

ATTACHMENT NO. 1

- 1. AWI Bid Protest Letter dated November 13, 2006**
- 2. AWI Bid Protest Letter dated December 4, 2006**



530 B Street • Suite 2100 • San Diego, California 92101-4469
 Telephone 619-238-1900 • Fax 619-235-0398
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OFFICE OF THE CLERK
 AND PARK COMMISSIONERS
 2005 NOV 13 PM 5:00

FACSIMILE TRANSMISSION

DATE: November 13, 2006

TOTAL PAGES, INCLUDING COVER: 4

To:

NAME:	FACSIMILE NO.	TELEPHONE NO.
Mary E. Alvarez Commission Executive Assistant Board of Recreation and Park Commissioners	(213) 928-9048	

FROM: Andrew J. Kessler

RE: Bid Protest on Project: South Los Angeles Sports Activity Center (Formerly Know as South Central Sports Activity Center)

CC:

MESSAGE:

Please see attached correspondence

CONFIDENTIAL INFORMATION

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential; and it is intended only for the use of the individual(s) named above, and others who have been specifically authorized by such individual(s). If you are not the named recipient(s) or authorized by the named recipient(s), you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone ((619) 238-1900) and return this facsimile message to the sender via the U.S. Mail (530 B Street, Suite 2100, San Diego, California 92101). Thank you.

Please deliver the accompanying document(s) as soon as possible to the addressee. If a problem occurs in transmission, please telephone immediately (619) 238-1900.

Client Name: All West Iron, Inc.
 Client/Matter No.: 121118.000001
 Equitrac No:



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BOARD OF RECREATION
AND PARK COMMISSIONERS

2006 NOV 13 PM 5:00

Andrew J. Kessler
Direct Dial: (619) 525-3858
E-mail: ajk@procopio.com
Personal Fax: (619) 744-5460

November 13, 2006

VIA FACSIMILE (213) 928-9048

Mary E. Alvarez
Commission Executive Assistant
Board of Recreation and Park Commissioners
1200 West 7th Street, First Floor
Los Angeles, CA 90017

Re: **South Los Angeles Sport Activity Center**

Dear Ms. Alvarez :

This firm represents AWI Builders, Inc. ("AWI") in its business dealings in the Southern California area and, in particular, with regard to the bid submitted on the South Los Angeles Sports Activity Center ("Project")

Thank you for your correspondence dated November 9, 2006, in which you advised AWI that the K-Son Construction, Inc. ("K-Son") was determined to be the lowest responsive and responsible bidder on the Project. I spoke with representatives of AWI this morning and, together with AWI, have extensively reviewed both the bid documents and the bid packet submitted by K-Son. Based upon that review I have some very real concerns with regard to the K-Son bid. In particular, the K-Son bid (1) omitted crucial affidavits and disclosures; (2) fails to properly designate a steel subcontractor; and (3) has extensive and critical errors in the bid amount.

Please consider this correspondence a formal bid protest to any decision by the public entity to award the bid to K-Son construction based upon the fact that K-Son is not a responsible bidder and its bid is not, under the law, responsive to the bid documents.

As indicated, your correspondence regarding the Board Meeting to be held on November 15, 2006 was received by AWI on Thursday, November 9, 2006, the day before the Friday holiday. Only this afternoon were we able to review the K-Son bid to identify the many discrepancies therein. I am providing a brief summary of the discrepancies below and will

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expound upon the same and provide the legal authority by way of correspondence tomorrow. AWI's bid protest briefly consists of the following:

1. K-Son failed to submit the required Affidavits and Compliance documents.

Initially, K-Son failed entirely to submit the required affidavits and compliance documents contained in the "Schedules" included in the bid documents. Most importantly, K-Son failed to submit schedules "D" through "G" constituting information for determining minority/women status, the final report of subcontracting and purchasing, and – most importantly – schedule "D" which is the affidavit indicating that all of the bid documents are true and correct. Absent this affidavit, a bidding contractor cannot be held to its bid and thus may not be considered as a responsible and responsive bidder. While it appears that the general manager was prepared to waive the requirement for timely filing Schedule "B", no waiver was given for the further Schedule omissions.

2. Failure to list a properly licensed Steel Contractor

Moreover, while K-Son's bid documents indicate that it will self perform the Project's steel work, there is no indication that it can do so. K-Son does not hold a C-51 specialty license. Additionally, should K-Son assert that it is performing two or more unrelated trades and thus can self-perform the work, the contract specifications indicate that it cannot. Specifically, the contract specifications require that all structural steel fabrication shall be done in the shop of a fabricator certified by the building authority. Accordingly, unless K-Son can self-perform such work (which its certification indicates it cannot), then it was required to provide the name of the entity who would do so. It did not.

3. AWI's bid is lower than that submitted by K-Son

K-Son's bid amount indicates that it offered to perform the contract for the amount of \$2,840,565.00. However, a review of its designation of Subcontractors (Schedule "A" to the bid documents) indicates otherwise. First, the designation fails to list any dollar value associated with the work to be performed by J. Colavin & Son, the purported ceramic tile subcontractor. Even with a \$0 value assigned to the subcontractor, K-Son's bid totals \$2,887,000.00, more than \$25,000.00.00 higher than the bid submitted by AWI. Once a value is added in for the Colavin work, the bid is substantially higher than that submitted AWI.

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& Savitch**
LLP

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Thank you for your consideration of the foregoing and I will be happy to provide further support for the foregoing upon demand therefore.

Very truly yours,



Andrew J. Kessler

AJK

cc: Robert Mekikyan



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December 4, 2006

VIA FACSIMILE (213) 928-9048
AND U.S. MAIL

Mary E. Alvarez
Commission Executive Assistant
Board of Recreation and Park Commissioners
1200 West 7th Street, First Floor
Los Angeles, CA 90017

Re: **South Los Angeles Sports Activity Center**

Thank you for speaking with myself and Robert Mekikyan of AWI Builders, Inc. ("AWI") at last month's board meeting regarding the South Los Angeles Sports Activity Center Project. Per the invitation of your counsel to submit follow-up correspondence supporting AWI's status as the lowest responsible bidder on the Project in light of K-Son Construction's ("K-Son") non-responsive bid, the following is submitted.

You will recall that this firm previously submitted its bid protest on November 13, 2006 in light of a series of non-conformities in the K-Son bid. In that letter, I called to your attention the fact that K-Son's bid omitted crucial affidavits and disclosures, failed to properly designate a steel subcontractor, and had extensive and critical errors in the bid amount. During the subsequent hearing, and in its letters of November 14 and 17, 2006, K-Son admitted to the irregularities but asserted that said irregularities did not render its bid non-responsive. The arguments are without merit. By way of this correspondence, I will attempt to address the assertions of K-Son and demonstrate why its arguments do not change the non-responsive nature of the K-Son bid.

K-Son's Bid is Non-Responsive.

Perhaps the most notably irregularities contained in K-Son's bid are the rampant errors in its bid amount. These errors demonstrate that it is not, in fact, the Project's lowest bidder. In its initial correspondence to the board, AWI pointed out that K-Son failed to provide the value of work to be performed by K-Son's ceramic tile subcontractor, J. Colavin & Son. In light of the

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glaring omission, AWI attempted to determine the value by adding up the remaining subcontracted amounts and value of self-performance and then subtracting the total from the purported total bid. Undertaking the exercise not only highlights the material omission of K-Son's bid, but further demonstrates that its bid is not lower than that submitted by AWI.

K-Son's bid amount indicates that it offered to perform the contract for the amount of \$2,840,565.00. A review of its designation of Subcontractors (Schedule "A" to the bid documents) indicates that this number is in error. Initially, as set forth above, the designation fails to list any dollar value associated with the work to be performed by J. Colavin & Son, the purported ceramic tile subcontractor. Even with a \$0 value assigned to the subcontractor, K-Son's bid totals \$2,887,000.00, more than \$25,000.00 higher than the bid submitted by AWI. Accordingly, even absent the inclusion of the Colavin work, K-Son is not the Project's lowest bidder. In its November 17, 2006 letter, K-Son argues that the Colavin omission and other mathematical errors were inadvertent. Specifically, it argues, "[y]es K-son missed to write the subcontractor price which is \$27,500.00." The irregularities render K-Son's bid non-responsive for no fewer than three reasons.

First, if the Colavin bid totals \$27,500.00, then the bid submitted by K-Son totals \$2,914,500.00. Accordingly, it was not the lowest responsible bidder. Secondly, as evidenced by K-Son's own notation on the Colavin bid correspondence (see September 26, 2006 correspondence attached hereto as Exhibit "A") K-Son and Colavin did not, in fact, agree to have the ceramic work performed for \$27,500.00 as is now asserted by K-Son. Upon submission of the bid, K-Son specifically rejected the same by writing "BID TOO HIGH. See attached bid by Continental Tile/Marble". As a result, there was no agreement by the parties to have the ceramic work performed by Colavin as K-Son now asserts. If anything, and by its own admission, the lowest bidder to K-Son was Continental Tile/Marble which was never listed in the bid documents. Finally, even if K-Son is correct and the listing of Colavin and failure to submit the value of the Colavin bid was a "clerical mistake" (see page 3 of K-Son's November 17, 2006 correspondence attached hereto as Exhibit "B") K-Son failed to correct the mistake in the time granted under the law.

Section 4107.5 of the Public Contract Code gives a contractor claiming to have made a clerical error in its bid with regard to its designated subcontractors two days to give written notice to the awarding agency. K-Son gave no such notice until after the time in which AWI called attention to the mistake. Moreover, sections 5100 *et seq* of the Code set forth a contractor's right to remedy errors contained in its bid. Section 5103 of the Code indicates that a general contractor seeking relief from a bid award pursuant to a clerical error must show (a) that a mistake was made, (b) that it gave the entity written notice within five working days of the bid opening, (c) that the mistake made the bid materially different than intended, and (d) the mistake was made in filling out the bid and not due to error in judgment or carelessness. Public Contract Code section 5103 permits a bidder who submits its bid based upon a mistake which materially

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affects the bid to withdraw the bid and not be bound by its terms. According to the courts, the mere fact that a bid might be withdrawn is sufficient to deem the bid non-responsive.

In *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, the Court of Appeals upheld the long standing rule that if an error in a bid gives the bidder an advantage or benefit not allowed other bidders, the public agency cannot waive the error. According to the Court, it was irrelevant whether or not the bidder actually attempted to withdraw the bid under section 5103 of the Code. The mere fact that it could have withdrawn the bid renders the bid non-responsive. Moreover, the mistake need not have affected the contract price. According to the Court, "The language of [Public Contract Code Section 5103] does not provide [that] the mistake must be in the price, only that it makes the bid materially different than intended and be a mistake in filling out the bid. *Id.* at 1442.

Here, should the Project be awarded to K-Son, it will have been given a tremendous advantage over other contractors in the bidding process. Specifically, K-Son submitted a total bid that was lower than the subcomponents of the bid. Doing this would allow its bid to be considered – and increase the likelihood that it was the low bidder – while preserving its right to withdraw the same based upon clerical error if later chose to do so after reviewing the other bids. The scenario is not uncommon in the bid process but is a blatant violation of the law.

Specifically, K-Son submitted its bid in the total amount of \$2,840,565.00. Its designation of subcontractors (with \$0 being performed by its ceramic tile subcontractor) indicates that its bid was actually, \$2,887,000.00. (See Schedule "A" to K-Son's bid.) If we take K-Son's assertion that its ceramic tile subcontractor is going to perform work in the amount of \$27,500.00, then K-Son's total bid is \$2,914,500.00. Only two permissible conclusions exist. **Either K-Son was not the lowest bidder on the Project or its bid contained no fewer than two clerical errors which materially change the price of its bid.** In the former scenario, K-Son is simply not the lowest bidder. In the latter, its bid was in error which may be withdrawn and thus may not be considered by the awarding agency. No third scenario exists and under either scenario, K-Son's bid may not be considered.

K-Son's Omission of the Value of It's Subcontractor's Work Facilitates

"Bid-Shopping".

In its November 17, 2006 letter, K-Son dedicates a substantial amount of time trying to convince the Board that the value of the subcontractor work in Schedule A is incidental and that it is not bound to enter into contracts for the stated amount. K-Son's position is untenable under the law.

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Sections 4100 through 4114 of the Public Contract Code are referred to collectively as the "Subletting and Subcontracting Fair Practices Act." Pursuant to the seminal provision of the Act:

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors **and subcontractors**, and lead to insolvencies, loss of wages to employees, and other evils.

PCC § 4101; *emphasis added*.

Section 4107 of the Code goes on to define the limited scenarios whereby a bidding contractor may, after the bid award, modify or cancel the bid of a subcontractor. Under the Code, "[a] prime contractor whose bid is accepted may not: (a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority may . . . consent to the substitution . . . (1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract **for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid. . . .**" (*emphasis added*.)

As set forth above, a contractor who uses a subcontractor's bid in the formulation of its own bid is bound both to use that subcontractor and bound to use that subcontractor in the amount of the bid. If the law were otherwise, a general contractor who solicits bids and is then awarded a contract may return to the subcontractors and seek to reduce the contract-price and scope of work. Such a scenario would defeat the stated intent of the legislature to facilitate fairness in bidding and would encourage bid shopping in the public bidding process.

K-Son Cannot Self-Perform the Project's Structural Steel Work.

In its initial bid dispute, AWI demonstrated that K-Son's bid indicates that it will self-perform the Project's steel work. AWI demonstrated that K-Son cannot, in fact, self-perform this work based upon its classification as a "B" licensed general contractor. By way of its November 17, 2006 letter, K-Son argues that it need not hold a C-51 Structural Steel specialty license in order to perform the steel work. Instead, it argues that a "B" licensed general contractor can "perform 3 or more specialty trades" and avoid the requirement for a specialty license. (See Exhibit "B".) The assertion misunderstands the applicability and breadth California law.

K-Son's argument references, albeit improperly, section 7057(b) of California's Business and Professions Code. Under the Code, a ["B" licensed] general building contractor may not

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take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry. The Code does, in fact, allow “B” licensed general contractors to self-perform certain portions of work under a public contract that, absent a “B” licensure, would require a specialty license. The grant of a specialty license exception, however, does not give general contractors the broad authority to perform work that it is otherwise unqualified to perform. Structural Steel fabrication, for example, has additional competency and safety requirements that cannot be self-performed by a “B” licensed contractor unless that contractor – despite the absence of a C-51 specialty license – has the proper fabricating capability.

Subparagraph 5 of the Structural Steel specifications on the Project require that “[a]ll fabrication shall be done in the shop of a fabricator certified by the building authority or under the continuous inspection of its certified deputy inspector.” In its initial bid dispute, AWI pointed out that K-Son – who is not a steel fabricator – does not have or maintain a certified fabrication shop whereby the steel fabrication requirements of the Project may be performed. In its November 17, 2006 letter, K-Son argued that “[s]ince the bid document requires the prime contractor to perform 50% of the bid price K-son chose to list that work. Moreover, K-son will use a certified approved shop by City of L.A. and perform the work under K-son’s payroll which have [sic] done many times.” By its own admission, K-Son indicates that it does not have the capacity to self-perform the steel work but listed it in order to adhere to the requirement that it self-perform 50 percent of the work. It now argues that it will simply use someone else’s “certified approved shop”. Fabrication “shops”, however, are certified by the building authority based upon qualifying individuals (i.e. such as the use of Responsible Managing Employees or Responsible Managing Officers in certifying “B” licensed business entities.)

In that K-Son admits that it does not have the properly licensed shop, its decision to use another shop licensed under another entity or individual (i.e., this is certainly the case as K-Son’s own bid documents indicates that it currently has no employees) will result in it being unable to self-perform the work. K-Son cannot simply hire workers to “man” a certified shop and call it self-performance. Such a procedure would be tantamount to a contractor agreeing to “self-perform” electrical work by hiring an electrical subcontractor to do the job. By definition, using another’s resources and personnel is not self-performance. Instead, the steel work will be performed by another contractor. This fact is not changed by the fact that K-Son will allegedly perform the work on its “own payroll”. This becomes subcontracted work which requires (1) disclosure of the subcontractor’s name and contact information and (2) both a valid licensure by the subcontractor (either a “B” license or “C-51” specialty license) and the existence of an approved fabrication shop. K-Son has provided none of the requisite information and thus its bid is non-responsive.

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K-Son Make No Legally Cognizable Argument Regarding AWI's Bid.

Finally, and in an effort to overshadow its own non-responsive bid, K-Son attempts to point to improprieties in the AWI bid. Importantly, K-Son asserts no legal authority to support its allegations. The reason for this is simply that no legal authority exists.

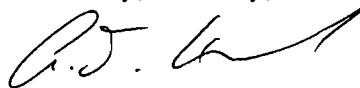
First, K-Son asserts that AWI and one of its fifteen proposed subcontractors, All West Iron, Inc., are the same entity and that both entities cannot perform work on the Project without creating a "conflict of interest". The argument has no foundation in law or fact. The two companies are wholly distinct under the law, with separate contracting licenses, separate officers, and separate scopes of work on the Project. Neither a conflict of interest nor any impropriety arises from the two entities performing work on the Project; one as a general contractor and one as the steel, carpentry, and concrete subcontractor as set forth in Schedule "A" of the AWI bid.

Secondly, K-Son argues that AWI is in the same position as K-Son with regard to its ability to perform structural steel work on the Project (i.e., both are "B" licensed general contractors and if one can't perform steel work than the other can't.) K-Son simply misinterprets the structural steel requirements of the Project. Primarily, the steel fabrication capability which K-Son does not maintain, **is maintained** by All West Iron, the proposed structural steel subcontractor for the Project. All West Iron operates and maintains a steel fabrication shop specifically certified by the building authority as required by subparagraph 5 of the contract specifications.

Lastly, and in a final desperate attempt to invalidate the AWI bid, K-Son argues that AWI sought to manipulate the bidding process by submitting inflated bids as a subcontractor to other bidding contractors. The absolute reality is that while All West Iron, as a subcontractor, separately bid steel work on the Project to other contractors, it did so in the precise scope and amount as its intended scope in the AWI bid. The unsubstantiated suggestion of impropriety is a clear attempt by K-Son to obscure the non-responsiveness of its own bid by attempting to cast others in the same negative light. The facts of the respective bids do not permit such a finding.

Thank you for your attention and I look forward to the Board's decision. If you have any questions with regard to the foregoing, please contact me directly.

Sincerely, Sincerely,



Andrew J. Kessler

AJK

EXHIBIT "A"

J. COLAVIN
J. Colavin & Son, Inc.

323 225 3488 P. 01/01

BID

CERAMIC TILE CONTRACTORS

8928 Alhambra Ave. * Los Angeles, CA 90082-2404 * (888) 885-8218 * Fax (888) 885-8458

State Contractor's Lic. #266805

DATE: 9/26/2006 2:00pm

*S. Los Angeles Sports Pictology Center
Los Angeles*

BID PROPOSAL FOR:

SECTION: 09300 (Ceramic Tile)

**TAX INCLUDED: INSTALLED PER PLANS AND SPECS. --
BONDABLE AT 1.976% (NOT INCLUDED). WE ARE UNION.**

BASE BID: \$ 27,500.00

QUALIFICATIONS:

- 1. Based on plans dated 12/03/03

ADDENDAS NOTED:

- * Addenda # 1: 8-25-06 noted

EXCLUSIONS:

- 1. Lath & Scratch
- 2. Shop Drawings

*BID TOO HIGH
SEE ATTACHED BID
FROM COMMERCIAL TILE MANDLES
15-079.00*

ESTIMATOR:

James Weatherby



DBE, MBE, WBE & SBE
Certified With
MTA, Cal Trans, Clearinghouse, City of Los Angeles,
County of Los Angeles, U.S Small Business Admin.

EXHIBIT "B"

11/17/2006 12:56 6197186392

KSON

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K-SON CONSTRUCTION, INC.6912 OWENSMOUTH AVE. SUITE #104
CANOGA PARK, CA, 91303

LIC. NO. 597949

TEL: 818-710-6391
FAX: 818-710-6392

11/17/2006

VIA FACSIMILE (213) 928-9048

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TO: DEPT. OF REC. AND PARKS**MARY ALVAREZ****RE: SOUTH LOS ANGELES SPORTS ACTIVITY CENTER****SUBJECT: AWI PROTEST**

Mrs. Alvarez:

As you know K-son was informed by you about the protest of AWI on Tuesday 11/14/2006 at 2:00 pm so I attended the next morning Board meeting on 11/15/2006. Prior to that time I was informed by the Board that everything was set and the Board on Wednesday's meeting would vote to award the contract to K-son.

This letter is the summary of what was said in the board meeting which K-son categorically rejected AWI's representative reasonings and claims trying to persuade the board that K-son's bid should not be considered as the lowest responsive bidder and AWI should be considered as the lowest responsive bidder and also I am writing the detailed K-son's justifications for rejecting AWI's protest claims which absolutely has no valid grounds and basis for protest and is very unprofessional.

Item 1 (K-son failed to submit the required Affidavits and compliance)

I indicated that K-son did submit all the documents and received all approvals from OCC and Bureau of engineering bid processing and approved by general manager.

Item 2 (failure to list a properly licensed steel subcontractor)

I responded that K-son does hold a "B" license which by definition the contractor can perform 3 or more specialty trades with that type of license and Steel work is one of them as indicated in the bid documents. Since the bid document requires the prime contractor to perform 50% of the bid price K-son chose to list that work. Moreover, K-son will use a certified approved shop by City of L.A and perform the work under K-son's payroll which have done it many times. I also mentioned that All West Iron the steel subcontractor listed by AWI which both companies belong to the same ownership just with different license numbers also holds a B license not a C-51 license which I am attaching both companies information extracted from California Contractor's License Board. I also indicated that what AWI did which submitted a very high STEEL Bid to all bidding contractors to throw their bids sky high and then submit a bid as a prime contractor under AWI which was not ethical and was a conflict of interest.

Item 3 (AWI's bid is lower than that submitted by K-son)

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KSDN

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I explained to the board that it is absolutely ridiculous what they are claiming and apparently they do not know much about public works bid documents.

Per public works contracts (ordinance No. 150,595, section 10.14"provisions pertaining to listing of subcontractors page 17) which also is indicated on schedule "A" of this project under DOLLAR PARTICIPATION OF ALL SUBCONTRACTORS AND SUPPLIERS, it is indicated :

All subcontractors and suppliers who will do work on this project valued in excess of one-half of one percent or \$10,000.00 whichever is greater must be listed, regardless if they are MBE/WBE or not. That means the bidding prime contractor does not have to list any subcontracts amounts under one-half of one percent which in this case K-son, AWI and other bidders did not have to list subcontractors with dollar values under approximately \$15,000.00. So K-son or other bidders could have subcontractors with dollar values under \$15,000.00 totaling up to \$100,000,\$200,000.00 or any other dollar values whatever amount unknown at time of bidding and not reflected in the bid documents schedule "A". So you do not add up the single dollar values of each and all listed subcontractors listed in schedule "A" with the dollar value of work to be performed by prime contractor and then determine who is the lowest bidder since there are some unknown amounts not even indicated in that schedule and is not part of prime contractor work price either.

Per AWI claim and justifications they are adding those numbers and determine who is the lowest bidder and who is higher which is absolutely wrong and ridiculous and is not per public works bidding documents.

Moreover, those dollar values of the listed subcontractor doing work over 1/2 percent of bid price can be rounded to the nearest thousand dollar or even more, that is what K-son and I am sure many other bidding contractors do. For instance if a subcontractor bid is \$119,200.00 we list that price as \$119,000.00 or \$120,000.00 and that is merely to comply with public works contract law to list those subcontractors with price in excess of one-half of one percent of total bid price and also the approx. dollar value or percentage of MWBE's sub used which in this bid K-son has by far exceeded the required amount, it does not matter what the actual dollar and cents price of that sub may be as long as they are listed so the awarding agency know who those subcontractors are with approximate dollar values so you could not shop around or change subcontractors after the award without the board approval. Also those numbers can be used when providing schedule of values for approval to the project manager which will be used for payments. And if there is a clerical error, that error can be clarified at that time. So in a three million dollar job with 15 subcontractors that could make some difference with actual lump sum bid price which is written in page 4 of bid document "PROPOSAL -SCHEDULE OF WORK AND PRICES" and that is where the lowest bidder price is determined not any where else. In this case K-son's bid is the lowest and must be considered as the lowest bidder.

Also AWI has indicated that K-son failed to list the dollar value of J.Colavin the ceramic tile subcontractor and K-son's bid must be added with the dollar value of that sub. Again as long as the subcontractor is listed that means K-son can not use any other tile sub contractor except J.Colavin regardless of the subcontractors price, it could be zero dollars, it could be \$100,000.00 it will not and can not affect or change the bid amount. Yes

11/17/2006 12:56

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KSON

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K-son missed to write the subcontractor price which is \$27,500.00 . But again you do not add up those prices with prime contractors price and determine the lowest bidder. A prime contractor could simply make a clerical mistake in the very last minutes of preparing and submitting bid in schedule "A" for instance to write a \$16,000.00 subcontractor price for restroom accessories by putting an additional zero writing \$160,000.00 ,Which that can be clarified later after the award and when preparing to submit the schedule of values to the project engineer for approval.that is very obvious that restroom accessories can not be that huge number. You do not use these numbers and add them up and use it as the basis for determining the lowest bidder.

But that is not what AWI thought .They thought they had to add up all those listed subcontractors prices and then deduct it from their bid price of \$2,859,911.00 and then come up with the remainder value of \$1,144,822 and list that as the amount of work to be done by prime contractor which is absolutely wrong and shows how much they know about public works contracts as they were claiming in the board meeting!!!.

First of all, per schedule "A" requirement ,very top line under SUBCONTRACTORS AND SUPPLIERS page 16 of bid document AWI must do at least 50 percent of their contract price which is approximately \$1,430,000 and what they listed for the work to be done by prime contractor is only \$1,144,822 which the bid /contract document required them to do at least 1,430,000.00. That is their biggest mistake by adding up all the listed subcontractors prices and then deducting it from their bid price and coming up with that number.

As I indicated my 11/14/2006 letter I am wondering what works they wanted to do with \$1,144,822 when they have listed all the major and minor subcontractors with even dollar values of less than one-half of one percent which they did not have to list . The only trade remaining for them to do is painting with a value of \$30,000.00 and insulation with a value \$10,000.00 .what they will be doing with remaining \$1,100,000?!!.

It is really interesting that a contractor who has been doing all these wrong doings indicated above (1. submitting a very high subcontract bid for steel work to all other bidding contractors and then bidding as a prime contractor with different license number hoping they could be the lowest bidder and then frustrated that the lowest bidder was another company and did not list them as the steel subcontractor. 2. adding up the schedule A listed subs and then deducting it form their bid price and come up with a number that is about \$300,000.00 lower than what the contract is requiring them to do,) use those as their justifications for coming up with a protest plan .

In my opinion if AWI was a professional and knowledgeable contractor, they would not jeopardize their name and integrity with the City of L.A by planning this unprofessional protest that serves no purpose but lowering their reputation which I am sure they did it.

At the end K-son is requesting from the Dept. of Rec. and Parks to send a copy of this letter to the office of City Attorney and also Mr. Willis Yip the project engineer as soon as possible for a response back to K-son..

If you have any question please call me.

Sincerely yours;

CHRIS ANJALI

Pres.

