



William S. Hart High School District
Attn: Leigh Hansen – Director of Purchasing and Warehouse

May 23, 2022

Re: Valencia High School Fire Alarm Replacement Project
Project #VA2205A

Leigh,

Advanced Cable Solutions, Inc (ACS) is submitting this formal protest letter for Bid #VA2055A Valencia High School Fire Alarm Replacement Project based on missing and/or incomplete information required to be included in the bid proposal from JAM Fire and Golden Phoenix.

ACS acknowledges that CA Public Contract Code§3400 creates an implied “or equal” on public projects unless the school board has adopted a resolution to justify the use of a sole source product. However, the contract documents clearly conveyed that the District intended that Notifier be the sole product used for the Fire Alarm System. The District’s intent is set forth as follows:

1. The project drawings are designed with Notifier and are DSA approved, which means the drawings cannot be changed without resubmittal to DSA. This is NOT a design build project and therefore the DSA approved plans and specs are considered complete, accurate and not open to changes to promote fair and equal bidding.
2. The project specifications specify that all fire alarm products **“Shall be Notifier”** and does not provide an **“or equal”** clause anywhere within the contract documents with regards to the Notifier equipment. However, **“or equal”** does appear in other portions of the project specifications. The term **“Shall be”** in legal terms means “it must be”. The proper legal term to allow equals or substitutions would have been “Should be”.
3. Based on the construction schedule of the project, it is unrealistic to entertain a substitution, project re-design and DSA resubmittal and be able to complete the project per the contract schedule.
4. Throughout the mandatory job walk it was stated that the fire alarm system must be Notifier. In fact, there were several other manufacturer representatives present at the job walk who left early & did not submit bids due to these statements
5. The contractor could not know that the school board has or has not adopted a resolution to standardize with Notifier; however, based on the language within the specifications, drawings, & job walk it clearly alludes that Notifier is the only accepted solution.

The District has a duty to ensure that the intent conveyed within the contract documents does not run contrary to CA Law in order to promote fair and competitive bidding. Any intent that runs contrary to CA Law or is otherwise in violation of such, places an unfair burden on bidders to verify if Public Entities are complying with CA Law. This is not the bidder’s responsibility. It is the responsibility of the Public Entity to ensure that the intent being conveyed in their bid documents is in compliance and consistent with CA Law. Otherwise, failure to do so, will mislead bidders and result in some bidders gaining unfair advantage over others. Therefore, when it comes to the contract award, the intent within the contract documents shall take precedence over CA Law because it ensures fair and competitive bidding amongst all bidders. The bidder is at the mercy of the Public Entity and expects that the Public Entity is complying with CA Law throughout the entire bid process.



The contract documents clearly conveyed that the District intended Notifier be the sole product used for the Fire Alarm System. However, the District's failure to follow the legal procedures set forth in CA Public Contract Code §3400 to designate and justify Notifier as a sole source product should not give the District an excuse to disregard their intention and accept a bid that is not based on using the Notifier product for the Fire Alarm System.

Secondly, in reference to missing and/or incomplete information on JAM Fire and Golden Phoenix's bid form, neither contractor is an authorized Notifier dealer and both contractors failed to identify and list each subcontractor who will perform a portion of the bid scope on its behalf which is in direct violation of CA Public Contract Code §4104.

Under CA Public Contract Code §4104, it specifies the following: *"Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:*

- (a) (1) The name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater."*

Since JAM Fire and Golden Phoenix failed to identify and list each subcontractor who will perform a portion of the bid scope on its behalf in compliance with CA Public Contract Code §4104, then JAM Fire and Golden Phoenix shall self-perform all work required under the bid scope in accordance with CA Public Contract Code §4106.

Under CA Public Contract Code §4106, it specifies the following *"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111. (Added by Stats. 1986, Ch. 195, Sec. 42.1.)"*

Upon further review of the facts and careful consideration of CA Public Contract Code §4106, JAM Fire and Golden Phoenix is not permitted to self-perform all work required under the bid scope according to the CA Contractor's State License Board, which is the governing authority on this subject matter. The primary scope of work on this project is to deploy a new Notifier (District Standards) fire alarm system to replace the antiquated end-of-life system currently on campus. This type of work falls under the purview of an authorized Notifier dealer and as a result they can't self-perform the work that is required under the bid scope.



Furthermore, the value of the specified Notifier scope of work exceeds $\frac{1}{2}$ of 1% per the maximum limit allowed pursuant to CA Public Contract Codes §4104 & §4106.

The public contract code sections identified above are based on the project requirements specified within the contract documents. JAM Fire and Golden Phoenix are in violation of the following sections of the project specifications and district standards.

1. Per Contract Manual that specifies the Bidding & Contract Requirements, Item 10 – Listing of Subcontractors specifies the following:

“In accordance with the Subletting and Subcontracting Fair Practices Act, each bidder must submit with its bid a list setting forth the name, location of the place of business, and California contractor license number of each subcontractor that will perform any portion of the Work, or that, under subcontract to the bidder, will specially fabricate and install a portion of the Work, in an amount in excess of $\frac{1}{2}$ of 1 percent of the total amount of the bidder’s bid. A bidder may not list more than one subcontractor for any one portion of the Work. A bidder that fails to list a subcontractor for any portion of the Work represents that it is fully qualified to, and agrees that it shall, perform such Work using its own forces. If the Bid Documents require the bidder to submit alternate bids and the bidder intends to use different or additional subcontractors for the alternates, the bidder must submit a separate list of Subcontractors for each such alternate. A bidder must submit its lists of Subcontractors only on the “Subcontractor Listing” form included in the Required Bidding Forms. In addition to providing the subcontractor lists, upon request of the District at any time after bids are opened, a bidder must provide the address and telephone number for each listed subcontractor.”

2. Specification 283100 – Fire Alarm, Section 1.4 – Submittals, Part F – Certification specifies the following requirements for this project:

“Submit with equipment submittals and shop drawings, letter of certification from major equipment manufacturer, indicating proposed engineered system distributor is an authorized representative of major equipment manufacturer.”

3. Specification 283100 – Fire Alarm, Section 1.5 – Quality Assurance, Part D – Equipment, Programming, & Installation Supervision specifies the following requirements for this project:

“Provide services of approved Platinum Level engineered systems distributor of Notifier for equipment, programming, and installation supervision.”

4. Specification 283100 – Fire Alarm, Section 1.5 – Quality Assurance, Part E – Software Modifications specifies the following requirements for this project:

“Provide services of Platinum Level Notifier factory-trained and authorized technician to perform system software modifications, upgrades, or changes.”

5. Specification 283100 – Fire Alarm, Section 3.3 – Field Quality Control, Part A – Manufacturer’s Field Services specifies the following requirements for this project:

“Provide service of competent, factory-trained technician authorized by manufacturer to technically supervise and participate during pre-testing and acceptance testing of system.”



6. Specification 283100 – Fire Alarm, Section 3.3 – Field Quality Control, Part C – Acceptance Testing specifies the following requirements for this project:


“Contractor's job foreman, in presence of representative of manufacturer, representative of Owner, and fire department shall operate every installed device to verify proper operation and correct annunciation at control panel.”

The six (6) sections identified above clearly specify that these services must be performed without exception by an authorized Notifier dealer. In accordance with the contract documents, the language specifies that the fire alarm manufacturer **“Shall be Notifier”** and by not listing any subcontractors, JAM Fire and Golden Phoenix both represent they can self-perform all work on this project. Since JAM Fire and Golden Phoenix are not authorized Notifier dealers, they cannot self-perform this scope of work.

Finally, by not listing a Notifier dealer, they also violate the **“Ethics in Bidding”** clause specified in the contract project manual and public contract code. This would allow the contractors open to “shop around” for the best price after bid closing in order to improve their profit margins. Bid peddling is not allowed post bid on public works projects and the fact that they did not identify their subcontractors poses questions to the bid ethics of this project.

For the reasons stated above, the bids submitted by JAM Fire and Golden Phoenix could not substitute the approved specified product and are in direct violation of CA Public Contract Code §4104 & §4106 and therefore shall be deemed as Non-Responsive. ACS respectfully requests that the William S. Hart High School District rejects the bids submitted by JAM Fire and Golden Phoenix as nonresponsive for the Valencia High School Fire Alarm Replacement Project. The above noted violations of the CA Public Contract Code afford both JAM Fire and Golden Phoenix an unfair advantage over all other bidders that complied with CA State Law. The William S. Hart High School District must not defy public policy and overlook the rules and regulations of competitive public works bidding and conformance and therefore must reject the bids submitted by JAM Fire and Golden Phoenix. In light of circumstances described throughout, ACS is the lowest responsible and responsive bidder and an award to Advanced Cable Solutions is proper.

Sincerely,


Jasen Smith
President
Advanced Cable Solutions, Inc.