

Pima County Clerk of the Board

Robin Brigode

Mary Jo Furphy
Deputy Clerk

Administration Division
130 W. Congress, 5th Floor
Tucson, AZ 85701
Phone: (520) 724-8449 • Fax: (520) 222-0448

Document and Micrographics Mgt. Division
1640 East Benson Highway
Tucson, Arizona 85714
Phone: (520) 351-8454 • Fax: (520) 791-6666

June 9, 2015

Gaetano Falcone, President
Falcone Brothers & Associates, Inc.
15885 N. Equestrian Trail
Tucson, AZ 85739

RE: Appeal of the Pima County Procurement Director's decision regarding Solicitation No. 175271, Bid for Construction Pantano River Path 5th Street Wash to Speedway Boulevard

Dear Mr. Falcone:

In accordance with Pima County Code 11.20.010(J), please be advised that we are in receipt of your request to appeal the decision of the Procurement Director in the aforementioned matter. A hearing has been scheduled before the Pima County Board of Supervisors on Tuesday, July 7, 2015, at 9:00 a.m. or thereafter, at the following location:

Pima County Administration Building
Board of Supervisors Hearing Room
130 West Congress, 1st Floor
Tucson, AZ 85701

If you have any questions concerning this hearing, please contact this office at 724-8449.

Sincerely,

A handwritten signature in cursive script that reads "Robin Brigode".

Robin Brigode
Clerk of the Board

c: George Widugiris, Procurement Director
KE&G Construction, Inc., 5100 S. Alvernon, Tucson, AZ 85706
Granite Construction Company, 4115 E. Illinois Street, Tucson, AZ 85730
Clear Contracting Company, P.O. Box 68787, Oro Valley, AZ 85737



FBAI Falcone Brothers
& Associates, Inc.

15885 N Equestrian Trail • Tucson, AZ 85739 • "A" Lic. 143810
Office: (520) 825-1072 • Mobile: (520) 780-2385 • Fax: (520) 825-3002

6/8/2015

Clerk of the board

RE: Protest of award
Solicitation # 175271, Bid For Construction
Pantano River path 5th street Wash to Speedway Blvd
Bid opening date may 6th 2015

This letter is in regards to the fax we received (6/3/2015) from L George Widugiris regarding Bid (IFB) Number 175271, Titled "Pantano River Path; 5th Street Wash to Speedway Blvd (PAN5TH)". Please consider this letter as Falcone Bros and Associates, Inc. (FBAI) Appeal to the decision regarding FBAI protest. You refer us to Arizona Department of Transportation Intermodal Transportation Division, Rules for Prequalification of contractors (R17-3-201 thru R17-3-204) which was followed. ADOT does also have another rule if you're following rules we should have not been able to pick up these plans or even bid this project if we were not qualified. Therefore FBAI was misled and spent time and money to prepare the bid for this project and we would like you to reconsider your decision. We are also currently prequalified for ADOT as of this Day.

Please contact me at 520-780.2385 should you have any questions, require additional information.

Sincerely,

Tom ~~Falcone~~
Gaetano "Tom" Falcone

JUN 08 15 PM 09:25 PC CLK OF RD BK



DESIGN AND CONSTRUCTION DIVISION
130 WEST CONGRESS, 3rd FL.DT-AB3-126 TUCSON, AZ 85701-1207
PHONE: (520) 724-3731 FAX: (520) 724-4434

June 3, 2015

Gaetano "Tom" Falcone
Falcone Brothers & Associates, Inc.
15885 N. Equestrian Trail
Tucson, Az. 85739
FAX 520-825-3002

RE: Solicitation #175271, Bid for Construction Pantano River path 5th Street Wash to
Speedway Blvd.
Bid opening date May 6th, 2015

Dear Mr. Falcone,

I have reviewed your protest filed with the Pima County Procurement Department ("County") dated May 29, 2015. In your letter you assert that Falcone Brothers & Associates Incorporated ("FBAI") followed the directions outlined in the County's Invitation for Bid ("IFB"), "where it clearly states that ADOT prequalification is required..." You contend that FBAI is an eligible bidder for this solicitation because you have been ADOT prequalified in the past and are in the process to requalify before the project starts. You further assert that the IFB did not state that pre-qualification was required at the time of bid submission.

The IFB Notice states, "Bidders must be prequalified under the ARIZONA DEPARTMENT OF TRANSPORTATION INTERMODAL TRANSPORTATION DIVISION, RULES FOR PREQUALIFICATION OF CONTRACTORS (R17-3-201 thru R17-3-204)". Any entity submitting a bid was required to have been ADOT prequalified at the time of submission of a bid to the County.

A significant fact is that the solicitation for this project was published on March 27, 2015 and the bid opening date was May, 6, 2015. FBAI sent verification to the County that they had submitted a prequalification application to ADOT on May 1, 2015, approximately five (5) weeks after the Solicitation was published.

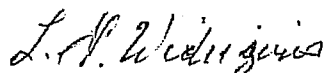
FBAI clearly had sufficient time from the date the IFB was published to the date bid responses were due to secure ADOT prequalification status, but elected to begin the prequalification process with ADOT five (5) days before the bid due date, and had yet to be prequalified by ADOT at the time bids were due to the County. It is noteworthy that on the ADOT prequalification application itself as it pertains to ADOT projects, it states, "Prequalification applications may be filed with the Department at any time provided that the date of filing is at least 15 calendar days prior to the proposed bid opening date of work on which the contractor seeks to bid."

Furthermore, the County consulted with Steve Beasley, Engineer Manager of ADOT Contracts and Specifications Division, regarding the rules for prequalification, and, more specifically, for this Solicitation. ADOT informed the County that FBAI had not been pre-qualified since 2011, and therefore should not be considered an eligible bidder at this time. As a side, ADOT has confirmed with the County that, as a condition of the Federal Highway Administration (FHWA) grant funding provided to the County through ADOT, the County must utilize ADOT's list of prequalified bidders for FHWA-funded projects, and to do otherwise places that funding in jeopardy for the County.

In summary, I have reviewed FBAI's basis for protest and, pursuant to the County Procurement Code Section 11.20.010(E), I have determined that a valid basis for protest has not been provided, and the protest is therefore dismissed.

You may appeal this decision to the Board of Supervisors by filing an appeal with the County Clerk of the Board within five business days of the date of this written decision pursuant to County Procurement Code Section 11.20.010 (H). If you file an appeal with the Board of Supervisors, the Board will consider the protest at a regularly scheduled meeting within 30 days of this decision. The Board may, with or without a hearing, either accept this decision or determine an appropriate remedy.

Sincerely,



L. George Widugiris, C.P.M.
Procurement Director

Copy: Mark Neihart, Manager, Design and Construction Division



FBAI Falcone Brothers
& Associates, Inc.

15885 N Equestrian Trail • Tucson, AZ 85739 • "A" Lic. 143810
Office: (520) 825-1072 • Mobile: (520) 780-2385 • Fax: (520) 825-3002

5/29/2015

L George Widugiris, C.P.M.
Procurement Director
Pima County

RE: Protest of award
Solicitation # 175271, Bid For Construction
Pantano River path 5th street Wash to Speedway Blvd
Bid opening date may 6th 2015

Dear Mr. L George Widugiris

This letter is in regards to the fax we received yesterday (5/28/2015) from Anthony Schiavone (Contracts Officer) of Pima County Procurement Department regarding Bid (IFB) Number 175271, Titled "Pantano River Path; 5th Street Wash to Speedway Blvd (PAN5TH)". Please consider this letter as Falcone Bros and Associates, Inc. (FBAI) notice to protest the award. When FBAI submitted the bid, we followed the directions outlined in the County's invitation to bid where it clearly states that an ADOT prequalification is required, and we have been Adot prequalified in the past and are in the process to requalify before the project starts, the invitation to bid does not state Pre-qualification is needed at time of bid.

This is why we asked for the project to be awarded to the low bidder Being Falcone Bros & Associates Inc. and disagree with the County's intent to award the project to the 3rd bidder at a bid amount of 31% higher from the Engineers estimate. FBAI has been prequalified with ADOT for years, completed many projects over these years, with some including the same scope as the County's, Pantano River Path project. At the time of bid submittal, we were in the process of renewing our ADOT prequalification. The application was submitted and in the process of being reviewed by ADOT. Additionally, we are registered with the AZ UTRACS system (20092880).

Please contact me at 520-780.2385 should you have any questions, require additional information.

Sincerely,

~~Tom Falcone~~
Gaetano "Tom" Falcone

JUN 08 15:09:25 PC CLK OF BD BK

NOTICE OF RECOMMENDATION FOR AWARD

The Pima County Procurement Department - Design & Construction Division hereby issues formal notice to participating respondents for:

**SOLICITATION NO. 175271: PANTANO RIVERPATH:
5TH STREET WASH TO SPEEDWAY BLVD**

that the below listed firm will be recommended for award of a contract in an amount of \$723,900.00. The award is anticipated to be heard on the Pima County Board of Supervisors meeting scheduled for July 7, 2015.

RECOMMENDED:

K E & G Construction

AMOUNT

\$723,900.00

OTHER BIDS (ascending order):

| <u>Respondents</u> | <u>Total Bid</u> | | | |
|---|-------------------------|--|--|--|
| Granite Construction | \$ 761,475.00 | | | |
| ENGINEER'S ESTIMATE | \$ 550,000.00 | | | |
| The following contractor was not ADOT Prequalified: | | | | |
| Falcone Brothers and Associates, Inc. | \$617,998.50 | | | |
| The following contractor was not ADOT Prequalified to perform the scope of work: | | | | |
| Clear Contracting Company | \$ 626,648.40 | | | |

Contracts Officer: /s/ Anthony V. Schiavone
Anthony V. Schiavone

Date: 5/28/15

This notice is in compliance with Pima County Procurement Code: Sec. 11.12.010, 11.12.020, 11.20.010.C, Procedure dated 10/25/02.