



AGENDA REPORT

Meeting Date: October 16, 2007

Item Number: F-5

To: Honorable Mayor & City Council

From: Allen Rubenstein, Project Manager

Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS
AWARDING A CONTRACT TO TOWER ENGINEERING, INC. FOR
THE CITY HALL GROUND FLOOR REMODEL AND APPROVING
PLANS AND SPECIFICATIONS THEREFOR

AND APPROVE A PURCHASE ORDER IN THE AMOUNT OF
\$5,134,240 FOR THE CONTRACT WORK

Attachments:

1. Resolution
2. Form of Contract
3. Icon West, Inc. protest letter of September 21, 2007
4. Tower Engineering response letter of September 24, 2007
5. Segovia Construction protest letter of October 3, 2007 (includes various letters of recommendation)

RECOMMENDATION

It is recommended that the City Council adopt the resolution awarding a contract to Tower Engineering, Inc. ("Tower") for the Base Bid and Alternate #1 in the amount of \$4,634,240, and approve a contingency of \$500,000 for contract work pertaining to the City Hall Ground Floor Remodel project. The work consists of the demolition and renovation of the ground floor of City Hall.

INTRODUCTION

The ground floor of City Hall is being remodeled into the Customer Service Center, which is intended to provide a one-stop service for most of City Hall customers. The new Customer Service Center will provide a new upgraded environment with an expanded level of convenience and service. Some of the expanded services include processing development permits, the issuance of parking permits, cashiering for bill payments, and self-service computer stations to access City programs through its internet website. During construction the ground floor staff will be relocated to modular buildings located on the former Transfer Station site. This move is currently scheduled to occur in mid-October.

RTK Architects, a California licensed architect, prepared the plans and specifications, which consists of demolition of the existing City Hall ground floor interiors, constructing a new reconfigured floor plan, and modifications to the exterior entry from Rexford Drive. Staff finds that the plans and specifications will safely implement the project. The project was initially advertised on June 4, 2007, as the "Customer Service Center" and bids were received on August 2, 2007. On September 4, 2007, the City Council rejected the bids that were received because of bid discrepancies and excessive cost.

The project was re-advertised as the "City Hall Ground Floor Remodel" during the week of August 20, 2007, and bids were received on September 17, 2007.

DISCUSSION

The bid documents requested quotations for the Base Bid, Compensatory Delay, and four Alternatives. The basis for selection was listed as the sum of the Base Bid and twenty days of compensatory delay. The Base Bid and the Alternates are as follows:

Base Bid – Interior Renovation

This provides for the demolition of the existing space and the construction of the interior ground floor space including all of the contracting trades and mill work.

Alternate One – Exterior Renovation

This work consists of upgrades to the exterior façade, entry doors, and balcony on the Rexford Drive side.

Alternate Two – Additional floor tile

This alternative adds additional decorative floor tiles to a portion of the ground floor terrazzo.

Alternate Three – Changes the finish on the rolling security grill

Alternate Four – Changes the material for decorative elements from natural stone to GFRG (glass-fiber reinforced concrete)

The project was advertised in the local Beverly Hills newspapers and the construction trade publication of McGraw-Hill Construction Information Group (Dodge Report). Seven firms obtained bid documents for this project, and four bids were received as follows:

	Segovia	Tower Eng'g	Icon West	Pima
Base Bid	\$3,841,544	\$4,310,000	\$4,500,000	\$4,666,500
Compensatory Delay	\$20,000	\$14,000	\$5,000	\$4,000
Basis of low Bid	\$3,861,544	\$4,324,000	\$4,505,000	\$4,670,500
Alternate #1	\$759,765	\$324,240	\$444,000	\$340,000
Alternate #2	\$46,380	\$110,954	\$48,000	\$40,000
Alternate #3	\$3,061	\$55,200	\$1,000	\$1,000
Alternate #4	\$0	(\$23,000)	(\$42,000)	(\$60,000)
Base Bid & Alternate #1	\$4,601,309	\$4,634,240	\$4,949,000	\$5,010,500

The bid documents include the following language:

"SPECIFIC QUALIFICATIONS Bidders shall have the following experience. City shall reject such bids that fail to demonstrate such experience as non-responsive. City shall determine, in its sole discretion, that bidders have met these specific qualifications.

h. Within the last five years, list at least three (3) construction projects your organization has completed which will demonstrate your capability to do the work. These shall include those where a public agency was the client, and where the project was of the same construction type, and describe the relevance of your construction project to the Work herein. (Be specific and identify the trades that are similar to the trades that are required in this project, such asOn a separate sheet provide the owner, a contact person and phone number, architect, contract amount, date of completion of the project listed..." [Emphasis in original]

The apparent low bidder, Segovia Construction, was issued its Contractors License in January 2007 according to the California State Contractors License Board. Segovia Construction's bid provided a resume of work overseen by Edward Segovia but performed by other companies. In addition, the bid listed only two projects, which at the time of bid submission it indicated were not completed, under the firm name Segovia Construction. Thus, staff, in consultation with the City Attorney's office, recommends that the City Council find that Segovia Construction's bid is non-responsive and be rejected as it does not list three completed projects it has performed in the last five years.

The bid of the second lowest bidder, Tower, was reviewed by staff and found to be responsive to the bid requirements, and to the qualifications and experience requirements. As reported by the California State Contractors License Board, their license is current and in good standing.

The third low bidder, Icon West, submitted a bid protest against both the bids of Segovia Construction and Tower. Attached for your reference are the bid protest from Icon West, Inc. and Tower's responses. Staff has determined that the protest related to Segovia Construction's bid is moot since it is recommended that their bid be rejected. The issues raised in connection with Tower's bid are as follows as well as staff's response to each item raised.

- 1) Tower did not submit a request for substitution for the specified Moonlight Mold product.

Response: Tower must purchase the specified material from that firm as it did not request substitution of materials prior to bid submission as required by the bid documents. Furthermore, Tower has indicated in its response letter that it will be purchasing this product from Moonlight Mold and will be installing it themselves.

- 2) Subcontractors were not listed on a separate form for the alternate bids.

Response: As required by the Bid Package and the Public Contract Code, Tower listed the subcontractors that will perform work in connection with the project which Tower has determined is in an amount in excess of one half (1/2) of one (1) percent of the prime contractor's total bid. The City Designation of Subcontractor Form also required that the

subcontractors for any alternates be listed on a separate form. Tower did not list its subcontractors for the alternates on a separate form. However, Tower has listed all the subcontractors that will be performing work in connection with the project as described in the Bid Package for the base bid and any alternates on one form.

In accordance with Beverly Hills Municipal Code Section 3-3-301 (E), the City Council shall award the bid to the lowest responsible bidder and the City Council may also waive any irregularities or informalities in the bidding. In order for the irregularity or informality in the bidding to be waived it must not (1) affect the amount of the bid; (2) give a bidder an advantage over others; (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. Staff, in consultation with the City Attorney's office, has evaluated these factors and it believes that none of these factors are present. Further, staff finds that it would be in the best interests of the City to accept the lowest responsive and responsible bid for the project, and listing the subcontractors on one form rather than two is an irregularity that can be waived by the City.

3) No subcontractor was listed for 'bronze cladding'.

Response: Only subcontractors listed in Tower's designation of subcontractors form may be utilized for the work required by the contract. The bronze cladding work may be performed by a subcontractor Tower has listed in its designation form. Furthermore, Tower has indicated in its response that the materials for this work will be provided by the same subcontractor listed under another category, and Tower will perform the installation.

Segovia Construction submitted a bid protest which was reviewed by staff. Attached for your reference is Segovia's protest letter in which it asserts that its bid is responsive and it is the lowest responsible bidder. The issues raised by Segovia in connection with staff's recommendation to find its bid non-responsive are as follows as well as staff's response to each item raised.

1) Segovia asserts that the City Council must award the contract to Segovia because it is the lowest responsible bidder and further, may not find Segovia's bid non-responsive on the grounds that it failed to submit evidence of three completed projects.

Response: Staff concludes, in consultation with the City Attorney's office, that Segovia failed to submit evidence of three completed projects as required by the bid package and thus, its bid is non-responsive. The City is entitled to request that Segovia list three completed projects in its bid. Segovia has pointed to no prohibition against such a request.

2) Segovia requests a hearing to attest to its qualifications pursuant to the prequalification process set forth in the Public Contract Code.

Response: Staff's response, in consultation with the City Attorney's office, is that the City did not utilize the prequalification process. There is no statutory or other procedure that provides for a hearing to reconsider a decision that a bidder is non-responsive. In fact, a hearing would not be appropriate because the City cannot now lawfully elect to waive the requirement that Segovia list three completed projects on its bid form, as explained below.

3) Segovia requests that the City Council waive the irregularity in its bid, the failure to submit evidence of three completed projects.

Response: As noted above, there are four factors which must be weighed in determining whether an irregularity may be waived. It is staff's conclusion, in consultation with the City Attorney's office, that the City Council cannot waive this irregularity because to do so would favor Segovia over other similarly situated bidders who were not qualified and did not submit a bid.

Based on staff's evaluation of Icon West's and Segovia's protests, staff finds the issues raised do not require the City to reject Tower's bid or accept Segovia's bid. Staff recommends waiver of the Tower bid irregularity with respect to its use of one subcontractor designation form, and further recommends acceptance of Tower's Base Bid and Alternate #1 for the total contract amount of \$4,634,240. The cost submitted for alternates #2 through #4 are not consistent with the estimated cost for that work; and therefore, it is not recommended that these alternatives be included in the contract amount.

The bid documents specify a 305 calendar day (ten months) completion period for the work, resulting in completion of the project in August-September 2008.

FISCAL IMPACT

Funding for this contract work has been allocated from the fiscal year 2007-2008 Capital Improvement Program (CIP) budget for the City Hall Master Project #0851 and is available to cover the cost of this work.



Scott Miller
Finance Approval



David D. Gustavson
Approved By

ATTACHMENT 1

RESOLUTION 07-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF
BEVERLY HILLS AWARDING A CONTRACT TO
TOWER ENGINEERING, INC. FOR THE CITY HALL
GROUND FLOOR REMODEL AND APPROVING
PLANS AND SPECIFICATIONS THEREFOR

The Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. The plans and specifications for the City Hall Ground Floor Remodel, dated August 24, 2007, ("Project") copies of which are on file in the Public Works Department, are hereby adopted and approved with respect to design criteria.

Section 2. The City invited bids for the Project and four bids were received. The lowest bid submitted by Segovia Construction is non-responsive because the bid fails to provide evidence of at least three (3) construction projects Segovia Construction has completed in the last five-year period as required by Bid Package No. 08-08. Tower Engineering, Inc. (or "Tower") submitted the second lowest bid. As required by the Bid Package and the Public Contract Code, Tower listed the subcontractors that will perform work in connection with the Project which Tower has determined is in an amount in excess of one half (1/2) of one (1) percent of the prime contractor's total bid. The City Designation of Subcontractor form also required that the subcontractors for any alternates be listed on a separate form. Tower did not list its subcontractors for the alternates on a separate form. However, Tower has listed all the subcontractors that will be performing work in connection with the Project as described in the Bid Package for the base bid and any alternates on one form.

Section 3. In accordance with Beverly Hills Municipal Code Section 3-3-301 (E), the City Council shall award the bid to the lowest responsible bidder and the City Council may also waive any irregularities or informalities in the bidding. In order for the irregularity or informality in the bidding to be waived it must not (1) affect the amount of the bid; (2) give a bidder an advantage over others; (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. The City Council has determined that none of these factors are present, it would be in the best interests of the City to accept the lowest responsive bid for the Project, and the failure to list the subcontractors on a separate form is an irregularity that can be waived by the City. Accordingly, based on the reasons set forth herein and in the Agenda Report dated October 16, 2007 the City Council hereby waives any irregularities or informalities in Tower's bid.

Section 4. Upon reviewing the bids submitted for the work to be performed pursuant to contract and said plans and specifications, the City Council hereby rejects the Segovia Construction bid as non-responsive and finds that Tower Engineering, Inc., hereinafter "said Contractor", is the lowest responsible bidder for such work. The bid of said Contractor is hereby accepted in the total amount of \$4,634,240.00 which includes the Lump Sum Base Bid and Alternate Bid #1, and a contract for the performance of such work dated _____, and identified as Contract No. _____, a copy of which is on file in the Office of the City Clerk, is hereby approved and awarded to said Contractor.

Section 5. A construction contingency in the amount of \$500,000 is hereby approved for change orders to the contract as approved by the City.

Section 6. The Mayor is authorized and directed to execute said Agreement on behalf of the City and the City Clerk is directed to attest thereto.

Section 7. The City Manager or his designee shall administer the terms of the Agreement on behalf of the City.

Section 8. The City Clerk shall furnish a copy of said Agreement after it has been approved and fully executed by the City, along with a copy of this resolution, to: Tower Engineering, Inc., 9130 Glenoaks Blvd., Suite 200, Sun Valley, CA 91352.

Section 9. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and her certification to be entered in the Book of Resolutions of the Council of this City.

Adopted:

JIMMY DELSHAD
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager
[signatures continue]



DAVID D. GUSTAVSON
Director of Public Works and
Transportation



ALAN SCHNEIDER
Director of Project Administration

ATTACHMENT 2

APPENDIX A
FORM OF CONTRACT

This contract ("Contract") is entered into by and between the City of Beverly Hills ("City"), a California municipal corporation, and Tower Engineering, Inc., a Corporation, whose address is 9130 Glenoaks Blvd., Suite 200, Sun Valley, CA 91352.

In consideration of the agreements herein contained, the parties agree as follows:

1. **WORK TO BE PERFORMED.** Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, transportation and other items of expense necessary to complete in a workmanlike manner all Work in accordance with the terms and conditions of the Contract, except for the labor, materials, supplies, equipment, tools, transportation and other items of expense as may be required to be furnished by the City. The Work is defined in detail in the Contract Documents, which govern the interpretation and performance of this Contract, but may be generally described as follows:

Item Description: Base Bid: Remodel of the City Hall Ground Floor. The project includes demolition, new walls, floors, lighting, and ceilings. It also includes electrical, mechanical, sprinklers, terrazzo tile, cabinets and fine woodwork, specialty decorative wall and ceiling elements, specialty glass, and other pertinent items and trades. Include Allowances #1, #3, and #4.

There are also four alternates:

Alternate 1: Sections 03451, 03490, 05700, 08410, 08716; and drawings A-4.1 and 4.2. Exterior entry renovations including façade, doors and balcony. Include Allowances #2, #5, and #6.

Alternate 2: Section 09310 and drawings A-3.3. Add decorative tiles in Halls #105 and #106.

Alternate 3: Section 08330. Provide an alternate cost to upgrade the finish to anodized gold on the rolling grilles.

Alternate 4: Section 09380. Cut natural stone, type II. Provide a deductive amount to substitute GFRG panels for the stone cladding at columns and walls where shown. The panel finishes shall match the existing stone wall finishes in the historic second floor lobby.

2. **CONTRACT DOCUMENTS.** This contract consists of this Form of Contract and the following Contract Documents, including all exhibits, appendices, addenda, drawings, specifications and documents therein and attachments thereto, all of which are by this reference incorporated herein and made a part of this Contract:

SECTION 1: NOTICE INVITING BIDS
SECTION 2: INSTRUCTIONS TO BIDDERS
SECTION 3: SPECIAL CITY REQUIREMENTS
SECTION 4: GENERAL SPECIFICATIONS
SECTION 7: ADDITIONAL FORMS
SECTION 8: GENERAL CONDITIONS
APPENDIX B: SCOPE OF WORK
APPENDIX C: PAYMENT PROCEDURES
APPENDIX D: BID FORM
APPENDIX E: TECHNICAL SPECIFICATIONS

as contained in City's Bid Document for Bid No. 08-08 dated August 24, 2007, and

SECTION 5: BIDDER'S BID
SECTION 6: SIGNATURE PAGE AND LEGAL STATUS

of Contractor's Bid in response thereto, all of which are incorporated herein by reference, and all of which shall comprise the Contract Documents for this Contract. If any item of the Scope of Work, Payment Schedule, or any other item of the Bid Package is modified by either of the parties or arrived at by negotiation between the parties, that item as finally agreed upon by the parties shall also become a

Contract Document, it shall supersede the corresponding item of the Bid Package, if any, and it shall be subject to all terms and conditions of the Contract.

3. PERFORMANCE PERIOD. Contractor shall commence Work after execution of the Contract, as provided in the Notice to Proceed, and shall complete all Work in accordance with the Schedule set forth in the Contract Documents.

4. PAYMENT. City shall pay Contractor as full consideration for the satisfactory performance by Contractor of all Work required under this Contract the sum of: Four Million Six Hundred One Thousand Three Hundred Nine Dollars (\$4,601,309), payable as provided in the Contract Documents, inclusive of Base Bid and Alternate Bids .

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the _____ day of, _____ 2007, at Beverly Hills, California.

City:
CITY OF BEVERLY HILLS
a municipal corporation

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk (SEAL)

General Contractor: (Insert Name)
a California corporation

(Insert Name) (Insert Title)

(Insert Name) (Insert Title)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

RODERICK J WOOD
City Manager

(Signatures Continue)

DAVID D. GUSTAVSON
Director of Public Works & Transportation

ALAN SCHNEIDER
Director of Project Administration

KARL KIRKMAN
Risk Manager

ATTACHMENT 3

ICON WEST, INC

Contractors / Engineers
License No. B747737

520 S. La Fayette Park Place Ste. #503
Los Angeles, Ca 90057

Tel. No. 213-385-0027
Fax No. 213-385-0024

September 21, 2007

Mr. Allen Rubenstein
City of Beverly Hills, DPW
3045 Foothill Rd
Beverly Hills, CA 90210

Project: Customer Service Renovation_ Project No. 05-821
Beverly Hills City Hall

Bid Date : September 17, 2007 @ 12: NN

Dear Mr. Rubenstein:

This letter is to formally protest the bid submitted by the two apparent low bidders for the above referenced project. We are protesting the non-responsive of the bid packages submitted by the two apparent low bidders on the following grounds;

A.) Tower Construction

- 1.) Tower Construction listed "Whitestone Designs" as per Section 09235 , item 1.05 E, Substitution, "*Companies desiring to submit proposals other than Moonlight Molds, Inc., shall at least ten working days in advance of the bid date, submit to the architect all descriptive information of the system.*"
- 2.) Tower Construction did not submit a subcontractors list for the alternates (Please refer to the Bid Form).
- 3.) Tower Construction did not list a subcontractor for "Bronze Cladding" which is more than ½ of one percent of the total bid amount.

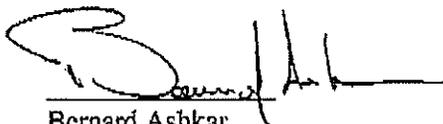
B.) Segovia Construction

- 1.) Segovia Construction did not list a subcontractor for "Bronze Cladding" which is more than ½ of one percent of the total bid amount.
- 2.) Segovia Construction listed "Home Express Construction" (a B License holder and does not possess the C9 required Drywall license and is only listed to do one trade) a subsidiary of "Whitestone Designs Inc.," but as per Section 09235 , item 1.05 E, Substitution , "*Companies desiring to submit proposals other than Moonlight Molds, Inc., shall at least ten working days in advance of the bid date, submit to the architect all descriptive information of the system.*"

Based on the foregoing, Icon West Inc., respectfully request that because of the above mentioned discrepancies of the bid packages as presented by Tower Construction and Segovia Construction respectively, that the bid submitted be rejected due to non responsive as required in the bid instructions and due to these reasons did not give Icon West Inc., the advantage required to be the low bidder.

Very Truly Yours,

Icon West Inc.,

A handwritten signature in black ink, appearing to read 'Bernard Ashkar', written over a horizontal line.

Bernard Ashkar
CEO

ATTACHMENT 4

TOWER GENERAL
ENGINEERING CONTRACTORS
9130 GLENDALE BLVD. #200 SUN VALLEY, CA 91352
PHONE: (818) 768-3530 FAX: (818) 768-3534

MEMORANDUM

DATE: September 24, 2007

12:29:30 PM

CC: zfarimani
mmotahari
robert calderon
nato flores
rowena smith

FROM: Alex Guerrero

11091 TO: Allen Rubenstein
City of Beverly Hills
345 N. Foothill Rd.
Beverly Hills, CA 90210

Fax: 310 278 1838

CSI:

310 288 2808

RE: -208028 Beverly Hills City Hall Ground Floor Remodel
Tower Response To Challenge

Dear Mr. Rubenstein:

Thank you for your e mail and attached points 1, 2, & 3 of the challenge. Tower responds as follows:

1. Contrary to point #1, Whitestone Designs is not listed in section 09235 and is not a substitute for Moonlight Molds, Inc. Whitestone is listed under 03300, where there is no Owner specified sub contractor required. Moonlight Molds, Inc. is supplying the specified material and Tower is the installer.
2. The "Designation Of Subcontractors/Supplier Form" contains the sub contractors performing the Alternates. The subcontractors performing the alternates were not listed because they are the same subcontractors performing the base work as well as the alternates.
3. Bronze Cladding is carried by the 05500 section sub who will provide the material and Tower will install.

If I may be of further assistance to you, please do not hesitate to contact me.

Tower looks forward to the prospect of working with the City of Beverly Hills.

Kindest regards,

Alex Guerrero
Executive Vice President

ATTACHMENT 5



BELL, ROSENBERG & HUGHES LLP

October 3, 2007

Via Electronic and First Class Mail

City Council of Beverly Hills
City Hall, 3rd Floor
455 N. Rexford Dr.
Beverly Hills, CA 90210

Re: Bid Protest / Beverly Hills City Hall Ground Floor Remodel

Dear Council Members:

We are counsel to Segovia Construction, the lowest responsible bidder for your City Hall Ground Floor Remodel Project. Segovia Construction, moreover, is a duly licensed and bonded contractor with all of the necessary resources to do an outstanding job for the City on this Project. Please review the attached recommendations for Mr. Segovia from the Los Angeles Unified School District and the Lynwood Unified School District, as well as the recommendation of Segovia Construction by its surety and others. Despite Segovia Construction's unquestioned qualifications, City staff has informed Segovia Construction that the City may not award Segovia Construction a contract for the Project based solely upon Segovia Construction's responses to question "h" in the bidder's questionnaire.

Basis for Bid Protest

Segovia Construction disputes the City's authority to reject its bid based upon question "h". The City cannot use question "h" to be the exclusive factor to decide which bidder is awarded the Project's contract. Therefore, an award to anyone but Segovia Construction, the lowest responsible bidder, would be void and illegal.

Question "h" appears in the City's bid form below a heading entitled "Special Qualifications." This heading states that the City "shall reject such bids that fail to demonstrate such experience as non-responsive." Then, question "h" seeks information regarding various constructions projects engaged in by the bidder within the past five years. As interpreted by the City's staff, question "h" would categorically preclude any recently formed company (no matter how substantial its resources, or how experienced its management) from competing for the Project.

Public Contract Code §20162, however, does not permit the City to arbitrarily exclude new companies from competing for the work. Section 20162 provides that “[w]hen the expenditure required for a public project exceeds five thousand dollars (\$5,000), *it shall be contracted for and let to the lowest responsible bidder after notice.*” (Emphasis Added) The contract for this Project is within the scope of §20162 and so must be awarded to “the lowest responsible bidder.” The determination whether a bidder is responsible relates to the “fitness, quality and capacity of the bidder to satisfactorily perform the proposed work.” (*Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341 fn 4) By contrast, a bid is “responsive if it promises to do what the bidding instructions require.” (*Valley Crest Landscape, Inc. v. City Council of the City of Davis* (1996) 41 Cal.App.4th 1432, 1438)

While Public Contract Code §20101 permits a public entity to prequalify contractors by requesting bidders to state their “experience in performing public works” projects, this experience is only one of many factors that must be considered to determine which bidder should be awarded a contract.

Any public entity requiring prospective bidders to complete and submit questionnaires and financial statements . . . shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. *The uniform system of rating prospective bidders shall be based on objective criteria.*

(Pub. Contract Code §20101(b) (Emphasis Added)) A bidder’s successful completion of prior similar projects is an objective criteria. However, the statute does not permit the City to arbitrarily establish this one criteria as a litmus test of the minimum qualifications or for determining who is a responsible contractor.

In this case, it is undisputed that Segovia Construction is the lowest bidder. Therefore, the Project must be awarded to Segovia Construction unless Segovia Construction is determined not to be a “responsible” bidder. (See Pub. Contract Code §20162) In other words, the City cannot use a single factor like question “h” to act as *the* factor to decide which contractor is awarded Project. Nevertheless, question “h” does exactly this by stating that the failure to show a particular level of experience will cause the City to reject a bid, even from a lowest bidder who is demonstrably a responsible bidder.

The City’s decision to reject a bidder based solely on question “h” violates the statutory requirement of Public Contract Code Section 20161 by allowing the City to award the Project’s contract to a bidder who was not the lowest responsible bidder. In other words, regardless of any other material provided in the bid, and even if the bid was the lowest, the City can still reject that

bid solely because of the response given to question "h." By giving question "h" an effective veto over who is awarded the Project's contract, the City has improperly taken aspects of §20101 and changed them. In doing so, the City is not awarding the bid to the lowest bid, as statutorily required. (*See, e.g.*, Pub. Contracts Code §20162) Instead, the City is awarding the Project's contract based solely upon the length of time that a bidder has been in business. As the City does not have statutory authority to award the Project's contract based solely on the length of time a bidder has been in business, Segovia Construction protests the City's decision not to award a contract to Segovia Construction as the lowest responsible bidder.

Request for Due Process Hearing

If the City still maintains its position that it can award the Project's contract to a contractor other than the lowest bidder, then it "*must* (1) notify the low monetary bidder of any evidence reflecting upon his responsibility received from others or adduced as a result of independent investigation, (2) afford the bidder an opportunity to rebut such evidence and (3) permit him to present evidence that he is qualified to perform the contract." (*Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341 (Emphasis Added))

Due to this, if the City does not award Segovia Construction the Project's contract, then Segovia Construction requests a hearing at which it can establish that it possesses the level of experience and skills necessary to successfully complete the Project. In particular, Segovia Construction's evidence would show that its employees and officers have the historical knowledge sought by question "h." As evidence of this knowledge, Segovia Construction is in the process of collecting declarations from other owners and sub-contractors. (Segovia Construction attaches to this letter the declarations that it has gathered to date.) At a hearing, Segovia Construction would submit these declarations and other evidence to show that it, through its employees, possesses the skills and knowledge sought by the City for this Project.

The City May Waive Strict Compliance with Question "h"

A city is permitted to accept a bid if it substantially complies with the bid requirements, even if the bid does not strictly comply with all requirements. (*Valley Crest Landscape, Inc. v. City Council of the City of Davis* (1996) 41 Cal.App.4th 1432, 1440-1441)

Under the terms of the City's bid request for this Project, Segovia Construction seeks a waiver for any irregularity related to or associated with its response to question "h." This waiver is proper because Segovia Construction cannot withdraw its bid.

Pursuant to Public Contracts Code §§5100-5110, a bidder can withdraw a bid because of a mistake. (*See, e.g.*, Pub. Contract Code §5103) A mistake for §5100 et seq. is defined as a typographical or arithmetical error. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175,

1181) If §5100 et seq. does not apply, then a public entity can waive any irregularity and the bid can be deemed valid. (*Id.* at 1180-1181)

For Segovia Construction, any non-compliance with question "h" should be waived by the City because Segovia Construction is unquestionable a responsible contractor. The information requested by question "h" relates solely to a bidder's history. However, for Segovia Construction, since it is a relatively young company, its history is limited. Nevertheless, Segovia Construction sought to comply with the spirit of question "h" by providing documentation showing that its individual employees and officers possess a considerable amount of experience directly relevant to the Project. Further, Segovia Construction is in the process of obtaining additional declarations from other contractors and sub-contractors attesting to the experience and skills possessed by its individual employees and officers. In other words, even though Segovia Construction as a corporate entity began business relatively recently, the individuals who are employed by it and who would be working on the City's Project do have the work history requested by question "h". Thus, Segovia Construction should receive a waiver for this irregularity because it would receive no unfair advantage over another bidder from that waiver. "The rule of strict compliance with bidding requirements does not preclude the contracting entity from waiving inconsequential deviations." (*Ghilotti Construction Company v. City of Richmond* (1996) 45 Cal.App.4th 897, 908)

Moreover, this waiver is appropriate because Segovia Construction cannot withdraw its bid, pursuant to §5100 et seq. Segovia Construction cannot withdraw its bid because its response to question "h" was not a mistake. The inability of Segovia Construction to re-submit its bid precludes a potential that Segovia Construction would receive an unfair advantage from this waiver. (*See Konica Business Machines U.S.A., Inc. v. The Regents of the University of California* (1988) 206 Cal.App.3d 449, 456-457 (holding that a waiver that granted a bidder an unfair advantage is not permitted).) Rather, since Segovia Construction lacks the ability to respond to question "h" because of its short history, its response to question "h" was not a mistake, as defined by §5100 et seq.

Conclusion

Based upon the foregoing, Segovia Construction must be awarded the Project's contract because Segovia Construction is the lowest responsible bidder. As indicated by the supporting letters of support, Segovia Construction will do a great job for the City on this project. However, if the City fails to award a contract to Segovia Construction, then we request a hearing to demonstrate that it is a "responsible" contractor as defined by Public Contract Code Section 20162 and relevant case law, and that Segovia Construction fully meets the concerns addressed by question "h." Alternatively, Segovia Construction requests that the City waive the requirement for strict compliance with question "h" because it is a waivable irregularity under applicable law.

City Council of Beverly Hills
October 3, 2007
Page 5

Thank you very much for your attention to this matter and for your consideration.

Very truly yours,

BELL, ROSENBERG & HUGHES LLP



Roland Nikles

RN:GCM:mdb

Enclosure/s

cc: City Attorney of Beverly Hills (*via facsimile*)

Allen Schneider, Director of Projects

Deborah R. Hakman

[7428.002/city 2007_10_03]



DAVID BREWER III
Superintendent of Schools

LOS ANGELES UNIFIED SCHOOL DISTRICT Facilities Services Division

JOSEPH MEHULA
Chief Facilities Executive

JOHN DOYLE
Director - Construction
Existing Facilities

LEONARD de LEON, P.E.
Regional Project Management Director
Region 4

October 2, 2007

To Whom It May Concern:

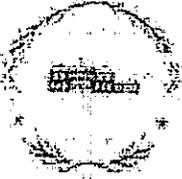
The Belmont Modernization is a large multi phased complex project exceeding \$23 M in construction. For a large portion of the project, I have had the distinct pleasure of having Mr. Ed Segovia as manager with his association with Amoroso Construction, general contractor for the project. As a part of the Belmont Modernization team, Mr. Segovia was responsible for all aspects of the construction process, overseeing site operational personnel, project management and finance. As he seeks to move on to new challenges, I welcome this opportunity to provide a recommendation on his behalf.

In my association with Mr. Segovia, he has been an excellent manager. I found him to be professional and prepared. At times negotiations between the owner and contractor can be difficult, Ed retains his composure and consistently seeks to be part of the solution, bringing closure to many difficult and challenging issues during his tenure.

Further, every time I have asked Ed for something, he delivers on time. His professional approach, demeanor and high degree of integrity inspires confidence in his staff and in others. Simply put, Ed Segovia makes a team look good. I would not hesitate to recommend him for this project.

Please feel free to contact me.

A. Jared Cascadden
Project Manager
Senior Construction Manager
LAUSD Existing Facilities, Region 4
(213) 633 3515 Office
(661) 713 2096 Cell



LYNWOOD UNIFIED SCHOOL DISTRICT
11321 Builly Road, Lynwood, CA 90262 (310) 886-1000

October 2, 2007

To Whom It May Concern:

The Cesar Chavez Middle School No. 1 is a new middle school project normally completed in 18-24 months, but was scheduled and completed in 11 months. The construction cost of the project exceeded \$25 million dollars. The project consisted of nine new steel framed buildings totaling approximately 85,000sf and a 85,000sf parking garage with off site and on site work.

The reason this project was completed in record time was due to Mr. Segovia's ability to manage not only the project but all issues that could have delayed the project. He was the Project Manager / Project Executive and was responsible to oversee the finance, management and scheduling of the project.

Mr. Segovia consistently seeks to be part of the solution during negotiations between owner and contractor, which at times can be often difficult. I have found him to be very professional and prepared throughout his tenure especially during challenging issues.

Mr. Segovia's professionalism, accountability, and integrity are a few of the characteristics that build confidence within his staff and business partners. But it is Ed's leadership and team player attitude that allows him to always deliver on time. These are the main reasons why I would highly recommend him for this project.

If you have any other questions please do not hesitate to contact me at 310-886-1507.


Ramon Roxas
Facilities Planner
LUSD Facilities



WOODRUFF
SAWYER &
COMPANY

October 2, 2007

City of Beverly Hills

Re: Segovia Construction
City Hall Ground Floor Remodel

To Whom It May Concern:

Please be advised that as Segovia Construction's Surety broker, we are prepared to issue the performance and payment bonds required in connection with the captioned bid and the contract award.

The approval of the bid bond issued in connection with the bid of September 17, 2007 is an indication of our confidence in Segovia Construction. We would be pleased to follow with the issuance of the performance and payment bonds. These bonds represent a third-party (surety) prequalification of Segovia Construction as well as a guarantee of Segovia Construction's contractual and performance obligations as required by the contract, bond forms and appropriate laws and statutes.

Ed Segovia's construction experience and track record reflect a high level of construction expertise that exceed the requirements of this project. Ed and Andrew Segovia have also invested in the business planning and management tools that have resulted in Segovia Construction's business capabilities matching the same high level of expertise.

If there is anything we can do to assist in the bid review and contract award, please let us know.

Sincerely,

Mark Munekawa
Vice President - Surety

Insurance Services
Risk Management
Employee Benefits

T 415.391.2141
F 415.989.9923

220 Bush Street, Floor 7
San Francisco, CA 94104

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EASTBROOK CONSTRUCTION, INC.

Lic. #673570

October 1, 2007

Beverly Hills City Hall
445 North Rexford Drive
Beverly Hills, California 90210

Re: Segovia Construction and
Mr. Edward L. Segovia

To Whom It May Concern:

It has been our pleasure to do business with Mr. Ed Segovia over the last 10 years, first, with S.I. Amoroso Construction Co. and now with Segovia Construction. We were pleased to see Mr. Segovia go into business for himself. The construction industry needs more individuals with the knowledge and integrity that Mr. Segovia provides. We feel that it would be in the City's best interest to employ Segovia Construction for the BEVERLY HILLS CITY HALL REMODEL.

Please do not hesitate to call if we can be of further help in this matter.

Respectfully,

Lee A. Ferguson
General Manager



Construction Services Inc.

October 2, 2007

Subject: Segovia Construction

To Whom It May Concern:

Segovia Construction is currently on the Building R Gymnasium Renovation Project for Long Beach City College. Segovia Construction has provided adequate personnel and supervision. Segovia Construction has been eager and willing to resolve any concerns that Long Beach City College has had. The workmanship and overall quality of work of Segovia Construction has been appreciated by Long Beach City College. Segovia Construction has submitted all paperwork in a timely manner to Long Beach City College and has met the contractual requirements. Long Beach City College is content with Segovia Construction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas Shambra', with a long horizontal line extending to the right.

Nicholas Shambra

Senior Project Manager

BOARD OF PUBLIC WORKS
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DEPARTMENT OF
PUBLIC WORKS

BUREAU OF
ENGINEERING

GARY LEE MOORE, P.E.
CITY ENGINEER

1149 S. BROADWAY ST., SUITE 700
LOS ANGELES, CA 90015

<http://ong.lacity.org>

October 4, 2007

To Whom It May Concern:

As the Construction Manager of the Operations Valley Bureau Headquarters and Valley Traffic Division, a \$20 Million project for the Los Angeles Police Department, I have had the pleasure of working with Mr. Ed Segovia. In my relationship with Mr. Segovia he exceeded my expectations as Project Executive, with his superior knowledge of construction and ability to handle the personal relationships required to make a project successful.

As the project manager for the Operations Valley Bureau Headquarters and Valley Traffic Division it was required of Mr. Segovia to provide to the City a cost and man loaded primavera schedule exceeding 400 activities involving multiple trades and milestones. This CPM was updated every two weeks and proved to be a useful tool to drive both subcontractors as well as the design team.

During the settlement of change orders Mr. Segovia was well briefed on the scope of work weather it involved his own work or was the work of one of his subcontractors. Mr. Segovia proved to be a voice for his sub contractors as well as a stop gap for the unreasonable. The negotiations we had together I believe came to the result of mutual benefit to all parties involved.

Mr. Segovia has the ability to be among the cool thinking heads in a heated construction meeting. This requires no explanation to anyone who has coordinated trades.

I look forward to the possibility of working with Mr. Segovia on future projects.

If you have any questions contact me at 213-978-1915.

Sincerely,

Juan Izaguirre P.E.,
Construction Manager





S. J. AMOROSO
Construction Co., Inc.
390 Bridge Parkway
Redwood Shores, California
94065

(650) 654-1900 phone
(650) 654-9002 fax

October 4, 2007

Beverly Hills City Council

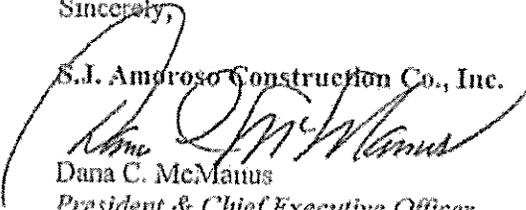
RE: The Beverly Hills City Hall Project

Dear Council Members,

I have been informed that Segovia Construction is the low bidder on the Beverly Hills City Hall Project. Mr. Segovia worked for S.J. Amoroso Construction for the past 5 years before starting his own company. During the time Mr. Segovia worked for Amoroso, he was a Project Executive on multiple public works projects, each ranging in size from \$20 million to \$30 million. Therefore, I believe that he certainly has the capability of performing an excellent job for Beverly Hills. When this project is complete, the Beverly Hills Council will be proud of the fact that it awarded this project to Segovia Construction.

Sincerely,

S.J. Amoroso Construction Co., Inc.



Dana C. McManus

President & Chief Executive Officer

Bergelectric Corp. Contractors & Engineers



October 6, 2007

Mr. Ed Segovia
Segovia Construction
211 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

via electronic mail edsegovia@segoviaconstruction.net

**RE: CITY OF BEVERLY HILLS
CITY HALL GROUND FLOOR REMODEL**

Dear Ed,

Please use this letter of reference as necessary to further your business opportunities.

Bergelectric had a very solid history with Ed Segovia while he was employed with SJ Amoroso Construction Company during the Lynwood Middle School project. We completed a fast track, multi-building school through the rainiest season on record on time.

In addition, we are currently working on a project with Segovia Construction at the Pacoima Maintenance Facility New Guardhouse and Front Entrance project. We are happy to say that our experience working with Segovia Construction is no different than our good experience working with him while at SJ Amoroso Construction. He is positive, proactive, and committed to completing projects on time.

We look forward to continuing our business relationship together on the Beverly Hills City Hall Ground Floor 16,000 square foot remodel project.

If anyone has any questions or requests additional information, please have them contact me.

Very truly yours, -

Bergelectric Corp.

A handwritten signature in black ink that reads "Steve Parks". The signature is written in a cursive, flowing style.

Steve Parks
Operations Manager

SP/sm