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January 31, 2024

VIA EMAIL

Robert A. Bothman Construction
Attn: James Moore, V.P. Preconstruction Services
2690 Scott Blvd.
Santa Clara, CA. 95050
jmoore@bothman.com

RESULT OF BID PROTEST

In Reply to the Bid Protest received 1/24/24 from Robert A. Bothman Construction for #0510-470 C.K. McClatchy H.S. Softball Field and Baseball Field Improvements:


Robert A. Bothman (“RAB”) Construction has protested that apparent low Bidder, D.L. Falk (“Falk”) Construction failed to list Silver Creek Modular as a Subcontractor in their Bid response pursuant to California Public Code, §4104.

Falk Construction contends that a Subcontractor listing would not be applicable in this case. Falk states Silver Creek Modular is a supplier who fabricates and preassembles the modular buildings offsite, transports and delivers to job site. Attachment and any work beyond delivery is self-performed.

Based on the referral from the Architect and review from Legal Counsel, Silver Creek Modular is a Subcontractor, and their subcontract is more than ½ of 1% of the Bid price.

There are circumstances where not listing a subcontractor can be remedied, however, based on the Silver Creek product being a sole sourced, the District cannot waive the use of Silver Creek as a subcontractor without giving Falk Construction a competitive advantage not given to other Bidders.

As a result, the District will uphold the Protest and deem Falk Construction’s Bid as Non-Responsive. The District, as the awarding authority, will recommend RAB Construction as the apparent low bidder for this project.

Respectfully, 
Robert Aldama
Purchasing Manager II

Enclosures

Cc: Chris Ralston, Facilities Director III
Ryan Wade, Kitchell CEM
David Falk, D.L. Falk Construction