

June 1, 2022

**VIA EMAIL
VIA OVERNIGHT MAIL**

Advanced Cable Solutions, Inc.
c/o Jasen Smith, President
26074 Avenue Hall, Ste 1
Valencia, California 91355

**Re: Response to Bid Protest on Valencia High School Fire Alarm Replacement Project
(Project # VA2205A) (“Project”)**

Dear Mr. Smith:

On behalf of the William S. Hart Union High School District (“District”), please accept this as the District’s response to your bid protest letter dated May 23, 2022 (“Protest”). The Protest claims that the apparent low bidder, JAM Fire Protection, Inc., dba JAM Corporation (“JAM”), and the apparent second low bidder, Golden Phoenix Construction Co., Inc. (“Golden Phoenix”) submitted non-responsive bids regarding the Project. The District has already deemed Golden Phoenix’s bid as non-responsive. Accordingly, this response will only discuss JAM.

Your Protest appears to make the following claims:

1. The District’s Project drawings and specifications call out for “Notifier” fire alarm products without an “or equal” designation.
2. JAM will not be installing “Notifier” products.
3. JAM is not an authorized “Notifier” dealer and did not list any subcontractor that is an authorized dealer.
4. JAM is not permitted to self-perform the installation of “Notifier” products because JAM is not an authorized “Notifier” dealer.

As detailed below, the District will recommend that its Governing Board reject the Protest and award the Project to JAM. The Governing Board will consider this issue on June 8, 2022.

I. The District’s contract documents are legally compliant.

Your Protest claims that the District’s contract documents do not contain appropriate “or equal” language. We respectfully point you to the Instructions for Bidders contained in the Project Manual. Section 23 of the Instructions for Bidders provides, in part:

Except for any Sole-Source Items described in Section 8 of the Special Provisions, the requirement for any Specified Item shall be interpreted as if followed by the words ‘or equal,’ and a bidder may offer in place of such Specified Item any material, product, service, or other thing that the bidder can demonstrate is, in every

respect, materially equal to or better than the Specified Item and that will completely accomplish the intended aesthetics, purposes and/or functions of the Specified Item.”

Section 8 of the Special Provisions does not list any “Sole-Source Items.” Moreover, we point you to Section 14.4 of the General Provisions, which provides in part:

“Except as the Contract Documents expressly provide, any material, product, service or thing described in the Contract Documents as being required in connection with the Work and designated by specific brand or trade name (each a ‘Specified Item’) shall be deemed and construed to set forth the minimum requirements for such Specified Item and to be followed by the words ‘or equal.’”

The District’s Contract Documents comply with the law and any bidder could have submitted an “or equal” substitution request with his/her/its bid. Nevertheless, JAM has expressly represented to the District that it will be installing “Notifier” products. We are including JAM’s response your Protest as an attachment to this letter.

II. JAM can self-performing the installation of “Notifier” products and will be using an authorized dealer/distributor to supervise the installation and perform programming services.

As referenced above, JAM will be the licensed contractor installing “Notifier” products. Nevertheless, your Protest claims that JAM cannot self-perform this work because JAM is not an authorized dealer. As support, your Protest relies on:

1. Section 10 of the Instructions for Bidders involving the Subletting and Subcontracting Fair Practices Act;
2. Specification 283100 – Fire Alarm, Section 1.4 – Submittals, Part F;
3. Specification 283100 – Fire Alarm, Section 1.5 – Quality Assurance, Part D;
4. Specification 283100 – Fire Alarm, Section 1.5 – Quality Assurance, Part E;
5. Specification 283100 – Fire Alarm, Section 3.3 – Field Quality Control, Part A; and
6. Specification 283100 – Fire Alarm, Section 3.3 – Field Quality Control, Part C.

None of these specifications require the licensed contractor performing the installation work to be the authorized distributor or dealer. In fact, several of these specifications require an authorized distributor to supervise the installation. Moreover, these specifications require an authorized distributor to perform programming, software modifications, updates, or changes, not installation.

JAM possesses a B (General Building) contractor’s license, a C-10 (Electrical) contractor’s license, a C-16 (Fire Protection) contractor’s license, and a C-7 (Low Voltage Systems) contractor’s license. JAM is clearly capable of self-performing the installation work.

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With respect to the supervision, programming, and software modifications/updates/changes by an authorized Notifier distributor, JAMS will be using Cosco Fire Protection, Inc. (“Cosco”). Cosco is an authorized distributor on all Notifier projects and will perform the programming work. Cosco will also provide a warranty for the equipment.

As noted in your Protest, Public Contract Code section 4104 requires any bidder to list all subcontractors that will perform work or labor or render service to the prime contractor in an amount in excess of one-half of 1 percent of the prime contractor's total bid. In this situation, Cosco is not a “subcontractor” that must be listed because they are not performing work on the Project that requires a contractor’s license. Cosco will only provide equipment, supervision, and programming services. As such, Cosco did not need to be listed as a “subcontractor.” Even assuming that Cosco is a “subcontractor,” Cosco’s provision of onsite programming and supervision is less than ½ of 1% of JAM’s total bid, which further means that Cosco did not need to be listed as a “subcontractor.”

Based on the foregoing, JAM can self-perform the installation work and JAM will use Cosco as an authorized Notifier distributor for the programming and supervision work required by the specifications.

III. Conclusion

The District respectfully believes that your Protest is without merit. Accordingly, District staff will recommend to its Governing Board that the Protest be rejected. District staff will take this item to the Governing Board’s June 8, 2022, meeting.

The District desires Advanced Cable Solutions, Inc. to know that the recommended denial of your Protest in no way comments upon its ability to perform this or other work. By all appearances, Advanced Cable Solutions, Inc. is a reputable company. The District encourages Advanced Cable Solutions, Inc. to submit bids on District’s projects in the future.

Very truly yours,

[INSERT NAME]

Attachment

cc: JAM Fire Protection, Inc., dba JAM Corporation