



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jane Light
Katy Allen

SUBJECT: SEE BELOW

DATE: 05-26-09

Approved

Date

6/2/09

COUNCIL DISTRICT: 4

SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR CONSTRUCTION OF THE EDUCATIONAL PARK BRANCH LIBRARY PROJECT AND APPROVAL OF THE FIRST AMENDMENT TO THE AGREEMENT WITH ANDERSON BRULE ARCHITECTS, ABA, FOR ARCHITECTURAL CONSULTANT SERVICES

RECOMMENDATION

- a. Award the construction contract for the Educational Park Branch Library to the low bidder, Barry Swenson Builder, to include the base bid and Add Alternate Nos. 1 through 5 in the amount of \$7,136,300, and approve a contingency in the amount of \$1,070,445.
- b. Approve the first amendment to the agreement for consultant services with Anderson Brule Architects (ABA), for the Project, extending the term of the agreement from October 31, 2010 to April 30, 2011, modifying the scope of services, and increasing the amount of compensation by \$90,000, for a total agreement amount not to exceed \$1,280,000.

OUTCOME

Approval of the construction contract with Barry Swenson Builder will allow the Educational Park Branch Library Project to be built and occupied for use by the community. Approval of the contingency will provide funding for any unanticipated work necessary for the completion of the Project.

Approval of the first amendment to the agreement with Anderson-Brule Architects (ABA) will provide additional funds for professional services and enable the City to compensate ABA for an expanded scope of work arising during the design phase, replenish the nearly depleted Additional Services funding for this Project, and extend the term of the agreement.

EXECUTIVE SUMMARY

The low bidder for the Project is Barry Swenson Builder (BSB). The second lowest bidder, Zolman Construction and Development, Inc. (Zolman), two of its subcontractors, and Carpenters Local Union 405, filed bid protests claiming that the structural steel sub-contractor listed in

BSB's bid did not have the required experience, that BSB failed to submit a signed non-discrimination/non-preferential treatment statement, and that BSB improperly pre-determined its subcontractors. The protest letters and responses to those protest letters are attached to this memorandum. After carefully analyzing the issues, staff finds the protests are without merit and recommends awarding the Project to BSB.

The first amendment to the agreement with ABA for architectural consultant services on this Project modifies the scope of work, increases compensation, and adds to the term of the agreement, to enable the consultant to provide services related to increases in the Project development area and related enhancements determined during the design development process. Staff recommends approval of this amendment.

BACKGROUND

The Educational Park Branch Library is the eighteenth library to be initiated under the November 2000 Library Bond Program and replaces the existing 13,000 square foot facility with a new 18,000 square foot building. The existing leased building will be vacated and returned to the East Side Union High School District (ESUHSD) for their use, and the lease will be terminated. The new building is located in the area of the existing parking lot adjacent to the old facility at 1770 Educational Park Drive. The site is bounded by Independence High School to the north and east, Overfelt Park on the south, and the Adult Education Facility across the street to the west.

In November 2007 City Council approved a consultant agreement with ABA for Planning, Design, and Construction Administration services for the new Educational Park Branch Library. The original agreement was based on a scope of work that called for the new library to be located on the existing parking lot site with minimal design or development of the surrounding area. As the design progressed it was agreed between DPW and Library Staff, as well as representatives from the ESUHSD, that more development of the area surrounding the new library building would greatly benefit both the library users and the school by enhancing the interface between the two facilities.

Based upon City Council recommendations, this building is designed towards meeting the criteria of a LEED Silver level facility and has been registered with the USGBC (United States Green Building Council) as targeting silver certification.

The Engineer's Estimate for the base bid is \$9,700,000. Construction is scheduled to begin in August 2009 with completion in February 2011.

ANALYSIS

A. Report on bids and recommendation to award construction contract.

The bids for this project were opened on April 7, 2009. There were 22 bids received and all were below Engineer's Estimate. The results are as follows:

<u>Contractor</u>	<u>Base Bid</u>	<u>Add Alt. 1 - 5 Total</u>	<u>Total Bid</u>	<u>Variance Amount</u>	<u>Over/ (Under) Percent</u>
Engineer's Estimate	\$9,700,000	\$372,000	\$10,072,000	---	---
Hagensen Pacific Construction (San Jose)	8,402,000	366,000	8,768,000	(1,304,000)	13
Kuehne Construction (Sunnyvale)	7,797,798	419,378	8,217,176	(1,854,824)	18
West Coast Contractors (Fairfield)	7,750,000	289,000	8,039,000	(2,033,000)	20
Howard S. Wright Construction (Emeryville)	7,558,428	369,998	7,928,426	(2,143,574)	21
Swenson and Associates (Campbell)	7,526,000	399,000	7,925,000	(2,147,000)	21
McCrary Construction (Belmont)	7,632,000	272,250	7,904,250	(2,167,750)	22
Intertex Construction (Valencia)	7,497,306	384,689	7,881,995	(2,190,005)	22
Farotte Construction (Gilroy)	7,597,756	275,285	7,873,041	(2,198,959)	22
Bobo Construction (Elk Grove)	7,296,000	320,000	7,616,000	(2,456,000)	27
John Plane Construction (Brisbane)	7,345,000	257,500	7,602,500	(2,469,500)	25
BRCO Construction (Loomis)	7,183,000	353,000	7,536,000	(2,536,000)	25
Ralph Larsen and Sons (San Mateo)	7,189,000	346,000	7,535,000	(2,537,000)	25
Brown Construction (West Sacramento)	7,198,000	303,639	7,501,639	(2,570,361)	25
San Jose Construction (San Jose)	7,211,233	264,124	7,475,357	(2,596,643)	26
Midstate Construction (Petaluma)	7,188,492	259,850	7,448,342	(2,623,658)	26
SJ Amoroso Construction (Redwood Shores)	7,157,000	281,000	7,438,000	(2,634,000)	26
Kent Construction (Gilroy)	6,977,731	392,000	7,369,731	(2,702,269)	27

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Subject: Educational Park Branch Library

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Bogard Construction (Santa Cruz)	7,027,000	289,241	7,316,941	(2,755,059)	27
Zovich Construction (Hayward)	6,880,000	345,000	7,225,000	(2,847,000)	28
Gonsalves & Stronk Construction (San Carlos)	6,859,100	295,300	7,154,400	(2,917,600)	29
Zolman Construction (San Carlos)	6,800,000	350,000	7,150,000	(2,922,000)	29
Barry Swenson Builders (San Jose)	6,867,000	269,300	7,136,300	(2,935,700)	29

In addition to the base bid scope of work, there are five Add Alternates:

Add Alternate No. 1: Slate Veneer at Exterior Walls

Add Alternate No. 2: Linear Wood Ceiling

Add Alternate No. 3: Linear Wood Soffit

Add Alternate No. 4: Level 5 Gypsum Board Finish

Add Alternate No. 5: Steel Tube Fencing in lieu of Chain Link

The bid results on these five Add Alternates are as follows:

<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>
Engineer's Estimate	\$120,000	\$116,000	\$60,000	\$44,000	\$32,000
Hagensen Pacific Construction	116,000	122,000	52,000	44,000	32,000
Kuehne Construction	169,025	148,000	61,710	19,365	21,278
West Coast Contractors	114,000	120,000	34,000	11,000	10,000
Howard S. Wright Construction	103,252	135,831	92,037	26,096	12,782
Swenson and Associates	194,000	132,000	50,000	10,000	13,000
McCrary Construction	66,000	129,000	46,000	17,000	14,250
Intertex Construction	64,365	207,494	84,312	14,539	13,979
Farotte Construction	83,276	118,393	52,872	13,731	7,013
Bobo Construction	125,000	118,000	58,000	11,000	8,000
John Plane Construction	73,000	130,000	33,000	13,000	8,500
BRCO Construction	120,000	139,000	58,000	11,000	25,000
Ralph Larsen and Sons	115,000	125,000	75,000	15,000	16,000
Brown Construction	99,630	136,076	44,095	12,871	10,967
San Jose Construction	73,241	112,307	53,752	9,700	15,124

Midstate Construction	69,778	119,141	45,772	12,942	12,217
SJ Amoroso Construction	88,000	124,000	43,000	14,000	12,000
Kent Construction	52,640	234,784	53,014	31,724	19,838
Bogard Construction	69,948	111,188	67,780	26,063	14,262
Zovich Construction	120,000	130,000	60,000	15,000	20,000
Gonsalves & Stronk Construction	79,800	132,500	51,000	14,200	17,800
Zolman Construction	70,000	180,000	70,000	15,000	15,000
Barry Swenson Builder	89,500	97,000	58,000	9,000	15,800

All of the 22 bids are at least 13 percent lower than the Engineer's Estimate. The low bid submitted by BSB is 29 percent below. During the bid period staff discussed the overall market conditions with the cost estimate consultant. The construction market has become extremely competitive as a result of the recent economic downturn and many contractors are submitting bids with little overhead/profit and other costs, and some contractors are even submitting bids that reflect a decision to take a loss. This has made it very difficult to provide accurate cost estimates.

In reviewing the bids, Staff found that the mean and average bid amounts are 21 percent and 24 percent respectively below the engineer's cost estimate. The individual bid amount of the 14 lowest bidders represents less than one percent difference from one to another. The variation of the 14 bids is within five percent. These narrowly spread bid results indicates that the bid documents are consistent and that the below market value bids are valid and feasible. Staff recommends award of a construction contract including all Add Alternates to BSB.

The standard contingency amount is 10 percent of the construction contract and is used for addressing any unanticipated work during the construction phase. Based on past experience, the change orders for such work during construction have been typically charged at their full market values. Due to the below market value bid, the contingency amount for this contract will yield approximately 30 percent less than what it would normally yield from a contract of full market value. To increase the ability of Staff to effectively manage any unanticipated work and/or address other challenges during the construction phase, Staff is recommending increasing the contingency fund from the standard 10 percent to 15 percent (\$1,070,455) of the contract amount. Any unused contingency funds will be returned to the program.

B. Bid Protests and Award of Contract

On April 10, 2009, Staff posted the bid results, the bid documents of all bidders, and the letter of intent to award on the City's website. This letter indicated the City's intent to award a contract to the low bidder, BSB, and instructed that all bid protests must be submitted within 5 business days. Prior to the deadline, Staff received protests from Zolman, Dasco Drywall, Carpenters Local Union 405 and Ace Iron, Inc.

I. Protest that the steel subcontractor listed by BSB does not have the required experience is without merit.

Zolman, the Carpenters Local Union 405 and Ace Iron, Inc. each assert that BSB's bid is not responsive because the structural steel subcontractor listed by BSB does not have the experience required by the Project specifications. This assertion is based on the incorrect argument that experience is determined based upon when the subcontractor received its contractor's license. After carefully analyzing the protest, Staff concludes that it is without merit.

With regard to the structural steel work, the Project specifications state, in relevant part:

Fabricator: Company specializing in performing the work of this Section with minimum 3 years experience. . . . Erector: Company specializing in performing this work of this Section with minimum 3 years experience.

There is nothing in the Project specifications that require measuring experience based solely on when the subcontractor obtained its license – as assumed by the protestors.

BSB listed Elmer's Portable Welding, Inc. as the subcontractor that would perform the structural steel work. Structural steel work requires a contractor to have a C-51 specialty license. Contractor State License Board records indicate that Elmer's obtained its C-51 license on or about September 26, 2006, which is approximately 2 and a half years ago.

The Contractor State License Board requires that a person have at least four years of experience to qualify to take an exam for a contractor's license. Experience must consist of work at a journey level, as a foreman, supervising employee, contractor, or owner-builder. In response to the bid protest, BSB – through its attorney - submitted a list of structural steel projects completed by Elmer's going back to October, 2005.

After carefully reviewing the information regarding Elmer's experience, Staff concludes that Elmer's meets the "experience" requirements set forth in the project specifications. Accordingly, staff recommends rejecting the protest.

II. The protest that the scope of work contained in Elmer's proposal to BSB is incomplete is without merit.

Zolman protests that the BSB's bid is not responsive because the scope of work contained in Elmer's proposal to BSB does not contain all of the structural steel work required by the Project specifications. This protest is without merit.

Consistent with the subcontractor listing requirements, BSB listed Elmer's as the subcontractor that would perform structural steel work. As discussed above, Elmer's has the necessary experience. This is all that is required to conclude that there is nothing with regard to the listing

of Elmer's that results in BSB's bid being nonresponsive. The scope of work contained in Elmer's proposal to BSB is irrelevant to the issue of whether BSB's bid proposal is responsive. The City's construction contract is with the general contractor. In preparing its bid proposal, the general contractor – not the City – determines how the work will be divided between itself and its subcontractors. The general contractor – not the City - is responsible for determining if the scope of work proposed by a subcontractor is sufficient to meet the general contractor's requirements as well as the requirements of the project. The general contractor bears the risk with regard to listing a subcontractor that has submitted an incomplete scope of work. The general contractor bears the risk with regard to its bid proposal accurately reflecting the cost of all work required by the project specifications. Regardless of the scope of work in the subcontractor's proposal to the general contractor, from the City's perspective the general contractor is still required to perform the work as required by the project specifications – using the listed subcontractors – for the amount set forth in the general contractor's bid proposal.

In short, the completeness of the scope of work contained in Elmer's proposal to BSB for the structural steel work is of no relevance to determining the responsiveness of BSB's bid proposal. Accordingly, Staff recommends rejecting this protest.

III. The protest that BSB failed to sign an anti-discrimination statement as part of its bid proposal is without merit.

Zolman also protests that BSB's bid is not responsive because BSB failed to sign an anti-discrimination statement as part of its bid proposal. This protest is without merit and should be rejected.

Attachment 1 of the bid proposal forms sets forth various anti-discrimination requirements. Section I of Attachment 1 includes the following requirement:

. . . ALL BIDDERS ARE REQUIRED TO SIGN THE FOLLOWING STATEMENT, AS PART OF THEIR BID PROPOSAL: . . . [¶] . . . In listing subcontractors in this bid, I have not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. I understand that any such discrimination or preference is in violation of Chapter 4.08 of the Municipal Code."

The "Proposal to City of San José" form submitted by BSB – as well as all of the other bidders – contains an anti-discrimination declaration that is in all respects materially identical to the one contained in Attachment 1. BSB made the declaration by signing and submitting the Proposal to City of San José to the City.

Zolman seems to argue that BSB should have submitted a separate declaration containing the statement set forth in Section I of Attachment 1. However, Section I of Attachment 1 requires that the statement be made as part of the bidder's Bid Proposal, which is exactly what BSB did.

Moreover, even if Zolman's argument had any merit, Staff would recommend waiving the failure to provide a separate, signed statement as a minor irregularity because BSB made the same declaration as part of its bid proposal. In other words, it would have effectively complied with the requirement, just in a different part of the bid proposal documents.

IV. The protest based on the form of the subcontractor listing form is without merit.

DASCO Construction & Drywall, Inc. protests that BSB's list of subcontractors is typed versus handwritten, and that the use of a typed list suggests that BSB had predetermined which subcontractors it would use. However, there is no legal requirement for the list of subcontractor's to be handwritten versus typed. Moreover, even assuming BSB predetermined which subcontractors it would use, there is nothing that legally prevents a general contractor from doing this. There is no legal requirement that a general contractor use the lowest priced subcontractor, as suggested by DASCO. Accordingly, the protest is without merit.

In short, the various protests are all without merit. Accordingly, staff recommends rejecting the protests and awarding the construction contract to BSB.

C. First amendment to the agreement with Anderson-Brule Architects based on increased project scope and overall site area to be developed by the Project.

The increased area of site development resulted in an additional scope of services for the consultant beginning with Design Development and will carry through Construction Administration. The additional work described below has already been completed by the consultant as part of the ongoing design development and efforts to keep the Project on schedule.

The three most significant changes are as follows:

1. Additional school related site work resulting in increasing joint-use parking from eight stalls to 48 including six disabled access spaces, a new wrap-around driveway, and a protected pedestrian path linking the school, library, and shared Overfelt Gardens parking lot.
2. Additional Overfelt Gardens Park related site work resulting from requests made by PRNS for a new site fence and gate adjacent to the Overfelt Garden pond, as well as a new maintenance access path. Previously used access path and fencing will be demolished due to new Project development.
3. Additional landscape transitions, planting areas, and grading and drainage associated with the increased scope of work.

Staff has reviewed the current scope and schedule of services in ABA's agreement and believe that increasing the additional services compensation, and the term of the agreement, as proposed through this first amendment is appropriate and necessary to the successful completion of this Project.

The \$90,000 increase requested by this amendment is an addition to the Additional Services amount included in the original agreement. Of the original \$33,000 allocated, one request for additional services funds in the amount of \$28,000 to be used for analysis and redesign to achieve LEED Silver certification, has been approved to date. Approval of additional compensation will replenish the Additional Services funds to cover any unanticipated expenses during the construction administration phase of the Project. Any unused funding will be returned to the program.

EVALUATION AND FOLLOW-UP

Approval of this recommendation will enable the Project to move forward into the construction phase and to continuously receive adequate and timely consultant assistance throughout the remaining project development schedule. At this time, there are no other pending issues requiring Council attention.

POLICY ALTERNATIVES

A. Construction Contract Award

Alternative #1: In order to defer or reduce operating and maintenance costs as directed in the Mayor's March Budget Message and approved by the City Council, the 2009-2010 Proposed Capital Budget and 2010-2014 Proposed Capital Improvement Program includes a recommendation to defer the award of the construction contract for the Educational Park Branch Library until January 2010.

Pros: As a result of this action the beneficial use date for this facility would not occur until June 2011, and the grand opening of the facility would occur in fall 2011 (the original grand opening was anticipated to occur in winter 2011). This delay would result in the operating and maintenance impact on the General Fund of the newly renovated facility being deferred from 2010-2011 to 2011-2012.

Cons: Given the favorable nature of the bids received, however, this memorandum includes a recommendation to award the construction contract now, which would result in the beneficial use date occurring in February 2011.

Reason for Not Recommending: Due to the significant operating and maintenance impact on the General Fund, the grand opening for the facility is still recommended to occur in fall 2011, which would result in the building being completed but kept closed for six months prior to the grand opening.

B. First amendment to the Agreement with Anderson-Brule Architects based on increased project scope and overall site area to be developed by the Project

Alternative #1: Direct City Staff to provide the required services with in-house resources.

Pros: Increased work options for current staff.

Cons: Schedule impact while a staff design/engineering team is assembled resulting in potentially greater costs due to coordination issues interfacing with consultant design and working drawing production cycles. Shifting existing City staff resources to this Project at this time would delay this or other projects.

Reason for not recommending: Staff is fully utilized on other projects resulting in lack of available resources. Since the establishment of these bond projects the importance of creating a City/consultant partnership has been recognized. The use of architectural design consultants results in fresh and innovative ideas being applied to the Project along with the flexibility required to meet changing staffing needs. This agreement has the added benefit of having a local consultant working in partnership with City staff.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater.

To solicit contractors this Project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid notifications for all Department of Public Works construction projects were provided to various contractor organizations and builder's exchanges. In addition, this memorandum will be posted with the June 16, 2009 Council agenda.

COORDINATION

This memorandum has been coordinated with the Departments of Planning, Building and Code Enforcement, the City Manager's Budget Office and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy. The expansion of square footage of this branch library will also assist in meeting the General Plan goal of providing 0.43 square feet of library space per capita at this library.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: **\$7,226,300**

Project Delivery	\$2,080,000
Construction	\$7,136,300
Contingency	\$1,070,445
Public Art	<u>\$195,000</u>
Total Project Costs	\$10,481,745
Prior Year Expenditures	<u>\$1,435,078</u>
Remaining Project Costs	\$9,046,667

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Task 1 – Program Review & Conceptual Design	\$ 86,045
Task 2 – Schematic Design	115,635
Task 3 – Design Development	214,652
Task 4 – Construction Documents	463,510
Task 5 – Bidding & Award	24,344
Task 6 – Construction Administration	193,330
Task 7 – Record Documents & Project Closeout	36,484
Additional Services	33,000
Reimbursable Expenses	23,000
Total of Original Contract Agreement	1,190,000
First Amendment - Additional Services	<u>90,000</u>
TOTAL AGREEMENT AMOUNT	<u>\$1,280,000</u>

3. SOURCE OF FUNDING: 472 – Branch Libraries Bond Projects Fund

4. OPERATING COSTS: The 2010-2014 General Fund Forecast (released on February 27, 2009) assumed that the renovated Educational Park Branch Library would have a net operating and maintenance cost of \$914,000, beginning in 2010-2011. A recommendation to defer the grand opening date for this project until fall 2011 is included in the 2009-2010 Proposed Capital Budget and 2010-2014 Proposed Capital Improvement Program in order to defer this operating and maintenance cost until 2011-2012.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contract(s) recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

HONORABLE MAYOR AND CITY COUNCIL

05-26-09

Subject: Educational Park Branch Library

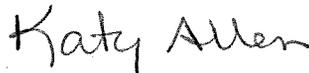
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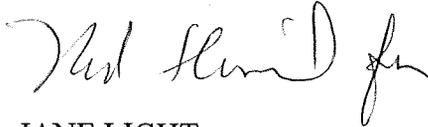
Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amount for Contract (including First Amendment)	2008-2009 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				\$9,046,667	\$7,226,300		
Total Funding Available							
472	5552	Educational Park Branch	146795	11,876,000	\$7,226,300	V-269	10/21/08, Ord. No. 28422
TOTAL				\$11,876,000	\$7,226,300		
Funding in future years of CIP							
472	5552	Educational Park Branch		172,000		V-269	
Total Funding Available				\$12,048,000*	\$7,226,300		

* Due to the favorable bids received for this facility, project savings are anticipated to occur. However, due to unforeseen conditions that may arise during construction, all project funding is recommended to remain in the project at this time.

CEQA

CEQA: Mitigated Negative Declaration, PP08-024. Resolution approved by Council on November 6, 2007.


 KATY ALLEN
 Director, Public Works Department


 JANE LIGHT
 Library Director

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, PUBLIC WORKS DEPARTMENT, at (408) 535-8300.

KJ:rr:dz:dt:sb

ATTACHMENTS

ZOLMAN PROTEST LETTER



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

T: 510-834-6600
F: 510-808-4713
gmural@wendel.com

April 16, 2009

**VIA FACSIMILE, CERTIFIED MAIL &
PERSONAL DELIVERY/(408) 292-6288**

Steve Blum, Project Manager
City of San Jose
DEPARTMENT OF PUBLIC WORKS
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113

Re: Educational Park Branch Library – Bid Protest

Dear Mr. Blum:

Our office represents Zolman Construction & Development, Inc. (“Zolman”). Zolman was the second lowest bidder on the City of San Jose’s (“City”) Educational Park Branch Library project (“Project”). This letter constitutes Zolman’s protest to the bid submitted by Barry Swenson Builders (“Swenson”), the apparent lowest bidder on the Project.

A. Swenson’s Failure to Submit a Complete Bid Package - Nondiscrimination/ Nonpreferential Treatment Applicable to Contracts for Public Works Construction Projects.

Swenson has failed to submit a complete bid package for the Project. As such, its bid is non-responsive. Specifically, Attachment 1, Nondiscrimination/Nonpreferential Treatment Applicable to Contracts for Public Works Construction Projects, of the Project Bidding and Contract Documents provides in pertinent part:

1. ALL BIDDERS ARE REQUIRED TO SIGN THE FOLLOWING STATEMENT, AS PART OF THEIR BID PROPOSAL:

In listing subcontractors in this bid, I have not discriminated or given any preferential to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, I understand that any such discrimination is in violation of Chapter 4.08 of the Municipal Code.

As you know, the non-discrimination statement is a part of the Special Provisions for City public works projects, and is required to be submitted and signed in order for a bidder to be

RECEIVED

APR 20 2009

DPW-CFAS

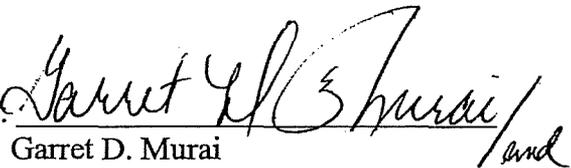
Steve Blum
April 16, 2009
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WENDEL, ROSEN, BLACK & DEAN LLP

Pursuant to Government Code section 54954.1, Zolman requests that a copy of all agendas, and a copy of all documents constituting an agenda packet, of any meeting of a legislative body concerning the award of this Project, be mailed to us. Should there be any fee for this service, please contact immediately so that such fee can be paid.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

By: 
Garret D. Murai

GDM/emd
Enclosure



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Post Office Box 2047
Oakland, CA 94604-2047

T: 510-834-6600
F: 510-808-4713
gmurai@wendel.com

April 24, 2009

VIA EMAIL AND FIRST CLASS MAIL

Steve Blum, Project Manager
City of San Jose
DEPARTMENT OF PUBLIC WORKS
200 East Santa Clara Street, 6th Floor
San Jose, CA 95113

Re: Educational Park Branch Library – Bid Protest

Dear Mr. Blum:

As you know, our office represents Zolman Construction & Development, Inc. (“Zolman”). We recently received Ace Iron, Inc.’s (“Ace Iron”) bid-protest and join in its statement of reasons for its bid protest.

As has previously been raised by Zolman, Barry Swenson’s Builder’s proposed structural steel subcontractor, Elmer’s Portable Welding, Inc. (“Elmers”), has not met the experience requirements of the City of San Jose’s (“City”) bid specifications, Section 5100-3, Structural Steel. Ace Iron correctly points out that the City should not consider Elmer’s C-60 license as satisfying the three-year experience requirement under Section 5100-3.

California Code of Regulations, Title 16, Division 8, Article 3, defines a C60 license holder as “[a] welding contractor causes metals to become permanently attached, joined, fabricated by the use of gases and electrical energy, which creates temperatures of sufficient heat to perform this work.” By contrast, a C51 license holder is defined as “[a] structural steel contractor fabricates and erects structural steel shapes and plates, of any profile, perimeter or cross-section, that are or may be used as structural members for buildings and structures, including the riveting, welding, rigging and metal roofing systems necessary to perform this work.”

By definition then, a C60 license holder does not have the experience, or in the case of Elmer’s, the requisite experience, of fabricating and erecting structural steel. C60 welding experience alone, which does not necessarily include experience in welding structural steel as opposed to non-structural metals such as aluminum, brass, or otherwise, does not satisfy Section 5100-3. Nor, would I surmise, would the City wish to have a subcontractor which, while it might possess a C60 “welding” license for little more than three years, fabricate and erect a component as important as structural steel on the City’s Educational Park Library project.

RECEIVED

APR 30 2009

DPW-CFAS

ACE IRON PROTEST LETTER

ACE IRON, INC.

(CA. LIC. # 787767)

31626 HAYMAN STREET

HAYWARD, CA 94544

TEL. (510) 324-3300 FAX (510) 324-3322

Certified MBE, WBE, DBE, LBE, SLEB in Hubzone

(Issued by CUCP - Caltrans/DOT/BART/ACTIA/Alameda County/Port of Oakland)

Signatory: Field Ironworkers Union Local #378

DVBE Certification with Associate Firm USA Const. for Concrete, Lumber, Electrical, All Materials & Ser

April 18, 2009

Mr. Steven Blum – Project Manager
Dept. of Public Works
200 E. Santa Clara Street, 6th Floor
San Jose, CA 95113

Via e-mail & fax# 408-292-6288

Dear Mr. Steven Blum:

Re: Bid Protest for Educational Park Library bid of April 7, 2009

Greetings! With reference to the above project, please let this letter serve as a formal Bid-Protest for the afore-
said project. Our reasons are as under:

1. Upon reviewing the Bid results we noticed that the apparent lowest bidder Swenson Builders has listed Elmer's Portable Welding of Sacramento, CA. However, Elmer's does not have the minimum 3 (three) years of experience required per your bid specifications Section 5100 - Structural Steel.
2. Attached is the Contractors State License Board (CSLB) website document which states that Elmer's acquired their Structural Steel C-51 license only on 09/26/06.
3. Prior to acquiring the C-51 Structural Steel License they only have C-60 Welding license which allows them to conduct the Welding business like portable welding and repair or re-construction of existing steel plant and machinery, farm equipment, etc. which perhaps they were engaged in as their business name suggests, but definitely does not allow them to do C-51 Structural Steel work until when they received it on 09/26/06. For that reason the CSLB has kept both license classifications separate as C-60 and C-51, since C-51 and C-60 are far apart in the requirements of the AISC and AWS codes, Building codes, etc. Also any one having C-51 license can conduct C-60 work but not vice-versa. (as welding forms a small component in the Structural Steel C-51 licensing). Furthermore, as you may already know the only guideline for bidders (at bid time) is to follow CSLB's licensing requirements as in the limited time on bid day, only then everyone can be at the same platform.
4. We have successfully completed many prestigious projects for the City of San Jose including the 200 award winning Roosevelt Center. The following are few of our recently completed projects for the City of San Jose as steel sub-contractors:
 - i). Cambrian Library
 - ii). Pearl Library
 - iii). Willow-Glen Library
 - iv). Roosevelt Community Center
 - v). Seven Trees Library (almost complete)
 - vi). Edenvale Library (under execution)

Contractor's License Personnel Detail

Contractor License #: 875556
Contractor Name: ELMER'S PORTABLE WELDING INC

Name: ELMER LEE CRAIN

Title and Class History	TITLE	CLASS	ASSOCIATION DATE	DISASSOCIATION DATE
	RMQ/CEO/PRES	D60 WELDING	04/04/2006	
	RMQ/CEO/PRES	<u>O51 STEEL STRUCTURAL</u>	<u>09/26/2006</u>	

Bonding History	PERCENT	SURETY COMPANY	BOND #	BOND AMOUNT	EFFECTIVE DATE	CANCELLATION DATE
	%				09/26/2006	
	%				04/04/2006	09/26/2006

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CARPENTERS LOCAL UNION 405
PROTEST LETTER



CARPENTERS LOCAL UNION 405

SERVING SANTA CLARA & SAN BENITO COUNTIES

April 16, 2009

Mr. Steven Blum, Project Manager
City Facilities Architectural Services Division
Department of Public Works
200 E. Santa Clara St., 6th Floor
San Jose, CA 95113

Re: Educational Park Branch Library

Dear Mr. Blum;

This is an official letter of protest submitted on behalf of Carpenters Local Union 405, which represents thousands of trades men and women who live and work in Santa Clara County. It is our contention that the proposal of Green Valley Corporation (doing business as "Barry Swenson Builders", hereafter referred to as "Swenson") is non-responsive to the specifications of the above-referenced project.

The City's bid documents include a specification for the qualifications of its Structural Steel erector: "Company specializing in performing the work of this Section with minimum three years experience."

The Swenson proposal listed as its structural steel subcontractor "Elmer" of Sacramento. A search of licensed structural steel contractors from Sacramento identifies "Elmer" more properly as **Elmer's Portable Welding, Inc.** (hereafter referred to as "Elmer's"), license number 875556.

A check of the Contractor's State License Board website quickly revealed that Elmer's can not satisfy the experience qualification specified by the City. The Personnel Detail page of the CSLB website (attached) reveals that Mr. Elmer Lee Crain was not associated with the C-51 Structural Steel Classification until September of 2006. As it is not legal to perform erector work in the State of California without being duly licensed, it is not possible that Elmer's has acquired the specified experience in California.

The failure of Swenson to select a Structural Steel erector with the necessary qualifications makes Swenson's bid non-responsive and potentially gave Swenson an unfair competitive advantage in attaining its "apparent low-bidder" status.

The City should not permit Swenson to substitute another Structural Steel erector contractor for Elmer's, as such as substitution would run contrary to the spirit and letter of the Subletting and Subcontracting Fair Practices Act (Pub. Contract Code, § 4100 et seq., hereafter "the Act"). Instead, the City should award the contract to the lowest responsive and responsible bidder, Zolman Construction.

In addition we hereby request, per California Government Code Section 54954, that we be mailed or e-mailed notices of all meetings of the awarding body for this contract relative to the award of the above referenced contract. If there is any fee for this service, please e-mail or fax that information to us immediately, so we can promptly pay the fee. We also request that we be informed by e-mail or fax the availability of any staff reports or recommendations regarding the award of this contract so that we can immediately inspect those reports or recommendations.

Contractor's License Personnel Detail

Contractor License #: 875556

Contractor Name: ELMER'S PORTABLE WELDING INC

Name: ELMER LEE CRAIN

Title and Class History	TITLE	CLASS	ASSOCIATION DATE	DISASSOCIATION DATE
	RMO/CEO/PRES	C60 WELDING	04/04/2006	
	RMO/CEO/PRES	C51 STEEL, STRUCTURAL	09/26/2006	

Bonding History	PERCENT	SURETY COMPANY	BOND #	BOND AMOUNT	EFFECTIVE DATE	CANCELLATION DATE
	%				09/26/2006	
	%				04/04/2006	09/26/2006

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DASCO PROTEST LETTER

DASCO Construction & Drywall, Inc.

529 SINCLAIR FRONTAGE ROAD

MILPITAS, CA 95035

TEL: 408-262-3945

FAX: 408-262-3753

1-866-815-7605

FACSIMILE/MEMO SHEET

TO:	Public Works Department	FROM:	Mike Cook
COMPANY:	City of San Jose	DATE:	April 17, 2009
FAX NUMBER:		TOTAL NO. OF PAGES INCLUDING COVER:	
TELEPHONE NUMBER:		DASCO'S REFERENCE NUMBER:	
RE:	Educational Park Branch Library	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

I wish to express my concern regarding Barry Swenson Builder's bid proposal for the above mentioned project. After reviewing their sub list, I noticed the unusual fact that Barry Swenson typed in all the sub names versus hand writing them in. This is unusual because General Contractors are sometimes unable to determine who is the lowest priced subcontractor because they are still receiving bids up until the very last minute. If subcontractors are already predetermined by the General Contractor, then it seems the General Contractor already had an agreement already in place with his subs. I am not sure if this is illegal, but it is certainly unethical.

Please respond to my concerns and if they have any merit.

Respectfully,

Mike Cook

BARRY SWENSON BUILDER
PROTEST RESPONSE LETTER
APRIL 20, 2009

BARRY SWENSON

BUILDER

777 N. FIRST STREET, 5TH FLOOR • SAN JOSE, CA 95112-6303 • (408) 287-0246 • FAX (408) 998-1737

CONTRACTORS LIC. 342751

April 20, 2009

Sent via Email

Mr. Danny Tsao
Senior Architect
City Facilities Architectural Services
Department of Public Works
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Re: Educational Park Branch Library
San Jose, CA

Response to Dasco's Protest of BSB Bid

Dear Mr. Tsao:

We are in receipt of Dasco Construction & Drywall's (Dasco) bid protest dated April 17, 2009. Green Valley Corporation dba Barry Swenson Builder (BSB) has reviewed the memo and offers the following response:

Our subcontractor listing form is an Excel spreadsheet which imports data from the master bid spreadsheet. As information is changed on the master spreadsheet, the subcontractor listing form automatically updates itself. Our bid room is located geographically very close to the City Clerk's office that receives the bids. We give our current listing to the bid runner as they leave our office roughly one hour prior to the bid submission time. By utilizing this method, only last minute subcontractor listings need to be changed or added. This can be verified by noting the manual changes that were done on the form. We assure you that there are no predetermined subcontractors and nothing unethical took place. We would be happy to discuss this matter in further detail should it be required.

Sincerely,



Blair Edsen
Project Manager
Barry Swenson Builder

RECEIVED

APR 29 2009

DPW-CFAS

www.barryswensonbuilder.com

A DIVISION OF GREEN VALLEY CORPORATION

April 20, 2009
Mr. Danny Tsao
Page 2

Educational Park Branch Library

Execution of the Non-Collusion Affidavit constitutes execution of the Bid Proposal including the above statement of nondiscrimination and, with the exception of the Bidder's Bond or Addenda, if any, no other signatures will be required."

Our execution of the Bid Form confirms our submission of a complete bid package.

BSB's Listed Subcontractor for Structural Steel:

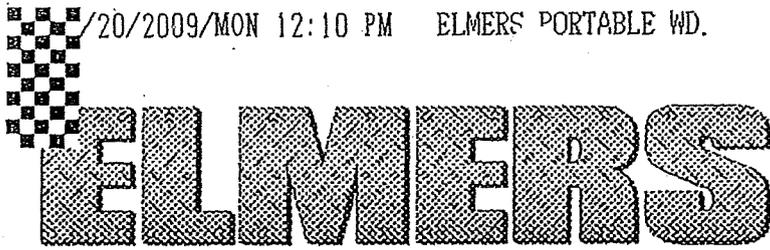
Zolman contests Elmer's experience by stating that their C51 license was issued on September 26, 2006. Per the attached printout from the CSLB, the license was effective on April 4, 2006. In addition, per CSLB requirements, the applicant must have four (4) years experience prior to applying for the license. Please review the attached letter from Elmers.

Zolman's assertions regarding Elmer's proposal are insignificant and incorrect. The comment regarding an incomplete scope is irrelevant. It should be pointed out that although Zolman feels that the stainless steel handrails were excluded, Elmer's proposal dated April 7, 2009, (see attached), clearly calls out hand rail per 5/L5.

Zolman also objects to items being bid as FOB. This is standard for all steel projects as many miscellaneous items are shipped to the jobsite and incorporated into the work by other subcontractors. It should be pointed out that the steel subcontractor that Zolman listed, (Ace Iron), also listed many items as "Furnished FOB Jobsite and Installed by General Contractor Items".

Regarding the bid price, we don't understand Zolman's assertion. They claim that Elmer's bid was \$40,000 less than other steel subcontractors. Per the attached quotes from bid day, Elmer's total price was \$240,972.00 and Ace Iron's price was \$247,000.00. This is a cost difference of \$6,028.00.

Barry Swenson Builder hereby submits the above response in an effort to move forward with this project. Please contact us if further documentation is required.



For a job done right, the first time.

Elmer's Portable Welding, Inc.
Serving Sacramento Since 1983

To: Barry Swenson Builder

RE: Elmer's Portable Welding, Inc. Fabrication and Qualifications

Date: 4/20/2009

Elmer's Portable Welding, Inc. [hereinafter "Elmer's"] submits the following:

This letter has been drafted to state Elmer's position on meeting the minimum qualifications for the San Jose Library project. Please review the following:

Elmer's has been operating under a Contractor License since April 4, 2006. According to California State License Board "You must have at least four years of experience to qualify for licensing". The specifications for the San Jose Library project section 1.5 Qualifications state: "Fabricator: Company specializing in performing the work of this Section with minimum 3 years experience." Therefore, when our qualification years as mandated by the state of California are combined with the years that Elmer's started operating under Contractor License in April 4, 2006; the minimum requirements are being met in connection with the afore mentioned project.

Also, questions were raised as to Elmer's ability to perform the work in connection with this project. Please see the following in which further states our qualifications and ability to perform Structural Steel Fabrication and Erection:

3904 Winters Street
Sacramento, CA 95838
916.921.2626 phone
916.921.5002 fax
CA Contractor's License #875556

ELMERS

For a job done right, the first time.

Page 2

Elmer's Portable Welding, Inc. has been in business since 1983, and since has provided the following services:

- **Full Service Fabrication & Installation Shop**
 - **Shop Equipment:**
 - 14,500 Square Foot Shop
 - 20x22 Vertical Band Saw
 - 75 Ton Iron – Worker
 - Track Torch
 - 2 Forklifts
 - 7 – 300 and 400 amp Welders
 - Air Compressors
 - Plasma Beam Line

- **Work Force is as Follows:**
 - 14 Welders
 - CAWI Certified Shop Foreman/QC Manager with 21 years experience
 - Chief Estimator/Senior Project Manager and Shop Drawing Checker w/35 years experience
 - Project Engineer
 - Estimator
 - 4 Additional Administrative Staff

- **Fabrication and Erection Experience is as follows:**
 - 25+ Experience in Fabrication and Installation in Steel Framing, Moment Frames, Braced Frames, Joist, Structural Deck
 - 25+ Experience in Fabrication and Installation in Misc. Metals, Trash Enclosure Gates, Hand Rail, Guard Rail, Awnings and other light fabrication

Department of Consumer Affairs Contractors State License Board

Contractor's License Detail - License # 875556

 **DISCLAIMER:** A license status check provides information taken from the CSLB license database. 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 database.

License Number: 875556 Extract Date: 04/20/2009

Business Information: **ELMER'S PORTABLE WELDING INC**
 3904 WINTERS STREET
 SACRAMENTO, CA 95838
 Business Phone Number: (916) 921-2626

Entity: Corporation

Issue Date: 04/04/2006

Expire Date: 04/30/2010

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

Classifications:	CLASS	DESCRIPTION
	C60	WELDING
	C51	STEEL, STRUCTURAL

CONTRACTOR'S BOND
 This license filed Contractor's Bond number 100038014 in the amount of \$12,500 with the bonding company
AMERICAN CONTRACTORS INDEMNITY COMPANY.
 Effective Date: 01/01/2008
Contractor's Bonding History

Bonding:
BOND OF QUALIFYING INDIVIDUAL
 1. The Responsible Managing Officer (RMO) ELMER LEE CRAIN 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: 09/26/2006
BQI's Bonding History

This license has workers compensation insurance with the
INSURANCE COMPANY OF THE WEST

Experience Requirements

7. What kind of experience is required for a contractor's license?

You must have at least four years of experience to qualify to take the examination. Credit for experience is given only for experience at a journey level or as a foreman, supervising employee, contractor, or owner-builder. These are defined as follows:

- A journeyman is a person who has completed an apprenticeship program or is an experienced worker, not a trainee, and is fully qualified and able to perform the trade without supervision.
- A foreman or supervisor is a person who has the knowledge and skill of a journeyman and directly supervises physical construction.
- A contractor is a person who manages the daily activities of a construction business, including field supervision.
- An owner-builder is a person who has the knowledge and skills of a journeyman and who performs work on his or her own property.

All experience claims must be verified by a qualified and responsible person, such as a homeowner, an employer, fellow employee, other journeyman, contractor, union representative, building inspector, architect, or engineer. The person verifying your claim must have firsthand knowledge of your experience—that is, he or she must have observed the work you have done—and must complete the experience certification portion of the application. Even if you provide a certification of your experience, be prepared to furnish documentation of any experience you claim on the application whenever such documentation is requested. The failure to provide this documentation will result in rejection of your application or denial of the license.

8. Are there education requirements for a license?

No. You do not have to meet any education requirements in order to qualify for a contractor's license. However, many community colleges and private schools offer instruction in vocational education. For more information, contact the:

Chancellor's Office, California Community Colleges
1102 Q Street
Sacramento, CA 95814
www.cccco.edu

or

Bureau for Private Postsecondary and Vocational Education
400 R Street, Suite 5000
Sacramento, CA 95814
(916) 445-3427
www.bppve.ca.gov

(PLEASE NOTE: CSLB cannot make referrals or recommendations regarding license preparation schools.)

9. May I substitute any education, technical training, or apprenticeship training for the required experience?

You may receive credit for your technical training, apprenticeship training, or education instead of a portion of the required four years of practical experience. At least one year must be practical experience. You must provide written documentation of any training or education claimed in place of experience. Acceptable documentation includes copies of apprenticeship certificates and college transcripts.

ELMERS

For a job done right, the first time.

Page 3

- **Certification and Membership:**
 - Certified by AWS D1.1
- **SMAW**
 - Plate Unlimited
 - Pipe
- **FCAW**
 - Plate Unlimited
- **GMAW**
 - Plate
- **Certified by AWS D1.3**
 - SMAW – Pan Deck
- **Certified ASME**
 - SMAW Pipe

- **California Certified Small Business**
- AISC Member
- AWS Member

Sincerely,

Kerry

Kerry Washington, Estimator
Elmer's Portable Welding, Inc.
CA. Contractor's Lic. #875556
Email – kerry@epweld.com

Policy Number: WSA216234502

Workers' Compensation:

Effective Date: 01/06/2009

Expire Date: 01/06/2010

Workers' Compensation History



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ACE IRON, INC.

CA. LIC. # 787767 PH (510) 324-3300 FAX (510) 324-3322

Certified MBE/WBE/DBE/LBE/SLBE and SIGNATORY IRON WORKERS UNION LOCAL #378

PRICING PROPOSAL No. 031109 (Bids 4/07/09)

Further to AI Scope Letter No. 031109 REV.-1 faxed earlier today, hereunder is our base bid pricing:

TOTAL OUR BASE BID PRICE: \$247,000

PROJECT: EDUCATIONAL PARK BRANCH LIBRARY, SAN JOSE, CA.

Job Specification: Sections 05100 (Structural Steel), 05500 (Metal Fabrication) and 05513 (Miscellaneous Metals). Addenda #1 (3-10-09), #2 (3-20-09), #3 (3-25-09), #4 (3-27-09) and #5 (4-02-09) have been noted.

Furnish & Install Items:

Total of seven (7) items are same as earlier faxed AI SCOPE No. 031109 REV.-1 (4/07/09) show.

Furnish F.O.B. Jobsite and Installed by General Contractor Items:

Total of eleven (11) items are same as earlier faxed AI SCOPE No. 031109 REV.-1 (4/07/09) show.

Exclusions:

Total of sixteen (16) items are same as earlier faxed AI SCOPE No. 031109 REV.-1 (4/07/09) show.

Technical Clarifications:

Total of sixteen (16) items are same as earlier faxed AI SCOPE No. 031109 REV.-1 (4/07/09) show.

FOR THE SUM OF \$247,000 (TWO HUNDRED FORTY SEVEN THOUSAND DOLLARS) ON OUR BASE BID ABOVE

Add Alternates: (Above "Exclusions" and "Technical Clarifications" conditions, also apply to this section)

- 1. Project Alternate #5 - Black Color Finish Painted Metal Fence/Gate
(02820 - Furnished & Installed)..... Sales tax included.....Add \$38,000 total
- 2. Primed Steel Pipe Sleeves for Fire Sprinkler Lines or Electrical Conduits Through
(05300 or 15300 - F. O. B.)..... Sales tax included.....Add \$3,000 total
- 3. (6) Peninsula Table Legs/Supporters - Primed on steel and #4 satin finish on stainless steel portions
(05500 or 11054 - F. O. B.)..... Sales tax included.....Add \$6,000 total

FOR YOUR CONVENIENCE, WE FAX THIS AI PRICING PROPOSAL No. 031109 TO YOU NOW, AND THE AI FORMAL PROPOSAL No. 031109 COMBINING THE SCOPE LETTER AND PRICING PROPOSAL MAY BE SENT TO YOU LATER. ANY PURCHASE ORDER OR CONTRACT SUBMITTED IN LIEU OF SIGNED COPY OF THE AI FORMAL PROPOSAL MUST STIPULATE "TERMS AND CONDITIONS SET FORTH IN ACE IRON'S FORMAL PROPOSAL ON April 07, 2009 SHALL GOVERN."

ACE IRON, INC.
BY: Tony Kao
TONY KAO, SENIOR ESTIMATOR

perforated metal panels (#11 gage, 3/4" square opening on 1" straight centers and approximate 56% open area) and double steel angle (sandwich style) ledgers around per details A100; 15, 17, 18, 27, 28, 29, 35, 37, 38, 40, 48/A130 & A600.

Inclusions: The gate has generic hinges, kick plates. Prepare works for panic exit device mounting and latch/lock set holes only. Dig hole on dirt (not on concrete/tar asphalt surface) and concrete fill for wall/gate posts, but limit to 18" diameter x 3'-6" depth maximum.

Exclusions: All core drilling, concrete reinforcing bar, slope or finish concrete/mortar, latch, lock set, panic exit device, electric power operator system (if required), card reader system (if required), sign / lettering / related support accessories, stainless steel pins and engineer calculations (if required).

7. **Metal trash gate** - Total of one (1) double-leaves swing metal trash gate (8'-6" W x 7'-0 H) at the project building north-east corner, to have rectangular tube steel posts, steel angle frames, tube steel back crossing members, pre-galvanized metal decking panels and generic hinges/latch/cane bolt set per details A100 & 6, 16, 26, 36, 46, 47, 49/A130. Dig hole on dirt (not on concrete/tar asphalt surface) and concrete fill for wall/gate posts, but limit to 18" diameter x 3'-6" depth maximum.

Exclusions: All core drilling, concrete reinforcing bar, slope or finish concrete/mortar, lock set (if required), wood bumper and stainless steel pins (if required).

Furnish F.O.B. Jobsite and Installed by General Contractor Items:

Structural Steel (05100), Metal Fabrication (05500) and Miscellaneous Metal (05513) packages:

1. All embedded/ship loosed steel members related to our fabricated steel in "Furnish & Install Section" of this proposal.

Metal Fabrication (05500) package:

2. **Steel angle ledgers with edge plates and structural metal decking on low roof** - Total of two (2) steel frames to have 2 layers steel angle perimeter ledgers with continued steel perimeter edge plates and 1 1/2" depth, #20 gage, G60 pre-galvanizing metal deck infill panels on low roof mechanical concrete pad (Z) areas only per details A211; S2.2 & 1/S4.1 and SDI standard. Exclude concrete infill, concrete reinforcing bars, cutting metal deck openings and related metal closure/accessories.
3. **Coiling door support posts** - Total of two (2) tube steel posts with steel base plates and top connection plates and related welded thread studs to support the coiling door #131B grill tracks at vestibule #131 area per details A201; 33/A290; A600 & 17/A810. Exclude all door track welding, metal/wood blocking, screws/fasteners, nuts & washers.
4. **Low height partition support posts** - Approximate total of eight (8) tube steel posts with steel base plates (without cap plates) and related welded thread studs to support the low height partitions (6) at print/copy room #121 and (2) at drinking fountain sides per details A201; 33/A290; 8, 14A/A500, 44/A800 & addendum #1 AD1-S13. Exclude all screws/fasteners, nuts & washers.
5. **Counter-top support frames** - Total of three (3) tube steel support frames (to have welded "L" shaped tube steel arms, welded continued tube steel front members, welded tube steel back members between arms and non-countersunk round through/access holes) to support the counter-tops at marketplace #123 checkout counter and tech connect #118 high/low counters per details A201; A240; 6, 7, 26, 27/A833 & 6, 7, 27, 47/A834. Exclude all screws/fasteners & access holes filling.
6. **Counter-top support arms** - Total of nine (9) "L" shaped tube steel arms (with non-countersunk round through/access holes) to support the counter-tops (2) at men's room #132, (2) at women's room #133 lavatory counters and (5) at marketplace #123 E-branch counter per details A201; A240; 33/A290; 47D, 48B/A500; 46/A831 & 8, 9, 10/A833. Exclude all screws/fasteners & access holes filling.
7. **Peninsula table legs/supporters** - Total of six (6) peninsula table legs/supporters at tech connect room #118, to have 4" stainless steel tube posts (#4 satin finish) with stainless steel base covers (#4 satin finish), top connected steel plates (with non-countersunk round holes) and bottom base steel plates per details A240; 9, 10, 18, 19, 20/A834; addendum #2 - AD2-A22, A23, A24, A25, A26 & A27. Exclude all fasteners.
8. **Ceiling eave joint plates** - Total of four (4) steel flat bars with round holes at roof ceiling eave intersection joint lines per details A222 & 7, 16/A722. Exclude all fasteners.

15. Any steel / metal items other than those listed under "Furnish and Install" and "F.O.B." sections of this bid proposal or those items are shown on mechanical, plumbing and fire protection, electrical, civil, landscape, information technology (telecomm) and audio/visual drawings.
16. Primer coating for intumescences paint and all finish painting.

Technical Clarifications:

1. Due to current market material stock Size, we will substitute HSS 5 x 5 x 1/2 in lieu of HSS 4 1/2 x 4 1/2 x 1/2 (non-stock size) and HSS 5 x 5 x 1/4 in lieu of HSS 4 1/2 x 4 1/2 x 1/4 (non-stock size) at the bidding project.
2. Due to bending system requirement and current market material stock Size, we will substitute HSS 6 x 6 x 3/16 in lieu of HSS 6 x 6 x 1/8 (non-stock size) at the bidding project.
3. All carbon steel materials to receive hand / power tool cleaning (SSPC- SP2 / SP3) non-sandblasted surface treatment only. Except the project specification/design drawings indicated locations shown.
4. All materials to receive one shop coat of generic primer only, except as noted above, embedded, field welded, galvanized, pre-galvanized and fireproofed members.
5. All steel members are exposed to weather to receive shop coat of zinc rich compound (ZRC) primer per industrial standards only, except the member(s) as clearly indicated "galvanize" on the project design drawings.
6. Touch up of shop primer is included, but limited to field welds & bolts only. Spot priming prior the application of finish paints to be provided by others.
7. Ace Iron, Inc. will provide connection bolts, but limited to our fabricated steel to steel & our fabricated steel members to be supported by other trade joints only, except as noted above.
8. Structural steel members to support other trades on floor/roof openings of the project building(s) per structural design drawings only (as indicated locations shown, not per sheet notes shown), except as clearly indicated location(s) on approved shop drawings, prior to our fabrication. Or the costs will increase.
9. General Contractor cooperates with field measuring, provides clean/sufficient/sustainable access and park for heavily loaded cranes/trucks/erecting equipments without sinking during our installation period. General Contractor will compact and reinforce the soil/ground to sustain heavy erecting equipments firmly, if the job cases require, in a timely fashion and maintain schedule.
10. General Contractor provides a traffic controller (flag man), a fire/spark watchman and a sufficient staging area for loading/unloading/installing/temporary storing the steel materials. If it is required.
11. General Contractor provides "Quality Control Manuals Fees", if the job specifications are required.
12. Work will be done during straight time hours only (Monday through Friday), if premium time is required, the costs will increase.
13. This quote reflects a raw material costs per base price sheet as published by NYS dated 4/01/09 and includes a mill surcharge of \$60/ton. On various jobs the owners have helped out with materials price up over 3% to keep fabricators survive in business. We know this is an inconvenience but in today's tight market, we cannot absorb scrap and other surcharges and would appreciate your confirmation/acceptance within 90 days.
14. Ace Iron, Inc. will not be responsible for any damages to our finished/unfinished materials cause by other trades and any delays which are beyond our control.
15. Ace Iron, Inc. will not honor any back charges on any of our errors unless notified in writing at the time and given the opportunity to correct the situations.
16. Should a dispute arise over the provisions of the subcontract, change orders, delays, or any other matters, and litigation ensues, the prevailing party will be entitled to reasonable attorney's fees and costs.

FOR THE SUM OF \$ (_____) DOLLARS) ON OUR BASE BID
ABOVE

BARRY SWENSON BUILDER
PROTEST RESPONSE LETTER
APRIL 22, 2009

April 22, 2009

Sent via Email

Mr. Danny Tsao
Senior Architect
City Facilities Architectural Services
Department of Public Works
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Re: Educational Park Branch Library
San Jose, CA

Additional Response to Zolman's Protest of BSB Bid

Dear Mr. Tsao:

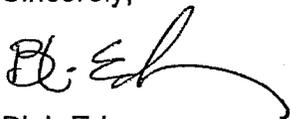
Per our original response to Zolman's protest, the CSLB licensing status page for our steel subcontractor, Elmer's Portable Welding, Inc., indicated that both the C-51 and the C-60 licenses were issued on April 4, 2006. Upon further investigation, it has become apparent that the C-51 license was in fact issued on September 26, 2006, thus failing to meet the requirements of the specifications.

The failure of one listed subcontractor to meet the requirements of their specification section may disqualify that particular subcontractor; however, the subcontractor's failure does not constitute grounds for the general contractor's disqualification. Per the various items listed in Section 2, paragraph 2-1.10 of the Special Provisions, "Disqualification of Bidders", there is nothing that supports Zolman's position to disqualify the bid of Barry Swenson Builder.

Even though we are confident that Elmers could complete the work, if the City elects not to approve this subcontractor, then we would substitute the subcontractor as permitted per Section 2, paragraph 2-1.15B of the City of San Jose Standard Specifications. This would be completed with no change to our bid price, thus there would be no grounds for the disqualification of our bid.

Please advise how you would like us to proceed.

Sincerely,



Blair Edsen
Project Manager
Barry Swenson Builder

Mr. Danny Tsao, Senior Architect
City Facilities Architectural Services
April 24, 2009
Page: 2

Reiterating a point made in Swenson's prior response dated April 20, 2009, Ace Iron's competitive proposal to Zolman was less than \$7,000.00 higher than Elmers' proposal to Barry Swenson Builder. Swenson would still have been the low bidder had they listed Ace Iron instead of Elmers as Zolman's bid was higher than the differential between Ace and Elmers. As a result, neither Zolman nor any other bidder suffered any disadvantage or harm from the purported differential.

As Elmers' meets the minimum experience requirements of the Specifications, none of the other bidders (including Zolman) were harmed by Elmers' listing, and the protests against Barry Swenson Builder's successful bid should be rejected.

Very truly yours,

Law Offices of
IRA JAMES HARRIS



Ira James Harris

ELMERS

For a job done right, the first time.

Page 2

Please see the following in which states our qualifications and ability to perform Structural Steel Fabrication and Erection coupled together with our experience:

- **Full Service Fabrication & Installation Shop**
 - **Shop Equipment:**
 - 14,500 Square Foot Shop
 - 20x22 Vertical Band Saw
 - 75 Ton Iron – Worker
 - Track Torch
 - 2 Forklifts
 - 7 – 300 and 400 amp Welders
 - Air Compressors
 - Plasma Beam Line

- **Work Force is as Follows:**
 - 14 Welders
 - CAWI Certified Shop Foreman/QC Manager with 21 years experience
 - Chief Estimator/Senior Project Manager and Shop Drawing Checker w/35 years experience
 - Project Engineer
 - Estimator
 - 4 Additional Administrative Staff

- **Certification and Membership:**
 - **Certified by AWS D1.1**
- **SMAW**
 - Plate Unlimited
 - Pipe
- **FCAW**
 - Plate Unlimited
- **GMAW**
 - Plate
- **Certified by AWS D1.3**
 - SMAW – Pan Deck
- **Certified ASME**
 - SMAW Pipe
- **California Certified Small Business**
- **AISC Member and AWS Member**

ELMERS

For a job done right, the first time.

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Ascent Builders

April -2007 to August -2007
Town Center II – Yuba City, CA
Owner: City of Yuba City Public Works
Architect: FWA
Contract Amount: \$107,000.00

On this project Elmer's did the following:

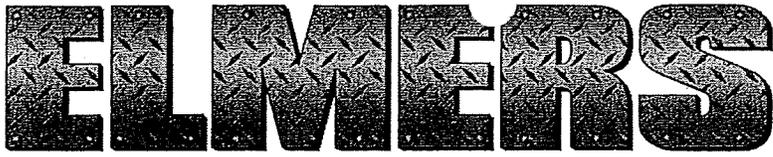
- a. Steel Fabrication and Erection of both Moment and Braced Frames
- b. Complete Joint Penetration Welding of both Moment and Braced Frames
- c. Fabrication and installation of various types of miscellaneous metal work: Hand Rail, Guard Rail, Stairs, Trash Enclosure Gates, Ladders and Bollards. These being of all different metal type aluminum, stainless steel, and galvanized.

ESI Construction

April -2007 to August -2007
Best Buy – Riverbank CA
Owner: First Riverbank
Architect: Perkowitz & Ruth
Contract Amount: \$267,000

On this project Elmer's did the following:

- a. Steel Fabrication and Erection of both Moment and Braced Frames
- b. Complete Joint Penetration Welding of both Moment and Braced Frames
- c. Fabrication and installation of various types of miscellaneous metal work: Hand Rail, Guard Rail, Stairs, Trash Enclosure Gates, Ladders and Bollards. These being of all different metal type aluminum, stainless steel, and galvanized.



For a job done right, the first time.

The following is a list of some of the Public projects that have been awarded to Elmer's recently in which Steel Fabrication and Erection of Moment and Braced Frames and Misc. Metal Fabrication and Installation will be performed:

Mather VA Infrastructure

General Contractor: Halbert Construction

Owner: Department of Veteran Affairs/ US Army Corps of Engineers

Contract Amount: \$157,000.00

Feather River College Learning Center

General Contractor: Randy Hill Construction

Owner: Feather River Community College

Contract Amount: \$800,000.00

Caltrans Stairs at 3 mile Slough

General Contractor: Steve Owens Construction

Owner: Caltrans

Contract Amount: \$40,000.00

In providing this information Elmer's feels that we are showing not only our competence, but also our experience in being able to perform the Structural Steel Fabrication and Erection for the San Jose Library and Educational Center.

Sincerely,

Kerry

Kerry Washington, Estimator

Elmer's Portable Welding, Inc.

CA. Contractor's Lic. #875556

Email - kerry@epweld.com