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December 7, 2020

Via Email: roy.valadez@jfshea.com

Roy A. Valadez
J.F. Shea Construction, Inc.
667 Brea Canyon Road, Suite 30
Walnut, California 91789

SUBJECT: OCSD Response to J.F. Shea Construction, Inc.'s Award Protest
RE: Project No. FE18-14
Plant Water Pipeline Replacement in Kinnison, Lindstrom, and Scott
Tunnels at Plant No. 2

This letter serves as the Orange County Sanitation District's ("OCSD") response to the Award Protest Statement ("Protest") filed by J.F. Shea Construction, Inc. ("Shea") on November 30, 2020. The Protest challenges the recommendation that OCSD award the contract for the above-referenced project (the "Contract") to MMC, Inc ("MMC"). Shea alleges that MMC is not a responsive and/or qualified contractor because it is non-responsive to OCSD's Safety Standards Section V, Part B. Asbestos, which states that "Asbestos is to be handled only by qualified and certified CONTRACTORS and employees" and because MMC does not hold a C-22 license. OCSD has reviewed the Protest and all necessary facts and written materials submitted, including the Protest response letter received from MMC, and hereby denies the relief Shea requested based on the following:

MMC, Inc is a Responsive and Responsible Bidder

We reviewed MMC's bid and requested clarifications specifically regarding MMC's approach to Asbestos and Lead Abatement Work as required by Specifications Section 01900. Please note that this Specification does not specifically require a C-22 license. However, it also does not relieve Bidders from responsibility to meet specialty license requirement when the work demands it per California law.

Shea states that "The value of the asbestos abatement removal work was 3 times greater than the required listing amount for the State of California, which the other 9 bidders complied with".



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MMC has provided information requested by OCSD and clarified the portions of the work to be self-performed and the portions of the work it intends to subcontract. Based on MMC's Bid amount of \$1,134,000.00, the required listing for Subcontractors to comply with Subcontractor listing requirements for the State of California would be a minimum amount of \$5,670.00 or .5% of 1 percent. MMC provided supporting information for its Subcontractor that MMC intends to use, and confirmed that the value of the work that will be performed by this Subcontractor is less than half a percent and therefore it did not have to be listed. MMC also confirmed that the Subcontractor that they intend to use has a C-22 license. Furthermore, MMC certified that other portions of the work as required by the above-referenced Specification shall be performed by MMC's properly certified staff.

In addition, there is a difference between subcontractor-listing requirements and Cal/OSHA requirements for asbestos registration. OCSD's opinion regarding the asbestos registration is that per 8 CCR § 1529, Cal/OSHA registration is not required when the quantity of asbestos being abated is less than 100 sq. ft. Per the project requirements, there are approximately 53 gaskets, which amount to less than 100 sq. ft. Therefore, since the size of the work is estimated to be less than 100 sq. ft., it does not require Cal/OSHA registration.

For all these reasons, OCSD does not believe that MMC's lack of a listed subcontractor or lack of a C-22 license warrant a finding of non-responsiveness or non-responsibility for this project.

Determination

Based on the facts and evidence presented, OCSD determined that MMC is a responsive and responsible bidder for the above-referenced project. Accordingly, OCSD hereby rejects Shea's Protest.

OCSD will proceed to recommend award of the Contract to the lowest responsive and responsible bidder, MMC, at the Board of Directors Meeting on December 16, 2020.

Ruth Zintzun
Purchasing & Contracts Manager

RZ:JSK:yp