

Attachment #3



CITY OF EL PASO DE ROBLES "The Pass of the Oaks"

August 8, 2024

VIA ELECTRONIC MAIL

Newton Construction & Management, Inc.
Attn: Eric Newton
P.O. Box 3260
San Luis Obispo, CA 93403
email: bids@newtonconstruction.com
eric@newtonconstruction.com

SUBJECT: Paso Robles Veteran's Memorial Building Patio and Canopy
DWP Project No. 23-26
Response to Protest of Kies & Son Construction, Inc.'s Bid Proposal

Dear Mr. Newton:

The City of Paso Robles ("City") has reviewed the bid protest submitted by Newton Construction & Management, Inc. ("Newton") dated August 2, 2024 ("Protest") of the bid received from Kies & Son Construction, Inc. ("Kies") for the above referenced project. The City has also reviewed the response to the Protest received from Kies dated August 7, 2024 ("Response"). Based on the foregoing, the City has determined that the Protest has no merit.

As a threshold matter, the City has broad discretion to waive any minor irregularities or deviations in bids it receives. The City is only compelled to reject a bid as non-responsive where the irregularity/deviation impacts the bid price that is the basis of award and/or would otherwise provide the bidder an unfair competitive advantage, such as a mistake that would allow the bidder to withdraw its bid without forfeiting its bid bond. (*See Menifee v. County of Fresno* (1985) 163 Cal.App.3d 1175.)

The City is not required to reject Kies' bid as non-responsive due to its listed subcontractor, H.S. Concrete, Inc. ("H.S. Concrete") not appearing to have a current registration status with the Department of Industrial Relations ("DIR"). Pursuant to Labor Code section 1771.1(c), an error in listing a subcontractor who is not registered with the DIR shall not be grounds for protest or for considering the bid non-responsive. Further, California case law explicitly holds that a low bidder cannot be rejected as non-responsive due to a problem with the license of a listed subcontractor. (*D.H. Williams Constr., Inc. v. Clovis Unified Sch. Dist.*, (2007) 146 Cal.App.4th 757.)

Finally, as detailed in the Response, in this case, the failure of H.S. Concrete to have a current registration status with DIR appears to be beyond the control of the subcontractor. The statement from H.S. Concrete attached to the Response details the efforts made and issues experienced by this subcontractor in attempting to renew its registration with the DIR. The City reviewed the DIR website to confirm the

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information provided in the Response. The DIR website page for contractor registration, <https://www.dir.ca.gov/public-works/contractor-registration.html>, does in fact provide as follows:

System Maintenance Notice: Please be assured that contractors will not be penalized for any failure to comply with the public works registration or eCPR requirements as a result of technical issues which are beyond their control due to the rollout of the updated new public works contractor registration and eCPR systems.

The City intends to consider award of this contract at its meeting on September 3, 2024. Based on the above, City staff will recommend that the City Council reject the Protest submitted by Newton and award the contract for the Project to Kies, the lowest responsible bidder submitting a responsive bid. The agenda for the meeting will include details on the meeting and will be posted on the City's website.

Sincerely,



Ditas Esperanza, P.E.
Capital Projects Engineer

cc: Joseph Luke Kies, President, Kies & Son, Inc.

Enclosure: Kies response to Newton's Bid Protest