



Via email sdsmith@cityofkeywest-fl.gov; churd@cityofkeywest-fl.gov
May 3, 2016

Shawn Smith, City Attorney
City of Key West
PO Box 1409
Key West, FL 33041

**RE: ITB #010-16 Sailfish Pier Replacement, City Marina at Garrison Bight
Project No. GB1503**

Dear Mr. Smith:

As you may know from my protest letter dated, April 5, 2016, a copy of which is attached (without enclosures), I represent, Kearns Construction. I understand that the matter is back on the agenda for this evening. I have also reviewed the response of DH Higgins to our bid protest. I suggest that response of DN Higgins tends to substantiate the basis for our protest, not refute same.

These reasons are summarized as follows:

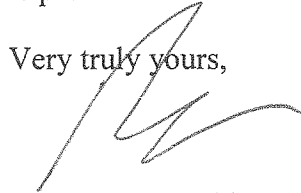
1. The Instructions to Bidders state that the prime contractor must submit five prior projects that demonstrate their prior experience and expertise with marine construction.
2. All of the projects submitted by DN Higgins were sewer or heavy civil not marine construction.
3. DN Higgins claim that they are marine contractor because they built sewer pump stations. Construction means and methods for this Project are significantly different.
4. One of the primary features that separates marine contractors from other contractors is the insurance.
5. By federal law (see the following) marine contractors must maintain Federal USLH and Jones Act insurance for marine construction. I suggest you ask DN Higgins for proof that it currently has such insurance and whether it had such insurance on the projects it submitted to support its experience requirement.
6. Therefore, a critical question is whether DN Higgins maintained the federally required marine insurance (USLH & Jones Act) for their "marine construction" listed projects.

7. Also, one of the main distinctions between marine constructing and other types of contraction is the necessity of using barges. The Sailfish Pier Replacement project requires working from a barge. Working from a barge requires unique skills and knowledge (US Army Corp has special tables for barge mounted equipment). None of the completed projects listed by DN Higgins appear to involve use of barges.
8. Lastly, marine contractors need to have experience and expertise in following the environmental permit conditions. Marine contractors are regularly required to comply with the following:
 - a. Trained and certified manatee observer
 - b. Trained turbidity monitor
 - c. Coral relocation
 - d. Seagrass preservation

None of the completed projects listed by DN Higgins had the above marine environmental requirements.

Based on the foregoing Kearns continues in its protest of the award of the contract to DN Higgins.

Very truly yours,



Raymond L. Robinson, Esq.

RLR/tmg

Encls.

cc: Via email dbradshaw@cityofkeywest-fl.gov; kolson@cityofkeywest-fl.gov w enclosures



Via email dbradshaw@cityofkeywest-fl.gov; kolson@cityofkeywest-fl.gov
April 5, 2016

Doug Bradshaw
Director Port and Marine Services
City of Key West
201 William Street
Key West, FL 33040

**RE: ITB #010-16 Sailfish Pier Replacement, City Marina at Garrison Bight
Project No. GB1503**

Dear Sirs:

Please be advised that I represent Kearns Construction, one of the bidders on the above referenced project. It is my understanding that the Public Bid Opening occurred on February 21, 2016, that there were three bidders and that the order of the bidders accordingly to price from low to high is as follows:

Douglas N. Higgin, Inc.	\$ 1,011,000.00
	\$ 1,042,000.00
Kearns Construction Company	\$ 1,197,675.00
	\$ 1,229,450.00
Shoreline Foundation, Inc.	\$ 1,232,726.22
	\$ 1,273,306.22

On March 23, 2016 the City issued a Notice of Intent to award to the contract to DN Higgins, as the low bidder. For the reasons more particularly set forth below. It is submitted that DN Higgins, although the lowest bidder according to price, is not a "responsible" bidder nor is its bid responsive within the terms of the bid documents.

The bid document contains the following provisions: "The Bidder shall submit with his Bid his experience record showing his experience and expertise in marine construction similar to this project. Such experience record shall provide at least five current or recent projects of similar work, preferably within Florida or the southeastern United States. For each project the following information shall be provided:

1. Description and location of work.
2. Contract amount.
3. Dates work was performed.
4. Owner.
5. Name of Owner's contact person and phone number.
6. Engineer.
7. Name of Engineer's contact person and phone number."

In support of this letter I would direct your attention to the Experience Statements (Pages 33-51 of the DN Higgins bid) copies of which are attached to this letter. These statements clearly reflect that the bidder does not have the required experience similar to the work to be performed under the proposed contract. It appears to be more in line with contractors involving predominantly land based water, sewer and drainage work, whereas, the project currently proposed by the City of Key West involves predominantly installation of submerged piling.

Additionally, set forth below are additional factors that distinguish marine contracting requirements from those commonly involved with the drainage, water and sewer contractors.

The following experiences and expertise separates marine contractors from sewer /civil Contractors:

1. Marine Contractors are required to follow coastal and tidal Army Corp and DEP permits (coastal and tidal Army Corp. and DEP permits are part of this solicitation).
 - a. Marine Contractors must perform daily turbidity monitoring and record daily logs (permit requirement).
 - b. Marine Contractors must have a trained and certified manatee observer (permit requirement)
2. Marine Contractor must maintain marine construction insurance (also part of bid requirements). It is doubtful that DN Higgins previously had any marine insurance) for all workers and subcontractors.
 - a. USLH Insurance
 - b. Jones Act Insurance
 - c. Marine Liability Insurance
3. Marine Contractor must have the experience and knowledge to operate marine construction equipment safely.

- a. Tug boats
 - b. Work boats
 - c. Barge mounted cranes
 - d. Barge mounted pile driving equipment
4. Marine Contractors must have the experience and knowledge to follow marine OSHA safety rules.
- a. Marine safety equipment
 - b. Marine safety procedures
 - c. Follow reduction in lifting capacity of barge mounted equipment per OSHA rules.

None of the projects listed in DN Higgins bid proposal show any required experience or expertise in marine construction.

Second, the Instructions to Bidders (00 21 13 – 8) state, “The Contractor shall perform on the site and with his own organization, labor equivalent to at least 40 percent of the total amount of work to be performed under this Contract and materials.” DN Higgins listed marine service providers to perform the marine work. In addition, DN Higgins listed mechanical, electrical and plumbing subcontractors in with its proposal (see DN Higgins’ bid form). What portion of the work will DN Higgins perform to achieve the 40% of self-performed work?

Finally, the marine service providers listed in the DN Higgins proposal (Alexander Marine Salvage Inc, and Key West harbor Service, see DN Higgins Bid Form) are not listed as contractors with the Florida Department of Professional Regulation.

Based upon the foregoing it is submitted that awarding the contract to DH Higgins not be in the best interest of the City of Key it would also be in violation of Fla. Stat. §255.20 and other applicable Florida Statutes and laws regarding the awarding of public contracts

In the event that this Contact is awarded to DH Higgins, it is the intent of Kearns Construction to immediately institute suit in Circuit Court for Monroe County for injunctive relief and any and all rights and remedies which Kearns may have under the circumstances,

Very truly yours,


Raymond L. Robinson, Esq.

RLR/tmg
Encls.