



## D.L. FALK CONSTRUCTION INC.

3526 INVESTMENT BLVD., HAYWARD, CA 94545 WWW.DLFALK.COM

PHONE (510) 887-6500 • FAX (510) 887-6501

February 14, 2017

City of Hayward  
777 B Street  
Hayward, CA 94541

02/14/17 15:54 CLK

Attn.: Dave Hung

Re: Bid for Hayward Fire Stations #1, 2, 3, 4, & 5

DL Falk Construction Inc. (DLF) respectfully requests that the City of Hayward reject as materially non-conforming the bid submitted by Arntz Builders, Inc. (Arntz), because Arntz has failed to list subcontractors required to perform work in excess of one-half of one percent of its bid, which Arntz itself is not qualified to perform.

The bid submitted by Arntz fails to list many of the subcontractors required to properly execute the project. The following are scopes of work where DLF and the other General Contractors that submitted a bid (JUV Inc. and Sausal Corp.) listed a subcontractor but Arntz did not, and their values:

	<u>DLF</u>	<u>JUV</u>
* Roofing	\$116,484	\$97,000
* Drywall	\$198,300	Self Perf
* Plaster	\$103,100	Self Perf
* Tile	\$114,425	\$130,000
* Painting	\$162,660	\$145,000
* Polished Concrete Floors	\$50,919	\$103,250
* Fence & Gates	\$110,221	\$113,000

As you can see each of these items far exceed the one-half of one percent of Arntz's bid (.5% of Arntz's bid is \$34,558). Reviewing JUV's website it is clear that they typically do perform drywall and plaster work and are capable of doing so, there is no such indication for Arntz on their website.

According to Public Contract Code § 4106: *"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's bid, the prime contractor agrees that he or she is fully qualified to perform that*

*portion himself or herself, and that the prime contractor shall perform that portion himself or herself."*

The trades that Arntz has failed to list, in addition to each being well in excess of the required one-half of one percent threshold, together amount to over \$856,000 or 12% of their bid. Arntz cannot simply self-perform this work, either, for at least three reasons. First, although Arntz does possess a 'B' license which allows them to perform multiple trades, they do not carry the following specialty licenses. Arntz does not have a C-39 license to perform roofing work, a C-9 license to perform drywall work, a C-35 license to perform lathing and plaster work, a C-54 license to perform tile work, a C-33 license to perform painting work, or a C-61 (D-10) license to perform concrete resurfacing work. Yet Arntz failed to list a subcontractor to perform any of these scopes of work, and they are all well in excess of one-half of one percent of Arntz's bid.

Second, even assuming Arntz were qualified to self-perform all trades, by failing to list subcontractors for approximately \$856,000 of work on this project, Arntz has apparently indicated, pursuant to Public Contract Code § 4106, that it is "*fully qualified to perform that portion*". Arntz may be able to perform the scopes of work it failed to list on its bid from using subcontractors, but DLF's research strongly suggests that Arntz is incapable of performing it with its own forces.

Third, the technical specifications for a number of the trades at issue require the installer/applicator to have documented experience for a number of years:

- **070150 Roofing Repairs**, ¶ 1.5.A requires the installer to be "*Roofing Manufacturer certified or approved.*" ... "*Company specializing in performing roofing repairs of existing Garland roofing system, with not less than five years successful experience and a certified Pre-Approved Garland Contractor*"
- **033550 Polished Concrete Flooring**, ¶ 1.04.A requires the installer be a "*Firms with not less than five years successful experience polishing concrete using one of specified systems and acceptable to system manufacturer.*"

There is no indication that Arntz, as a self-performing general contractor, has any of the requisite specialty experience or certifications indicated in the specifications. Before the contract is awarded to Arntz, at a bare minimum, the City should require Arntz to provide documentation of its specialty experience, certifications, and its ability to *self-perform* the \$856,000 of work its bid implicitly claims it can handle.

A roof warranty is a very important facet in a renovation project like this. DLF has confirmed with the Garland representative that Arntz is not certified to install Garland products and in his past experience Arntz hires roofing contractors to perform their roofing work. It is important to note that without Arntz having the required Garland certification if they self-perform the roofing work the manufacturer would not be able to provide the specified warranty.

The appropriate conclusion that the City should draw is that Arntz's bid was not responsive. For a bid to be responsive, the "bidding requirements must be strictly

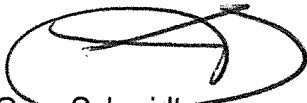
adhered to in order to avoid the potential for abuse in the competitive bidding process." *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 175-176 (citation omitted). If a bid does not confirm to the specifications, it is not responsive, and may not be accepted by the public entity. *Ghillotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897; *Konica Business Machines U.S.A., Inc. vs. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454 (a bid is not responsive and cannot be accepted if the variance gives the bidder an advantage or benefit not allowed by other bidders or, in other words, if the variance is consequential). Factors that determine whether a deviation is a substantial departure from bid requirements include "whether deviation could be a vehicle for favoritism, affect the amount of the bid, influence potential bidders to refrain from bidding, or affect the ability to make bid comparisons." *Id.* at 907. Here, Arntz's bid was not responsive in that the deviations were material and provided an unfair advantage to Arntz.

In today's competitive bidding market, it is critical that all General Contractors abide by the same requirements when bidding a project as to not allow any one bidder an unfair advantage over another. The omissions in Arntz's bid proposal as noted above are not to be considered inconsequential and are cause to disqualify Arntz as the low responsive Bidder on this project.

Accordingly, for the aforementioned reasons, and to avoid the delay and legal expense that would result from an improper bid award, the bid of Arntz should be rejected, and the Project should be awarded to DLF, the next lowest responsive and responsible Bidder.

DLF looks forward to the City of Hayward's response. If you have any questions, please contact me either via e-mail [gregs@dlfalk.com](mailto:gregs@dlfalk.com) or at (510) 887-6500 or cell (415) 559-7828.

Thank You

A handwritten signature in black ink, appearing to read "Greg Schmidt", enclosed within a hand-drawn oval.

Greg Schmidt  
Director of Operations


**D.L. Falk Construction, Inc.**

 3526 Investment Blvd  
 Hayward, CA 94545

Phone: 510.887.6500

Fax: 510.887.6501

**TRANSMITTAL  
 No. 00197**
**PROJECT:**
**DATE:** 02/14/2017

**TO:** City of Hayward  
 777 B Street  
 Hayward, CA 94541

**REF:** Bid Protest

**ATTN:** Dave Hung

WE ARE SENDING:	SUBMITTED FOR:	ACTION TAKEN:
<input type="checkbox"/> Shop Drawings	<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Approved as Submitted
<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Your Use	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> Prints	<input type="checkbox"/> As Requested	<input type="checkbox"/> Returned After Loan
<input type="checkbox"/> Change Order	<input type="checkbox"/> Review and Comment	<input type="checkbox"/> Resubmit
<input type="checkbox"/> Plans		<input type="checkbox"/> Submit
<input type="checkbox"/> Samples	<b>SENT VIA:</b>	<input type="checkbox"/> Returned
<input type="checkbox"/> Specifications	<input type="checkbox"/> Attached	<input type="checkbox"/> Returned for Corrections
<input type="checkbox"/> Other:	<input type="checkbox"/> Separate Cover Via:	<input type="checkbox"/> Due Date:

ITEM NO.	COPIES	DATE	ITEM NUMBER	REV. NO.	DESCRIPTION	STATUS
01	1	02/14/2017			DL Falk Protest Letter for FS 1, 2, 3, 4, & 5	NEW
02	1	02/14/2017			Check for \$500	NA

**Remarks:** Received By: \_\_\_\_\_ Date: \_\_\_\_\_

**CC:**
**Signed:** \_\_\_\_\_

Greg Schmidt



D.L. FALK CONSTRUCTION INC.

26354

CITY OF HAYWARD

DATE: 02/14/17  
ACCOUNT: 57631

CHECK # 26354

INV DATE	JOB #	INVOICE #	BALANCE	DISCOUNT	NET PAID
02/14/17		BID DOCS	500.00		500.00

<b>TOTAL:</b>	<u>500.00</u>	<u>500.00</u>
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ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER



D.L. FALK CONSTRUCTION INC.  
3526 INVESTMENT BLVD.  
HAYWARD, CA 94545  
(510) 887-6500 LIC. #683837

California Bank of Commerce  
3595 Mt. Diablo Blvd., 2nd Fl.  
Lafayette, CA 94549

26354

90-4469/1211

26354

Five Hundred and 00/100

DATE

AMOUNT

02/14/17

\$\*\*\*\*\*500.00

PAY  
TO THE  
ORDER  
OF

CITY OF HAYWARD

ATTN: ACCOUNTING DIVISION  
777 B. STREET  
HAYWARD, CA 94541

SAFEGUARD SECURE  
SAFEGUARD SECURE  
MP

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

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February 16, 2017

**City of Hayward**  
777 B Street  
Hayward, CA 94541

Attention: David Hung

**Re: D.L. Falk Protest Letter**

We have reviewed the letter submitted by D. L. Falk, Inc. If the City believes that D. L. Falk, Inc. protest has merit, then we will defer to the City's position, and understand the City may award the project to D. L. Falk, Inc.

Sincerely,

ARNTZ BUILDERS, INC.

David A. Arntz  
Vice President

Enc

cc: Greg Schmidt (D.L. Falk)



February 16, 2017

**City of Hayward**  
777 B Street  
Hayward, CA 94541

Attention: David Hung

**Re: D.L. Falk Protest Letter**

The City has asked us for certain additional information. In reviewing its records, Arntz has realized that inadvertently it did not list its painting subcontractor, whose bid is in the amount of \$208,000. A copy of that bid is enclosed.

Sincerely,

ARNTZ BUILDERS, INC.

David A. Arntz  
Vice President

Enc

cc: Greg Schmidt (D.L. Falk)

CS/KF

# Nissim Painting Company

CA. License #797909, DIR #1000011933  
SBE (Micro) #1785596

199 Berryessa Drive  
Napa, CA 94558  
www.nissimpainting.com

415-566-5111 Fax: 415-566-5534

Email: [nissimpainting@yahoo.com](mailto:nissimpainting@yahoo.com)



Date: 02/07/2017

## Bid Proposal

**Project Name: Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480**

**Bid Submission Date: February 7<sup>th</sup>, 2017 at 2:00pm**

Our bid proposal is for painting the interiors and exteriors of the Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480 to specifications and plans attached and reviewed. We are bidding section 099000-Painting and Coating. All materials, equipment and labor needed to finish this project are included in this bid.

We recognize addendum:	#1	Date: 01/11/2017
	#2	Date: 01/19/2017
	#3	Date: 01/31/2017

We also recognize this project as a Prevailing Wage project, with certified payroll.

**Fire Station 1-5 Improvement Project #07476, 07477, 07478, 07479, and 07480**

### Bid Prices:

Fire Station #1	\$55,000.00
Fire Station #2	\$35,000.00
Fire Station #3	\$35,000.00
Fire Station # 4	\$35,000.00

*W/O - Powdercoat  
Yes - re-caulk  
yes - WP  
YES - MASON REST.*



**Fire Station #5 \$48,000.00****Total: 208,000.00****Bid prices for fire stations cannot be separated, they are one bid package.****Any questions please call: Jack Cell Phone: (415) 637-3353****\*\*\* Scope of work included in our base bid pricing:**

1. Painting Interior and Exterior to Specs and Plans
2. Power-wash/Cleaning Exterior as shown on Specs and Plans

*RECOMMENDS PRESSURE WASH ONLY, BOT WILL USE PROSOLO IF REQU.*

*\*INCLUDES CAULKING, RESTORATION OF EXT. MASONRY & MASONRY WATER REPELLENT*

**\*\*\* Surfaces and elements excluded from base bid price:**

1. Major Wall and Ceiling Patching
2. Traffic Line Paint
3. Pre-finished items, pre-finished metal surfaces and concealed surfaces
4. No Removal and reinstallation work of any items. Moving of any Furniture, Desks, Cabinets, and Books
5. Any Enclosed Areas
6. Painting of Cabinets and Shelves
7. Floor finishing
8. No Powder Coating Finish

*PER JACK***\*\*\* Base Bid is only honored for 90 days from bid date!****Insurance:**

\*\*Nissim Painting will supply all general liability insurance and workman's compensation insurance for all Nissim Painting Company's employees that will work on this project.

\*\*Nissim Painting is excluded from providing any payment and performance bonds on this project.

\*\*Nissim Painting is not including Excess Liability Insurance, Contractor Pollution Liability Insurance and Builders Risk Insurance and is not in base bid. We can provide those types of insurance at an additional cost to base bid.

\*\*Nissim Painting will finish this project by professional standards. Nissim Painting Company has experience on these types of projects and knows how to finish a project of this size! As a professional painting company, we complete every project in a timely manner and strive to beat your expectations.

Submitted By: *Jack Nissim* Date: February 7<sup>th</sup>, 2017

**Dave Hung**

---

**From:** David Arntz <DArntz@arntzbuilders.com>  
**Sent:** Thursday, February 16, 2017 3:26 PM  
**To:** Dave Hung  
**Cc:** gregs@dlfalk.com; Kelsey Godfrey; Brian Proteau  
**Subject:** RE: Bid Protest from D.L. Falk Construction Inc.

Dave,

We are planning to self-perform the Roofing and Polished Concrete. We reserve the right to self-perform the Drywall, Plaster, Tile, Fencing & Gates.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

From: Dave Hung [mailto:Dave.Hung@hayward-ca.gov]  
Sent: Thursday, February 16, 2017 11:51 AM  
To: David Arntz <DArntz@arntzbuilders.com>  
Subject: RE: Bid Protest from D.L. Falk Construction Inc.

Dave,

Please let me know how Arntz planned to perform the following work:

- a) roofing,
- b) drywall,
- c) plaster,
- d) tile,
- f) polish concrete floors,
- g) fences & gates.

Thanks.

Dave

-----Original Message-----

From: David Arntz [mailto:DArntz@arntzbuilders.com]  
Sent: Thursday, February 16, 2017 11:13 AM  
To: Dave Hung <Dave.Hung@hayward-ca.gov>  
Cc: Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>; gregs@dlfalk.com  
Subject: RE: Bid Protest from D.L. Falk Construction Inc.

Dave,  
See attached.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

From: David Arntz  
Sent: Thursday, February 16, 2017 8:52 AM  
To: 'Dave Hung' <Dave.Hung@hayward-ca.gov>  
Cc: Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>; 'gregs@dlfalk.com' <gregs@dlfalk.com>  
Subject: RE: Bid Protest from D.L. Falk Construction Inc.

Dave,  
See attached.

Dave Arntz  
Arntz Builders, Inc.  
19 Pamaron Way  
Novato, CA 94949  
(415)382-1188  
(415)883-3756 fax  
www.arntzbuilders.com

Lic# 856393 A,B

-----Original Message-----

From: Dave Hung [mailto:Dave.Hung@hayward-ca.gov]  
Sent: Tuesday, February 14, 2017 7:30 PM  
To: David Arntz <DArntz@arntzbuilders.com>  
Cc: Bid <Bid@arntzbuilders.com>; Brian Proteau <Brian@arntzbuilders.com>; Kelsey Godfrey <Kelsey@arntzbuilders.com>  
Subject: FW: Bid Protest from D.L. Falk Construction Inc.

Hi Dave,

Please find attached for the bid protest from DL Falk and provide your response to the City as soon as possible. Thank you.

Dave Hung  
City of Hayward  
PW - Engineering

Senior Civil Engineer  
777 B Street  
Hayward CA 94541  
(510) 583-4752

-----Original Message-----

From: Miriam Lens  
Sent: Tuesday, February 14, 2017 4:02 PM  
To: Dave Hung <Dave.Hung@hayward-ca.gov>  
Cc: Morad Fakhrai <Morad.Fakhrai@hayward-ca.gov>; Michael Lawson <Michael.Lawson@hayward-ca.gov>  
Subject: Bid Protest from D.L. Falk Construction Inc.

Good afternoon Dave,

We are in receipt of a bid protest from D.L. Falk Construction, Inc., to the lowest bidder submitted by Arntz Builders, Inc., for the Hayward Fire Stations #1, 2, 3, 4, & 5 project.

Attached is a copy of the protest along with a copy of the check in the amount of \$500.

Please let me know if you have any questions.

Thank you,

Miriam

Miriam Lens, CMC, MPA  
City Clerk

City of Hayward | Office of the City Clerk | 777 B Street | Hayward, CA 94541 |  
Phone: 510-583.4401 | Email: [Miriam.lens@hayward-ca.gov](mailto:Miriam.lens@hayward-ca.gov)  
[www.hayward-ca.gov](http://www.hayward-ca.gov) | City Clerk's Blog: [www.hayward-ca.gov/cityclerk/](http://www.hayward-ca.gov/cityclerk/)

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REPLY ADVISORY: Please be advised that messages sent to me on the City of Hayward e-mail system are not confidential and may be reviewed by other persons without my knowledge. Please do not send messages or attachments that may violate the City of Hayward e-mail policy.

-----Original Message-----

From: [kba6551ci@cityofhayward.com](mailto:kba6551ci@cityofhayward.com) [mailto:[kba6551ci@cityofhayward.com](mailto:kba6551ci@cityofhayward.com)]  
Sent: Tuesday, February 14, 2017 3:55 PM  
To: Miriam Lens <[Miriam.Lens@hayward-ca.gov](mailto:Miriam.Lens@hayward-ca.gov)>  
Subject:

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TASKalfa 6551ci  
[00:17:c8:28:c8:28]  
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## D.L. FALK CONSTRUCTION INC.

3526 INVESTMENT BLVD., HAYWARD, CA 94545 WWW.DLFALK.COM

PHONE (510) 887-6500 • FAX (510) 887-6501

February 23, 2017

City of Hayward  
777 B Street  
Hayward, CA 94541

Attn.: Dave Hung

Re: Follow-up Regarding DLF Bid Protest for Hayward Fire Stations #1, 2, 3, 4, & 5

On February 14, 2017, DL Falk Construction Inc. (DLF) timely submitted a bid protest to the City of Hayward (City) regarding the above-captioned Hayward Fire Station Renovations Project (Project). Based on the information then available to DLF, it was clear that the bid specifications for the Project required the City to reject the bid submitted by the apparent low bidder, Arntz Builders, Inc. (Arntz), as materially nonconforming. Since February 14, Arntz's communications regarding the Project—provided by Arntz to the City and DLF—have only reinforced the facial, material nonconformity of Arntz's bid, and the City's obligation under the California Public Contract Code to reject the bid.

DLF's letter identified the following nonconforming elements to Arntz's bid, any one of which would be sufficient to require the City to reject it:

- Arntz's failure list subcontractors required to perform work in excess of one-half of one percent of its bid (\$34,558), which Arntz itself is not qualified to perform—roofing, drywall, plaster, tile, painting, polished concrete floors, and fence and gates scopes of work. See Pub. Contract Code § 4106.
- Arntz's failure to carry the specialty licenses required to self-perform roofing work (C-39), drywall work (C-9), lathing and plaster work (C-35), tile work (C-54), painting (C-33), or concrete resurfacing (C-61/D-10).
- Arntz's failure, and inability, to provide the documented experience required by the Project's Technical Specifications for the roofing (070150 Roofing Repairs, ¶ 1.5) and polished concrete flooring (033550 Polished Concrete Flooring, ¶ 1.04.A) installer.

Arntz's response to DLF's bid protest has been telling. It has not contested *any* of the material nonconforming elements raised by DLF. In fact, rather than provide an item-by-item refutation of the DLF letter—as is common for apparent low bidders in bid

protests—Arntz responded three business days later, on February 16, with a two-sentence letter, stating: “If the City believes that [DLF] protest has merit, then we will defer to the City’s position, and understand the City may award the Project to [DLF].” In the competitive world of public works contracting, this is essentially an invitation by Arntz to the City to award the Project to DLF.

Later on February 16, Arntz responded to a request for additional information from the City, stated: “In reviewing its records, Arntz has realized that inadvertently it did not list its painting subcontractor, whose bid is in the amount of \$208,000.” The Public Contract Code is clear: inadvertence does not matter in this context. See Pub. Contract Code § 4104(a). The admission by Arntz that it failed to list a subcontractor performing more than one-half of one percent of the total value of its bid is dispositive, and the materially nonconformity is sufficient, standing alone, to require the City to reject the bid.

Later that same day, the City asked Arntz via email how it planned to perform the scopes of work identified in DLF’s bid protest: roofing, drywall, plaster, tile, painting, polished concrete floors, and fence and gates.

Arntz responded that it intended to self-perform the roofing and polished concrete scopes of work. Arntz has provided none of the documentation required by the Technical Specifications, nor can it. Contrary to Technical Specification 070150 Roofing Repairs, ¶ 1.5, Arntz is neither certified nor approved by Garland. Nor can Arntz satisfy the requirement of Technical Specification 033550 Polished Concrete Flooring, ¶ 1.04.A, that it have “not less than five years successful experience polishing concrete using one of specified systems and acceptable to system manufacturer.” To DLF’s point, above, Arntz has not even attempted to make these showings.

Arntz also replied that it “reserve[d] the right to self-perform” the remaining scopes. This is prohibited by the Subcontractor Listing Law. See Pub. Contract Code § 4104. Either Arntz can self-perform or it cannot. According to its bid, it not only can, it must. The attempted reservation of rights gives rise to exactly the kind of post-award bid shopping and peddling that the Subcontractor Listing Law is designed to prevent. But even if it were appropriate for Arntz to refuse to declare its intentions, Arntz has failed to provide any evidence that it possesses any of the specialty licenses required to self-perform.

The dangers to the City of accepting Arntz’s materially nonconforming bid run well beyond the costs that it will incur in excess of Arntz’s original bid. To give just one example, because Arntz claims that it will self-perform the roofing work—despite lacking the required specialty license or being certified by Garland—the City will lose the benefit of the roofing warranty it contracted for, as Garland will not provide the manufacturer’s warranty required by the Project’s specifications to a non-certified installer.

In its bid protest procedures (3-1.04A), the City “reserves the right to waive any bid irregularities not affecting the amount of the bid, except where such waiver would give the low bidder an advantage or benefit not allowed to other bidders.” Here, there is no question that: (1) Arntz’s bid is nonconforming in multiple respects; (2) the nonconformities affect the amount of the bid; and (3) the nonconformities gives the low

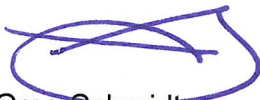
bidder an advantage or benefit not allowed to other bidders—among other things, the potential for bid shopping or peddling. See *Ghillotti Construction Co. v. City of Richmond* (1996) 45 Cal. App. 4th 897; *Konica Business Machines U.S.A., Inc. vs. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454 (a bid is not responsive and cannot be accepted if the variance gives the bidder an advantage or benefit not allowed by other bidders or, in other words, if the variance is consequential). Thus, the City lacks discretion in this instance to waive the nonconforming aspects of Arntz's bid, or to award the bid to Arntz.

Finally, DLF renews its request that the City provide a full and complete copy of the Arntz bid, as it is required to do under the California Public Contract Code.

DLF intends to avail itself of all available administrative and legal remedies should the Project be improperly awarded to Arntz. However, DLF is confident that the City will accept its bid protest and award the Project to DLF, the next lowest responsive and responsible bidder. DLF looks forward to working with the City on this important Fire Station Renovations Project.

If you have any questions, please contact me either via e-mail [gregs@dlfalk.com](mailto:gregs@dlfalk.com) or at (510) 887-6500 or cell (415) 559-7828.

Thank You



Greg Schmidt  
Director of Operations





February 24, 2017

Mr. Greg Schmidt, Director of Operations  
 D.L. Falk Construction Inc.  
 3526 Investment Boulevard  
 Hayward, CA 94545

Re: DL Falk Construction Bid Protest  
 Hayward Fire Stations #1, 2, 3, 4, & 5 Project

Mr. Schmidt:

This is in response to your subject letter dated February 14, 2017. Your letter requested that the City reject Arntz Builders, Inc. (Arntz) low bid. You alleged that Arntz did not list subcontractors required to perform work in excess of one-half of one percent of its bid, and that Arntz is not qualified to perform the work itself. You also asserted that there were omissions that are material and render the Arntz's bid non-responsive. The City Attorney's Office has reviewed your letter and concluded as follows.

To the extent that your bid protest is based on omissions in the subcontractors list, the City has considered your protest on the basis of non-responsiveness. The bid proposal required bidders to provide the List of All Subcontractors and Suppliers which Arntz provided. In their response to your bid protest, Arntz stated that they inadvertently did not list their painting subcontractor in the amount of \$208,000. This does not change the bid total and therefore is not materially non-conforming.

Regarding other scope of work that Arntz has not listed subcontractors, Arntz stated that they are self-performing roofing and polished concrete floors and reserve the right to self-perform drywall, plaster, tile, fencing and gates. Arntz has both a Class "A" and "B" contractor's license and with a Class "B" General Building *"may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building*

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*contractor to be able to take a prime contract or subcontract for a project involving other trades.” (BPC §7057).* The California Contractors State License Board does not limit Class “B” to self-performing as many trades as he or she may choose (with some specific exceptions such as fire protection or well drilling) and contractors may also take a general building contract and sub-contract 100% of the job as long as they use properly licensed sub-contractors for each trade or craft. If Arntz fails to self-perform as specified, Public Contract Code Section 4110 provides the City with several remedies to discourage the types of potential bid mischief D. L. Falk is concerned with.

For the reasons stated above, staff will be recommending that the City Council reject your bid protest; waive any omissions in Arntz’s listing of subcontractors as non-material; and proceed with the award to Arntz as the lowest responsible bidder.

Sincerely,

**MORAD FAKHRAI, P.E.**  
Director of Public Works

cc: Joseph Brick, Assistant City Attorney, City of Hayward  
Garrett Contreras, Fire Chief, City of Hayward  
Yaw Owusu, Assistant City Engineer, City of Hayward  
Dave Hung, Senior Civil Engineer, City of Hayward  
David Arntz, Vice President, Arntz Builders, Inc.