow appeared for Appellant and reiterated their grounds for appeal, protesting specifically that the amount of work needed for related electrical work was far greater than what Asphalt Design claimed and was over ½ of 1% of the contract amount, and that a subcontractor should have been listed for this work. Dan Soto, appearing for Asphalt Design, testified that should the work exceed this amount they would either self perform or absorb the costs.

Deputy City Attorney Brandon Collett, Purchasing Manager Gary Watahira, and Supervising Buyer Bob Callistro, appeared for the City (City). City submitted a revised Respondent’s Brief

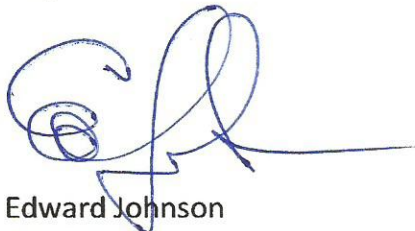
with minor changes. City previously submitted a written Hearing Packet to the Hearing Officer and Appellants. At the hearing, City reiterated in their oral testimony that the issues raised were minor irregularities/informalities and the City had discretion to waive those irregularities, and that the irregularities/informalities did not have a monetary consideration and did not offer bidders an unfair advantage.

After considering all of the evidence presented, the Hearing Officer finds the following: (1) the City was required to verify the bidder's contractor license information and was readily able to verify the license issue date; (2) the listing of a subcontractor performing less than ½ of 1% is not required by Public Contract Code, and should the amount necessary to perform the relevant electrical work exceed that amount, City and Asphalt Design testified that either the prime contractor will self perform the work, or the prime or non-listed contractor would absorb the cost; (3) and (4) the Self Performance form only requires that the contractor affirm that they will self perform at least 30% of the work and Asphalt Design adequately demonstrated that they would; (5) the listing of subcontractor bonding information was readily available to the City in their verification of licensing information; and (6) address and phone number information required on Form 15-G was readily available in other portions of the bid proposal and/or was readily available to City in their confirmation of contractors' licenses. Consequently, these irregularities were minor, did not have a monetary consideration, and did not offer bidders an unfair advantage.

As part of the record of appeal, the Hearing Officer endorses and incorporates by reference the revised Respondent's Brief.

Conclusion

The Hearing Officer therefore recommends to the City Manager that the City Council UPHOLD the staff determination that designated Asphalt Design as the lowest responsive and responsible bidder.



7/2/14

Edward Johnson
Independent Administrative Hearing Officer

Cc: Bob Callistro, Supervising Buyer
Gary Watahira, Purchasing Manager