



PROTECTING YOUR FUTURE

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

Re: Valencia High School Fire Alarm Replacement Project Response to Formal Protest
Project #VA2205A

Leigh,

*JAM Corporation has reviewed and acknowledges all of the Contract documents. It is JAM's intent to provide Notifier Equipment for this project while reserving the right to provide an equivalent product if the district chooses not to allow JAM to provide Notifier. JAM will provide all Notifier equipment with the required warranty from the manufacturer. JAM is utilizing COSCO Fire Protection to perform any onsite programming modifications required. COSCO is a Platinum Level Notifier Distributor. COSCO Fire Protection provided JAM a proposal for onsite work that is less than ½ of 1 percent of our bid, therefore we were not required to list them as a subcontractor. Below you will see our formal responses **IN BLUE** to the claims outlined in the protest letter.*

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.

JAM has completed several thousand DSA projects in the last 30 years. Providing an equivalent manufacturer that is different than the DSA approved plans is a common practice in many School Districts. In this instance JAM is aware it would be responsible for any costs associated with a CCD required for A/E resubmittal. The location of the equipment shown on the drawings will not change. The notification appliances will not change. The initiating devices, and remote power supplies for Gamewell-FCI and Notifier are exactly the same and made in the same factory with different labels. The only difference is the programming software, Fire Alarm Panels, and Amplifiers.

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".

Without specific language in the bid documents that indicates the School Board has adopted Notifier as the "District Standard" through a Board Resolution Contractor reserves the right to submit an equivalent product per CA Public Contract Code§3400

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.

A project redesign is not necessary. Locations of all initiating devices, and notification devices will remain the same. All Power supply, amplifier, and FACP locations will remain as shown on DSA drawings. The installation will remain the same with the equivalent Honeywell Gamewell-FCI product provided in lieu of Notifier by Honeywell. A CCD will be submitted to DSA reflecting the changes showing equivalent product. JAM to absorb any cost required for A/E resubmittal.

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.

What is discussed at the mandatory job walk is not part of the bid documents. Any formal response to discussions on the job walk that are in conflict with the bid documents need to be issued in the form of an RFI and addenda.

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.

Without specific language in the bid documents that indicates the School Board has adopted Notifier as the "District Standard" through a Board Resolution contractor reserves the right to submit an equivalent product per CA Public Contract Code §3400

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.

Since JAM bid the project with the intent on using Notifier product, meeting the requirements, and intent of the specifications there is no unfair burden to any of the other bidders, however JAM will reserve the right to submit an equivalent product per **CA Public Contract Code §3400** if JAM is unable to self-perform providing Notifier equipment.

3400.

(a) The Legislature finds and declares that it is the intent of this section to encourage contractors and manufacturers to develop and implement new and ingenious materials, products, and services that function as well, in all essential respects, as materials, products, and services that are required by a contract, but at a lower cost to taxpayers.

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

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.

JAM Corporation bid is based on Notifier system. We will reserve the right to provide an equivalent system at no additional cost to owner if the district deems we cannot self-perform the Notifier installation.

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.

Correct. JAM will self-perform all work.

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 (for 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.

JAM is a B, C-7, C-10, and C-16 licensed contractor and is licensed to perform all work required by this contract including the installation of Fire Alarm Systems. JAM has performed installation on over 500 Notifier Systems and there are no provisions in our license classification that prevent us from performing this installation.

Furthermore, the value of the specified Notifier scope of work exceeds ½ of 1 % per the maximum limit allowed pursuant to CA Public Contract Codes §4104 & §4106.

JAM Corporation will be purchasing the Notifier product preprogrammed from a Factory Authorized Dealer before taking possession. JAM received a proposal from COSCO Fire Protection a Platinum Level Engineered System Distributor for



onsite services required by the contract. The COSCO proposal was an amount less than ½ of 1 percent of the bid price.

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 ½ 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."

JAM Corporation does not have any subcontractors that exceed ½ of 1% of the bid price.

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."

JAM will provide COSCO Fire protection certification with submittals for Notifier or JAM certification for equivalent product.

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."

JAM will provide COSCO Fire protection certification with submittals for Notifier or JAM certification for equivalent product.

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."

JAM will provide COSCO Fire protection certification with submittals for Notifier or JAM certification for equivalent product.

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."

JAM will provide COSCO Fire protection certification with submittals for Notifier or JAM certification for equivalent product.



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."

JAM will provide in accordance with Contract documents

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.

Since we are self-performing the work and not utilizing a subcontractor over ½ of 1 percent this would not be applicable.

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.

JAM Corporation is acutely aware of the requirements of Public Contracting Codes. We have completed over 450 million dollars in public works Contracts in the last 30 years. JAM utilizes CA State certified Electricians, CA State certified Fire and Life Safety Technicians, and DIR registered apprentices. We adhere to all Public Contracting, Prevailing Wage, and DIR requirements.

Most recently we have completed Fire Alarm Replacement projects at 7 elementary schools in Saugus Union School District that are feeder schools for the William S. Hart High School District. SUSD is extremely satisfied with our performance.

Below is a list of Notifier projects we have completed in the last 7 years utilizing COSCO Fire Protection for programming. Long Beach Unified School District has a sole source Board resolution for Notifier and it did not preclude us from self-performing the installation on these projects utilizing Notifier product.



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PROJECT NAME	CONTRACT \$	COUNTY	FACILITYTYPE	OWNER	PROGRAMMING
BARTON AND JEFFERSON FIRE ALARM AND ICS SYSTEMS	\$1,957,000.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
BRYANT ES HVAC MOD & PORTABLES RELO	\$147,176.00	Los Angeles	Elementary School	Long Beach Unified School District	Cosco
BURCHAM ES AND MARSHALL MS FIRE ALARM	\$2,182,000.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
COTTONWOOD ES MODULAR BUILDINGS MODIFICATION	\$481,119.75	Los Angeles	Elementary School	Westside Union School District	Cosco
EL CAMINO COLLEGE BOOKSTORE CAFÉ RENOV	\$9,300.00	Los Angeles	Community College	El Camino College	Cosco
EL CAMINO COLLEGE FIRE ACADEMY PORTABLES	\$19,871.00	Los Angeles	Community College	El Camino College	Cosco
EL CAMINO COLLEGE STUDENT ACTIVITES BLDG	\$27,000.00	Los Angeles	Community College	El Camino College	Cosco
HUGHES MIDDLE SCHOOL PORTABLE AND ELECTRICAL UPGRADE	\$69,547.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
HUGHES MS HVAC ALTERATION	\$470,149.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
INTERNATIONAL, LINDBERGH AND ROBINSON SCHOOLS	\$2,081,000.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
IRON MOUNTAIN	\$44,879.00	San Bernardino	Office Building	Iron Mountain	Cosco
LBUSD BURBANK ES AND SMITH ES FIRE ALARM PHASE 4	\$1,272,000.00	Los Angeles	Elementary School	Long Beach Unified School District	Cosco
LBUSD GRANT ES AND HARTE ES FIRE ALARM PHASE 4	\$1,391,000.00	Los Angeles	Elementary School	Long Beach Unified School District	Cosco
LONGFELLOW ELEMENTARY SCHOOL KITCHEN AND CAFETERIA	\$9,672.00	Los Angeles	Elementary School	Long Beach Unified School District	Cosco
MAGNOLIA LEARNING CENTER	\$61,536.15	Los Angeles	Elementary School	Mountain View School District	Cosco
MALIBU ADMIN CENTER DPW GARAGE/UTILITY BUILDING	\$41,677.00	Los Angeles	City Owned Building	LA County ISD	Cosco
MONROE K-8 FIRE ALARM PHASE 3	\$578,334.75	Los Angeles	Middle School	Long Beach Unified School District	Cosco
MORENO VALLEY COLLEGE WELCOME CENTER	\$46,986.00	Riverside	Colleges & Universities	Riverside Community College District	Cosco
MORNINGSIDE HIGH SCHOOL LAWA SOUND INSULATION	\$319,213.00	Los Angeles	High School	Inglewood Unified School District	Cosco
MOUNTAIN SHADOWS MS FIRE ALARM	\$264,534.87	Riverside	Middle School	Nuvview School District	Cosco
RILEY ELEMENTARY SCHOOL INTERIM HOUSING	\$58,976.00	Los Angeles	Elementary School	Long Beach Unified School District	Cosco
SATO ACADEMY CLASSROOM BUILDING 500	\$151,292.00	Los Angeles	High School	Long Beach Unified School District	Cosco
STEPHENS MIDDLE SCHOOL HVAC MODERNIZATION	\$398,922.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco
WILL ROGERS MIDDLE SCHOOL HVAC MODERNIZATION	\$165,334.00	Los Angeles	Middle School	Long Beach Unified School District	Cosco

JAM Corporation will meet all the requirements outlined in the Contract Documents and has successfully completed installations of Fire Alarm Systems of equal scope with various public entities. We respectfully request the William S. Hart Union High School District move forward with award to JAM Corporation as the lowest responsive bidder.

Regards,

John Mongillo,
President
JAM Corporation



DATE: May 16, 2022

PROJECT: Valencia High School FA Upgrades
27801 Dickason Drive
Valencia, CA 91355

Dear Valued Customer:

We propose to furnish the following (Fire Alarm Equipment Programming Services/Supervision) in accordance with the terms set forth. Prices quoted are effective for 30 days from the date of this quotation unless extended in writing. Our proposal includes the following components.

Programming Services/Supervision Proposal:

Proposal for programming services/supervision on a T&M basis with a not to exceed value.
Programming labor - \$100.00/hr

Cosco Fire Protection is pleased to submit a lump sum quotation in the amount not to exceed **\$9,000.00** for the installation of the fire alarm system at the above referenced project.

Qualifications:

1. All programming shall take place during Normal working hours, No provision for afterhours are included unless noted above.
2. Proposal is based upon plans dated 04/06/2022 (DSA BACKCHECK), and ADD#1.

This proposal/quotation shall remain in effect for the next (30) days.

Please feel free to contact me regarding any of your fire protection needs.

I thank you for your time and consideration.

Sincerely,

Marc Lopez
Cosco Fire Protection, Inc.
DIR # 1000002305
E-Mail: mlopez@coscofire.com
Cell: 562-322-5117