



*General Engineering Contractor*

REF: South Perimeter Security and Utility Improvements at Plant No.1  
SUBJECT: Bid Protest  
DATE: 06/04/2021

To whom it may concern,

Please let this letter serve as ACT 1's formal bid protest regarding South Perimeter Security and Utility Improvements at Plant No.1 (Project No. P1-134). Regardless of the circumstances, our last intentions are to cause any inconveniences to which inhibits the construction of this project or to cause any hardships for the Orange County Sanitation District. In our past experiences bidding, we have had our bid determined non-responsive in an exact case such as this one, as we feel it is proper protocol to bring this to your attention. I just wanted to follow up with the below information, which should help you properly qualify the submitted apparent low bidder (Tovey/Shultz Construction, Inc.) in deeming them responsive or non-responsive.

Tovey/Shultz construction has the critical deficiencies as followed:

1. Tovey/Shultz failed to list a licensed surveyor for this project and Per California Public Works contract code 1720, any subcontractor doing "construction" on a project shall be listed as a subcontractor and shall possess a valid DIR number. For purposes of this paragraph, "construction" includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems. Public Cont. Code § 4104(a)(1) & (b) therefore requires that prime contractor bidders on public jobs list in their bid the name and the "portion of the work" to be performed by any subcontractor in an amount in excess of \$10,000 or more than .5% of the total bid price, whichever is greater. As explained above, which this defect should deem Tovey/Shultz bid as unresponsive.
2. Tovey Shultz specified more than one subcontractor for the cabling/fiber optic scope of work (ITI and LEED Electric). Per Public Contract Code section 4106 states, "If a prime contractor fails to specify a subcontractor or **if a prime contractor specifies more than one subcontractor for the same portion of work to be performed** under the contract in excess of one-half of 1 percent of the prime contractor's total bid, **the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself**, and that the prime contractor shall perform that portion himself or herself.". Furthermore, fiber optic cabling work can only be performed by a contractor who has such a specialty license (C-7 low voltage systems license, which Tovey Shultz does not have). Thus, since Tovey Shultz doesn't have a low voltage license and by listing two subcontractors it makes them have to self-perform this scope, which they cannot. Furthermore, ACT 1 received bids from both ITI and LEED companies at bid time and ITI is not certified to install the specified fiber optic system per the plans/specs. Such failure to comply with the bid specifications set forth at time of bid further asserts that Tovey Shultz defects are incurable and shall be deemed an unresponsive bidder.

Thank you for taking the time to look into our findings and hopefully this helps you in qualifying the bids received. If you need any additional information, please let us know!

Sincerely,  
Don Trenholm

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