

RE: Central Park Amphitheater CIP Project No. 19-15  
Formal Bid Protest Letter  
Dated: 10/11/2023

To Whom It May Concern,

Act 1 Construction is submitting this letter as a formal Letter of Protest to the above-mentioned Public Works Project. After careful review of the bids, bid documents, and public contract code below are the listed reasons Act 1 feels this formal protest is in order.

Upon preliminary review, we noticed that Optima RPM, Inc. failed to list subcontractors for the electrical system, landscape/irrigation, signage, structural steel and survey scopes of work. Additionally, Optima RPM, Inc. failed to have the signature(s) on the bond notarized by the person or company that is offering the bid bond for security, thus making it invalid. Public Contracts Code §4106 states that if a prime contractor fails to specify a subcontractor when so required, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself and will in fact perform that portion of the work. In this instance, Optima RPM, Inc. (CSL#961714) is not qualified to install the electrical system, structural steel or surveying per the specifications set forth at bid time, nor is licensed to perform the work themselves for electrical and surveying. Structural steel portion requires a certification. Clarification on identified deficiencies stated above and additional deficiencies are as follows:

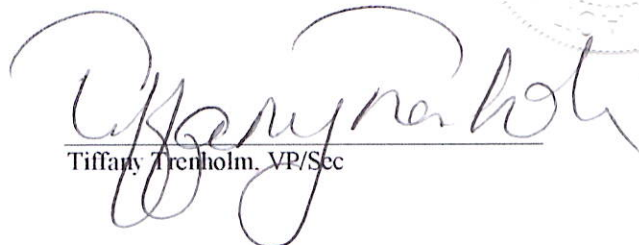
- 1) Optima RPM, Inc. failed to list an electrical subcontractor for this project during time of bid. Bid specification section 1350001-3 (Specialty Lighting Products) states in subsection 1.7 "Quality Assurance" Installer Qualifications: An entity that employs installers and supervisors who are trained and approved by manufacturer. Optima RPM, Inc. did not list a licensed electrician on this project and thus according to Public Contract Code 4106 shall perform this work, but they are incapable of doing so since they don't possess a valid electrical license. The value of this scope of work is upwards of \$1.5 million dollars from various approved subcontractors and the subcontractor listing requirement for the value of this scope of work exceeds the threshold of 0.005% as defined by the Public Works Contract Code listing requirements for subcontractors. Additionally, failing to list a subcontractor for this scope of work, regardless of the value, shall be deemed incurable based on the bid specifications. These defects in failing to list this scope nor perform it shall be deemed incurable. This defect is an incurable bid advantage if the City accepts or awards this contract to Optima RPM, Inc. as the tax-payers money is subject to bid shopping after award of contract for this significant scope of work. It is unfair to all subcontractors and/or other general contractors who submitted bid proposals as well. Optima RPM, Inc. failed to comply with the provisions of the Subletting and Subcontracting Fair Practices Act (Section 4100 et sec of the Government Code of the State of California).
- 2) Specification section 051200-3 (Structural Steel Framing): Subsection 1.7 "Quality Assurance" B Installer Qualifications: A qualified installer who participates in the AISC Quality Certification Program and is designated an AISC-Certified Erector, Category ACSE Category CSE" is stated in the bid documents for instructions to bidders to abide by. Optima RPM, Inc. failed to list a licensed structural subcontractor and to our knowledge is not licensed nor certified to perform the scope of work as explained above. The identified defect shall be deemed incurable and their bid proposal shall be deemed unresponsive.
- 3) Optima RPM, Inc. failed to include copies of their listed subcontractor's proposals as mandated in the instructions to bidders in the bid documents. In the project's Instruction to Bidders, section 8 "Listing of Subcontractors", in bold lettering it states, **"Contractor shall submit a copy of all listed subcontractor(s)' bids with their bid"**. Not only did they fail to comply with the City's requirements set forth in the bid documents, but by not listing the required subcontractors, they failed to comply with the provisions of the Subletting and Subcontracting Fair Practices Act (Section 4100 et sec of the Government Code of the State of California).

- 4) Optima RPM, Inc. failed to include a properly executed Bid Bond at the time of bid opening and therefore did not submit a valid Bid Bond. The documents presented to Act 1 to be the complete bid package at the time of bid opening and the original wet signature(s) mailed/delivered bid package both do not have the acknowledgement form attached for Optima's signatory to the bid bond. The acknowledgement form is not included in the package as a misplaced page. Not only does this open the City to exposure/liability, but it presents a major clerical error that cannot be corrected after the time of bid. ACT 1 conferred with our counsel and bid surety agent and they confirmed that if the bond does not have the signature(s) notarized when required by the entity requesting the bond then it should be deemed incomplete and not valid. Instructions to bidders, pages 6 & 7, Item #13: Notary Public, states the bid bond signature(s) must be notarized. Without the acknowledgement attached, it is not considered a completed notarization and therefore not a valid bid bond, which Optima RPM, Inc. has failed to do so properly.

Based on the above findings Act 1 Construction feels Bidder #1, Optima RPM, Inc. should be deemed non-responsive, therefore making Act 1 Construction the lowest responsible Bidder. We are competitive in our field and we pride ourselves in putting together a complete bid in order to ensure efficient project operations. As an experienced Public Works general contractor, we also feel a responsibility to ensure equal competition on bidding public works projects and emphasize that we are not looking to cause any inconvenience to the city in any manner. Act 1 spends a lot of time and money to ensure our bids are thorough and complete and adhere to bid documents as well as public contract codes and equal care must be taken by all to ensure fair and equal bid opportunities. We reserve our right to protect our interests and the interests of the taxpayer according to Public Contract Code and the provisions set forth in this bid solicitation if these bid defects of Optima RPM, Inc. are accepted by the City.

Respectfully,

  
Don Trenholm, President

  
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