



TAMICO, INC.

400 Mitkof Hwy P.O. Box 1540
Petersburg, AK • 99833
Phone (907) 772-4585

Date: 3/22/13

Regarding: Protest of Award for North Harbor Reconstruction

Attn: Steve Giesbrecht

This letter will serve as an official protest to the recent Intent to Award to Western Dock & Bridge issued on the North Harbor Reconstruction Project.

The premise of this appeal is multifaceted. A review of prebid and post bid procedures has raised many concerns to the overall integrity of the Borough's execution of procurement protocol on this project. The main issues are as follows

1. That the parameters and interpretation that keep the Borough consistent with State Procurement Statute in regards to Deferred Maintenance Funding are questionable.
2. That the Borough did not follow proper procedure for 4.04.090 Protest and Remedies regarding allegations of ambiguities in a solicitation.
3. The Borough did not follow the proper protocol as outlined in 4.04.060 Bid Procedure.
4. The Borough has shown that their actions do not have the best interest of the taxpayers of this Borough.

1. Parameters & Interpretation of State Procurement Statute Regarding Deferred Funding

After reviewing the Alaska Procurement Statute, the bill of sale on the above funding, and court cases that have relevance we conclude that 4.04.050 Bid preference for residents is both applicable and consistent.

For this funding to be consistent with AS 36.10.180 it would require a 5% bidder preference, either Alaska Bidder Preference which is Statute or Local Bidder Preference which is consistent.

The use of "consistent" needs to be clearly understood. It does not mean exact, but very similar in nature. As long as the Borough procurement process is similar in nature the state cannot pull this funding because it is not exact.

We have reviewed the bid documents for a clear indication that this project would be bid with "Alaska Bidder Preference" and found none. Furthermore to be consistent this 5% would have been applied to all applicable bid tabulations immediately following the bid opening.

If "Alaska Bidder Preference" was not used your only recourse to remain consistent with your funding would be to automatically let your own local bid preference apply which it does in accordance to 4.04.050.

The consistency of "Local Preference" is also strengthened because of the precedence set by other Municipalities that have used Deferred funding while giving "local preference"

Our conclusion on this issue is that local bidder preference is consistent with your funding, and since "Alaska Bidder Preference" was not applied it remains your only option to stay consistent with State Procurement Statute AS 36.10.180

2. The Borough did not follow proper procedure for 4.04.090 Protest and Remedies regarding allegations of ambiguities in a solicitation.

The main premises of this surrounds the inquiries and actions that led to this issuance of Addendum 3 which stated "local bidder preference does not apply".

As we read the code 4.04.090- Protest and Remedies, in order to get any ambiguous questions answered in a solicitation you have to follow the steps outlined in section A.

If clarification was needed on "local preference" it needed to be filed with the city manager in writing. To be 100% compliant they would have to pay the \$750 dollar filing fee. As I cannot find any documentation of this request for clarification I can only assume that the clarification was not in written form or filed.

If the request for clarification is found the Borough still failed to follow Section D which instructs the manager to give notice to all interested parties. As of yet I have not received my notice.

Furthermore this clarification would also have to comply with Section B and be filed at least ten days before the due date of the bid. I can only assume that it didn't as we do not have the filed request. The fact that date of issuance of addendum 3 was less than 10 days before bid opening. This is in direct violation of code and did not give all interested parties enough time to review its issues.

The only way that the clarification as stated could be binding, even if issued by the Borough is if Addendum 3 also changed the bid date to give all interested parties the time to review as required by Code. The Borough cannot make a change to the bid documents without giving written notice or the allowed time to review.

Our conclusion on this issue is that up to the time of this clarification the Borough Code would have made local bidder preference apply. Procedure was not followed either by the interested party wanting clarification or the Borough.

As such the clarification of "no local preference applies to this project" cannot be used as it was procedurally not handled correctly, changes the context of the bid, and also puts the consistency of your funding in jeopardy.

3. The Borough did not follow proper protocol as outlined in 4.04.060 Bid Procedure

This in regards to the Boroughs failure to send out the notice of intent to award and Assembly vote to award.

Tamico was forced to file a protest, pay a \$750 dollar fee for that right, which was denied. We than had to file an appeal. This is when Tamico according to code is suppose to get to appeal to council, have a public hearing and have the council grant or reject the appeal. It was very surprising to than have the Borough manager deny our appeal and not get to present our case to the Assembly and general public. Not only is this another infraction of city code, it is also a big one. Even if it was premature it shows reasonable evidence that proper protocol would not be followed.

Our conclusion is these are some major blunders that put question to the integrity of the Boroughs handling of this bid procedure. In order to stay consistent with your deferred funding it brings a strong case the Borough has compromised the procurement integrity.

4. The Borough has shown that their actions do not have the best interest of the taxpayers of this Borough.

I would first like to state that in order to stay consistent with State Statute, the Borough can not deny a protest or appeal based solely on time constraint or other obligations related to this project. The State is very adamant on keeping the integrity of their bid procedures. If you deny a protest without giving detailed and factual reason it is hearsay and undermines the integrity of the bid procedure.

It is our belief that under borough code 4.04.050 you cannot use section C as a means not to apply local preference. It would be putting section C in direct conflict with section A. To be consistent with your own code your cannot make a decision that makes section A null and void without very strong reasoning.

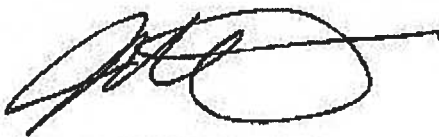
Futhermore to adhere to your funding and be consistent with State Statute you cannot pull preference because in your opinion it is to large of advantage. The State was very clear that preference laws are applicable, but under State Statute there are no limits to the amount of the preference. State Statue and Borough Code does not allow the Boroughs opinion that the preference is too high to be grounds for not applying it. It only states that it needs to be applied.

Our conclusion is that the Borough can not use the size of preference as a reason not to apply. In order to stay consistent with State Statute you have to apply it and there is no room for opinion on what is to big of a preference. It is also our conclusion that the Borough does not have the best interest of the entire Borough and its taxpayers if it does not apply local bidder preference, and in fact will do whatever it can not to apply a preference that would give huge benefits to Petersburg.

It is our conclusion that the handling of this procurement has had some serious interpretational and procedural errors. This is what Tamico feels are the Remedies for this protest

Based on the above issues the Borough needs to agree with the protest, apply local bidder preference and award the job to Tamico. It is the only way that you can stay consistent with your funding and complete the job in a timely manner. If the Borough does not agree with this than Tamico would than demand that all bids be rejected and the project go to rebid as the Boroughs procedural errors have seriously compromised the integrity of the procurement process which is not consistent with State Statute in regards to State funding.

Sincerely

A handwritten signature in black ink, appearing to read 'Jim Martinsen', with a large, stylized flourish extending to the right.

Jim Martinsen Tamico Inc