



MEMORANDUM

Date: January 9, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Appeal by Nelson J. Greer Painting Contractors, Inc.**

Attached is information I requested from the Procurement Director to assist the Board in deliberations regarding this appeal.

The issue involves compliance with the contractual requirements of the bid documents, the Replacement Offer Agreement and additional specifications in scope regarding paint specifications, area to be painted and number of coats. Failure to supply this document in the bid leaves it open to interpretation as to what type or quality of paint that will be provided and is not a contractually binding bid.

Therefore, the Procurement Director has recommended the award be made to the second lowest bidder, an SBE contractor who has complied with the bid specifications and requirements.

CHH/anc

Attachment

c: Jan Leshar, Chief Deputy County Administrator
Julie Castañeda, Clerk of the Board of Supervisors
Mary Jo Furphy, Director, Procurement Department



PIMA COUNTY
PROCUREMENT

MEMORANDUM

Date: January 3, 2020
To: Chuck Huckelberry, County Administrator
From: Mary Jo Furphy, Procurement Director *msf*
Re: Appeal by Nelson J. Greer Painting Contractors, Inc.

All respondents were provided the opportunity to attend the Pre-Bid Conference and the Site Visit. Chris Greer attended both opportunities as proven by his signature on the attached sign-in sheets (Exhibit A). As stated in the solicitation, these two events are held for the purpose of clarifying requirements and answering Prospective Offeror questions. The solicitation further states that it is the responsibility of Prospective Offerors to familiarize themselves with the solicitation and to identify issues at the conference. Mr. Greer is not unfamiliar with County procurement processes as he currently possesses another contract with Pima County.

Mr. Greer's appeal letter states he did not understand that he could not change the quantity of hours in the Unit Prices schedule. While the solicitation document did not specifically say do not change the quantities, the instructions do say to enter the Unit Price and shows the calculation for the Extended Amount. A reasonable person could conclude the required action is to only enter values in the empty fields. This is their Unit Price bid and to complete the extended calculation based on the provided quantities. The Instructions to Offerors does state the following directions:

- "Offerors must print or typewrite all prices . . ."
- ". . . must provide a Unit Price for all items. . ."
- "Offeror must provide requested information and data in the precise manner that County requests."
- "The submittal . . . must use without modification the form . . ."

If Mr. Greer did not agree with the hours as listed and provided by the Facilities Management Department he should have voiced his concern at the Pre-Bid Conference where it could have been discussed and altered if deemed the appropriate action.

Mr. Greer's second issue in the appeal letter is that Amendment No. 01 did not provide instruction to replace page one of the Offer Agreement (contract). Yet he shows the exact wording from Amendment No. 01 that states "**Replace** Offer Agreement, Product or Service Specifications & Scope, page 1 of 13 from the original bid package with the attached Amendment 1 Product or Service Specifications & Scope, page 1 of 13." This error to replace the page by Mr. Greer is not a minor irregularity that can be waived by the Procurement Director since this page contained scope changes as highlighted in Exhibit B. This page is a part of the binding Offer and would become the contract if awarded. The submitted binding Offer contained a wrong scope of work and contractually the County would not be able to hold him to the Scope that was intended by the County.

The second low bid and recommended awardee, DeLeon Painting, is a Small Business Enterprise in Pima County. While the County may be paying a little more, the integrity of the procurement process is upheld and the County will be awarding this contract to a SBE contractor that demonstrated good business practices by paying attention to the details.

This appeal should be denied and awarded to DeLeon Painting as recommended.

C: Jan Leshner, Chief Deputy County Administrator
Lisa Josker, Facilities Management Director

JAN 3 11:49 AM

Exhibit A

(2 pages)

Exhibit B

(1 page)

OFFER AGREEMENT

1. INTENT:

This document is intended to establish a Purchase Order ("PO") to provide Pima County ("County") with Veterans Memorial Bridge Painting Service.

As defined by the Pima County Standard Terms and Conditions included herein, this contract is non-exclusive and County may terminate it for any reason without penalty or cost.

All Goods and Services that Contractor offers or provides pursuant to the contract will conform to the requirements defined by or referred to by the solicitation documents including *Solicitation Amendment, Instructions to Offerors, Standard Terms and Conditions*, and this *Offer Agreement*, all of which are incorporated herein.

This document, including all attachments and documents incorporated by reference, constitutes the entire contract between the parties pertaining to the subject matter hereof, and merges all prior or contemporaneous agreements and understandings, oral or written, herein.

2. CONTRACT TERM, RENEWALS, EXTENSIONS & REVISIONS:

The PO will document the term of the contract. County will make proposed extension or revisions to the contract through the issuance of a revised PO document setting forth the requested changes.

Contract extensions, renewals, or revisions will occur through the issuance by County to Contractor of a revised MA document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions, scope modifications and/or specifications within ten (10) calendar days of issuance by County will signify acceptance of all such changes by Contractor and the revision will be binding upon the parties.

3. CONTRACTOR MINIMUM QUALIFICATIONS:

The Contractor certifies that it is competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this contract. Contractor certifies that it possesses all licenses required by applicable Agencies to satisfy the requirements of this contract.

| ITEM NO. | MINIMUM QUALIFICATIONS | CHECK <input checked="" type="checkbox"/> appropriate response certifying agreement with the requirement. |
|----------|--|---|
| 1 | Contractor must have been in business for three (3) consecutive years, including current year, providing commercial painting services. | <input type="checkbox"/> Yes |
| 2 | Contractor must possess and maintain Arizona Registrar of Contractors license C-34 or CR-34. Provide license # _____ | <input type="checkbox"/> Yes |

4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

4.1 Bridge is located near the intersection of South Palo Verde and E. 36th Street, National Bridge Inventory (NBI) # 10501. Bridge spans the Union Pacific railroads and Aviation Highway.

4.2 Painting will be performed per Painting and Decorating Contractors of America (P.D.C.A.) industry standards.

4.3 Entire surface of bridge must be cleaned prepped and primed prior to final color coat coats. This includes all steel mesh areas, steel supports, American Flag details and railings on both sides of the bridge **including extended railing that continues to closet intersections on both sides of the bridge structure.** No painting in the park areas below are required.

4.4 County requires the use of the following Dunn Edwards products or equivalent: Aristoshield coatings and Enduraprime metal primer. Equivalent must be submitted to the Facilities Management Department for approval. One (1) coat of Enduraprime primer or approved equivalent will be used on all areas followed by **two (2) coats of Aristoshield semi-gloss urethane or approved equivalent to match as closely as possible the original color of the bridge which consists of Red, White, and Blue.**

4.5 Contractor will submit color samples to Facilities Management Department for approval. Areas where paint has worn through **to bare metal** and any areas that display rust shall be cleaned, prepped **and primed using one (1) coat of DTM (direct to metal) primer or approved equivalent before final color coats are applied.**