



DATE: April 20, 2015

TO: BRUCE RUDD, City Manager
City Manager's Office

FROM: JAMES V. LARKIN, Construction Manager
Airports Department

SUBJECT: RECONSIDERATION HEARING AND DETERMINATION OF
DISADVANTAGED BUSINESS ENTERPRISE GOOD FAITH EFFORT,
SHIELDS AVENUE ITS WIRELESS PROJECT, WEST AVENUE TO
CHESTNUT AVENUE, BID FILE 3316

Purchasing Department has asked that I be the Reconsideration Official for a reconsideration hearing requested by Kertel Communications, Inc., dba Sebastian where their project bid Disadvantaged Business Enterprise (DBE) Goal was below the minimum goal of 12% set forth in the project specifications. Sebastian asked to be heard to show that their Good Faith Efforts were adequate, and that they should be awarded the project bid.

Summarizing the bid results, Sebastian was the apparent low bidder, and their DBE Goal was 10.779%. Crosstown was second low bidder whose DBE Goal was 12.30%. AC Electric was third low bidder, and their DBE Goal was 14.52%. These goals were verified for accuracy by the DBE Coordinator. All three bidders also submitted their Form 15-G Good Faith Effort documentation to prove their DBE Goals.


The reconsideration hearing was held at 2:00 p.m. on Thursday, April 9, 2015, in the Purchasing Division, Conference Room CH2-2157. Representing Sebastian were Ron Cato, Brandon Dukes, Cristal De La Torre and Debra A. Coe, attorney for Baker, Manock & Jensen. Representing the City was Beth McDonnell, Purchasing's DBE Coordinator.

Sebastian presented a list of previous projects awarded by the City where the respective project DBE Goals were not met. Per the presented list (provided by Purchasing), Sebastian was the recipient of one of the projects. Sebastian posited that their Good Faith Efforts followed the same efforts they put forth on every bid, and that their consistent use of publishing in two trade journals and exclusive use of GoodFaith, Inc., to contact prospective certified DBE contractors and suppliers to solicit bids for the project supported their Good Faith Efforts. They also provided that their procedures had not changed from previous successful bids which were awarded by the City, yet did not meet the project DBE Goal.

Ms. McDonnell countered Sebastian's argument by showing of the 19 DBE firms contacted by Sebastian (through GoodFaith, Inc.) only 10 were ready, willing and able firms. Many of the 19 firms were shown on the Caltrans California Unified Certification Program (CUCP) website (state listing of certified DBE firms) to not perform work in Fresno County, effectively preventing Sebastian from listing them for this bid. Of the 10 remaining and usable DBE firms, three were selected by Sebastian for this bid and the total allowable participation amounted to 10.779%. Ms. McDonnell went on to say that the Good Faith Effort evaluation is examined as a whole, not just the presented listing of subs. Total number of solicitations, the type and qualifications of the subs, the home address of the firms (lends to their ability to travel to Fresno to perform their work), the number of times the prospective firms were contacted, and the time frame the solicitations took place are all factors that are evaluated to show a Good Faith Effort was made. What stood out in the Sebastian listings vs. the AC Electric listings was that Sebastian's initial contact efforts were made on January 14, 2015, just five days prior to the bid opening, whereas AC Electric's initial and secondary efforts began on December 23, 2014. AC Electric's third and final effort came on January 14, 2015. Per 49 CFR Subtitle A, Part 26, Subpart F, Appendix A, the guidance concerning Good Faith Efforts advises the bidder to conduct his market research to identify and contact prospective DBE firms, and to solicit this interest as early in the bidding period as practicable to allow the DBE's to respond to the solicitation and submit a timely offer for the subcontract. Sebastian's efforts started on January 14, 2015, very late in the bidding period while AC Electric started on December 23, 2014, just 11 days after the Notice Inviting Bids was published on December 12, 2014. This effort provided AC Electric's DBE's 23 days to submit their bids, whereas Sebastian's efforts provided their DBE's only four days.

This Reconsideration Official concludes that the documentation presented by Sebastian at this meeting did not support their assertion that their Good Faith Efforts were adequate enough to show that their bid was responsive, even though their DBE Goal was less than the 12% required by the bidding documents. The City was able to show how and why the Sebastian Good Faith Efforts were not enough to change Purchasing's initial DBE and Good Faith Effort evaluation. The City also showed how the second and third lowest bidders were able to meet and exceed the DBE Goal required by the bidding documents.

Pursuant to 49 CFR Part 26.53(d), this Hearing Officer concludes that Sebastian's DBE and Good Faith Efforts were not sufficient, thus determining their bid to be non-responsive.



James V. Larkin
Reconsideration Official

APRIL 20, 2015
Date