



Agenda Item No. _____

File Code No. 560.04

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: March 24, 2009

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Contract For Construction Of Santa Barbara Airport Airline Terminal Improvement Project

RECOMMENDATION: That Council:

- A. Hold a hearing to consider any possible bid protest with respect to award of the Santa Barbara Airport Airline Terminal Improvement Project contract to the apparent lowest responsible bidder;
- B. Reject all bid protests submitted by bidders to the award of the Airline Terminal Improvement Project contract to the apparent lowest responsible bidder;
- C. Award and authorize the Public Works Director to execute a contract with EMMA Corporation (EMMA) in its low bid amount of \$32,858,000 for the base bid, plus bid alternates 1 and 2, for construction of the Santa Barbara Airport Airline Terminal Improvement Project (Project), Bid No. 3,556, and authorize the Public Works Director to approve expenditures up to \$3,440,000 to cover any cost increases that may result from contract change orders for extra work and differences between estimated bid quantities and actual quantities measured for payment;
- D. Authorize the Public Works Director to execute a contract with Howard, Needles, Tammen & Bergendoff California Architects, P. C. (HNTB) in the amount of \$4,181,135 for construction support services, and approve expenditures of up to \$209,055 for extra services of HNTB that may result from necessary changes in the scope of work; and
- E. Authorize the Public Works Director to approve a contract with Padre Associates (Padre) in the amount of \$48,200, and approve expenditures of up to \$4,800 for extra services of Padre that may result from necessary changes in the scope of work.

DISCUSSION:

EXECUTIVE SUMMARY

Staff recommends to the City Council award of a contract for construction of the Santa Barbara Airport Airline Terminal Improvement Project to EMMA Corporation of Santa Monica in the amount of their low bid of \$32,858,000. The work includes construction of a new 72,000 square foot terminal building, demolition of a portion of the existing terminal, and relocation and rehabilitation of the historic 1942 Airport terminal core. The work also includes construction of necessary site work, landscaping, parking lots, terminal ramp and vehicular access.

Staff further recommends to the City Council award of a contract for construction management services to the firm of Howard, Needles, Tammen & Bergendoff California Architects, P. C. in the amount of \$4,181,135 and award of a contract for environmental services support to the firm of Padre Associates in the amount of \$48,200.

PROJECT DESCRIPTION

The Airport Airline Terminal Improvement Program includes the construction of a new 72,000 square foot airline terminal building, rehabilitation of the 1942 portions of the existing terminal, reconfiguration of the short term parking lot, loop road and installation of associated landscaping. To allow the existing terminal to remain in operation during construction of the new facility, the project has been divided into three phased construction contracts and two professional services contracts:

Contract 1 consists of the Airside Improvements and is currently underway. This work includes the construction of a new aircraft parking apron and the realignment and widening Taxiway B located adjacent to the new terminal. Contract 1 was awarded to Granite Construction in the amount of \$3,560,267. Construction under the contract began in September 2008 and will be completed by April 30, 2009, weather permitting.

Contract 2 consists of the Temporary Facilities and Site Preparation necessary to prepare the airline terminal site for construction of the new terminal building. Staff has recommended to the City Council that it award a contract in the amount of \$3,475,850 to Lash Construction concurrently with the award of Contract 3 for the airline terminal building. The Lash contract (Contract 2) includes the work necessary to enhance the soils underlying the new terminal building foundation and to install and construct temporary site improvements necessary to allow the existing terminal to continue operations during construction of the new facility.

Contract 3, the subject of this Council Agenda Report, entails construction of the Santa Barbara Airport Airline Terminal complex. The work includes construction of the new terminal building, rehabilitation of portions of the existing historic 1942 Airport terminal and roadway and short term parking lot improvements. After careful examination and verification of all bids and bidders responding to the request for bids, staff recommends

that EMMA Corporation be determined by the City Council to be the lowest responsible bidder in accordance with Section 519 of the Santa Barbara City Charter and award to EMMA the construction contract in the amount of \$32,858,000. The contract includes the base bid amount of \$32,500,000, plus two bid alternates to provide photovoltaic panels on a portion of the terminal roof in the amount of \$349,000 and to provide polished concrete flooring in lieu of carpet in the amount of \$9,000.

Contracts 4 (the "HNTB" contract) and 5 (the Padre contract) are for professional services related to the construction work. Contract 4 is the recommended award of a contract for construction management services to HNTB in the amount of \$4,181,135. Contract 5 is the recommended award of a contract for environmental support services to Padre Associates in the amount of \$4,800.

CONTRACT BIDS

A total of nine bids were received for the Airport Airline Terminal Improvement Project work, ranging as follows:

BIDDER	BID AMOUNT*
	• Base bid plus Alternates 1 and 2
1. EMMA Corporation Santa Monica	\$32,858,000
2. Swinerton Builders Irvine	\$35,090,000
3. Prowest Contractors Wildomar	\$35,557,000
4. Sinanian Development, Inc. Tarzana	\$36,090,000
5. Howard Wright Constructors Irvine	\$36,640,000
6. Pinner Construction Anaheim	\$37,148,000
7. Viola Constructors Oxnard	\$38,023,000
8. Malicraft, Inc. Altadena	\$38,478,000
9. FTR International, Inc. Irvine	\$39,058,000

LOWEST RESPONSIBLE BIDDER

The lowest bid submitted in response to the request for bids on the Airline Terminal Improvement Project was EMMA Corporation from Santa Monica California. Staff's evaluation of EMMA as a responsible bidder included the following:

- Review and verification of the bid proposal forms for completeness and accuracy. The bid proposal forms consist of fifteen forms including: the Contractor's proposal, Proposed Equipment and Material Manufacturers, Experience Statement, Proposed Subcontractors, Proposal Guaranty Bond, Bidder's Statement Regarding Insurance Coverage, Bidder's Declaration of Non-collusion, Bidder's Statement on Previous Contracts Subject to EEO Clause, Certification of Segregated Facilities, Assurance of Disadvantaged Business Enterprise Participation, Certifications of Bidder regarding Affirmative Action Program, Certification Regarding Foreign Trade Restrictions, Buy American Certificate, Suspension and Debarment Requirements for all Contracts over \$25,000, 49 CFR 26.11 – Bidder's List.
- Staff's review of EMMA's experience determined that EMMA has been in the construction business in California for 27 years. It has a bonding capacity of approximately \$150,000,000. EMMA has a good reputation of successfully completing its construction work. No claims have been made by project owners seeking payment on any of EMMA's performance bonds. EMMA's construction work in the past has primarily been related to school buildings and campuses. As part of the bid package forms, EMMA listed eleven projects which were of similar complexity and scale as the Airline Terminal Improvement Project. These eleven similar projects range in value from \$8 million to \$28 million. Currently, EMMA is working on a \$28,000,000 contract for a new school facility for Los Angeles Unified School District. As part of its bid review, staff contacted project owners, building inspectors, and architects for recommendations on EMMA's work. The responses were favorable and indicated that EMMA's work was satisfactory and on time. The responders valued EMMA's integrity and said that EMMA maintained good communication on project progress. All responders positively recommended EMMA as a general contractor. Staff determined that EMMA's past work, even though primarily on school facilities, was similar in nature to the terminal project and demonstrated ample comparable public facility work. Because most of the Airline Terminal Project work is outside the Airport Operations Area, staff does not believe there is a need to require specialized airline terminal experience.

Based on a thorough review of EMMA's bid including its past experience and references, staff has concluded that EMMA is responsible and capable of performing this project in accordance with the Airport's bid specifications. EMMA's bid is therefore, in staff's opinion, the lowest responsible bid on the Airline Terminal Improvement Project.

BID PROTEST

Staff recommends that the City Council complete the hearing to consider any bid protests made by bidders to the City's award of the Airline Terminal contract to the apparent lowest responsible bidder, EMMA. Swinerton Builders submitted letters to the City dated December 24, 2008 and February 19, 2009, in which it raised several concerns with EMMA's bid. These concerns were clarified and elaborated upon by Swinerton in an additional letter submitted to the City on March 13, 2009 and two letters from Swinerton's legal counsel. Staff also had several follow-up meetings and conference calls with Swinerton representatives. Swinerton's correspondence is available for City Council member review in the Council reading file and available for public review in the City Clerk's Office.

A more detailed analysis of Swinerton's claims is provided to the Council in Attachment No. 2 with respect to the precise contract bid specifications Swinerton asserts EMMA failed to comply with. Essentially, Swinerton alleges that because EMMA's electrical subcontractor did not have a contract with Johnson Controls (provider of a City recommended Access Control System Software and Security Controllers) on bid day and did not list an equal or alternate to Johnson Controls on bid day, the bid was nonresponsive. [The Airport's existing security system is operated by Johnson Controls software and the Airport hopes to keep the system in place making only minor modifications to it to accommodate the work for the new terminal.]

EMMA responded to Swinerton's concerns in correspondence to the City dated January 7, 2009, and February 25, 2009. As EMMA stated in its response, contrary to Swinerton's claim, EMMA did not propose or intend to use an alternate or equal to the Johnson Controls system and the bid never indicated any intention to suggest or use an alternate. Therefore, except for the listing of subcontractors whose bid was in excess of one half of one percent of the prime contractor's bid and whom contract with the prime contractor (such as EMMA's electrical contractor, GEC), no other documentation was required. Nonetheless, in an effort to answer this claim, in its letter dated February 25, 2009, EMMA provided the names and bids of the second tier companies which would supply, manufacture, or install the security, telecommunications, and audio paging systems as recommended in the bid specifications including the recommended Johnson Control Security System. EMMA also provided additional details and considerable background information concerning its qualifications and experience as a general contractor on similar projects in its written materials to the City. EMMA's January 7, 2009 and February 25, 2009 letters are available for City Council member review in the Council reading file and available for public review in the City Clerk's Office.

City staff evaluated and responded to the assertions made by Swinerton in correspondence dated January 26, 2008 and March 2, 2009 (Attachment No. 3).

On March 10, 2009, the City Council held a hearing to consider Swinerton's bid protest. Swinerton reiterated its concerns and alleged that the fourth tier security subcontractor provided in EMMA's February 25, 2009 letter was not authorized by Johnson Controls to work in Santa Barbara County. To support its allegation, Swinerton alleged that a

letter from Electronic Control System (ECS) to EMMA's electrical subcontractor, Gilmartin Electrical Contracting (GEC), and thereafter submitted by EMMA to the City, certifying that ECS was an approved Johnson Controls installer, had been altered by deleting the reference in the letter limiting the ECS certification to the San Diego area. Because this allegation was first raised at the City Council meeting, of March 10th, it was not possible to confirm or deny the validity of this allegation. In order to investigate the claim, the City Council continued the hearing and its deliberations on the contract award to the March 24, 2009, agenda.

EMMA has now provided a letter from ECS confirming that it did, in fact, alter the Johnson Controls letter without Johnson Controls authorization innocently believing that this alteration was appropriate and warranted because it was bidding on a contract in Santa Barbara County. A copy of the ECS explanation letter is provided in Attachment No. 4. Furthermore, the president of EMMA and the president of GEC have provided sworn declarations that neither company had prior knowledge of the letter's alteration. The recent ECS letter supports this information. The declarations from EMMA and GEC now indicate that ECS will not work in any capacity on the Airport project. The declarations from Emanuel Yashair, EMMA, and Michael Gilmartin, GEC, are attached as Attachment No. 5.

As a result, EMMA and GEC have now negotiated a direct letter of intent with Johnson Controls for the necessary portion of work. GEC has provided a letter to the City dated March 16, 2009 indicating its intent to contract with Johnson Controls and Johnson Controls has provided a letter received March 17 indicating its acceptance of GEC's letter of intent. The two letters are attached as Attachment No. 6. City staff contacted William King of Johnson Controls (the Johnson Controls representative who spoke at the March 10th Council meeting) and has verified the validity of the contents of the letters and that Johnson Controls has entered into a letter of intent with GEC, EMMA's electrical subcontractor for the Airport Terminal.

Public Works and City Attorney staff recommend that the any protest made to the lowest responsible bidder be rejected and that the bid of \$32,858,000, be determined as the lowest bid and submitted by a contractor which is both responsible and which has been responsive. As a result, staff recommends that the Airline Terminal Improvement Project contract be awarded to EMMA.

The change order funding recommendation of \$3,440,000, or about 10%, is typical for this type of work and size of project.

CONSTRUCTION PHASE CONTRACT SERVICES

Staff also recommends that Council authorize the Public Works Director to execute a contract with HNTB in the amount of \$4,181,135 for materials testing, construction management, and inspection services. HNTB was selected to provide construction management services for this Project under a competitive selection process. Staff also recommends that the General Services Manager be authorized to approve a contract with Padre for \$48,200 for assistance with management of hazardous materials known to be on the site.

FUNDING

A detailed discussion concerning funding for this contract, as well as the contract for construction of the Santa Barbara Airport Temporary Facilities and Site Preparation Project, is provided in a separate Council Agenda Report prepared by the City Finance Director.

The following summarizes the expenditures recommended in this report:

CONSTRUCTION CONTRACT FUNDING SUMMARY

	Basic Contract	Change Funds	Total
EMMA Corporation	\$32,858,000	\$3,440,000	\$36,298,000
HNTB	\$4,181,135	\$209,055	\$4,390,190
Padre	\$48,200	\$4,800	\$53,000
TOTAL RECOMMENDED AUTHORIZATION			\$40,741,190

SUSTAINABILITY IMPACT:

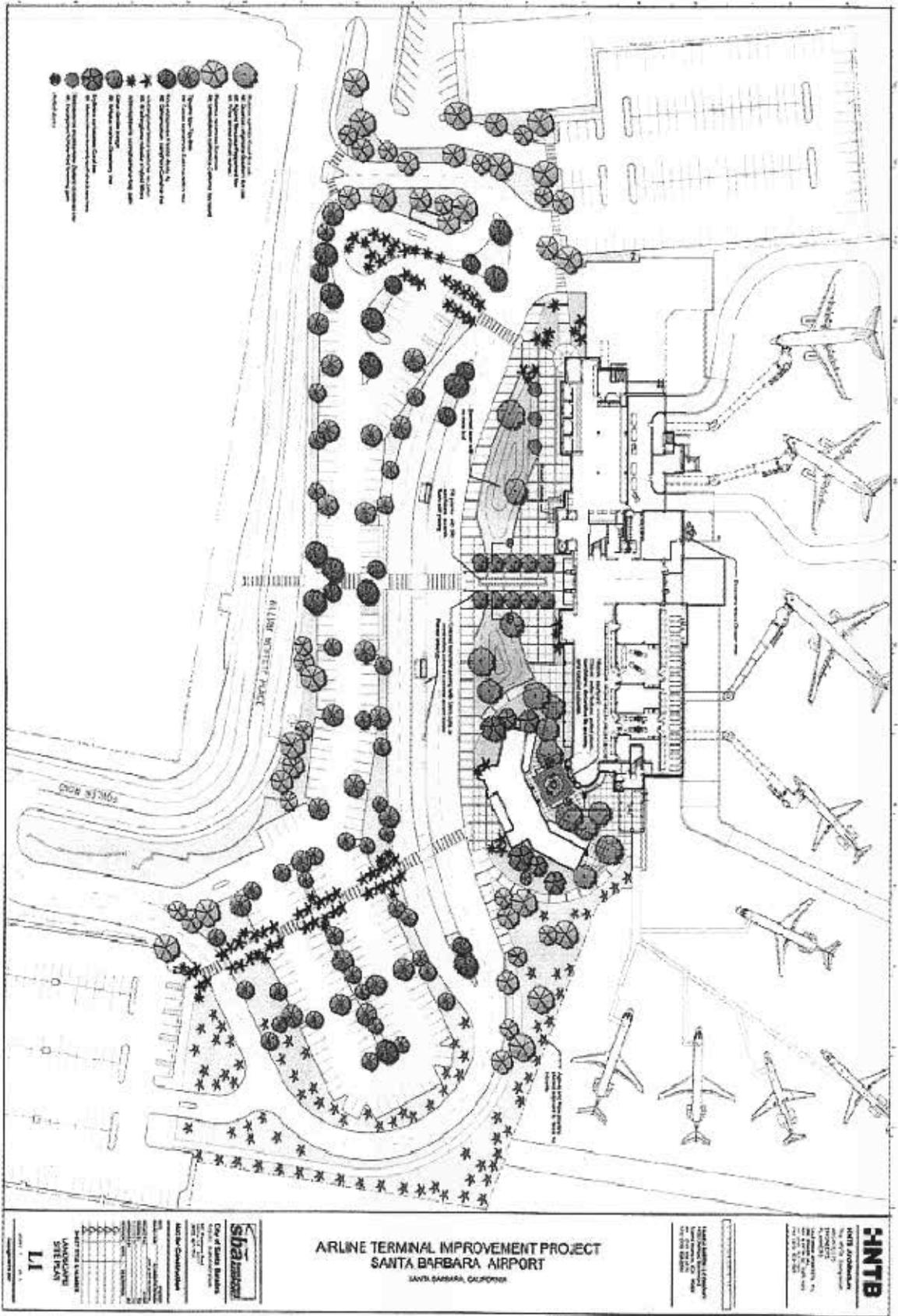
The Airline Terminal Improvement Program has been registered with the United States Green Building Council with the goal of a Leadership in Energy and Environmental Design Silver rating.

- ATTACHMENTS:**
1. Project Site Map
 2. City Staff and City Attorney Memo Analysis of Bid Protest dated March 20, 2009
 3. Staff letters to Swinerton dated January 26, 2008 and March 2, 2009.
 4. ECS letter dated March 11, 2009.
 5. Declarations from Emanuel Yusheri (EMMA) and Michael Gilmartin (GEC) dated March 16, 2009
 6. GEC March 16, 2009 letter
 7. Johnson Controls Letter date stamped March 17, 2009.

PREPARED BY: Owen Thomas, Principal Engineer/sk

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office



Terminal site plan

HNTB
 HNTB Architecture
 10000 Wilshire Blvd., Suite 1000
 Los Angeles, CA 90024
 Tel: 310.734.3300
 Fax: 310.734.3301
 www.hntb.com

Project Information
 Project Name: ARLINE TERMINAL IMPROVEMENT PROJECT
 Location: SANTA BARBARA AIRPORT
 City: SANTA BARBARA, CALIFORNIA

**ARLINE TERMINAL IMPROVEMENT PROJECT
 SANTA BARBARA AIRPORT**
 SANTA BARBARA, CALIFORNIA

City of Santa Barbara
 City Engineer: [Name]
 City Clerk: [Name]
 Mayor: [Name]

Project Information
 Project Name: ARLINE TERMINAL IMPROVEMENT PROJECT
 Location: SANTA BARBARA AIRPORT
 City: SANTA BARBARA, CALIFORNIA

Scale
 1" = 100'

DATE
 1/1/2011

CITY OF SANTA BARBARA**INTEROFFICE MEMORANDUM**

TO: Mayor and City Council

FROM: Stephen P. Wiley, City Attorney
Karen Ramsdell, Airport Director
Christine Andersen, Public Works Director
Sarah Knecht, Assistant City Attorney
Owen Thomas, Project Engineer

DATE: Friday, March 20, 2009

SUBJECT: Staff Analysis of Swinerton Bid Protest -- Airport Terminal Contract

As you know, in recent correspondence and at the March 10th City Council meeting, Swinerton Buildings claimed that EMMA Corporation, the low bidder on the Airport Terminal contract, is not a responsible or responsive bidder. This memo is intended to summarize Swinerton's position in plain English within the context of the relevant City contract bid specifications which are in dispute and to provide the Council with City staff's analysis of Swinerton's assertions.

1. Swinerton's claim that Johnson Controls is a City recommended manufacture that was not listed by EMMA in its equipment list as required by the contract specifications and, as a result, EMMA was required to propose an alternate manufacturer. ("Assertion No. 1")

City Contract Bid Specification 13720 relevant to Assertion No. 1 provides as follows:

"Section 13720 2.3. RECOMMENDED MANUFACTURERS & COMPONENTS.

A. Integrated Access Control System Equipment:

1. Access Control System Software-Johnson Controls P2000 Security Management System, or approved Johnson Controls upgraded alternate.

2. Security Controllers-Johnson Controls, or approved, compatible alternate."

In addition, City Contract Bid Specification Addendum No. 1 provides, in part, as follows:

“Specifications:

3. SECTIONS A2, Page 10 and Section A3, page 11: Replace pages 10 and 11 with the attached pages 10 and 11. The list of Proposed Equipment and Materials Manufactures may be submitted up to 24 hours after bid opening.”

Further, the form provided by the City upon which bidders are instructed to list proposed Equipment and Material Manufactures (the “equipment and supplier sheet”) also indicates the following :

“The Bidder shall indicate the name of the manufacturer of the equipment, and supplier of the material, proposed to be furnished under the contract. Awarding of a contract based on this bid will not imply approval by the Owner of the manufacturer or suppliers, used by the Bidder. No substitution will be permitted after award of contract except upon written approval of the Owner (i.e., the City).”

The equipment and supplier sheet provided to the City by EMMA lists its Division 13720 response as a “Security Access Control and CCTV system” - i.e., simply a generic listing indicating that EMMA will provide the required Security System. EMMA also provided to the City its proposed Equipment and Material Manufactures list on December 17, 2008. EMMA’s Exhibit A of this list states that Div. 13720 Security Access Control and CCTV will be manufactured by “HID 1 class, GE Security, Securitron, Pelco, Action, Patlite.” The supplier listed by EMMA is “Excell Systems & Solutions.” Swinerton also asserts that its proposed electrical subcontractor, Taft Electric, had knowledge that, on bid day, EMMA did not have an electrical subcontractor who had secured a written bid from Johnson Controls. Thus, according to Swinerton, since EMMA showed no specific listing of a Johnson Controls P2000 Security Management System or a Johnson Controls Security Management System and since its electrical subcontractor had not received a bid from Johnson, EMMA must have been, by implication, proposing an alternate unidentified security system.

City Staff Analysis of Assertion No. 1.

As is typical and allowed, EMMA’s bid was a lump sum bid with Gilmartin Electrical Contracting listed as the electrical subcontractor as required since the electrical work exceeded the one half of one percent identification requirement. Critically, the Proposed Equipment and Materials Manufactures list is a proposed list that is not binding on either the bidder or the City and one for which substitutions may be approved by the City’s at the City’s discretion. The list specifically states that a mere listing on the list does not imply City approval of the manufactures or suppliers listed. The list form also expressly allows for substitutions prior to contract award. Typically, the list is used by the construction managers as construction progresses to assess the materials and suppliers being used by the prime contractor. City approval is always required for

any substitution or changes of a listed manufacture or supplier after contract award, but not before the award. Thus, EMMA was free (as was Swinerton or any other bidder for that matter) to substitute listed manufactures and suppliers listed on the Equipment list at any time and for any reason up to the point of contract award and afterwards at the discretion of the City.

Finally, nothing in the Security System information provided by EMMA or in the listing indicates that EMMA or its electrical subcontractor was planning on using an alternate to Johnson Control. In fact, EMMA has advised the City that it always intended to comply with this City recommended requirement.

2. Swinerton claims that, since EMMA was apparently proposing an alternate security system, it was required to show the “technical information and catalog cut sheets for the (alternate) product” being proposed and that EMMA failed to do so on bid day. Swinerton also argues that the City rejected an apparent low bid in January 2005 for this same reason. (“Assertion No. 2”)

The City Contract Bid Specification 13720 3.4 relevant to Assertion No. 2 states as follows:

“A. Bid Compliance Requirement:

1. The Security Contractor shall be responsible for complying with the contract performance specifications. If Security Contractors bids an alternative to any recommended system, the Security Contractors shall (with the bid) provide technical information and catalog cut sheets for the product being bid and a copy of the relevant section of this specification with each paragraph marked as comply or alternate.”

In making Assertion No. 2, Swinerton directs the City’s attention to a decision made by the City Council in January 2005 pertaining to the contract award for the Santa Barbara Airport Security System Upgrade. In that instance, the City Council rejected the apparent low bidder and awarded the contract to Taft Electric based on Taft’s bid protest. However, in that case, the apparent low bidder had, in fact, submitted a proposed alternative access control equipment and alternative CCTV systems. In addition, the low bidder in 2005 had also failed to provide to the City the technical information pertaining to the proposed alternate on bid day as clearly required by the bid specifications. The January 2005 bid was therefore deemed non-responsive by the City Council and appropriately rejected.

City Staff Analysis of Assertion No. 2.

As explained in response to Assertion No. 1, EMMA did not list an alternate or equal security system in its bid nor was EMMA proposing to use an alternate. Therefore, the Security Contractor was not required to provide technical information and catalog cut sheets for an alternate with the EMMA bid. In staff’s opinion, this contract and EMMA bid is not at all similar to the 2005 situation discussed above because no alternate or equal was proposed by EMMA

and when no alternate or equal is proposed, there is no need to provide the City with the technical information required to review an alternate system.

3. Swinerton claims that, ECS, the Security Contractor to be used by EMMA's electrical subcontractor (GEC) lacks the required experience to meet the City's bid specification of specification 13720 1.3A. ("Assertion No. 3")

According to Swinerton, ECS, [the GEC Security Contractor identified as of March 10th] does not meet the City's bid specification 13720 1.3 A for two reasons: 1. because ECS is not authorized by Johnson Controls to work in the Santa Barbara area and 2. because ECS does not have the experience on Airport security projects which the City's specifications require.

The City's "experience" bid specification for the Terminal Contract [in this regard] read as follows:

"1.3 PERFORMANCE REQUIREMENTS

A. Security Contractor shall have provided and completed installation services for at least three (3) facility sites similar to that which will be provided to this project and provide at least three (3) references of work to the Owner, or designated representative prior to being awarded a bid contract."

Specifically, Swinerton asserts that ECS does not have the required three (3) "similar site" experience. Another apparent basis for Swinerton's claim that ECS is not authorized by Johnson Control may be the response time to service a problem in Santa Barbara. According to Swinerton, due to this lack of experience and the lack of authorization to do Johnson Control certified work in Santa Barbara, ECS does not meet the experience requirement contained in section 13720 of the City's bid specifications.

City Staff Analysis of Assertion No. 3:

The experience and performance requirements such as 1.3 quoted above are intended to provide information to the bidder concerning the City's expectation of performance of the particular bid specification, in this case, the over contract specification No. 13720. There is no requirement that a bidder's security contractor demonstrate compliance with this experience/performance requirement (or provide the necessary "experience" information) at the time bids are submitted so long as that experience and performance information is eventually demonstrated to the City's satisfaction prior to the actual award of the contract. The performance requirement simply puts the bidder on notice that the City will expect the security contractor to be able to meet the experience requirement when the contract is to be awarded. The bidder is expected to factor this criterion into its costing of its bid as it deems necessary.

Bidders on public works contracts such as this always have business decisions to make when preparing their bids. In this case, A bidder could have chosen to secure a fixed written bid from security contractors in order to meet the City's experience and performance requirement prior to submitting its bid to the City and, thereby, avoid a substantial risk of having a higher than expected subcontractor cost. But, in the alternative, a bidder can, as EMMA apparently did here, estimate the cost of this work for bid purposes and then secure the appropriately qualified company, manufacturer, or distributor at a later time – as permitted by the City contract specifications. In this instance, either approach meets the City's bid specification, particularly in this instance when EMMA was not proposing an alternate to a Johnson Controls security system and where EMMA will provide the required information to the City at the required time.

4. Swinerton asserts that EMMA's Failure to "comply" with the Contract Specifications is not fair and will result in cost differential to EMMA's advantage – an advantage which will ultimately work to the City's disadvantage. (Assertion No. 4)

According to Swinerton, since EMMA and its subcontractor, GEC, had no Johnson Control authorized bidder committed in writing on the actual bid day, it merely rough estimated EMMA's cost to provide the required security system. Swinerton argues that it, by contrast, had written bids on bid day from Johnson by way of its proposed electrical subcontractor, Taft Electrical. According to Swinerton, this fact could have affected the bid price and, possibly, it gave EMMA an advantage in submitting the lowest bid. So, Swinerton argues that this is unfair and that it should not be penalized for having used a sharper pencil.

City Staff Analysis of Assertion No. 4.

Bidders (and their subcontractors) on Public Works Project often and typically take many different approaches to submitting bid packages and on estimating their costs. The extent to which a particular prime bidder contracts with its many sub-subcontractors and suppliers and distributors prior to and at bid time is simply a business decision which, at time, can translate directly into why one bidder (or one subcontractor) is the lowest and another is not. Regardless, the City reviews the bid package to ensure that the low bidder/prime contractor will meet all requirements of the bid specifications and that the public facility will ultimately be delivered to the public in full accordance with the required specifications at the agreed upon price. The bidder/prime contractor which is ultimately selected by the City will be contractually bound to specifically perform under the contract at the bid price which has formed the basis of the contract with the City. Whether or not that contractor has made a detailed and correct assessment of its financial risks on bid day is not the City's concern so long as the bidder fully intends to and will be obligated perform as required.

In this instance, the City staff and the City Attorney's office will take every step necessary to assure that EMMA will perform and will complete this Terminal contract in full compliance with the contract specifications at the price they offered and which will form the basis of our contract. There is nothing "unfair" or inappropriate in this with respect to any of the unsuccessful bidders.

Staff Analysis of Swinerton Bid Protest
Airport Terminal Contract
March 20, 2009
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Please feel free to contact any of us should have any additional questions regarding the Swinerton bid protest of the Airport Terminal Contract or if we can be of any further assistance in this matter.

cc: James L. Armstrong, City Administrator
Pat Kelly, City Engineer

Swiley/city council communications/Airport Terminal Bid Protest – Council Memo
March 19, 2009 10:55 am



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:

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.

Water Resources
Tel: 805.564.5387
Fax: 805.897.2613

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

Granada Offices
1221 Anacapa Street
Santa Barbara, CA 93101

The City responds to this allegation as follows:

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.

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

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

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

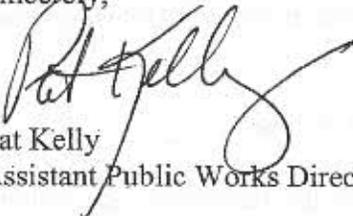
experience on projects with other similar government type funding and corresponding special contract requirements.

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



City of Santa Barbara

Public Works Department

www.SantaBarbaraCA.gov

March 2, 2009

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

Administration
Tel: 805.564.5377
Fax: 805.897.2613

Engineering
Tel: 805.564.5363
Fax: 805.564.5467

Facilities
Tel: 805.564.5415
Fax: 805.897.2577

Street Maintenance
Tel: 805.564.5413
Fax: 805.897.1991

Transportation Operations
Transportation Planning
Tel: 805.564.5385
Fax: 805.564.5467

Water Resources
Tel: 805.564.5387
Fax: 805.897.2613

Granada Offices
1221 Anacapa Street
Santa Barbara, CA 93101

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

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

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.

Gust Soteropulos
Vice President Operations Manager
Swinerton Builders
March 2, 2009
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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
Vice President Operations Manager
Swinerton Builders
March 2, 2009
Page 4 of 4

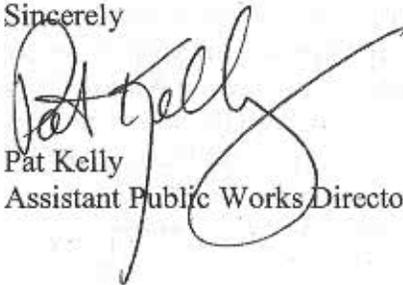
The specification section states, "All work shall be performed by skilled contractors having not less than five years satisfactory experience in comparable protection, salvage and removal operations including work on at least two projects similar in scope and size."

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.

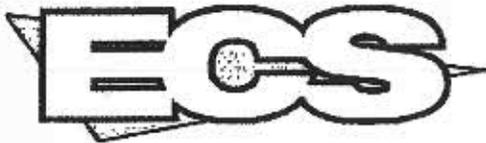
Sincerely



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

Electronic Control Systems, Inc.
12575 Kirkham Court, Suite 1
Poway, California 92064
Phone (858) 513-1911
Fax (858) 513-1907
<http://www.ecscontrols.com>



March 11, 2009

Emanuel Yashari
EMMA Corporation
1640 5th Street Suite 100
Santa Monica CA 90401

Re: Project in Santa Barbara County

Dear Emanuel:

Thank you for providing ECS an opportunity to explain the misunderstanding. I apologize on behalf of my company for any problem that may have resulted from ECS submitting a bid for work in Santa Barbara County. You are absolutely correct that ECS, as a Johnson Controls Authorized Building Control Specialist ("ABCS"), is authorized to sell and install Johnson Controls products in San Diego County and that this authorization is limited to San Diego County.

Although not a justification for the events that occurred, the origin of this embarrassment began with an inquiry from TECH Controls seeking a quote from ECS. TECH Controls was referred to ECS by Johnson Controls. ECS reasonably (but incorrectly) assumed that it was authorized to bid this job even though the job was in Santa Barbara County, and therefore it submitted a bid regarding the project.

The form letter that ECS utilizes as a Johnson Controls ABCS contains language that ECS is authorized to perform installations in the County of San Diego ("Authorization Language"). Because of the unique circumstance that the job was in Santa Barbara County, ECS management thought the Authorization Language should be removed from its standard letter because such language would not be accurate if the project was located in Santa Barbara County.

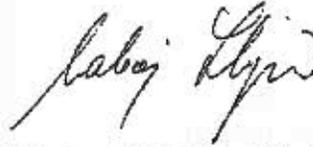
Therefore, I removed the language from the letter and TECH Controls had no knowledge of my actions.

TECH Controls would not be aware that Authorization Language is contained in ECS' standard letter, and therefore it would not have been aware that the Authorization Language was removed when it was submitted by ECS.

Had ECS known that it was not authorized to bid on this project, it would not have submitted a bid. ECS is committed to maintaining an excellent reputation in the industry. As you may know, ECS is a five time winner of the Johnson Controls ABCS Spotlight Award, and a seven time winner of the Premier ABCS Award. The ABCS Spotlight Award is given to the ABCS whose performance set the standard for the ABCS channel and is consistent with industry leadership. Spotlight award winners are among the top five Johnson Controls ABCS in all of North America. The Premier ABCS programs are special programs sponsored by Johnson Controls that are designed to encourage excellence and reward individual success. Over the years, ECS has earned a reputation for its service, leadership, and ethical conduct. This entire episode has been

embarrassment for the company, and I hope EMMA Corporation accepts this letter of apology from ECS for the misunderstanding that occurred.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Zbigniew Cabaj'.

Zbigniew Cabaj, President

Cc: Johnson Controls

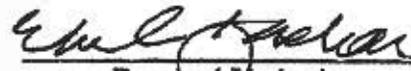
Declaration of Emanuel Yashari

I, Emanuel Yashari, declare and state:

1. I am the president of Emma Corp., the lowest responsive and responsible bidder on the City of Santa Barbara's Airline Terminal Improvement Project (Bid No. 3556). If called as a witness, I could and would competently testify hereto.
2. On March 10, 2009, I attended the meeting of the City Council of the City of Santa Barbara. During the meeting, a representative of Swinerton spoke to the council and alleged that ECS (an installer to Tech Controls, Inc. which is the supplier to Emma's listed electrical subcontractor Gilmartin Electrical Contracting) had altered the language of a letter that ECS received from Johnson Controls. The Swinerton representative stated that ECS had removed the geographical limitation contained within the Johnson Controls letter. When the Swinerton representative made that allegation at the Council meeting, it was the first time I had ever heard anybody say or otherwise communicate that ECS or anybody else had altered the language in the Johnson Controls letter. I had no advance knowledge whatsoever. If I had known, I would never have attached the letter to my February 25, 2009 letter to the City and I would have never considered doing business with ECS.
3. In telephone calls after the March 10, 2009 City Council meeting to representatives of ECS and Johnson Controls, I have learned that the allegation against ECS is true and that they did in fact remove the geographical limitation from the Johnson Controls letter before sending it to Tech Controls, Inc. ECS has also confirmed this in a letter. Accordingly, ECS will not work in any capacity on this project.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of March, 2009 at Santa Monica, California


Emanuel Yashari

Declaration of Michael Gilmartin

I, Michael Gilmartin, declare and state:

1. I am the president of Gilmartin Electrical Contracting, the bid listed electrical subcontractor to Emma Corp. on the City of Santa Barbara's Airline Terminal Improvement Project (Bid No. 3556). If called as a witness, I could and would competently testify hereto.
2. On March 10, 2009, I attended the meeting of the City Council of the City of Santa Barbara. During the meeting, a representative of Swinerton spoke to the council and alleged that ECS (an installer to Tech Controls, Inc. which was one of Gilmartin Electrical Contracting's equipment supplier) had altered the language of a letter that ECS received from Johnson Controls. The Swinerton representative stated that ECS had removed the geographical limitation contained within the Johnson Controls letter. When the Swinerton representative made that allegation at the Council meeting, it was the first time I had ever heard anybody say or otherwise communicate that ECS or anybody else had altered the language in the Johnson Controls letter. I had no advance knowledge whatsoever. If I had known, I would never have sent the letter on to the prime bidder, Emma Corp. and I would have never considered doing business with ECS.
3. In light of what has transpired, ECS will not work in any capacity on this project for Gilmartin Electrical Contracting or any of its suppliers or second-tier subcontractors.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of March, 2009 at Simi Valley, California.



Michael Gilmartin



March 16, 2009

Joseph Buckhout
Johnson Controls
4100 Guardian Street
Suite 200
Simi Valley, Ca 93063

Re: Santa Barbara Airport Terminal
Subject: Letter Of Intent

Dear: Josenh

Upon the Successful award to EMMA Corporation/Gilmartin Electrical Contracting of the Santa Barbara Airport New Terminal, "It is the intent of Gilmartin Electrical Contracting to provide a contract for \$555,288.00 to Johnson Controls Inc for the Santa Barbara Airport New Terminal Project per Johnson Controls Inc. March 13, 2009 proposal"

Sincerely,



Michael Gilmartin
Owner

Correspondence #: SBAT-0001

4505 Industrial St.
Unit 1C
Simi Valley, CA 93063

Johnson Controls, Inc
5770 Warland Drive Suite A, Cypress, CA 90630
Tel 562-299-8266 Fax 562-799-3621



Gilmartin Electric
4505 Industrial St
Unit 1C
Simi Valley, Ca.
93063



Attention: Michael Gilmartin

Johnson Controls Inc. has received and accepts a letter of intent from your company to partner with you for the access control/ security/ and video management portion for the upcoming Santa Barbara Airport based on our March 13, 2009 proposal.

Johnson Controls Inc. is an authorized provider of Johnson Controls Inc. equipment which is the existing security management system at the Santa Barbara Airport.

If Gilmartin Electric does not receive a contract to complete the electrical portion for the new Santa Barbara terminal then Johnson Controls will cancel their letter of intent with no cost incurred to Gilmartin Electric.

Sincerely,

A handwritten signature in black ink, appearing to read "William King".

William King
Southern California Branch Manager
Fire and Security Products