



City of Santa Barbara

Public Works Department

www.SantaBarbaraCA.gov

January 26, 2009

Main Offices
630 Garden Street
P.O. Box 1990
Santa Barbara, CA
93102-1990

Mr. Gust Soteropulos
Swinerton Builders
863 South Figueroa Street, Suite 3000
Los Angeles, CA 90017-3009

Administration
Tel: 805.564.5377
Fax: 805.897.2613

Subject: Santa Barbara Airport Terminal - Bid No. 3556

Engineering
Tel: 805.564.5363
Fax: 805.564.5467

Dear Mr. Soteropulos:

Facilities
Tel: 805.564.5415
Fax: 805.897.2577

The City of Santa Barbara has received your December 24, 2008 protest of EMMA Corporation's bid for the City's Airline Terminal project, Bid No 3556. We have reviewed the information presented in your letter and respond as follows to each allegation:

Street Maintenance
Tel: 805.564.5413
Fax: 805.897.1991

1. EMMA's bid is non-responsive because EMMA's electrical subcontractor and listed supplier are not qualified to perform the security telecommunications and audio paging work.

Transportation Operations
Transportation Planning
Tel: 805.564.5385
Fax: 805.564.5467

The City responds to this allegation is as follows:

Water Resources
Tel: 805.564.5387
Fax: 805.897.2613

EMMA will use Gilmartin/ExcelSystems for the security and telecommunications work and we are informed that they are fully qualified to work on Johnson Control Systems, as well as the Systimax telecommunication system. Note that the specifications allow for substitution of subcontractors, and proposed equipment and material suppliers with written approval of the City. EMMA has assured us that that only authorized suppliers and certified installers will be used on the project.

Granada Offices
1221 Anacapa Street
Santa Barbara, CA 93101

2. EMMA is not a responsible bidder for this Project because EMMA does not satisfy the qualification requirements of the Project Specifications.

Environmental Services
(Recycling Programs)
Tel: 805.564.5587
Fax: 805.564.5688

The City responds to this allegation as follows:

Downtown Parking
1221 Anacapa Street
Santa Barbara, CA 93101
Tel: 805.564.5656
Fax: 805.564.5655

We have carefully reviewed EMMA's experience in the construction of similar steel framed and other buildings. We have also interviewed several Owner's who EMMA has worked for and this leads us to the conclusion that EMMA has performed satisfactorily other contracts of like nature, magnitude and comparable difficulty and comparable rates of progress.

Additionally, because EMMA has not completed projects funded by the Federal Government does not render their proposal non-responsive. EMMA has significant

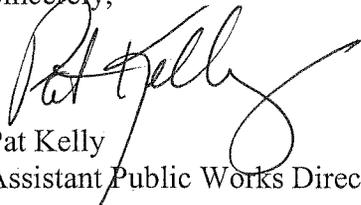
experience on projects with other similar government type funding and corresponding special contract requirements.

With regard to EMMA's experience working with relocation and rehabilitation of the historic Terminal, the value of this work is less than one half of one percent, therefore it was not required that a subcontractor be listed. The City will assure that only skilled workers meeting the requirements of the contract specification will perform the rehabilitation work.

Finally, a copy of your protest letter was sent to EMMA Corporation for their review and comment. Their response dated January 7, 2009 is attached to this letter. If you have any additional information to support the grounds for your protest, please submit that documentation or additional information as soon as possible to the undersigned. Once we have evaluated this additional information if any, we will make a recommendation on the bid award.

We appreciate your interest in the project. Please call Owen Thomas, Principal Engineer at 805 692-6018 if you have any other questions about this matter.

Sincerely,



Pat Kelly
Assistant Public Works Director/City Engineer

OT/sk

Encls: Emma Corporation letter (January 7, 2009)

c: Karen Ramsdell, Airport Director
Christine F. Andersen, Public Works Director



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March 2, 2009

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Via Overnight Delivery and Facsimile

Gust Soteropulos
Vice President Operations Manager
Swinerton Builders
865 South Figueroa Street
Suite 3000
Los Angeles, CA 90017-3009

Re: Bid No. 3556 Santa Barbara Airport Terminal
Swinerton Bid Protest

Dear Mr. Soteropulos,

Thank you for meeting with Owen Thomas, Leif Reynolds, Sarah Knecht and myself last week regarding the possible bid protest which may be made by Swinerton Builders ("Swinerton") on the bid submitted to the City of Santa Barbara by the apparent lowest responsible bidder, EMMA Corporation ("EMMA"). Enclosed with this letter, please find a letter dated February 25, 2009, from EMMA Corporation, with attachments, responding to the assertions made in your letter dated February 19, 2009.

The Santa Barbara City Council is scheduled to hold a public hearing to consider any possible bid protest with respect to the Airline Terminal contract on March 10, 2009, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the City Council chambers located at 735 Anacapa Street, Santa Barbara. If Swinerton still wishes to pursue a protest to the possible award of this contract to the apparent lowest responsible bidder, the City encourages you to attend this hearing and present your information and assertions to the City Council. Following the hearing on any potential bid protest, the City Council may reject or accept the bid protest and may award the contract to the lowest responsible bidder.

As a supplement to the City's letter to you dated January 29, 2009, the City provides the following additional responses to the possible bid protest as expressed in the Swinerton letters to the City dated December 24, 2008, and February 19, 2009:

A. Swinerton Asserts: EMMA's bid is non-responsive because EMMA's listed electrical subcontractor and listed supplier are not qualified to perform the security, telecommunications and audio paging work. Specifically, EMMA's bid does not comply with the requirements for the security system.

Gust Soteropulos
Vice President Operations Manager
Swinerton Builders
March 2, 2009
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GEC is not qualified to perform the security system work in accordance with Specification Section 13720-1.3 (performance requirements). Furthermore, pursuant to Specification Section 13720 3.4A – Bid Compliance Requirement – Security Systems, since EMMA, or its subcontractor, GEC, must be proposing to use an alternate security system, EMMA must provide supporting technical specifications. Swinerton assumes in its February 19, 2009 letter that EMMA is proposing to change out the security system.

Response: California Public Contract Code section 4104 requires that the prime contractor list the name and location of the place of business of each subcontractor who will perform work to the prime contractor in or about the construction or the work in an amount in excess of one-half of 1 percent of the prime contractor's total bid. As required by the Public Contract Code, EMMA listed Gilmartin Electrical Contracting ("GEC") as its electrical subcontractor.

Contrary to Swinerton's suggestion, second tier contractors need not be listed at the time of bid. Furthermore, as provided in the bid specifications, proposed Equipment and Material Manufactures may be substituted before contract award and after award with written approval of the City.

EMMA's submitted Equipment and Material Manufactures sheet lists six different manufactories and one supplier. EMMA does not list Johnson Controls specifically and its second tier subcontractor, Excell Systems, is alleged by Swinerton to not be "authorized" to work on Johnson Controls systems. EMMA has confirmed to the City that its electrical subcontractor, GEC, will contract with Tech Controls, as a second tier contractor, to furnish and install Bid section 13720. Tech Controls installer, ECS, is authorized by Johnson Controls to work on the existing P2000 Security Management System. The material list submitted by EMMA, attached to its February 25, 2009 letter, specifies use of Johnson Controls door controllers, P2000 site software upgrade and iclass card.

Additionally, Johnson Controls, by letter dated February 24, 2009, has confirmed and now acknowledges that ECS is a Johnson Controls Authorized Building Control Specialist and Authorized Building Security Specialist distributor of such products and is currently in good standing with Johnson Controls.

Furthermore, as confirmed by EMMA in its letter of February 25, 2009, Johnson Controls systems will be utilized and therefore no substitutions were or are proposed by EMMA.

B. Swinerton Asserts: EMMA's bid does not comply with the requirements for the telecommunications system. EMMA's subcontractor, GEC, does not comply with the quality assurance specification listed in Section 17700 1.6B.2, 3, 5 and 6 of the bid specifications.

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Vice President Operations Manager
Swinerton Builders
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Response: The bid specifications require documentation of experience after award of contract. However, in order to satisfy this inquiry, EMMA's subcontractor, GEC, has provided a letter from a second tier subcontractor, PCC Network, which indicates that PCC is an authorized "Systimax" cabling installer and has RCDD's on staff and BICSI certified installers.

C. Swinerton Asserts: EMMA's bid does not comply with the requirements of the audio paging system. The equipment and manufacturer listed for the audio paging system specified in Division 17790 lists Atlas Sound as the manufacture and Excel System as the supplier. Atlas does not manufacture a product that can comply with 17790. GEC cannot therefore comply with 17790 1.3A and 177901.5A.

Response: EMMA's subcontractor, GEC, has obtained and attached a quotation from a second tier subcontractor, AV Direct, for compliance with specification Section 17790 audio paging system that includes IED equipment. The requirement of section 17790 A.1 that experience and references be provided to the City prior to award of contract will be provided and satisfied by EMMA.

D. Swinerton Assets: EMMA is not a responsible bidder for the project because it does not satisfy the qualifications and experience requirements of the bid specifications.

Response: The bid specifications require the contractor to have performed five similar projects. EMMA has provided ten project references that are in excess of \$10,000,000. Of those ten, four were valued over \$20,000,000. EMMA has completed both infrastructure projects and building projects. EMMA has completed entirely new school campuses. EMMA does not have extensive experience working on Airports (one project listed). However, most of the City airline terminal project is outside the Airport Operations fence. The City considers the airline terminal project to be similar to a new school facility as it has similar infrastructure and a new building. EMMA is building a new school facility right now (LAUSD School 18 with a \$28,000,000 contract amount). Furthermore, the City has contacted many of the references listed by EMMA and is confident that EMMA has the required experience and qualification to perform the City's project.

Furthermore, in response to Swinerton's allegation in its letter of December 24, 2008 that EMMA does not satisfy the requirements of Specification Section 01350 1.6A Contractor's Qualification for Treatment of Historic Materials, the specifications require that the qualification requirements be met by the contractor after contract award but prior to undertaking the work.

Gust Soteropulos
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Swinerton Builders
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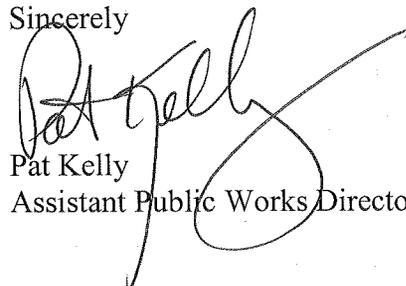
The specification section states, "All work shall be performed by skilled contractors having not less than five years satisfactory experience in comparable protection, salvage and removal operations including work on at least two projects similar in scope and size."

The Airline Terminal Project is an historical rehabilitation, not an historical renovation. A renovation involves a significant amount of salvage and reuse of original materials. As rehabilitation, much of the original building will be demolished, and reconstructed with new materials. There is very little salvage of original material for historical rehabilitation purposes.

In making its decision to award the construction contract to a particular bidder, the City Council has discretion to determine whether a low bidder is "responsible," meaning whether the bidder has the fitness, quality, and capacity to perform the proposed work satisfactorily. Additionally, the City Council must determine whether the bid is responsive to the call for bids, that is, whether the bid promises to do what the bidding instructions demand. In making this legislative decision, the law requires only that City Council may not abuse its discretion and that its action must not be arbitrary, capricious, or entirely lacking in evidentiary support. I can assure you that the City Council has every intention of exercising its appropriate legislative and executive discretion in the manner required by law. This determination is often appropriately dependent on information outside the bidding process and is clearly within the subjective determination of the elected officials of the City.

The City has thoroughly evaluated Swinerton's allegations and EMMA's response and is confident that EMMA is a responsible and responsive bidder. Thank you for your interest in this project.

Sincerely



Pat Kelly
Assistant Public Works Director/ City Engineer

Enclosure EMMA letter dated February 25, 2009 with attachments
cc: Karen Ramsdell, Airport Director
Sarah Knecht, Assistant City Attorney