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February 5, 2020

Mark Adams Via Email madams@portofsandiego.org
 Port of San Diego
 1400 Tidelands Avenue
 National City, CA 91950

**RE: MVC Enterprises Inc. Bid Proposal: Pavement Improvements
 at Shelter Island Parking Lots, San Diego, California,
 Solicitation Number 2019-15, MC-0071-01**

Dear Mr. Adams:

We have received the bid protest by TC Construction Company, Inc. ("TC") and are writing to request that the Port of San Diego ("Port") reject the protest by TC because the bid by MVC Enterprises, Inc., dba Moreno Valley Construction ("MVC") is responsive to the call for bids and MVC was the lowest bidder.

If the Port instead decides to consider the protest by TC, MVC makes the following requests:

1. That the Port provide MVC with copies of any and all bids for the Pavement Improvements at Shelter Island Parking Lots, San Diego, California, Solicitation Number 2019-15, MC-0071-01 ("Project") under California Public Records Act § 6250 et seq.; and
2. That the Port set a hearing date, to occur after the receipt of the copies of all bids, to allow MVC to answer the allegations of TC.

MVC'S BID WAS RESPONSIVE

MVC's bid was a valid, responsive bid by a responsible bidder. A responsive bid is a promise to enter into a contract on the terms specified in the bid invitation. *Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331. MVC has agreed to enter into the contract to perform the Project. There is no allegation by TC that MVC cannot perform the work that was put to bid, nor is there an allegation that MVC's bid has deviated one iota from the actual work to be performed.

The only allegation in the bid protest is that a material supplier, Supply Patriot, may not qualify as an SBE organization. There is no supporting information that supports that theory, the protest is merely raising questions as to whether or not Supply Patriot is SBE qualified.

February 5, 2020

Page 2

In response to a request for clarification, MVC has already advised the Port that Supply Patriot is a qualified dealer and the Port has already made the determination that the bid is responsive. The inquiry should stop there. In *Great West Contractors, Inc. v. Irvine Unif. Sch. Dist.* (2010) 187 Cal. App. 4th 1425, the appellate court looked at a bid protest by a losing bidder who claimed that the bid was non-responsive because the bid did not disclose other licenses held by the winning bidder. The school district in *Great West, supra*, contacted the winning bidder and received a satisfactory answer as to why the other licenses were not listed. As a result, the school district deemed the bid responsive. The appellate court determined that it was acceptable for the school district to do so. "There was a question in the [bidding instructions]. Great West [winning bidder] answered it. Period." The bid was determined to be responsive because the bidder answered the question as instructed. *Great West, supra* at 1457.

The current issue is remarkably similar to the issue addressed in *Great West, supra*. MVC has satisfactorily answered the question as to whether Supply Patriot is an SBE company. As a result, the bid is responsive. Further investigation should not be necessary.

The Port was correct in its determination that the bid was responsive because Supply Patriot is an SBE qualified organization. MVC understands that the definition of a dealer for the purposes of SBE qualification is as follows:

"The District and the bidder will count toward the SBE goal 100 percent of expenditures for materials and supplies required under a Contract and obtained from and SBE regular dealer. A regular dealer is a firm that is certified as such, owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are brought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase, and sale of the products in question. Brokers and packagers will not be regarded as regular dealers."

Supply Patriot is a regular dealer. MVC procured the following information from Peter Cabunoc of Supply Patriot. Supply Patriot is in the business of purchasing construction materials for re-sale to contractors and subcontractors. They are very familiar with public works projects and regularly sell to contractors and subcontractors who build public works projects. In order to sell to contractors, Supply Patriot purchases material from manufacturers or distributors through written contracts with the manufacturers or distributors. Supply Patriot separately contracts with the individual contractors to sell them the purchased materials. Supply Patriot has a warehouse at their address in Corona, located at 179 N. Maple St., Corona, CA 92880. At that

February 5, 2020

Page 3

address, Supply Patriot regularly holds material for sale and regularly repackages materials for sale. Supply Patriot engages in the purchase and sale of construction materials in its own name. As such, it qualifies as a regular dealer under the contract requirements.

MVC understands that the Port must look out for the what is in the public interest and asks that if the Port is considering rejecting MVC's bid, that MVC be given an opportunity for a hearing on the matter after receiving copies of all bids.

However, given that the bid was already deemed responsive, the wiser course would be to overrule the objections to the bid and award the contract to MVC.

Very truly yours,

MCMAHON LYNCH LAW FIRM, INC.



Robert J. Lynch

RJL/mfd

Cc: MVC Enterprises, Inc.

TC Construction Company, Inc.