

**Carson City
Agenda Report**

Date Submitted: September 9, 2015

Agenda Date Requested: September 17, 2015

Time Requested: 15 Minutes

Labor Commissioner PWP # CC-2015-116

To: Mayor and Supervisors

From: Public Works Department

Subject Title: For possible action: To make a determination on the bid protest by K7 Construction (“K7”) regarding the City’s recommendation to award Contract No. 1415-143 entitled “Carson City Animal Services Facility” (“Contract”) to Shaheen Beauchamp Builders LLC (“Shaheen”). (Darren Schulz and Joseph L. Ward, Jr., Deputy DA)

Staff Summary: The City accepted sealed bids for all labor, materials, tools and equipment necessary for the Carson City Animal Services Facility, aka Carson City Animal Shelter. The project consists of constructing a 10,181 square foot building and site improvements on a 1.5 acre site including street frontage improvements. On Monday, August 31, 2015, the City recommended awarding the Contract to Shaheen. K7’s protest asserts that Shaheen was not a responsive bidder based on Shaheen allegedly failed to timely submit a 1% list required by NRS 338.141(1)(b)(3), making it “not responsive” pursuant to NRS 338.141(4)(a) requiring such list to be timely submitted. *See* Protest at p. 1, 2nd ¶.

Type of Action Requested: (check one)

Resolution

Ordinance

Formal Action/Motion

Other (specify)

Does this Action Require a Business Impact Statement: Yes No

Recommended Board Action: I move to reject K7’s bid protest regarding the City’s recommendation to award Contract No. 1415-143, entitled “Carson City Animal Services Facility,” to Shaheen.

Explanation for Recommended Board Action: The plain language of NRS 338.141(4)(a) would require the Board to deem Shaheen’s bid not responsive only if the 1% list was untimely. Shaheen’s 1% list was timely and any “informality” or “irregularity” should be waived.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 338.141 and the Bid Package language quoted above.

Fiscal Impact: Shaheen Beauchamp Builder’s proposal is for \$3,063,000 and K7 Construction’s proposal is for \$3,117,900 for a difference of \$54,900.

Explanation of Impact: The difference between K7’s bid and Shaheen’s bid.

Supporting Material:

- 1) Same documentation provided with the next agenda item for possible action to determine whether Shaheen Beauchamp Builders LLC is the lowest responsive and responsible bidder, pursuant to Nevada Revised Statutes (NRS) Chapter 338, and to award the Contract to Shaheen.
- 2) Bid Protest letter from Frank C. Gilmore, Esq. dated September 8, 2015.

Prepared By: Darren Schulz, Public Works Director and Joseph L. Ward Jr., Deputy DA

Reviewed By:  Date: 9/9/15
(Department Director)

 Date: 9/9/15
(City Manager)

 Date: 9/9/15
(Finance Director)

 Date: 9/9/15
(District Attorney)

Board Action Taken:

Motion(s): _____ 1) _____ Aye/Nays _____
2) _____ _____

(Vote Recorded By)



ATTORNEYS:

Kent R. Robison
Thomas L. Belaustegui
E. DeArmond Sharp
Keegan G. Low
Barry L. Breslow
Mark G. Simons
Michael E. Sullivan
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Frank C. Gilmore

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September 8, 2015

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Laura Tadman, CPPB
Purchasing and Contracts Administrator
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201 North Carson Street, Ste. 3
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Re: K7 Construction/Carson City Animal Facility Bid Protest

Dear Mr. Ward and Ms. Tadman:

Please accept this letter as a formal notice of protest, pursuant to NRS 338.142, of the Carson City Animal Shelter recommendation of award which was made by the City staff on Monday, August 31, 2015. The staff has recommended that the City award the contract to Shaheen Beauchamp Builders, LLC. For the reasons set forth below, K7 Construction believes the low bid was non-responsive as required by Nevada statute, and therefore protests the recommendation of award of the contract.

The Shaheen Bid is non-responsive because it fails to comply with the express requirements of NRS 338.141(1)(b)(3), as the "1% list" submitted pursuant to NRS 338.141(1)(b) does not contain the names and license numbers of all first tier subcontractors as required by the statute. Thus, the bid is non-responsive pursuant to NRS 338.141(4)(a).

Carson City accepted bid proposals from qualified prime contractors on a project known as "1415-143 Animal Services Facility 2nd Release." Shaheen was the low bidder. City staff made a recommendation to award the contract to Shaheen on August 31, 2015. Pursuant to statute, within 2 hours of the bid opening, Shaheen (and the other 2 low bidders) were required to submit a "1%" list pursuant to NRS 338.141(1)(b). I have reviewed Shaheen's bid proposal and the subsequent 1% list. The bid proposal is likely defective because:

(1) Shaheen's failure to properly complete the Subcontractors Sheet (BP10) is in violation of the express instructions on the BP10 Form; and

(2) Shaheen failed to identify the names and license numbers on its 1% list of all first tier subcontractors who will be performing more than 1%

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(2) Shaheen failed to identify the names and license numbers on its 1% list of all first tier subcontractors who will be performing more than 1% of the work of the total amount of the bid in violation of the express statutory requirements.

First, Shaheen's failure to properly complete the BP10 is undisputable. The Bid packet requires that: "This form be complete in all respects." Shaheen's bid contains only the abbreviated names of the first tier subcontractors and a general description of the work activity. Nothing else is contained in the form. The form requires phone number, address, license number, and limit of license. Thus, the proposal fails to follow the instructions. However, as there does not appear to be any express statute requiring this information to be provided, it is possible that the City would consider this to be "substantial compliance" and would not deem the bid nonresponsive on this failure alone.

Second, Shaheen submitted a timely 1% list, but it is incomplete. NRS 338.141(2)(b) requires the three lowest bidders to submit, within 2 hours of the bid opening, a list which contains:

(1) The name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding \$250,000.

(2) If any one of the contractors who submitted one of the three lowest bids will employ a first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will not be paid an amount exceeding \$250,000, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid 1 percent of the prime contractor's total bid or \$50,000, whichever is greater.

Put simply, the 1% list requires the names of all first tier subs who **(1) will be paid more than \$250,000; and (2) who will be paid the higher of 1% of the total bid or \$50,000.** Further, the statute requires that the list contain, the "**number of the license issued to the first tier subcontractor pursuant to chapter 624 of NRS.**" NRS 338.141(b)(3).

Shaheen's 1% list omits each of the names contained in the original bid proposal. Those subs were identified in the BP10 to be anticipated to perform more than 5% of the total bid. Accordingly, those subs would also qualify under either requirement for the 1% list (more than \$250,000, or more than 1%). Moreover, Shaheen's bid proposal fails to identify the license numbers of the 5% subcontractors in BP10, and, as those subs are absent from the 1% list, Shaheen has not complied with the express requirements of NRS 338.141(2)(b) in either list.

Joseph L. Ward, Esq.
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September 8, 2015
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The statute explains that:

Except as otherwise provided in this subsection, if a contractor:

(a) Fails to submit the list within the required time . . .the contractor's bid shall be deemed not responsive.

NRS 338.141(4)(a). Shaheen failed to submit a compliant 1% list within the required time. Thus, its bid is nonresponsive.

Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Sincerely,



FRANK C. GILMORE

FCG:mcd
cc: Client