



## NOTICE OF INTENT TO AWARD CONTRACT

**Project Name:**  
Warm Springs BART West Access Bridge and Plaza Project

**City Project Number:**  
Bid #18-016

**Bid Opening Date:**  
November 16, 2017

**NOI Posting Date**  
January 24, 2018

**Project Manager:**  
Mirabel Aguilar

**NOI Posting Location:**  
Purchasing Department

This is notice of the City of Fremont's intent to award a contract to **Shimmick Construction Company, Inc.**, for the above-referenced project, as the lowest responsive and responsible bidder.

The two apparent lowest bids were each determined to be non-responsive, since (i) the submitted bids failed to meet the LBE and SLBE goals required under Alameda CTC's Local Business Contract Equity (LBCE) Program, and (ii) Alameda CTC has informed the City that the Independent Review Team (IRT) determination that each of these bidders failed to make the requisite Good Faith Efforts (GFE) to meet the required LBE and SLBE goals is final. Please refer to the enclosed letter from Alameda CTC and the IRT's findings attached thereto for further information.

### **APPEAL OF IRT DETERMINATION (ALAMEDA CTC PROCESS)**

If any bidder wishes to appeal the IRT's determination with respect to a bidder's failure to make the requisite GFE to meet the LBE and SLBE goals, that bidder must submit an appeal to Alameda CTC in a sealed envelope before 5:00 p.m. on the fifth business day following the posting date of this Notice of Intent to Award. All such appeals shall be in writing and shall contain a complete statement of the legal grounds for the appeal, and all facts relevant to the appeal. All appeals shall be accompanied by all documentation supporting the grounds for the appeal, and shall include the name, address and telephone number of the appealing party and the person representing the appealing party, if any.

GFE appeals can only be submitted by the party that submitted a bid, and must be submitted via mail or hand delivery between 9:00 a.m. and 5:00 p.m. to:

Alameda CTC  
1111 Broadway, Suite 800  
Oakland, CA 94607  
Attn: Trinity Nguyen

Re: Warm Springs BART West Access Bridge and Plaza Project  
Good Faith Effort Appeal

Any validly submitted appeal will be heard by a GFE Review Committee appointed by the Chair of Alameda CTC's governing body and executive director. You can learn more about this process by reviewing the Alameda CTC LBCE Program on the Alameda CTC website at [https://www.alamedactc.org/app\\_pages/view/4543](https://www.alamedactc.org/app_pages/view/4543).

**BID PROTEST BASED ON OTHER MATTERS (CITY PROCESS)**

Any bidder who wishes to protest the proposed award based on any matter(s) **other than the GFE Findings and/or the applicability of Alameda CTC's LBCE Program** must submit such bid protest in writing to the Purchasing Department before 5:00 p.m. on the fifth business day following the posting date of this Notice of Intent to Award. All protests shall be in writing and shall contain a complete statement of: the legal grounds for the protest; all the facts relevant to the protest; and the form of relief requested and the legal basis for such relief. All protests shall be accompanied by all documentation supporting the grounds for the protest. The protest shall include the name, address and telephone number of the protesting party and the person representing the protesting party, if any. Any bid protest which is based on the GFE Findings or other matters related to Alameda CTC's LBCE Program will not be considered by the City, since such appeals are governed by the above-described GFE appeal process as set forth in Alameda CTC's LBCE Program.

Per Article VIII, Item 3.20.330 of the City's Purchasing Code: Bid protests may be submitted only by a party that has submitted a bid or proposal in response to the contract solicitation. A subcontractor of a bidder or proposer may not submit a protest. A party may not rely on a protest or appeal submitted by another party, but must timely pursue its own protest.

Protests can only be submitted by the party that submitted the bid, by one of the following methods:

Via mail or hand delivered between 8:00 a.m. and 5:00 p.m. to:

Purchasing Department,  
3300 Capitol Avenue, Building B  
Fremont, CA 94538

OR, delivered via facsimile to: (510) 494-4621  
OR, via e-mail to the following address: [lwright@fremont.gov](mailto:lwright@fremont.gov)

If Alameda CTC receives one or more GFE appeals, the City will not complete its investigation of any bid protests or consider award of the contract until after Alameda CTC has issued a final determination with respect to any such appeal(s).

Attachments



**Commission Chair**  
Councilmember At-Large  
Rebecca Kaplan, City of Oakland

**Commission Vice Chair**  
Supervisor Richard Valle, District 2

**AC Transit**  
Board President Elsa Ortiz

**Alameda County**  
Supervisor Scott Haggerty, District 1  
Supervisor Wilma Chan, District 3  
Supervisor Nate Milley, District 4  
Supervisor Keith Carson, District 5

**BART**  
President Rebecca Saltzman

**City of Alameda**  
Mayor Trish Spencer

**City of Albany**  
Councilmember Peter Maas

**City of Berkeley**  
Councilmember Kriss Worthington

**City of Dublin**  
Mayor David Haubert

**City of Emeryville**  
Mayor John Bauters

**City of Fremont**  
Mayor Lily Mei

**City of Hayward**  
Mayor Barbara Halliday

**City of Livermore**  
Mayor John Marchand

**City of Newark**  
Councilmember Luis Freitas

**City of Oakland**  
Councilmember Dan Kalb

**City of Piedmont**  
Vice Mayor Teddy Gray King

**City of Pleasanton**  
Mayor Jerry Thorne

**City of San Leandro**  
Mayor Paulline Cutter

**City of Union City**  
Mayor Carol Dutra-Vernaci

**Executive Director**  
Arthur L. Dao

January 24, 2018

**VIA EMAIL**

Mirabel Aguilar, Project Manager  
Public Works Department  
City of Fremont  
39550 Liberty Street  
Fremont, CA 94538

**Re: Warm Springs BART West Access Bridge and Plaza Project; status of Good Faith Effort (GFE) Review Protest**

Dear Ms. Aguilar:

As you are aware, the two apparent lowest bidders on the above-referenced project each failed to meet the applicable Local Business Enterprise (LBE) and Small Local Business Enterprise (SLBE) goals required under Alameda CTC's Local Business Contract Equity (LBCE) Program, and Alameda CTC's Interdisciplinary Review Team (IRT) which reviewed these bidders' GFE materials determined that neither of the bidders had made a Good Faith Effort to meet the LBE and SLBE goals based on the scoring criteria set forth in the LBCE Program.

As you also know, both of these bidders timely filed protests of the IRT's GFE findings with Alameda CTC. I have reviewed these protest packages and discussed the packages and the IRT's findings with the Alameda CTC staff members who served on the IRT. Based on this review, I have determined that a hearing before the IRT is not warranted.

Accordingly, and pursuant to the LBCE Program, the City is entitled to consider as final the IRT's GFE review decision with respect to each of the two apparent lowest bidders, meaning that the bids submitted by these bidders must each be deemed nonresponsive. The City may accordingly issue an appropriate Notice of Intent to Award to the third-highest bidder in reliance on the IRT's determination.

Under the LBCE Program, each of the two lowest bidders have the right to appeal the IRT's decision, and any such appeal would be heard by a Good Faith Effort Review Committee appointed by the Chair of Alameda CTC's governing body and the Executive Director. The City's Notice of Intent to Award should reference this right, and further advise the bidders that they can learn more about this process by reviewing the Alameda CTC LBCE Program on the Alameda CTC website at [https://www.alamedactc.org/app\\_pages/view/4543](https://www.alamedactc.org/app_pages/view/4543). Note that this appeal right under Alameda CTC's LBCE Program is separate from any rights to submit a bid protest to the City based on any consideration *other than* the LBCE Program and GFE determination.

Attached for your information, and for distribution to the interested bidders along with the Notice of Intent to Award, is a summary report of the IRT's GFE findings for each of the two lowest bidders.

It is important to recognize that under the LBCE Program, Alameda CTC's determination of whether a bidder has made the requisite good faith effort to meet the LBE and SLBE Goals must be based on the GFE documentation submitted by that bidder at the time the bidder submitted its bid documents. Alameda CTC is unable to consider additional GFE evidence provided by a bidder after the original bid submission. This restriction on additional evidence also applies to GFE protest hearings and appeals. As part of any GFE protest or appeal under the LBCE Program, the IRT or Good Faith Effort Review Committee (as applicable) will consider testimony, clarifications and explanations regarding the GFE evidence originally submitted by a bidder, but is unable to accept or consider new evidence of such good faith efforts.

We look forward to the City's completion of this important and valuable project.

Sincerely,



Arthur L. Dao  
Executive Director

Attachments

ITEM NO.	ESSENTIAL REQUIREMENTS FOR GOOD FAITH EFFORTS	ELIGIBLE POINTS	POINTS AWARDED	Independent Review Team Assessment Robert A. Bothman
1	Attendance at all project pre-bid meetings scheduled by the City to inform all Bidders about the Alameda CTC Local Business Contract Equity Program requirements for the project for which the contract will be awarded. City must have a record of Prime Contractor's sign-in on attendance sheet.	5	5	Confirmed via pre-bid meeting sign-in sheet.
2	Identification of specific items of work to be performed by LBE/SLBE/VSLBE firms in order to increase the likelihood of meeting the LBE/SLBE goals, including breaking down contracts into constructible units. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate LBE/SLBE/VSLBE participation. The Bidder must complete a Request for Potential LBE/SLBE/VSLBE Work Break-out Analysis, the format of which will be furnished by the City as part of the contract document. This analysis will be used in determining if the Bidder has met this specific Good Faith Effort Criteria. (Form 1)	15	0	Bidder's work break-out analysis only addressed the Local Business Enterprise goal of 60%. The Bidder's work break-out analysis did not address how the Small Local Business Enterprise goal of 20% could be met.
3	Provision of written notice of interest and results in soliciting bids on the contract to LBE/SLBE/VSLBEs. Written notice shall specify which items of work the Contractor has identified pursuant to paragraph 2. This notice shall be provided to LBE/SLBE/VSLBE firms within five (5) calendar days after the pre-bid meeting or pursuant to the notice period set forth in the specifications for a given contract. These solicitations shall include a description of the specific items of work to be performed by the LBE/SLBE/VSLBE firms and all related conditions of the work. The Bidder will also be required to provide written documentation of responses to these solicitations by LBEs, SLBEs and VSLBEs, i.e. dates of written notice, response and results, phone logs, meetings, conference calls, etc., as well as records of discussions with LBEs, SLBEs and VSLBEs regarding the solicitations.	15	15	Contractor fulfilled written notice requirements within the specified time frame but did not include all identified, specific work items (see item 2) in solicitations.
4	Follow up of the written initial solicitations of interest by contacting the owner or other manager of the LBE/SLBE/VSLBE firms to determine with certainty whether the enterprises were interested in performing specific items of the project. The Bidder is required to document the follow-up activities and provide written documentation stating the date and method of contact, the reason for not using the subcontractor and copies of all communications.	15	15	Documentation submitted identifies Bidder made follow up calls to 30 LBE firms and 50 SLBE firms.
5	Making the project plans, specifications, and requirements for the selected subcontracting items or material supply work available for review by interested LBE/SLBE/VSLBEs. The Bidder is required to document and provide proof of receipt on the names and addresses of LBEs, SLBEs and VSLBEs to whom the project information was made available.	5	5	Confirmed availability of plans and information was included in text of both advertisements and e-mailed written notice.
6	Where needed, advise and efforts made to assist interested LBE/SLBEs in obtaining lines of credit, or required insurance.	5	5	Confirmed offer was included in text of both advertisements and e-mailed written notice.
7	Negotiate in good faith with LBE/SLBE/VSLBE subcontractors. The Contractor shall provide evidence that negotiations with LBEs, SLBEs and VSLBEs were done in good faith by documenting and providing names and addresses of LBEs, SLBEs and VSLBEs that were considered. To the extent that the Bidder negotiated with LBEs, SLBEs and VSLBEs and did not select such firms for the work, the Bidder shall provide written documentation detailing why the agreement could not be reached with LBEs, SLBEs and VSLBEs.	25	0	Documentation provided was insufficient as evidence: Bidder noted cost as a factor of selection and provided a percentage difference; however, did not provide log of amount of bid accepted and amount submitted by rejected bids.  In the following cases, negotiations were not established: - Trucking (alternative pricing, e.g. lump sum, 'per load', etc. was not considered); - Rejected quote for work that was originally solicited as subcontractable work in favor of self-performing work.
8	Request assistance from City and/or Alameda CTC, identifying the LBE/SLBE/VSLBE businesses contacted and explaining any problems securing LBE/SLBE/VSLBE Bidders, at least fifteen (15) working days before bid opening.	5	0	Logs submitted by bidder indicated generally low response or declines early in process from LBE/SLBE potential firms. Other than requesting an updated certified list, no other contact was made with Alameda CTC to either explain difficulty finding and problems securing LBE/SLBE/VSLBE subs or request assistance.
9	Advertise, not less than twenty (20) calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, trade journals, or other media, that may be specified by Alameda CTC and/or City to solicit LBE/SLBE/VSLBE firms that are interested in participating in the project. This paragraph applies only if City gives public notice of the project not less than thirty (30) calendar days prior to the date the Bids are opened.	5	5	Documentation provided is sufficient.
10	Document requests for assistance from contractor's groups, or other organizations that provide assistance in the recruitment and placement of LBE/SLBE/VSLBE firms, if any are available. Documentation of this solicitation must be provided.	5	0	Documentation provided contact information for groups that could provide assistance in the recruitment and placement of LBE/SLBE/VSLBE firms; however, no proof of solicitations for assistance demonstrating contact was made or services rendered by any of those contacts named on the list. Outreach efforts noted participation in a VTA event which is not in Alameda County and addresses a different focus group unrelated to the Alameda CTC's LBCE program pool.
<b>TOTAL POINTS -</b>		<b>100</b>	<b>50</b>	Overall comments: Bidder's GFE package lacked sufficient documented proof to allow confirmation of assertions made by bidder that GFE was made. Based upon documentation, Bidder placed no effort on the SLBE component of the program.



ITEM NO.	ESSENTIAL REQUIREMENTS FOR GOOD FAITH EFFORTS	ELIGIBLE POINTS	POINTS AWARDED	Independent Review Team Assessment Thompson Builders
1	Attendance at all project pre-bid meetings scheduled by the City to inform all Bidders about the Alameda CTC Local Business Contract Equity Program requirements for the project for which the contract will be awarded. City must have a record of Prime Contractor's sign-in on attendance sheet.	5	5	Confirmed via pre-bid meeting sign-in sheet.
2	Identification of specific items of work to be performed by LBE/SLBE/VSLBE firms in order to increase the likelihood of meeting the LBE/SLBE goals, including breaking down contracts into constructible units. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate LBE/SLBE/VSLBE participation. The Bidder must complete a Request for Potential LBE/SLBE/VSLBE Work Break-out Analysis, the format of which will be furnished by the City as part of the contract document. This analysis will be used in determining if the Bidder has met this specific Good Faith Effort Criteria. (Form 1)	15	0	Per advertisements and solicitations, many work items were identified. No work breakout analysis was provided and no dollar amounts associated with work items were provided. Unable to determine whether or not identified work would be sufficient in amount to meet LBCE program goals.
3	Provision of written notice of interest and results in soliciting bids on the contract to LBE/SLBE/VSLBEs. Written notice shall specify which items of work the Contractor has identified pursuant to paragraph 2. This notice shall be provided to LBE/SLBE/VSLBE firms within five (5) calendar days after the pre-bid meeting or pursuant to the notice period set forth in the specifications for a given contract. These solicitations shall include a description of the specific items of work to be performed by the LBE/SLBE/VSLBE firms and all related conditions of the work. The Bidder will also be required to provide written documentation of responses to these solicitations by LBEs, SLBEs and VSLBEs, i.e. dates of written notice, response and results, phone logs, meetings, conference calls, etc., as well as records of discussions with LBEs, SLBEs and VSLBEs regarding the solicitations.	15	0	Pre-bid meeting was held on 10/18/17. Bidder solicited for LBE/SLBE/VSLBEs subcontractors via faxes, e-mails, and advertisements between 11/2/2017-11/3/2017 which is outside of the required five calendar days after pre-bid meeting timeframe. With bids due to City on 11/16/2017, very little time would be available for LBE/SLBE/VSLBE subcontractors to submit bids to prime for consideration and negotiations.
4	Follow up of the written initial solicitations of interest by contacting the owner or other manager of the LBE/SLBE/VSLBE firms to determine with certainty whether the enterprises were interested in performing specific items of the project. The Bidder is required to document the follow-up activities and provide written documentation stating the date and method of contact, the reason for not using the subcontractor and copies of all communications.	15	0	Documentation submitted -shows that for several firms, contact was either not made ("Left message") or made with receptionist rather than owner/manager.
5	Making the project plans, specifications, and requirements for the selected subcontracting items or material supply work available for review by interested LBE/SLBE/VSLBEs. The Bidder is required to document and provide proof of receipt on the names and addresses of LBEs, SLBEs and VSLBEs to whom the project information was made available.	5	5	Confirmed availability of plans and information was included in text of both advertisements and e-mailed written notice.
6	Where needed, advise and efforts made to assist interested LBE/SLBEs in obtaining lines of credit, or required insurance.	5	5	Confirmed offer was included in text of both advertisements and e-mailed written notice.
7	Negotiate in good faith with LBE/SLBE/VSLBE subcontractors. The Contractor shall provide evidence that negotiations with LBEs, SLBEs and VSLBEs were done in good faith by documenting and providing names and addresses of LBEs, SLBEs and VSLBEs that were considered. To the extent that the Bidder negotiated with LBEs, SLBEs and VSLBEs and did not select such firms for the work, the Bidder shall provide written documentation detailing why the agreement could not be reached with LBEs, SLBEs and VSLBEs.	25	0	Documentation provided was insufficient as evidence: - Bidder noted cost as a factor of selection and provided a percentage difference; however, did not provide log of amount of bid accepted and amount submitted by rejected bids.  In the following cases, negotiations were not established: - Documentation submitted specifically notes "no discussions..." were undertaken with rejected LBE/SLBE bidders. - Bidder advertised/solicited for trucking and received quotes for trucking. Rejected quotes in favor of combining trucking in site work subcontract. - No follow up undertaken with an SLBE (SDV Services) after receiving a non-specific quote.  Bidder submitted list of 16 rejected LBE/SLBE/VSLBE bidder, of which only 9 were LBCE certified (3 -cert LBE, 5 cert LBE/SLBE, and 1 cert LBE/SLBE/VSLBE).
8	Request assistance from City and/or Alameda CTC, identifying the LBE/SLBE/VSLBE businesses contacted and explaining any problems securing LBE/SLBE/VSLBE Bidders, at least fifteen (15) working days before bid opening.	5	0	On 11/19/17, bidder called Contract Equity Team. No message was left. No discussion or explanation of any problems securing LBE/SLBE/VSLBE Bidders was given.
9	Advertise, not less than twenty (20) calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, trade journals, or other media, that may be specified by Alameda CTC and/or City to solicit LBE/SLBE/VSLBE firms that are interested in participating in the project. This paragraph applies only if City gives public notice of the project not less than thirty (30) calendar days prior to the date the Bids are opened.	5	0	Bid due date was 11/16/17. Ads were not published until 11/2/17 which was less than the required 20 calendars days prior to bid date (pages 12 - 35 of GFE package).
10	Document requests for assistance from contractor's groups, or other organizations that provide assistance in the recruitment and placement of LBE/SLBE/VSLBE firms, if any are available. Documentation of this solicitation must be provided.	5	0	Documentation provided by bidder identified the use of dbgoodfaith.com which addresses a different focus group unrelated to the Alameda CTC's LBCE program pool. No supporting documentation provided for firms that could provide specific assistance in the recruitment of LBE/SLBE/VSLBE firms.
<b>TOTAL POINTS -</b>	<b>100</b>	<b>15</b>	Overall comments: Bidder's GFE package lacked -documentation to support assertions made by bidder that GFE was made. Submitted documentation indicates Bidder did not understand/verify if firms were certified. Bidder's negotiation record claims that it considered and rejected 16 certified LBE/SLBE/VSLBE bidders. The verification process confirmed that only 9 of the 16 bidders were LBCE certified.	