



AFFILIATED AGENCIES

Orange County
Transit District

Local Transportation
Authority

Service Authority for
Freeway Emergencies

Consolidated Transportation
Service Agency

Congestion Management
Agency

Service Authority for
Abandoned Vehicles

February 16, 2017

Benjamin R. Trachtman
Trachtman & Trachtman, LLP
23046 Avenida De La Carlota
Suite 300
Laguna Hills, CA 92653

RE: IFB 6-1521 "Construction of the Metrolink Parking Structure at the Orange Transportation Center" – Response to Protest Submitted by Bomel Construction Co., Inc.

Dear Mr. Trachtman:

Please accept this letter as the Orange County Transportation Authority's (OCTA) response to the bid protest submitted by Bomel Construction Co., Inc. (Bomel) on February 9, 2017 for Invitation for Bids (IFB) 6-1521 "Construction of the Metrolink Parking Structure at the Orange Transportation Center (Project).

As detailed in Bomel's protest, Bomel's main ground for the protest is that to award to any other entity other than Bomel would result in an award to other than the lowest responsive and responsible bidder. Unfortunately, this assertion is incorrect. OCTA has determined that Bomel's bid was not responsive to the IFB requirements as it failed to follow material procedures set forth in the IFB. Specifically, specifying in its bid and confirming after bid submittal that it would be installing an elevator that was not determined under the procedures set forth in the IFB to be "equal" to the specified elevator.

It does not matter whether in Bomel's opinion the elevator for the Project is a "garden-variety" or "mundane" product. The IFB clearly set forth that OCTA, under applicable State law and Federal Transit Administration regulations, was specifying a specific product or its "equal". OCTA is allowed, in the context of public works projects, to specify specific products by brand name and model so long as it allows for an "equal" product to be used. This "equal" determination is not a determination that is left up to a bidder's decision. It is a determination that OCTA as the owner and bidding authority is required to make. As such, OCTA's IFB provided a process and a time frame by which a bidder who wished to substitute a product can do so by submitting the required backup documentation

in order to allow OCTA and its designer, not the bidder, to make said determination.

Bomel failed to follow that process and committed to bidding an elevator that had not been determined to be an "equal" product under the requirements of the IFB. Additionally, Bomel personnel confirmed this fact to OCTA staff after the submission of its bid. Bomel's failure to follow that process is not immaterial as Bomel asserts. Moreover, Bomel's assertion that it did not gain an unfair advantage by specifying a non-equal product is contrary to the facts. Bomel's own protest letter evidences this. The Excelsior elevator specified by Bomel was \$121,990 less than the specified Mitsubishi elevator. Bomel's listing of this elevator without a determination of "equal" being made by OCTA does put all other bidders at a disadvantage.

In summary, Bomel failed to follow the required process contained in the IFB for specifying an "equal" product. Bomel has the obligation to review the IFB in its entirety and conform its bid with the IFB's requirements. Bomel failed to do so. Accordingly, OCTA denies Bomel's protest.

Should you have any questions regarding this letter, please feel free to contact Marjorie Morris-Threats, Senior Contract Administrator at (714) 560-5633 or by e-mail at mthreats@octa.net.

Sincerely,



Virginia Abadessa,
Director

Contracts Administration and Materials Management

Cc: Lora Cross, Project Manager
Contract File

Sent via E-mail to Btrachtman@trachtmanlaw.com and Jure@bomelconstruction.com and U.S.
Certified Mail