



MEMORANDUM

TO: Mayor and City Council Members

FROM: Byron E. Johnson, C.P.M.
Purchasing Officer FASD

DATE: December 11, 2008

SUBJECT: Agenda Item #49 Fire Hydrant Maintenance and repair Contract

On the Agenda for the December 11, 2008 City Council Meeting, there is an item for your consideration to authorize award and execution of a 24-month requirements contract with WACHS Valve and Hydrant Services, LLC for fire hydrant maintenance and repair services for the Austin Water Utility (AWU). City Council has received a letter from a higher bidder, DMD Consultants, Inc. (DMD) West Palm Beach FL., questioning the award and the bid protest process. Be assured that the proper processes and procedures were followed. The letter requests further review of a protest that had no merit and was denied. The award on Council agenda is correct and is ready to be acted upon by City Council.

The letter states that they feel they were not properly dealt with in regards to the bid. The City of Austin (COA) has protest procedures that have been in place for many years. It allows bidders to protest actions in regards to their bid that may lead them to disqualification, non-responsive or non-responsible determinations in regards to their bid. The purpose is to give the bidder an opportunity to provide additional information to the COA in making a determination. The determination may be that the protest would be upheld, denied or referred to a hearings officer for review and recommendation.

In this case, DMD's protest stated "that the bid received from WACHS Valve and Hydrant Services, LLC should have been considered non-responsive as the company quoted, on the price for the report that must be furnished with each hydrant, "included as their price". DMD stated their position that this caused an "unbalanced bid" as defined in Construction bids. The Purchasing Office initially reviewed the bids received, contacted WACHS and had them confirm, in writing, that this item would not be a "chargeable item" and would be furnished at no additional cost to the COA. The Purchasing Office reviewed the bids with AWU and they concurred that in no case

could a report be procured on it's own as the report serves a purpose to document the fire hydrant and its properties.

DMD Consultants was advised, by letter, that their protest did not have merit. Further the company was provided information both verbally and in writing as to the rationale and a copy of the clarification letter from WACHS was supplied. I personally talked by cell phone with DMD Consultants representatives, Mr. Durrua and Mr. Gregory. DMD keeps quoting terms and conditions that were not in the bid which was issued by the COA and to which they responded. They keep quoting Section 00100.1a which is only used in a construction bid. Purchasing has again reviewed the documents and confirmed that no construction terms and conditions were used in the bid for goods and services. Further, DMD quotes the same construction bid terms and conditions, 00100.9B in regards to an unbalanced bid. An unbalanced bid is generally considered to be any bid that has pricing for items that when considered for purchase on their own would not be a realistic expectation to recoup costs or expenses. Even if the construction specifications were to be applicable, which they are not, this is not an unbalanced bid as the COA could not place an order for a report without ordering a repair or replacement hydrant.

DMD was also advised that there was not a need for this to be examined by a third-party hearings officer as precedence has already been set by review done in the past.

1. An independent hearings officer ruled "The provisions in the Bid instructions allowing the City to waive minor informalities and to resolve ambiguity by determining what bid is most advantageous can be relied on by the City to allow correction of the erroneous unit price.

So, even if this would have been determined to be an error, the COA could have waived this, and proceeded for the award. WACHS has the expertise and experience to be able to perform the contract and the bid submitted is a valid, responsive and responsive bid which under Texas Local Government Codes 252 and 271 should be considered for award.

Purchasing will supply DMD with a copy of this memorandum to further address any questions they have. DMD requested a copy of the bid submitted by DMD, which will be provided to them. They requested a copy of the contract, which I advised them, can not be supplied to them as City Council has not made an award and a contract document has not been created. After creation, it too will be supplied to DMD

If you have any questions or if you would like to discuss in more detail, please let me know.

cc: Marc A. Ott, City Manager
Leslie Browder, CFO
Jeff Knodel, Deputy CFO



11020 81ST CT N West Palm Beach, FL 33412
561-624-3333 fax 480-287-9283 cell 561-441-7405
dmd@dmdconsultants.net

December 10, 2008

City of Austin
301 W. Second Street
Austin, Texas. 78767

Attention: City Council Members

Regarding: Violation of City Policy

DMD Consultants, Inc is requesting City Council investigate the procedures utilized by the Purchasing Office during its review of Bid solicitation IFB NO. STA0179. There are Bid informalities within the Bid Documents submitted by Wach Valve & Hydrant which were brought to the attention of the Authorized Contact Person, Mr. Aden and to the Contract and Land Management Officer in October and again in November by email, fax, and certified mail. The Purchasing Office has not addressed the Bid irregularities, wrongfully denied a written request from DMD to schedule a Protest Hearing and has not responded to DMD's November correspondence which informed the Purchasing Office it appeared to be violating City policy.

DMD Consultants, Inc. is submitting all previous correspondence sent to the City concerning those bid irregularities and regarding violations of City policy by the Purchasing Office for the Council Members to review. Wach's Bid is being submitted to the City Council for award within Item 49 of the December 11th meeting agenda.

DMD Consultants, Inc. request the Council members pull Item 49 until such time it can be determined that City policy and bid review procedures have been properly adhered to.

Sincerely,
DMD Consultants, Inc.
David Durruea
President

**DMD****CONSULTANTS, INC.**

11020 81ST CT N West Palm Beach, FL 33412
561-624-3333 fax 480-287-9283 cell 561-441-7405
dmd@dmdconsultants.net

November 17, 2008
City of Austin
Office of Contract and Land Management
Attn: Contract and Land Management Officer
P.O. Box 1088
Austin, Texas. 78767-0845

Regarding: Bid No: STA0179
RX No: 2200-08081500932

Subject: Written Formal Complaint

On November 14th, DMD Consultants, Inc. was notified by Purchasing Officer Byron E. Johnson that he "found that there is no basis for a protest hearing." DMD strongly disagrees and requests that Mr. Johnson refer to the City's Standard Construction Contract Bid Documents, Instructions to Bidders and take note of the bid irregularities submitted by Wachs Valve & Hydrant.

Wachs Valve & Hydrant failed to submit any form of reasonable compensational consideration when it submitted (\$0.00) as the unit price for Item No: 3 (Hydrant Data Base Report) which is contrary to direction found within the Instructions to Bidders, Section 00100.1.a "Bidder must submit a price for each item in Bid."

Wachs created and submitted an "Unbalanced Unit Price Bid" by not submitting a price for Item No: 3. The other four bidders combined unit price average for Item No: 3 calculated from the bid tabulation was \$20.94. Wachs' response was submitted with no value assigned to the unit price. In accordance with Instruction to Bidders Section 00100.9.B (15), "an Unbalanced Bid may be considered as a basis for Bid rejection by the City of Austin."

Mr. Johnson stated that "the protest procedures do not allow for protesting of another company's bid submittal, therefore, I cannot grant a protest hearing." DMD strongly disagrees with Mr. Johnson and requests that he review the City's Standard Construction Contract Bid Documents, Section 00100.10 (Protest Procedures)(After Bid Opening) and take note of the instruction: "If you submit a bid to the Owner and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:...." DMD has complied with all the instructions contained within the Section 00100.10 (Protest Procedures).

Mr. Johnson wrongly ruled to not allow DMD Consultants, Inc. (A Qualified Bidder) to Protest an Award of Contract which is in violation of the City's Standard Construction Contract Bid

Documents. Furthermore, Mr. Johnson did not utilize or refer to those Documents to address the two bid informalities contained in Wachs' Informal Response.

DMD Consultants, Inc. is filing a formal complaint to the City in that Mr. Johnson has not timely and properly responded to DMD Consultants, Inc.'s October 17th letter to the City which provided written information and notification protesting award of Contract. In accordance with the City's Standard Construction Contract Bid Documents, Instructions to Bidders, Section 00100.1(3) (Allowed Representations); please distribute this letter to the members of the City Council and/or members of the City Board, to all Bidders on IFB STA0179 and any other interested party. DMD Consultants, Inc. again requests the City to arrange a protest hearing and to provide reasonable notification allowing DMD Consultants, Inc. to attend.

Please Email any written response to dmd@dmdconsultants.net at your earliest convenience. I can also be reached on my cell at 561-441-7405.

Respectfully,
DMD Consultants, Inc.
David M. Durrua, Director



City of Austin

Financial and Administrative Services Department
Purchasing Office, P. O. Box 1088, Austin, TX 78767

November 14, 2008

Delivered Via E-mail: dmd@dmdconsultants.net
U.S. Postal Service

David M. Durruea
DMD Consultants Inc
11020 81st Ct N
West Palm Beach, FL 33412

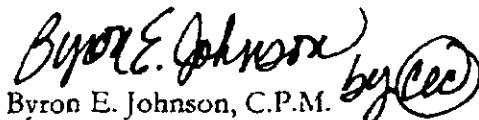
Re: STA0179 - Fire Hydrant Maintenance and Repair

Dear Mr. Durruea:

I have received and reviewed your letter dated October 17, 2008, as your protest hearing request. After review of your issues and concerns, I have found that there is no basis for a protest hearing. The protest procedures do not allow for protesting of another company's bid submittal, therefore, I cannot grant a protest hearing. Protests are held in regards to your submittal only. In addition, the recommended vendor has confirmed that as a standard practice within their company, they provide reports; therefore, did not include a charge for that service. (WACH's letter attached)

Thank you for your interest in the City of Austin.

Sincerely,


Byron E. Johnson, C.P.M. *by (cec)*
Purchasing Officer

DMD Consultants Inc

11020 81st Ct N West Palm Beach, Florida 33412AUSTIN CITY CLERK
POSTING: DATE/TIME561-624-3333 dmd@dmdconsultants.net fax 480-287-9289

DEC 10 PM 2 39

October 17, 2008

City of Austin
Office of Contract and Land management
Attn: Contract and Land Management Officer
P.O. Box 1088
Austin, Texas. 78767-0845

Regarding: Bid No: STA0179
RX No: 2200-08081500932

Subject: Written Notification Protesting Award of Contract

On October 17th, DMD Consultants, Inc. was informed by the Authorized Contact Person (Mr. Steve Aden) that the City had decided not to award the Contract to the apparent low bidder (Southern Specialties) and was instead considering the second low bidder (Wachs Valve & Hydrant) for Award. After receiving this information, DMD promptly reviewed Wachs unit price proposal on the City's Bid tabulation web site and discovered that Wach's response appears to be an Informal Response. DMD asks the City to conduct a thorough review of Wachs Bid and to furthermore consider these following informalities as a basis for an informal response:

Wachs Valve & Hydrant failed to submit any form of reasonable compensational consideration when it submitted (\$0.00) as the unit price for Item No: 3 (Hydrant Data Base Report) which is contrary to direction found within the Instructions to Bidders, Section 00100.1.a "Bidder must submit a price for each item in Bid."

Additionally, Wachs created and submitted an "Unbalanced Unit Price Bid" by not submitting a price for Item No: 3. The other four bidders combined unit price average for Item No: 3 calculated from the bid tabulation was \$20.94. Wachs response was submitted with no value assigned to the unit price. In accordance with Instruction to Bidders Section 00100.9.B (15), an Unbalanced Bid may be considered as a basis for Bid rejection by the City of Austin.

DMD Consultants, Inc respectfully requests the City reject Wachs Bid informal response and consider DMD Consultants for final award. Should the City be inclined to award the Contract in spite of the informal response by Wachs, DMD requests the City kindly notify DMD in advance and then schedule a protest hearing so that DMD may present its case. Please Email any written response to dmd@dmdconsultants.net at your earliest convenience. I can be reached on my cell at 561-441-7405.

Respectfully,
DMD Consultants, Inc.

David M Durrua
President

Faxed to: 1-512-974-7297