

MEMORANDUM

To: Mayfield Village Council
Mayor Brenda Bodnar
Diane Wolgamuth

From: Jim Budzik/Anthony Coyne

Subject: Public Improvement Bid Irregularities

Date: March 13, 2019

Bids were obtained last week for the Fire Station Exterior Improvements Project. Four (4) bids were received from the following contractors: Apex Construction, Cianci Construction, Roma Designs and Skoda Construction. Apex Construction's bid was the third lowest behind Skoda Construction (lowest) and Cianci Construction (second lowest). After the bid opening, Apex Construction sent a letter to the Village regarding the bid results, pointing out several "procedural irregularities" in the Cianci Construction and Skoda Construction bids. A copy of the letter is attached. Apex Construction stated "the two low bidders were non-responsive and their bids should not be considered for award."

MV Codified Ordinance 123.02 sets forth the procedures for contracts with expenditures over \$25,000. The award of a contract accepting a bid is by resolution directing the Mayor and President of Council to enter into the appropriate contract. In this case, the bid specifications at item 8 "Consideration of Bids" specifically noted the Village "intends to award a contract to the lowest and responsive bid. . ." This is in line with R.C. 9.312 provisions that require the municipality to make a contract with the "lowest responsive and responsible bidder."

The challenge by Apex Construction centers around its belief that the irregularities render the bids non-responsive and the bidders non-responsible. A contractor's bid must be responsive and responsiveness is determined by examining the bid itself. In order for a bid to be responsive, the bid must comply with the specifications and instructions to bidders in all material respects and must contain no irregularities or deviations from the specifications that would affect the amount of the bid or give the bidder a competitive advantage. The factors considered in determining whether a bidder is responsible include experience of the bidder, the bidder's financial condition, conduct or performance on previous contracts, facilities, management skills and ability to execute the contract properly.

Case law holds that for a bid to be deemed non-responsive, a deviation must be substantial and must provide the bidder an advantage over competitors. *BFI Waste Sys. v. City of Garfield Heights*, 94 Ohio App. 3d 62 (Ohio. Ct. App. Cuyahoga County, 1994). As noted above, the statute sets forth the considerations to determine whether bidders are “responsible.” Apex does not contest the other bidders’ experience, financial condition, conduct or performance on other contracts. The contention by Apex that the other bidders’ irregularities render them non-responsive is not the law and not accurate for a claim.

In this particular bid matter, the question is whether any deviation from the bid specifications were substantial and provided Skoda Construction or Cianci Construction an unfair competitive advantage. It appears there may have been some procedural irregularities such as “dollar amounts” not written out, names of individuals instead of a corporate designation or a bid guarantee amount not properly filled out. Such irregularities do not affect the bid amounts, they are not substantial nor do they appear to grant any advantage to Skoda or Cianci over the competitors. It is our conclusion that the bids of Skoda and Cianci contested by Apex are “responsive” to the bid notices and may be considered by the Village Council as being the lowest and responsive bids and are deemed to be responsible. This conclusion is also consistent with the internal MV document on consideration of bids.



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Mayfield Village
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March 8, 2019

RE: Fire Station Exterior Improvements – Bid Results
770 SOM Center Road, Mayfield Village, Ohio

To Who It May Concern:

We submitted a bid this afternoon for the improvements to the exterior of the Fire Station. We found several discrepancies to the two low bidders' bid documents.

Cianci Construction

1. The amounts on page 1 of bid form have been whited out but no initial follows the corrections
2. Base bid amount and bid guarantee amount are the same (bid guarantee should have been 5% of base bid which is \$15,987.50)
3. Bid guarantee was in the form of a cashier's check in the amount of \$33,000.00 not the amount stated on page 1 of bid form
4. A cashier's check is not valid per the Instructions to Bidders (see attached)
5. No corporate seal is recorded on page 3 of bid form

Skoda Construction

1. The written amount in the base bid section is different than the figure amount written on the bid
2. The written amount in the base bid section is missing the word "thousand"
3. In the submission of bid section part B. the corporate officer is named instead of the corporation
4. Bid bond is not signed and witnessed
5. Bid bond is not signed by a corporate officer of Skoda Construction
6. Bid bond has no seal of the corporation Skoda Construction

We believe that the two low bidders are non-responsible and non-responsive and their bids should not be considered for award.

Sincerely,

A handwritten signature in cursive script that reads 'Shaju A. Shahjahan'.

Shaju A. Shahjahan
President
Apex Construction & Management Co., Inc.

