



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: C-1

March 5, 2012

TO: Each Supervisor

FROM: Gail Farber *Gail Farber*
Director of Public Works

**BOARD AGENDA – MARCH 6, 2012, ITEM NO. 44
SAN GABRIEL RIVER BICYCLE TRAIL (PHASE 4)
PROJECT ID NO. RDC0015360**

On the March 6, 2012, Board Agenda there will be an item for the award of a construction contract to Kormx, Inc. (Kormx), for the San Gabriel River Bicycle Trail (Phase 4) project. This is to provide your Board with information on how Public Works responded to a protest of the award to Kormx from Hillside Retaining Walls Company, also known as Excavating Engineers, Inc. (Hillside).

On January 10, 2012, bids were opened for the San Gabriel River Bicycle Trail (Phase 4) project. There were 19 bidders, with the lowest bid being submitted by Hillside. All of the bids were analyzed by my staff, and the fourth lowest bidder, Kormx, was identified as being eligible for a Local Small Business Enterprise (LSBE) preference of as much as 5 percent pursuant to Title 2, Chapter 2.204 of the Los Angeles County Code. As a result of following the LSBE program requirements, Kormx's bid, which differs from Hillside's bid by \$9,900.68, resulted in Kormx becoming the apparent successful bidder. Subsequently, Hillside submitted two letters protesting the award of the contract to Kormx based on the following issues:

1. The LSBE preference should not be applied to this project and Hillside had insufficient notice of the LSBE provisions.
2. Hillside did not consider Kormx to be qualified to do the work of this project, as Hillside had not identified any similar projects, which Kormx had constructed.

Each Supervisor
March 5, 2012
Page 2

To address the issue of applying the LSBE preference, Public Works staff reviewed Hillside's protest and informed Hillside via telephone and by a response letter (copy attached) that the LSBE program is identified in the bid documents in three separate locations. Additionally, Public Works reminded Hillside that the LSBE preference is established in the County Code, and it applies to all locally funded County contracts as a matter of law.

Regarding Hillside's claim that Kormx is unqualified to do the work, Public Works staff reviewed the qualification criteria for this contract and determined that the sole experience qualification is that the contractor must possess a Class A Contractor's License. No bidder was required to provide a history of prior work experience. Public Works staff confirmed that Kormx has met the Class A Contractor's License criteria. As such, there is no legal basis for disqualifying Kormx's bid on the basis of lack of experience. Further, even though documenting prior experience is not a requirement of this bid, Public Works is aware that Kormx successfully completed the San Gabriel River Bicycle Trail (Phase 1) project in 2009, which is similar in scope to this work. Public Works included this information in the response letter sent to Hillside.

Public Works consulted with County Counsel, and they concur with this finding and recommendation to award. Public Works continues to recommend award of the project to Kormx and will be available at the March 6, 2012, Board meeting in the event that there are any questions on this item.

If you have any questions, please contact Mr. William J. Winter of my staff at (626) 458-4018.

JG:vr

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Attach.

cc: Chief Executive Office (Rita Robinson)
County Counsel (Michael Moore)
Executive Office
Internal Services Department (Tom Tindall, Ozie Smith)

Excavating Engineers, LLC

County of Los Angeles
Ms. Gail Farber, Director of Public Works
900 South Fremont Ave.
Alhambra, Ca 91803

01/16/2012

RE: San Gabriel River Bicycle trail – 183rd Street tunnel realignment (Phase 4)
RDC0015360

Dear Ms. Farber,

On bid day Excavating Engineers was the apparent low bidder on the above referenced project.

I called Mr. Jose Pou the day after the bid to inquire where to send the remaining forms needed for the project. During our conversation Mr. Pou mentioned that this project was possibly subject to the county's Local SBE program and the 4th bidder is claiming a preference credit on this project.

We reviewed all the bid documents including the Instructions to Bidders, Notice Inviting Bids, the Special Provisions, and the Sample Agreement for the project and we were not able to find any place where this project is subject to the Local SBE preference program. Usually, if a municipality or agency has a special program that is a part of the bid it is clearly mentioned in the bidding documents. There is no such statement anywhere in this bid.

The only mention of the Local SBE preference program is in the Instructions to Bidders, page 8. The instruction is simply to make sure a certain form is filled out and included with the bid – which we did.

Excavating Engineers has completed other projects for the County of Los Angeles where the Local SBE program was stated clearly in the Sample Agreement. (FCC0001114) We compared the sample agreements and that section was not included in the Sample Agreement for the San Gabriel River Bicycle trail. Due to these facts we concluded that this project would not be subject to the Local SBE preference program.

We therefore request that the project contract be awarded to Excavating Engineers, Inc.

Respectfully,



Bob Lathrop
Project Manager

5256 S. Mission Rd., #703-002
Bonsall, California 92003
(760) 451-8600 Office
(760) 451-8602 Fax
License #716401

Excavating Engineers, Inc

January 27, 2012

Mr. Bill Winter
Deputy Director of Public Works, LA County
900 S. Fremont Ave.
Alhambra, Ca 91803

Re: Excavating Engineers, Inc.
Project: RDC0015360 San Gabriel River Bicycle Trail (Phase 4)
Matter: Formal Protest of the award of contract

Dear Mr. Winter

I am writing to formally protest an award of the referenced project by The County of Los Angeles to the bidder who finished with the 4th lowest bid, Kormx Inc. "Kormx". We specifically protest an award of the contract because they are not qualified to perform the work on this project.

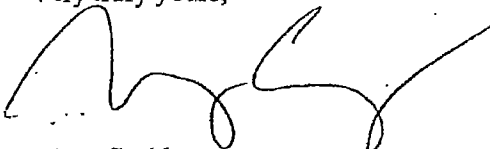
We contacted several cities where they have done work and it does not appear that they have ever successfully completed a project of this scope - ie: a pre-fabricated tunnel under a road, avoiding utilities, etc.. A project such as this is quite complicated and the Local SBE preference program should be set aside so that a contractor with experience can skillfully perform the work. As the low bidder on bid day Excavating Engineers has completed several such projects and we are in the process of finishing a project very similar to this for the City of Orange.

It would be a mistake for the County of Los Angeles to award the contract for a sensitive project such as this to a bidder with no experience in this type of work. Especially since the sole reason they may be awarded the project is because they received a preference (Local SBE preference program).

Accordingly, Excavating Engineers, Inc. respectfully requests that the County of Los Angeles decline to award the subject project to Kormx, Inc, and instead award the contract to Excavating Engineers, Inc. as the lowest responsive and responsible contractor.

Excavating Engineers, Inc. also requests that it be given notice of the date, time and location of any public meeting at which this matter is scheduled to be discussed.

Very truly yours,



Marty Smith
President - Excavating Engineers, Inc.

5256 S. Mission Rd., #703-002
Bonsall, California 92003
(760) 451-8600 Office
(760) 451-8602 Fax
License #716401



GAIL FARBER, Director

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February 14, 2012

IN REPLY PLEASE
REFER TO FILE: C-1

Mr. Marty Smith
Excavating Engineers, Inc.
5256 South Mission Road, No. 703-002
Bonsall, CA 92003

Dear Mr. Smith:

**PROJECT ID NO. RDC0015360
SAN GABRIEL RIVER BICYCLE TRAIL
183RD STREET TUNNEL REALIGNMENT, PHASE 4
BID PROTEST**

This is in response to your letter dated January 27, 2012, and your project manager Bob Lathrop's letter dated January 16, 2012, protesting the Local Small Business Enterprise (LSBE) preference given to the bid submitted by Kormx, Inc. (Kormx), and questioning Kormx's experience doing this type of work.

As explained to Mr. Lathrop by Mr. José Pou of our staff, the bid proposal included a form called "Request for LSBE Preference Program Consideration and CBE Firm/Organization Information Form". Instructions regarding the LSBE Preference Program were included in the Instructions to Bidders.

The LSBE Preference Program is established in County Code Section 2.204 and applies to all locally funded contracts. We believe adequate notice of the program was provided in the bid documents, and that there is no provision in County Code for this preference to be waived. Regarding your concerns about Kormx's experience, it successfully completed the San Gabriel River Bicycle Trail - Del Amo Boulevard Tunnel Realignment - Phase 1 project for the Department in 2009. Therefore, we will recommend to the County of Los Angeles Board of Supervisors (Board) that the project be awarded to Kormx as it possesses the required contractor's license, its proposal meets all the bid requirements, and it qualifies for the LSBE Preference Program.

We anticipate that the Board will consider our recommendation to award this project to Kormx at its meeting scheduled for March 6, 2012.

Mr. Marty Smith
February 14, 2012
Page 2

If you have any questions regarding this letter, please contact Mr. José Pou
jpou@dpw.lacounty.gov or (626) 458-2191.

Very truly yours,

GAIL FARBER
Director of Public Works

A handwritten signature in black ink that reads "William J. Winter". The signature is written in a cursive style with a large, prominent "W" and "J".

WILLIAM J. WINTER
Deputy Director

JRP:en

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