

From: Greg Wallace

Sent: Friday, October 21, 2016 1:56 PM

To: 'Gossage, Jeff L (Finance - Procurement)' <jeff.gossage@nashville.gov>

Cc: Joe Rodgers <j.rodgers@civilconstructors.com>; Steve Adcock (s.adcock@civilconstructors.com) <s.adcock@civilconstructors.com>; 'Pitman, Stephen (Finance - Procurement)' <Stephen.Pitman@nashville.gov>

Subject: Cumberland City Low Transmission WM - Protest Request

To: Jeff Gossage / Purchasing Agent / Metropolitan Government of Nashville and Davidson County

RE: Cumberland City Low Transmission WM

Mr. Gossage,

We respectfully protest the award decision to provide this project to Garney Companies, Inc. based on the following grounds:

- 1.) Garney Companies, Inc. did not meet the 20% SBE Participation requirement of the RFQ. Garney Companies shows \$6,000,000.00 of SBE participation on their Subcontractor Form and their total contract amount and evaluation amount for the project is \$32,871,695.00. This results in a 18.25% SBE Participation amount which does not meet the requirements of the RFQ or the contract. Garney Companies, Inc. willfully falsified the SBE participation percent on their subcontractor form by stating they had 20.09% participation.

We believe Garney Companies proposal is Non-Responsive in total for not meeting the RFQ and contract requirements.

Thanks for your consideration,

Gregory M. Wallace | Project Manager

Civil Constructors, LLC

425 Downs Boulevard

Franklin, TN 37064

Email: g.wallace@civilconstructors.com

Tel: 615.236.9031 | Fax: 615.236.9001 | Cell: 615.981.1229



From: Greg Wallace [<mailto:g.wallace@civilconstructors.com>]
Sent: Friday, October 21, 2016 4:53 PM
To: Gossage, Jeff L (Finance - Procurement)
Cc: Pitman, Stephen (Finance - Procurement)
Subject: FW: Cumberland City Low Transmission WM - Protest Request

Mr. Gossage,

Please see the attachment that backs-up our below protest.

Thanks.

Gregory M. Wallace | Project Manager
Civil Constructors, LLC

425 Downs Boulevard
Franklin, TN 37064

Email: g.wallace@civilconstructors.com

Tel: 615.236.9031 | Fax: 615.236.9001 | Cell: 615.981.1229



From: Gossage, Jeff L (Finance - Procurement) [<mailto:jeff.gossage@nashville.gov>]
Sent: Monday, October 24, 2016 9:33 AM
To: Greg Wallace <g.wallace@civilconstructors.com>
Cc: Pitman, Stephen (Finance - Procurement) <Stephen.Pitman@nashville.gov>
Subject: RE: Cumberland City Low Transmission WM - Protest Request

Greg,

I am prepared to schedule the protest hearing but in preparation of that meeting I asked staff to review the award analysis. Staff did not reach the same percentages you provided in your letter of protest. That correspondence did not include Civil's calculations.

Staff seems to think your calculations were made on the total figure, including the allowance. Please review your calculations, keeping in mind the following clause which was also present in the solicitation. Then advise if you want me to proceed with the hearing. Thanks

Allowances/Contingencies

These amounts are determined and identified by Metro and should not be included in the SBE/SDV participation amounts submitted with your offer.

Jeff L. Gossage, C.P.M.
Purchasing Agent
Metropolitan Government of Nashville & Davidson County
615-862-6639 Office
Jeff.Gossage@Nashville.gov



From: Greg Wallace [mailto:g.wallace@civilconstructors.com]
Sent: Tuesday, October 25, 2016 8:38 AM
To: Gossage, Jeff L (Finance - Procurement)
Cc: Joe Rodgers; Steve Adcock; Pitman, Stephen (Finance - Procurement)
Subject: RE: Cumberland City Low Transmission WM - Protest Request

Mr. Gossage,

Both statements below are true. The calculations must be made on the total contract value in accordance with the RFQ requirements. The statement in the SBE/SDV Participation and Misrepresentation section of the RFQ states that:

“...a minimum of 20% of the **contract value** must be spent with SBE/SDVs.”

We understand that the contract value as awarded to the bidder is inclusive of the allowances and contingencies listed on the Bid Form and the values that were entered in iSupplier. The contract value for Garney Companies, Inc. for this project, if awarded, will be \$32,871,695.00. The minimum 20% SBE/SDV participation requirement of the contract value equals \$6,574,339.00 ($\$32,871,695.00 * 0.20 = \$6,574,339.00$). Garney Companies, Inc. submitted a proposal with a \$6,000,000.00 SBE/SDV participation amount which is below the minimum 20% requirement of the contract value ($\$6,000,000.00 / \$32,871,695.00 = 18.25\%$).

The statement listed below and referenced by the Staff is true, but is being interpreted incorrectly based on Metro Procurement’s recent award decisions. The statement in the Allowances and Contingencies section of the RFQ states that:

“These amounts are determined and identified by Metro and should not be included in the **SBE/SDV participation amounts** submitted with your offer.”

We understand that the SBE/SDV participation amount is the amount of SBE/SDV participation, in dollars, listed on the Bid Form under column E as titled “List all subcontractors performing each bid item number (if applicable)” and as noted as SBE/SDV business participation on the Subcontractor Form via a Yes response in columns K or L and a dollar value listed in column O. The bidder is **not** allowed to use a SBE/SDV firm to provide the Allowances and Contingencies items, therefore prohibiting these values from inclusion in the offerors SBE/SDV participation amounts. The cells for column E on the Bid Form are purposefully locked from editing to prevent entry of SBE/SDV participation amounts for these line items.

Prohibiting the inclusion of SBE/SDV participation amounts for the Allowances and Contingencies does not change the requirement of bidders to meet the minimum SBE/SDV participation amounts based on the total contract value. Our position is firmly supported by the attached documentation from three recent Award Determinations issued by Metro Procurement. We have attached the Award Determination, Bid Form, and RFQ Document for the following projects:

- 1.) RFQ 934558: New Love Circle Water Pumping Station Construction and Water Main Installation / Awarded June 8, 2016
- 2.) RFQ 939624: Brick Church Pipe Improvements Project / Awarded July 7, 2016

3.) RFQ 941597: Brandau Road Water Main Replacement Phase 1 / Awarded August 19, 2016

All three of these recent Award Determinations contained Allowances and Contingencies sections with the same statement as listed above in RFQ 941617: Cumberland City Low Transmission WM. All three of these Award Determinations contained Minimum SBE/SDV participation requirements. And all three of these recent Award Determinations calculate the "Participation Requirement" or "Participation Incentive Threshold" by multiplying the minimum SBE/SDV participation amount by the total contract value of each bid which includes Allowances and Contingencies. For RFQ 934558, the offeror "Jarrett Builders, Inc." was given a status of "Min. SBE not met" because they submitted a bid of \$1,130,580.00 and their calculated minimum SBE/SDV participation amount of 20% equaled \$226,116.00 ($\$1,130,580.00 * 0.20 = \$226,116.00$). Their stated SBE/SDV participation amount was \$224,400.00. If the Allowances and Contingencies amount of \$60,000.00 for this project was not included in their total contract value for their minimum SBE/SDV participation amount, then their SBE/SDV participation requirement would have been \$214,116.00 ($\$1,070,580 * 0.20 = \$214,116.00$) and Jarrett Builders, Inc. would have been eligible to be evaluated further for award of the project.

These recent Award Determinations also support the statement that SBE/SDV participation amounts should not include the Allowances and Contingencies listed within the RFQ documents, even though the Allowances and Contingencies are included in the contract value. For RFQ 941597, the offeror "JSJ Construction, LLC" was awarded the project based on submitting a stated SBE/SDV participation amount of \$695,594.00 for a total contract value of \$730,594.00. Their minimum SBE/SDV participation amount or "Participation Incentive Threshold" was calculated to be \$109,589.00 ($\$730,594.00 * 0.15 = \$109,589.10$). The BAO SBE Assessment Sheet attached to the Award Determination states that their Prime Bid Amount was \$730,594.00 and the Total Offered SBE was \$695,594.00. The difference between these two amounts of \$35,000.00 ($\$730,594.00 - \$695,594.00 = \$35,000.00$) equals the total of the Allowance and Contingency items included in the contract value from the bid form. All the work for this project offered by JSJ Construction, LLC was to be provided by SBE/SDV firms, therefore it appears that the SBE percentage was noted at 100% to include the Allowances and Contingencies, though the actual calculated percentage of SBE/SDV participation based on contract value and proposed SBE/SDV participation amounts would be 95.20% for this award. The next three offerors (Walker Building Group, SBW Constructors, LLC, and Parchman Construction Co., Inc.) all submitted "100 percent SBE/SDV participation" quotes for this project and all had a contract value exactly \$35,000.00 higher than their SBE/SDV participation amount which complies with the requirement that Allowances and Contingencies should not be included in SBE/SDV participation amounts.

These are just a few examples of recent Award Determinations that highlight these statements. We believe that allowing Garney Companies, Inc. to be awarded a RFQ without meeting the minimum SBE/SDV participation amount of 20% of **contract value** would aggrieve offerors that met the RFQ requirements and disenfranchise those offerors that have previously been deemed non-responsive due to this very same issue. We believe that the proposal from Garney Companies, Inc. is non-responsive for failing to meet the 20% SBE/SDV participation requirement and should be given a status of "Min. SBE not met" consistent with previous Award Determinations from Metro Procurement that have involved the exact same circumstances.

We feel very confident that our position is supported by these facts and request that a protest meeting be held as soon as possible based on this issue. We would be glad to invite other offerors that have been deemed non-responsive due to this same issue to attend the protest hearing if desired by Metro Procurement to review previous Award Determinations as they apply to our request.

Thank you for your consideration,

Gregory M. Wallace | Project Manager
Civil Constructors, LLC

425 Downs Boulevard

Franklin, TN 37064

Email: g.wallace@civilconstructors.com

Tel: 615.236.9031 | Fax: 615.236.9001 | Cell: 615.981.1229

