



SIERRA MOUNTAIN
CONSTRUCTION INC

13919 Mono Way · Sonora, CA 95370
Phone: 415-896-2859 - Fax: 800-507-5295

03/14/17 16:51 CLK

By Email (to Tay Nguyen) & Hand Delivered (to Office of the City Clerk)

Doug Benton
President
Sierra Mountain Construction, Inc
doug@sierramtn.net
Phone: 209-988-2282
Fax: 800-507-5295

Tuesday March 14th, 2017

Tay Nguyen
Assistant Civil Engineer
City of Hayward
Utilities & Environmental Services
510-583-4715

Re: New Garin Reservoir and Pump Station Improvements - Project No. 07183
Notice of Bid Protest

Dear Ms. Nguyen:

Sierra Mountain Construction, Inc. (Sierra Mountain) protests the award of the referenced project's contract to either Spiess Construction Co, Inc (SCCI) or Mountain Cascade, Inc (MCI) on the grounds that neither SCCI nor MCI are responsive bidders.

Sierra Mountain asserts that pursuant to specification section 16010-1.04-C (ELECTRICAL CONTRACTOR QUALIFICATIONS) of the Contract Documents, bidders were directed to list both *"the proposed Electrical Subcontractor and Systems Supplier with bid documents."* After reviewing SCCI's and MCI's submitted bid documents, Sierra Mountain has determined that neither SCCI nor MCI indicated a Systems Supplier. In contrast, Sierra Mountain did indicate a Systems Supplier by hand-writing "KDL" on Con J Franke's experience package (note that bid documents did not specify how or where to list the System Supplier, only that they need to be indicated). Furthermore, specification section 16010-1.04-D states *"If the Contractor, electrical Subcontractor, and System Supplier listed in bid documents are deemed not qualified by Owner, they will have their bid rejected at the Owner's sole discretion and the next qualified bidder selected."* How is the City of Hayward to determine whether SCCI's or MCI's proposed System Supplier is qualified if neither contractor listed one? Determining System Supplier qualification after the bid provides both SCCI and MCI with a competitive advantage that was not afforded to Sierra Mountain.



SIERRA MOUNTAIN
CONSTRUCTION INC

13919 Mono Way · Sonora, CA 95370
Phone: 415-896-2859 - Fax: 800-507-5295

03/14/17 16:51 CLK

A basic rule of competitive bidding is that "bids must conform to specifications and that if a bid does not so conform, it may not be accepted." *Valley Crest Landscape, Inc. v. Davis*, 41 Cal. App. 4th 1432 (1996). A bid is responsive only "if it promises to do what the bidding instructions demand." *Taylor Bus Serv. v. San Diego Bd. of Educ.*, 195 Cal. App. 3d 1331, 1341 (1987).

We therefore respectfully request that the City of Hayward enforce the bidding instructions and deem SCCI's and MCI's bids as non-responsive and appropriately award the contract to the next lowest responsive bidder, Sierra Mountain Construction Co, Inc.

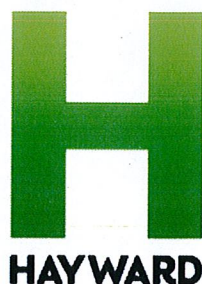
Please note that pursuant to 3-1.04A (Bid Protest Procedures) of the Special Provisions we are abiding by each protest condition (a through f) as follows:

- a) SMCI will provide a \$500 processing fee when filing protest at Office of City Clerk
- b) SMCI has provided its basis of protest in the above letter
- c) SMCI has provided the facts and referenced spec sections
- d) Doug Benton (company president) is representing SMCI. His contact information has been provided in the letter address.
- e) SMCI has provided a bid on referenced project
- f) SMCI has transmitted a copy of this protest letter to the affected parties (Speiss Construction Co., Inc and Mountain Cascade Inc).

Thank you for your careful attention to this matter, and please feel free to contact me if I can be of further service.

Very truly yours,

Doug Benton
Sierra Mountain Construction, Inc
President
Cell: (209) 988-2282
Doug@Sierramtn.net



March 28, 2017

Doug Benton
President
Sierra Mountain Construction, Inc.
13919 Mono Way
Sonora, CA 95370

Re: Sierra Mountain Construction, Inc., Bid Protest
New Garin Reservoir and Pump Station Improvements Project 07183

Dear Mr. Benton:

The City has received and reviewed your letter dated March 14, 2017. Your letter requested that the City reject the bids submitted by Spiess Construction Co., Inc., and Mountain Cascade, Inc., in connection with the above-referenced project on the grounds that neither were responsive bidders.

Your letter alleges that Spiess Construction Co., Inc., and Mountain Cascade, Inc., failed to indicate a System Supplier in their bids and that this omission renders their bids non-responsive. Specification section 16-010-1.04(C)-(D) requests that the Contractor submit the proposed electrical Subcontractor and System Supplier with the bid documents and gives the City discretion to reject bids if the System Supplier is deemed not qualified. Specification section 16-010-1.01(L) provides a list of pre-qualified System Suppliers for this project. This list includes: (1) Krug-Bixby-Long Associates; (2) Technical Systems, Inc.; (3) Primex; and (4) Tesco.

You are correct that both Spiess Construction Co., Inc., and Mountain Cascade, Inc., failed to include a pre-qualified System Supplier in their bids. However, none of the bidders, including Sierra Mountain Construction, Inc., included a pre-qualified System Supplier in their bids. On the list of subcontractors and suppliers sheet, which is required as part of the bid, Sierra Mountain Construction, Inc., wrote and crossed off "KDL" (although a hand-writing "KDL Stockton" appears on Con J Franke's experience package that was attached to the bid). "KDL Stockton" is not one of the pre-qualified System Suppliers. Accordingly, like Spiess Construction Co., Inc., and Mountain Cascade, Inc., your firm also failed to include a



Doug Benton
Sierra Mountain Construction, Inc.

pre-qualified System Supplier in the bid. Regardless of whether the System Supplier is listed on the bid, the Contractor is required to utilize a pre-qualified System Supplier as provided in specification section 16-010-1.01(L). The omission of the System Supplier does not change the bid total and therefore is not materially non-conforming.

Based on the foregoing, staff will be recommending that the City Council reject your bid protest. A date for City Council consideration of the bids has not been selected yet. The City will inform you once a date has been selected.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Ameri', with a long, sweeping flourish extending to the right.

Alex Ameri, P.E.
Director of Utilities & Environmental Services

Cc: City Attorney
Spiess Construction Co., Inc.
Mountain Cascade, Inc.