



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: EAST SAN JOSE CARNEGIE
BRANCH LIBRARY PROJECT

DATE: 12-18-07

Approved

Date 12/18/07

COUNCIL DISTRICT: 3
SNI: Five Wounds/
Brookwood Terrace

REASON FOR SUPPLEMENTAL

- a) Provide additional background documents submitted by bidders.
- b) To respond to a letter submitted by Lyncon Construction, dated December 12, 2007, addressing the recommendation of Public Works to reject the bid of Lyncon Construction as not being responsive.
- c) To clarify bid results.

BACKGROUND

- a) The contractors that submitted the second and third lowest bids, Farrote Construction and Ralph Larsen and Sons, Inc., respectively, each submitted documents putting forth their protests of the award of contract to the apparent low bidder and, in the case of the third low bidder, their protest of the contract award to the second low bidder. Lyncon Construction, the apparent low bidder submitted written responses to the protests, as summarized in the Council Memorandum dated November 26, 2007 and as noted below.
- b) The Council Memorandum prepared by Public Works, dated November 26, 2007, recommended rejecting the apparent low bid submitted by Lyncon Construction as non-responsive and awarding the construction contract to the second low bidder, Farrote Construction. In the Council Memorandum, Public Works addressed the bid protests submitted by Farrote Construction and Ralph Larsen and Sons, Inc., and the response submitted by Lyncon Construction. Lyncon Construction subsequently submitted another letter, dated December 12, 2007, responding to the Council Memorandum prepared by Public Works. That letter is attached to this Supplemental Memorandum (See Attachment A3). This Supplemental Memorandum responds to that letter.

- c) In the Council Memorandum prepared by Public Works, dated November 26, 2007, the bid results listed in the column titled "Base Bid + 5 Alternates" inadvertently included only base bid amounts without the Add Alternates.

ANALYSIS

- a) Attached to the Council Memorandum prepared by Public Works, dated November 26, 2007 was just one document of several sets that were submitted to the City by three bidding contractors in the process of evaluating the bids to determine the lowest responsive bidder. In addition to the letter from Berliner Cohen, with attachments, on behalf of Lyncon Construction, that was attached to the earlier Council Memorandum, the City received bid protest documents submitted by Farrote Construction and Ralph Larsen and Sons, Inc. Lyncon Construction submitted letters responding to the protests along with correspondence from their legal counsel. All additional formal correspondence related to the bid protests are attached to this Memorandum, organized by contractor as follows – Attachments A1) Ralph Larsen and Sons, Inc, A2) Farrote Construction, and A3) Lyncon Construction.
- b) Public Works recommends rejecting Lyncon's bid as non-responsive based on its failure to comply with the subcontractor listing requirements. In its letter, Lyncon does not dispute that it failed to fully comply with the subcontractor listing requirements. Rather, Lyncon argues that it is being disqualified based on a "technicality." Public Works respectfully disagrees.

The subcontractor listing requirements set forth in State law – and which have been incorporated into the City's Standard Specifications - were enacted to protect subcontractors from bid shopping. They require a contractor to provide in its bid three (3) pieces of information for each subcontractor performing work in an amount in excess of ½ of 1 percent of the total bid amount:

1. The name of each subcontractor,
2. The "location of the place of business" of each subcontractor, and
3. The "portion of the work" which will be done by each subcontractor.

The "location of the place of business" is important information because it helps identify the listed subcontractor.

Lyncon did not provide the "location of the place of business" for some of the subcontractors that it listed. Nor did Lyncon provide any other information from which the City could readily determine the location of the place of business or otherwise confirm the identity of the subcontractor. Accordingly, its bid is not responsive.

In its letter, Lyncon also indicates that it does not understand the reference in the Council Memorandum to "self-performing" work. Lyncon's bid did not list a

subcontractor to perform plumbing work. Section 2-1.15B of the Standard Specifications states that a contractor must self-perform such work. As a result, if Lyncon were awarded the construction contract, it would have to self-perform the plumbing work. However, in its response to the bid protests, Lyncon stated that it intends to have a subcontractor named Facility Systems perform the plumbing work. Although, Lyncon listed Facility Systems to perform the HVAC work, it did not list this subcontractor to perform plumbing work. Public Works is concerned by Lyncon's indication that it intends to use a subcontractor to perform "plumbing" work even though it did not list this subcontractor in its bid as performing such work – although the recommendation of Public Works is ultimately based not upon this concern but upon Lyncon's failure to identify the "location of the place of business" of certain subcontractors.

Finally, Lyncon takes issue with Staff's attempt to explain that the lower than expected bids on this project might be explained in part by the fact that several general contractors bidding the project have worked on City library projects in the past. Whether or not this explanation is correct has no bearing on the recommendation of Public Works.

Importantly, the recommendation of Public Works is not based or influenced by any conclusions regarding whether Lyncon is capable or qualified to perform this project. The recommendation is based solely upon the fact that the bid submitted by Lyncon fails to comply with applicable requirements and is, therefore, not responsive.

- c) The display of the bid results has been revised to provide more clarity, which is included as Attachment C.



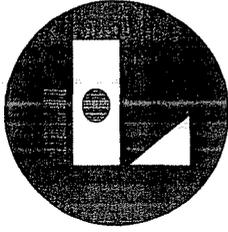
KATY ALLEN

Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, at 408-535-8300.

Attachment a1

Correspondence from Ralph Larsen & Sons, Inc.,



Ralph Larsen & Son, Inc.

General Contractors

License No. 189341

300 8th Avenue
San Mateo, CA 94401-4221
www.ralphlarsen.net

Phone: (650) 579-0339

Fax: (650) 579-0349

October 2, 2007

City of San Jose
Department of Public Works
City Facilities Architectural Services Division
200 E Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

Fax: (408) 292-6288
7 pages total
Also sent via email

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Bid Protest Re: Lyncon Construction, Inc.

Dear Ms. Ng:

This letter constitutes Ralph Larsen & Son, Inc. bid protest regarding Lyncon Construction's bid on the referenced project.

The basis of our protest is because of Lyncon Construction's failure to list a plumbing subcontractor. This work requires a C-36 license and Lyncon Construction does not possess such a license.

Per the Subletter and Subcontractor Fair Practices Act, if a subcontractor is not listed, one of the following conditions must be met:

1. The work must be performed by the prime contractor, or
2. The work being performed is less than ½ of 1% of the prime contractor's price.

Since Lyncon Construction is not licensed to perform plumbing work and that the plumbing work is worth over \$100,000, we request that the owner reject Lyncon Construction's bid as non-responsive.

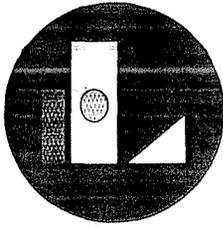
Sincerely,

Donald A. Teixeira
President, Ralph Larsen & Son, Inc.

DAT:bms

Encl. Copy of Lyncon Construction subcontractor list (4 pages)
Copy of Lyncon Construction License status (2 pages)

cc: Bid File



Ralph Larsen & Son, Inc.

General Contractors

License No. 189341

300 8th Avenue
San Mateo, CA 94401-4221
www.ralphlarsen.net

Phone: (650) 579-0339

Fax: (650) 579-0349

October 2, 2007

City of San Jose
Department of Public Works
City Facilities Architectural Services Division
200 E Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

Fax: (408) 292-6288
1 page total
Also sent via email

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Bid Protest Re: Lyncon Construction, Inc. and Farotte Construction Co.

Dear Ms. Ng:

This letter constitutes Ralph Larsen & Son, Inc. bid protest regarding Lyncon and Farotte Constructions bids on the referenced project.

The basis of our protest is because of Lyncon Construction's and Farotte Construction's failure to list a shelving subcontractor. This work requires a C-61. Neither Lyncon Construction nor Farotte construction possesses such a license. This is a requirement of section 11054.1.5B.1.

Per the Subletter and Subcontractor Fair Practices Act, if a subcontractor is not listed, one of the following conditions must be met:

1. The work must be performed by the prime contractor, or
2. The work being performed is less than ½ of 1% of the prime contractor's price.

Since Lyncon Construction and Farotte Construction are not licensed to perform this specialty shelving work and this work is worth over \$37,840, we request that the owner reject Lyncon Construction and Farotte Construction's bid as non-responsive.

Sincerely,

Donald A. Teixeira
President, Ralph Larsen & Son, Inc.

DAT:bms

cc: Bid File

Oct-02-2007 08:14am From-

T-025 P.002/013 F-400

BID OPENING
CITY OF SAN JOSE
OFFICE OF THE CITY CLERK

City Clerk
Time Stamp

RECEIVED
San Jose City Clerk

2007 SEP 27 P 2: 57

BASE BID 6,405,524.00

ALT NO. 1 90,000.00

ALT NO. 2 89,000.00

ALT NO. 3 60,000.00

ALT NO. 4 28,000.00

ALT NO. 5 25,000.00

TOTAL BID _____

BID DATE: Thursday, September 27, 2007

Project Manager: Agatha Ng - 535-8350

EAST SAN JOSE CARNEGIE BRANCH LIBRARY

BIDDER'S NAME: Tyncon Construction

Bond Cashier's Check _____

ADDENDUMS INCLUDED (2) YES NO _____

NON-COLLUSION AFFIDAVIT YES NO _____

LIST OF SUBCONTRACTORS

Designation of Subcontractors shall be as required in Section 2-1.15A of the City of San Jose Standard Specifications, July 1992.

BIDDER (GENERAL CONTRACTOR): Lyncon Construction Inc. (page 1)

	NAME OF SUBCONTRACTOR	CITY OF BUSINESS	DESCRIPTION
1.			ASBESTOS ABATEMENT
2.	<i>Ferna</i>	<i>Mt. View</i>	DEMOLITION (Bldg. and Site)
3.	<i>Tri Valley</i>		EARTHWORK
4.			PAVING
5.	<i>DE B. Trenching</i>	<i>San Jose</i>	SITE UTILITIES
6.	<i>Martina</i>	<i>Campbell</i>	IRRIGATION / LANDSCAPING
7.	<i>BT</i>	<i>Berkeley</i>	SITE CONCRETE/Hardscape
8.			BUILDING CONCRETE
9.	<i>Alamilla</i>	<i>Vallejo</i>	REBAR
10.	<i>Kwan Wo</i>		STRUCTURAL STEEL
11.			MISC. IRON
12.			ROOF DECK
13.	<i>Alcal</i>	<i>Hayward</i>	ROOFING
14.			ALUMINUM WINDOWS
15.	<i>AAA</i>	<i>San Jose</i>	GLASS / GLAZING
16.	<i>Alcal</i>	<i>Hayward</i>	INSULATION
17.	<i>A. Nava</i>	<i>Hayward</i>	LATH PLASTER
18.	<i>Frank Allen</i>	<i>San Jose</i>	FRAMING / DRYWALL

BIDDER (GENERAL CONTRACTOR):

Lyncon Construction Inc. (page 2)

	NAME OF SUBCONTRACTOR	LOCATION OF PLACE OF BUSINESS	PORTION OF WORK
19.			SHEET METAL
20.			DOORS AND HARDWARE
21.			FLOORING
22.	<i>J.M.</i>	<i>McKingsville</i>	CASEWORK/MILLWORK
23.	<i>R. Bros.</i>	<i>"</i>	PAINTING
24.			CARPET
25.			TILE / STONE WORK
26.			ACOUSTICAL TREATMENT
27.	<i>Residential</i>	<i>Sacramento</i>	FIRE PROTECTION
28.			SECURITY
29.			PLUMBING
30.	<i>For. Lys</i>	<i>SJ.</i>	HVAC
31.	<i>Clark</i>	<i>Santa Clara</i>	ELECTRICAL
32.			LOW VOLTAGE
33.			AUDIO VISUAL
34.			SIGNAGE
35.			LIBRARY SHELVING
36.			BOOK DETECTION SYSTEM
37.			CANOPIES / TRELLIS
			(Others)

LIST OF SUBCONTRACTORS (Cont.)

BIDDER (GENERAL CONTRACTOR): Lyncon Construction Inc. (page 3)

	NAME OF SUBCONTRACTOR	LOCATION OF PLACE OF BUSINESS	PORTION OF WORK
38.			Chain Link Fence
39.			Ceiling System
40.	Loane Masonry	Port. View	CMU wall
2.4	Fudo	San Mateo	Soil Stabilization
25.1	BT Muralini Bay Area Floor	S.J.	Carpet / Resilient Floor
25.2			wood floor



License Detail

CALIFORNIA CONTRACTORS STATE LICENSE BOARD

Contractor License # 786823

DISCLAIMER

A license status check provides information taken from the CSLB license data base. Before relying on this information, you should be aware of the following limitations:

- CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)). If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- Per [B&P 7071.17](#), only construction related civil judgments reported to the CSLB are disclosed.
- Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the Board's license data base.

Extract Date: 10/02/2007

***** Business Information *****

LYNCON CONSTRUCTION INC
175 LEWIS ROAD SUITE 20
SAN JOSE, CA 95111-2175
Business Phone Number: (408) 629-5900

Entity: Corporation

Issue Date: 11/01/2000 Reissue Date: 06/11/2002 Expire Date: 06/30/2008

***** License Status *****

This license is current and active. All information below should be reviewed.

***** Classifications *****

Class	Description
B	GENERAL BUILDING CONTRACTOR

***** Bonding Information *****

CONTRACTOR'S BOND: This license filed Contractor's Bond number 897817C in the amount of \$12,500 with the bonding company **DEVELOPERS SURETY AND INDEMNITY COMPANY.**
Effective Date: 01/01/2007

Contractor's Bonding History

BOND OF QUALIFYING INDIVIDUAL(1): The Responsible Managing Officer (RMO) MIKE

CHARLES BERGSTROM certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is **not** required.
Effective Date: **06/11/2002**

***** Workers Compensation Information *****

This license has workers compensation insurance with the
STATE COMPENSATION INSURANCE FUND
Policy Number: **756-000036** Effective Date: **12/31/2005** Expire Date: **12/31/2007**

Workers Compensation History

***** Miscellaneous Information *****

Date	Description
06/11/2002	LICENSE REISSUED TO ANOTHER ENTITY

Personnel List

License Number Request Contractor Name Request Personnel Name Request
Salesperson Request Salesperson Name Request

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Attachment a2

Correspondence from Farotte Construction Company, Inc.,

October 3, 2007

City of San Jose
Department of Public Works
City Facility Architectural Services Division
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Ralph Larsen & Son, Inc. Bid protest

Ms Ng,

This letter is the Farotte Construction Company Inc. response to the Ralph Larsen & Sons, Inc bid protest for the above referenced project.

The basis of the bid protest from Ralph Larsen is that we failed to list the shelving subcontractor, they are incorrect. We are not in violation of California Law, and our subcontractor bid (\$22,980.00) is less than 1/2 of 1% of the total bid amount. No listing of this subcontractor is required.

In addition, Farotte Construction Company Inc. feels that our bid was responsive, and we should be awarded the project. This is based on the reasons spelled out in our bid protest of Lyncon's bid, which is enormously non-responsive.

Sincerely,



Troy Fink
Project Manager / Estimator
Farotte Construction Company Inc.

October 3, 2007

City of San Jose
Department of Public Works
City Facility Architectural Services Division
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Bid Protest of Lyncon Construction, Inc

Ms Ng,

This letter constitutes Farotte Construction Company Inc. bid protest of Lyncon
Constructions bid for the following reasons:

Lyncon didn't properly list the Shelving subcontractor; Lyncon doesn't possess a C-61
license as specified in section 11054.1.5b.1.

Lyncon fails to list the "locations" for numerous subcontractors.

Lyncon fails to list subcontractors for numerous trades with values well over the
threshold of ½ of 1%. Farotte finds it very hard to believe Lyncon will be self
performing all these trades.

Its Farotte Construction Company Inc. opinion that Lyncon is legally non-responsive on
the bid for the Carnegie library and we believe their bid should be thrown out and Farotte
Construction Company Inc. should be awarded this project. We look forward to the
opportunity to do this project for the City of San Jose and will happily answer any
questions related to this issue.

Sincerely,



Troy Fink
Project Manager / Estimator
Farotte Construction Company Inc.

October 4, 2007

City of San Jose
Department of Public Works
City Facility Architectural Services Division
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Response to Lyncon Constructions response to the bid protest from Ralph Larson

Ms Ng,

This letter constitutes the Farotte Construction Company Inc. reply, to the Lyncon Construction's response, to the bid protest from Ralph Larson. This letter will further reinforce our bid protest, and should be considered part of our bid protest.

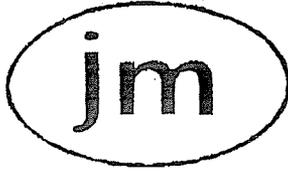
Lyncon is stating that they have listed and are considering "JM Cabinetmaker" as the supplier and installer of the metal shelving, Division 11054. This statement is incorrect. Farotte construction received a bid from JM Cabinetmaker at the time of the bid (copy attached) that clearly states the scope of work they are performing. It does not include the metal shelving. In addition JM Cabinetmaker does not have a C-61 license as required by the specifications.

It is clear that Lyncon did not understand the scope of work for this project. It is also clear that Lyncon did not comply with the subcontractors listing law. They did not list subcontractors for signage, flooring, carpeting, tile and stone work, acoustical treatments, security, plumbing, low voltage, metal decking, and wood flooring. All these sub-trades have a value higher than the 1/2 of 1% of the bid legal requirement by state law for listing of bids. Their bid should be deemed non-responsive and thrown out. The project should be awarded to the first responsive bidder, Farotte Construction Company Inc.

Sincerely,



Troy Fink
Project Manager / Estimator
Farotte Construction Company Inc.



Cabinetmaker

P. O. Box 2789
McKinleyville, CA
95519-2789
Office (707) 839-0916
Fax (707) 839-4955
Cal Cont. Lis 580647

Date: 9 / 27 / 07

To: BIDDING GENERAL CONTRACTORS

Job: EAST SAN JOSE CARNEGIE BRANCH LIBRARY

Section: 06400 ARCHITECTURAL WOODWORK (See Scope Letter of 9/26/07)

Total Price F. O. B. Shop

7.25 % Sales Tax: Yes / No

Included

Delivery: F. O. B. / Included

Included

Installation: Yes / No

Included

W. I. Certification: Yes / No

Included

Total : \$147,000.00

For Additive Alternate #3, Add \$66,000

Terms of Sale: Net receipt of goods

1. Addenda #1 and #2 noted.
2. All work to plans and specifications, taxed, delivered, and installed.
- 3.

Upon Acceptance: Terms of sale binding to BOTH parties:

Buyer: _____

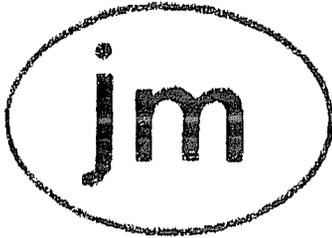
Signature: *Jack Coats*

Title: _____

Date: *9/27/07*



Cabinetmaker



Cabinetmaker

P. O. Box 2789
McKinleyville, CA
95519-2789
Office (707) 839-0916
Fax (707) 839-4955
Cal. Cont. Lic. 580647

SCOPE LETTER

EAST SAN JOSE CARNEGIE BRANCH LIBRARY

SECTION 06400 - ARCHITECTURAL WOODWORK

JM Cabinetmaker is an Award Winning Member and Licensee of the Woodwork Institute. Recent projects completed include Tully Branch Library, San Jose for Ralph Larsen & Son, General Contractor

We will be submitting a bid on the items listed below, which we believe will complete Specification Section 06400.

<u>ROOM / ITEM</u>	<u>PLAN REFERENCE</u>	<u>SUMMARY</u>
Children's Computer Table	21/A908	Table w/ 4 CPU Slings
Check-out Counter	13/A907	Plastic Laminate
Friends	4/A907	Wood Veneer Upper & Lower, Solid Surface Top
Copy Print Station	5/A907	P. Lam. Case w/ Locks Solid Surface Top w/ Sink
Staff Lounge	16/A907	P. Lam. Upper & Lower, Refrig. Enclosure, Solid Surface Top w/ Sink
<i>Fireplace Surround</i> <u>Not Included</u>	23/A907	
Work Station	23/A907	P. Lam. Lower w/ Solid Surface Top
Work Room	3/A907	P. Lam. Work Top with Integral Legs (files below by others)
Check In (2 Required)	2/A907	Solid Surface Tops with Steel Legs & Support Frame
Open Shelves (at Check In)	24/A907	P. Lam. Open Upper Cab.
Community Room	1/A907	P. Lam. Upper, Lower, & Tall w/ Locks, Solid Surface Top with Sink.

SCOPE LETTER (CONTINUED)

<u>ROOM / ITEM</u>	<u>PLAN REFERENCE</u>	<u>SUMMARY</u>
AV Cabinet in Languages	15/A907	Tall case w/ Diffuser & Slat Wall
Teen Room	22/A907	CPU Cabs w/ CPU Slings, & Solid Surface Top
Tech Room	14/A907	P. Lam. Case w/ Locks, Solid Surface Top
Toilet (2 Required)	121 / 122	Solid Surface Tops with Integral Sinks
C1 Units	5/A908	Wood Veneer w/ Fixed Metal Dividers, P. Lam. Top, & Slat Wall
C3 Units	3/A908	Tall Wood Veneer Shelf Units
P1 Units	1/A908	Wood Shelves w/ P. Lam Top
TA Unit	Uncertain?	Will Bid as G2 / G3 Units
Slat Wall	A/908	Short & Tall as Detailed
End Panels -EPO1, EPO2, EPO3, EPO4	A/908	As Detailed
Steel Shelving Tops	A/908	As Detailed

Note: Next 4 Items are Additive Alternate #3

D1 Units (Add. Alt. #3)	12/A908	CD Racks
C2 Units (Add. Alt. #3)	11/A908	Gondola
G2 Units (Add. Alt. #3)	2/A908	Canted Book Shelf
G3 Units (Add. Alt. #3)	4/A908	Canted Book Shelf

Attachment a3

Correspondence from Lyncon Construction, Inc.,



October 3, 2007

City of San Jose
Department of Public Works
City Facilities Architectural Services Division
200 E. Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

SENT VIA E MAIL & FAX 408 292-6288

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Response to bid protest by Ralph Larsen & Son, Inc.

Dear Ms. Ng:

This letter is in response to the two bid protest letters issued by Ralph Larsen & Son, Inc. regarding the above referenced project, both dated 10/2/07.

Ralph Larsen & Son, Inc. is alleging that Lyncon Construction has violated The Subcontractor Listing Laws of California Public Works Projects by not listing Subcontractors for Plumbing and Shelving. The Subcontractors performing this work are both included on the "List of Subcontractors" turned in with Lyncon Construction's bid.

Lyncon received bids from eight Mechanical Subcontractors on bid day, two of which quoted the entire Mechanical package including Plumbing. Lyncon Construction received a complete Mechanical bid, including Plumbing, from Facilities Systems which is listed under "HVAC" on the List of Subcontractors.

Lyncon received bids from eight Subcontractors bidding on casework, shelving, or some combination of the two. Only one of these bids (JM Cabinetmaker) included a complete scope of casework and shelving. JM is included under "Casework/Millwork" on the List of Subcontractors.

I hope this clears up this matter, if there are further questions regarding the listing of these or any other of our Subcontractors we would be happy to meet with you and review our bid documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Bergstrom', is written over a white background.

Mike Bergstrom
Principle



October 8, 2007

City of San Jose
Department of Public Works
City Facilities Architectural Services Division
200 E. Santa Clara Street, 6th Floor
San Jose, CA 95113-1905

SENT VIA E MAIL & FAX 408 292-6288

Attn: Agatha Ng

Re: East San Jose Carnegie Branch Library
Response to bid protest by Farotte Construction .

Dear Ms. Ng:

This letter is in response to the letter from Farotte Construction dated 10-4-07. Farotte's claims and statements are baseless, misleading, and simply not correct.

Regarding the shelving, it is clear from the drawings that there are both wood shelving and composite shelving, metal shelves with wood tops and end panels. Lyncon is planning to subcontract the shelving package to both a millwork subcontractor and a metal shelving subcontractor. The wood portion of the shelving is clearly included in the scope of work provided by JM cabinetmaker (attached to Farotte's letter). In addition, we received a bid for the metal shelving portion which is below the ½ of 1 percent threshold, therefore we are not required to list them.

Of the other subcontractor packages listed in Farotte's letter, they are either listed, included in the scope of work for subcontractor's that are listed, or are below the ½ of 1% threshold.

I hope this clears up this matter, if there are further questions regarding the listing of these or any other of our Subcontractors we would be happy to meet with you and review our bid documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Bergstrom', written over a horizontal line.

Mike Bergstrom
Principle



12/12/07

City Council meeting -- Lyncon's response to San Jose Memorandum dated 11/26/07

Lyncon Construction Inc.

Incorporated Jan 2, 2001

Location: San Jose

Employees: 16

California state license board: Class B - 786823

Revenue last year YE 2006 \$37,737,328

Single Owner – Mike Bergstrom

Bio on Mike Bergstrom

Married for 16 years – lived in San Jose for 18 years

Wife and three kids living in Almaden Valley

Started Lyncon with savings and grew it to the current size

Our original office was a rental in south San Jose near the fairgrounds

Moved to our own office on Junction avenue last year

Comments on the memo from the City

Page 3 –

Lyncon takes exception to the quote “in addition, several general contractors who have worked with the City previously and are familiar with library construction projects helped secure favorable bid results”

We are the low bidder and we have not worked with the City before. Our low bid is a result of hard work and a low margin. All of the bidders used the same pool of subcontractors – the winning bid is a function of how well a general contractor knows the scope of the project and understands the pricing from the subcontractor.

Page 4 –

The argument that Lyncon did not list the location of the subcontractor on our subcontractor listing form is weak and appears to be the agency looking for a way to disqualify Lyncon. The fact is and everyone knows it, the same low priced subcontractors were used by everyone who did a complete and through job during the bid process. On

page 3 it was pointed out by the City Attorney that it is the “familiarity” with library work that got the City good pricing. The subcontractors are all the same whether it was this library or another one. My point is the City already knows each one of these subcontractors and the “location” is irrelevant.

Page 5 –

The statement “staff is concerned that Lyncon apparently submitted a bid intending to subcontract work that they would otherwise be required to self perform pursuant to section 2-1.15B.” I don’t understand this reasoning or the intent of the statement.

We as a general contractor like any other general contractor would not try to self perform any mechanical or electrical work – is that what the memo is saying?

We were very explicit in our post bid explanation as submitted by our attorney on each case detailing why there was no listing, I feel that we are the lowest responsible bidder and deserve to be awarded the project to show the City of San Jose how a local company can deliver the project.

Comments in general

The library staff did contact my references and I believe we as a Company checked out fine. We do a lot of work at Lockheed Martin and just finished a \$48M project last year.

We were also going to bid on the Santa Teresa library but felt that given our work load with Carnegie and other projects we would not be able to service the City correctly. From my understanding, the low bidder on the Santa Teresa project had to pull their bid due to an error. This ironically is the true second place bidder on Carnegie that the staff recommends over Lyncon.

Conclusion

The real intent of the subcontractor listing law is to protect the subcontractor community from unscrupulous general contractors who, if the law was not in effect, would bid shop after the award to get better margins. The subcontractors listed by Lyncon are all from the local subcontracting community and in most cases the same subcontractors as listed by other bidders. The location, contractor number or any other information about the subcontractor listed is easily obtained. We see no merit in disqualifying a local contractor on what amounts to a technicality.

ATTACHMENT C

BID RESULTS

Bids were opened on Sept. 27, 2007 with the following results:

<u>Contractor</u>	<u>Base Bid</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Hagensen Pacific (San Jose, CA)	\$8,140,000	\$198,000	2.5
Engineer's Estimate	7,942,000		0.0
Cal Pacific Construction (San José, CA)	7,739,000	(203,000)	(2.6)
Sausal Corporation (San Leandro, CA)	7,585,870	(356,130)	(4.5)
John Plane Construction, Inc. (Brisbane, CA)	6,999,000	(943,000)	(11.9)
BRCO Constructors (Loomis, CA)	6,921,000	(1,021,000)	(12.9)
Ralph Larsen and Sons, Inc. (San Mateo, CA)	6,524,000	(1,418,000)	(17.9)
Farotte Construction Co., Inc. (Gilroy, CA)	6,611,514	(1,330,486)	(16.8)
Lyncon Construction Inc. (San Jose, CA)	6,405,524	(1,536,476)	(19.3)

<u>Contractor</u>	<u>Base Bid</u>	<u>Add Alt.Total</u>	<u>Total Bid</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Hagensen Pacific (San Jose)	\$8,140,000	\$310,014	\$8,450,014	\$291,014	3.6
Engineer's Estimate	7,942,000	217,000	8,159,000		0.0
Cal Pacific Construction (San José)	7,739,000	200,900	7,939,900	(219,100)	(2.7)
Sausal Corporation (San Leandro)	7,585,000	208,800	7,794,670	(364,330)	(4.5)
John Plane Construction, Inc. (Brisbane)	6,999,000	273,000	7,272,000	(887,000)	(10.9)
BRCO Constructors (Loomis)	6,921,000	350,000	7,271,000	(888,000)	(10.9)
Ralph Larsen and Son, Inc. (San Mateo)	6,524,000	278,000	6,802,000	(1,357,000)	(16.6)
Farotte Construction Co., Inc. (Gilroy)	6,611,514	160,934	6,772,448	(1,386,552)	(17.0)
Lyncon Construction Inc. (San Jose)	6,405,524	292,000	6,697,524	(1,461,476)	(17.9)

<u>Contractor</u>	<u>Add Alt. No.1</u>	<u>Add Alt. No.2</u>	<u>Add Alt. No.3</u>	<u>Add Alt. No.4</u>	<u>Add Alt. No.5</u>
Hagensen Pacific	\$75,000	\$97,918	\$62,096	\$55,000	\$20,000
Cal Pacific Construction	33,000	72,500	48,000	29,100	18,300
Sausal Corporation	7,800	95,000	76,000	8,500	21,500
John Plane Construction	66,000	91,000	58,000	46,000	12,000
BRCO Constructor	150,000	90,000	60,000	40,000	10,000
Ralph Larsen & Son, Inc. .	75,000	98,000	60,000	25,000	20,000
Farotte Construction Co., Inc.	15,700	93,000	42,500	5,302	4,432
Lyncon Construction, Inc.	90,000	89,000	60,000	28,000	25,000
Engineer's Estimate	16,000	83,000	62,000	41,000	15,000