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TAMICO, INC.

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City and Borough of Sitka
100 Lincoln St
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Regarding: Appeal of Bid Evaluation/Intent to Award for O'Connell Bridge Lightering Pile Replacement

Attention: Assembly Members

To All,

Tamico is appealing the evaluation of our bid as well as the decision of the City Engineer to award the project to Turnagain Marine.

There are several issues with the bidding of this project that led to this appeal. It is clarified with the attached original letter sent to the City Engineer.

The main issues with the procurement are but are not limited to

Bid documents, specifically the specifications on permitting did not clarify what type of Corp permit was needed. Our permit specialist and our inquiries with the Corp and NMFS indicated that with some sound mitigation measures a "simple" Corp permit could be attained in 60 days.

During the prebid meeting the acting city engineer did discuss the permitting, but it was vague in nature and there were no written minutes to clarify. Therefore, at bid time there was no stipulation on the type of permit would be needed, either the standard nation wide or the extremely expensive IHA. Logically the contractor, for the benefit of the owner, should seek the least expensive option.

Rejecting R & M Engineers as a permit specialist, do to not having IHA experience, was done without looking at the context of how we bid the project. Since an IHA was not specifically asked for, only permitting to do the project, we feel R & M was more than qualified.

Further analysis found that it is very difficult to pin point a price on a bid item that is at the discretion of regulatory agencies. I got very different information from the Corp and NMFS then Mr Tadic did. That led us to inform CBS that even though we got almost 100% positive feedback on obtaining the permit, if the regulatory agencies changed their perspective it would have to be considered a change of conditions.

Disqualifying do to lack of proof of insurance, in our opinion, had no impact on the integrity of the bid. Most procurements don't require insurance until the contractor gets the intent to award, at that time the insurance certificate is provided. Furthermore during bids with qualification parameters, the usual good faith approach is to ask the contractor for items asked for but not received during the evaluation.

Before I get to my last grievance I would like to take this time to open up a broader spectrum to this issue.

Paying \$145,000 for permitting on this size of project would be a major expense not only to the City and Borough, but to the entire marine construction and maritime industry. CBS should not be paying this high of price for a permit to maintain an existing facility. It is probably the biggest waste of funds I have seen in our 40 years doing this type of work. If you go through with this and pay \$80,000 for each pile it will have a very negative impact on the marine construction industry. If you don't fight for the lower cost permit you will be setting precedence for future projects in the whole region whether they are publicly funded or private. It will eventually affect every fisherman, charter operator, cruise line operators, and every other vessel in SE Alaska. It is these unneeded extra costs to the infrastructure that leads to higher user fees that lead to higher cost of operation. If it costs CBS more money to build and maintain its harbors it will cost the average boat owner more to tie up.

The final reason that Mr Tadic gave in his reasoning to declare Tamico non-responsive was

"Tamico has been determined to be a non-responsible bidder due to failure to strictly comply with local, state, or federal permits, or any portion thereof, on the Sitka Transient Float Project"

This is unfounded and using these allegations as a reason to disqualify is unlawful as well. Tamico has never been issued a fine or for that matter even received a letter in regard to this, as such Mr Tadic's accusations are unfounded.

Since Mr Tadic is using the Sitka Transient Float as a reason to disqualify Tamico on this project it may be time that this assembly reviewed all the evidence against CBS on this issue. I have submitted with this letter most of that evidence at this time as it is apparent that the STF project issues need to be cleared up in order for Tamico to ever do work in Sitka.

A Brief overview of STF

The basis of STF claim is site conditions, mainly debris, that damaged drill equipment, caused delays, and led to performing work outside of the contract. Up to this point CBS has given us little evidence. CBS's only stance has been lack of notification, which is both false as the evidence shows clear verbal and written notice.

The evidence I am providing in this packet on the STF project is very substantial. We have testimony from Drill Manufacturers, Drill Suppliers, other contractors, pictures, videos, and 40 years of our own knowledge in drilling and marine construction. CBS has presented nothing.

Furthermore, the city engineer failed to follow CBS's own standard and specifications when the debris issue was brought up. To this day CBS has failed to investigate the site to see the actual debris that caused the damages. Mr Tadic's original denial of the claim was based on his own opinions. He has no drilling or marine construction experience and it showed. He did reveal that he had a "credible" drill

consultant but did not state who it was even when asked. His air calculations were off by 1,100 %, his assessment of our drill was off brochures, and he failed to investigate the actual site or drill equipment.

Tamico strongly feels Mr Tadic acted in bad faith. When all his reasons for denial were questioned with the evidence, he relied on CBS's heavily one sided wording regarding disputes. This Article says that all decisions of the acting engineer are final. At that time the contractors only recourse is to litigate as the CBS standards and specifications does not allow simple arbitration. CBS uses this to their full advantage to get their way when disputes arises. In our research arbitrators and judges usually look down upon this kind of one sided contract.

Mr Tadic also had permitting issues with STF. During the construction of STF Tamico set up and applied to the Corp to get a daily extension to the in water work restriction window. We did this as the differing site conditions were causing delays and it looked as if any extra time before the 2 month window ceased operations could be beneficial. Tamico had the Corp, NMFS, and local AKDF&G on board for the parameters of the extension, but Tamico was informed that since the permit was issued by CBS the request would have to come from them. Tamico/NCS turned everything we had set up over to CBS with time to obtain the extension, but CBS did not do anything with it until a couple days prior to the closure. This unfortunately was not enough time and, in some ways, led us to where we are today.

I will let the evidence of this packet stand for itself and welcome any questions you may have on both these issues.

I would strongly suggest that CBS reject all bids on the Lightering Project and rebid with a permit. If the Borough still wants the contractor to do the permitting the specs on it should be very clear. The Borough could also elect to do the permitting on a set contingent bid item as then it only pays for what is needed. As it is now Turnagain could go to the Corp and obtain a permit for \$5,000, but in this procurement CBS would still be obligated to pay \$145,000. This just is a bad deal for everyone.

Finally in regards to STF. The evidence, precedence, and a host of other things are stacked against CBS. Before any costly litigation commences I strongly urge this body to invite NCS/Tamico to sit down for a face to face meeting. It has been two years since this issue came up and even though we have asked to meet several times CBS has not accepted. In that time the financial ramifications have been tough, in some case prohibited us from doing business. We support several business's in the Sitka Borough, but we are at the point where we will be taking that business elsewhere.

Sincerely

Jim Martinsen

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