



# Pima County Clerk of the Board

Julie Castañeda

Melissa Manriquez  
Deputy Clerk

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

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1640 East Benson Highway  
Tucson, Arizona 85714  
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December 31, 2019

Mr. Chris Greer, President  
Nelson J. Greer Painting Contractors, Inc.  
3945 E. Hayhurst Lane  
Tucson, AZ 85712

RE: Appeal of the Pima County Procurement Director's decision regarding Solicitation  
No. IFB-PO-2000051, Veterans Memorial Bridge Painting Service

Dear Mr. Greer:

In accordance with Pima County Code 11.20.010(H), 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, January 14, 2020, 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.

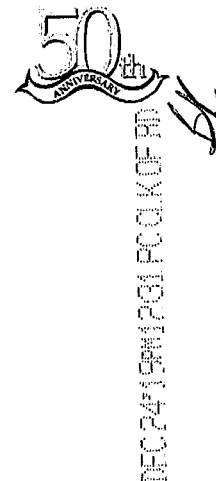
Sincerely,

A handwritten signature in black ink, appearing to read "Julie Castañeda", is written over the word "Deputy" which is partially visible from the typed name below.

Julie Castañeda  
Clerk of the Board

c: Mary Jo Furphy, Procurement Director  
Lisa Josker, Facilities Management Director  
Ana Wilber, Materials and Services Division Manager  
Meagan Lynch, Procurement Officer  
Stacey Roseberry, Deputy County Attorney

## PAINTING CONTRACTORS, INC.



December 24, 2019

Julie Castaneda, Clerk of the Board  
Pima County Administration Division  
130 W. Congress, 5th Floor  
Tucson, AZ 85701

RE: Solicitation Number IFB-PO-2000051 Veterans Memorial Bridge Painting

Dear Ms. Castaneda,

The purpose of this letter is to formally appeal the Procurement Director's decision to deny our protest in regards to solicitation number IFB-PO-2000051. Our offer was deemed non-responsive, and we filed a protest on Monday, December 23, 2019, to contest that decision. The Procurement Director dismissed our protest; below are our contestations to the explanation given for dismissal of our protest.

The director's response declares our claim that the table contained no numbers is false and therefore our argument is void. We did not claim that the table did not contain the number 2000; we were pointing out that the table must be modified to add our pricing into the blank portions of the table and because of this it could be interpreted that the estimated number of hours included in the table was open to modification. Our interpretation of the table led us to include our estimate of the number of hours we believe it will take to complete the project, based on our extensive experience with this type of work. It does not state anywhere in the solicitation that the project must be priced at 2,000 hours. In an answer to an RFI included in the first amendment states that the "labor needs to be priced by the hour and calculated to a total extended amount and the equipment and materials need to be listed as one total sum to complete the project", which we did in our proposal. We believed we were providing a more honest proposal by estimating our hours instead of inflating the labor rate, and since the solicitation did not declare that the project must be priced at 2,000 hours we concluded that including our estimated hours would be permissible.

The director's response falsely asserts that amendment one states that bidders must replace page one of the offer agreement. The referenced wording on that amendment is as follows:

- "1) CHANGE- Replace Offer Agreement, Product or Service Specifications & Scope, page 1 of 13 from the original bid package with the attached Amendment 1 Product or Service Specifications & Scope, page 1 of 13.
- 2) ADDITION- Optional Site Visit at Veterans Memorial Plaza, Richey Blvd and Aviation Pkwy on Thursday, November 21, 2019 at 9:00 AM Local Tucson, AZ time."

Later in amendment one it states:

"...Failure to include acknowledgment of all amendments may be cause for rejection. "



## PAINTING CONTRACTORS, INC.

Nowhere does it state that the page “must” be replaced by offerors. It does, however, state that offerors must acknowledge all amendments or they “may be” disqualified. We acknowledged both of the amendments in the appropriate section, as required by the instructions, therefore acknowledging the county’s replacement of page one of the offer agreement.

The director asserts that the words “‘may be’ are used to allow Pima County the right to waive minor irregularities in a bid”. A change in the specifications and therefor the resultant contract is not a minor irregularity...”. The irregularities in our offer do not change or alter the specifications, the scope, or the final price of the solicitation and therefore, in our opinion, should be considered minor.

Our offer included the complete and final scope of this solicitation; we acknowledged both amendments showing that we recognized the change resulting from each, and attended all walk-throughs and meetings related to this solicitation. Because of the reasons stated above, we kindly urge you to reconsider the Procurement Director’s decision to dismiss our protest. Our offer is the lowest bid and contains the full scope of the project. Disqualifying our offer due to minor technicalities or misinterpretation will cost the tax payers an additional nearly \$60,000.

Thank you for your time and consideration of this appeal.

Respectfully,

A handwritten signature in black ink, appearing to be 'CJ Greer'.

Chris Greer, President  
Nelson J Greer Painting Contractors



**PIMA COUNTY PROCUREMENT DEPARTMENT**  
130 W. CONGRESS ST., 3RD FLOOR, TUCSON, AZ 85701-1207  
PHONE: (520) 724-8161 FAX: (520) 222-1484

Mary Jo Furphy  
Procurement Director

*Via Email: [chrisgreer@nelsongreerpainting.com](mailto:chrisgreer@nelsongreerpainting.com)*

December 24, 2019

Chris Greer, President  
Nelson J. Greer Painting Contractors, Inc.  
3945 E Hayhurst Lane  
Tucson, AZ 85712

RE: Protest of Award  
Solicitation No. IFB-PO-2000051 Veterans Memorial Bridge Painting Service

Dear Mr. Greer,

On December 23, 2019, I received your letter protesting the Notice of Recommendation for Award of Solicitation No. IFB-PO-2000051 Veterans Memorial Bridge Painting Service, issued on December 17, 2019, which is naming DeLeon Painting, Inc., as the Awardee.

You assert the basis for your protest is, the reasons your firm was deemed "Non-Responsive" are true, as you admit making the errors but you claim that they should have no bearing on the scope of work being completed or the total price of the project.

Your firm was deemed Non-Responsive, for two reasons:

- 1) Modification of the estimated usage in the Unit Prices schedule.
- 2) Failure to include the amended specifications and scope (Offer Agreement, page 1 of 13) in the signed submitted bid.

You are claiming that the first reason should not count as a modification to the bid documents because: a) there were no numbers in the form originally, b) the column header states the word "estimated" and c) that the instructions does not state that the project must be priced at the listed hours in the usage column.

Our responses are:

- a) The Unit Prices did contain numbers in the form under the usage column. By your own admission you state that you did change the quantity from 2,000 to 3,040 hours, which voids your statement that there were no numbers in the form.
- b) The "estimated" usage was provided by Pima County as the estimated hours to complete this discrete project.

c) The Instructions to Offerors clearly states in Section 4. Submission of Bids, "The submittal must include all information requested by the solicitation, and must use without modification the forms provided by the solicitation."

You are claiming that the second reason should not count because you acknowledged the amendment and that the words "may be" do not mean that an error has to result in the rejection of the bid. Amendment No.1, which modified Section 4. Product or Service Specifications & Scope, stated clear instructions that the original page with Section 4. Product or Service Specifications & Scope must be replaced with the amended page Section 4. Product or Service Specification and Scope. This page is vital to the intent of the contract and work to be performed as it contained Specifications. The words of "may be" are used to allow Pima County the right to waive minor irregularities in a bid. A change in the specifications and therefor the resultant contract is not a minor irregularity and required the need to determine the bid nonresponsive.

Pursuant to Pima County Procurement Code 11.20.010.F.1, I have determined that the protest does not carry merit and therefore your protest is dismissed.

The decision may be appealed to the Board of Supervisors by filing an appeal with the Clerk of the Board within five business days of the date of this written decision pursuant to Pima 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 the decision or determine an appropriate remedy.

Sincerely,



Mary Jo Furphy, CPPO  
Procurement Director

Attachment: Nelson J. Greer Painting Contractors, Inc. protest letter dated December 23, 2019  
(3 pages)

c: Lisa Josker, Facilities Management Director  
Ana Wilber, Materials and Services Division Manager  
Meagan Lynch, Procurement Officer  
Stacey Roseberry, Deputy County Attorney  
Interested Parties

NELSON J. GREER

3945 E. HAYHURST LANE • TUCSON, AZ 85712

Tel. (520) 325-5800 • Fax (520) 326-3882



PAINTING CONTRACTORS, INC.

Protest of:  
Solicitation Number: IFB-PO-200051  
Title: Veterans Memorial Bridge Painting Service

Protested By:  
Nelson J. Greer Painting Contractors, Inc.  
Chris Greer, President  
3945 E Hayhurst Lane  
Tucson, AZ 85712  
Phone: (520) 325-5800

Signature: \_\_\_\_\_

Chris Greer

IFC 2419PM1231 PCD KDF RD



## PAINTING CONTRACTORS, INC.

To Whom It May Concern:

I, Chris Greer, President of Nelson J. Greer Painting Contractors, Inc. would like to submit a formal protest of the bid results and the Notice of Recommendation of Award for Solicitation Number: IFB-PO-200051, Title: Veteran's Memorial Bridge Painting Service. The reason we are protesting is because our bid was deemed "Non-Responsive. When we asked why our bid was deemed "non-responsive we were given the following response in and email from Procurement Office Meagan Lynch:

"Your firm was deemed Non-Responsive because it did not meet two requirements of the solicitation:

- 1) Per the Instructions to Offerors, "The submittal must include all information requested by the solicitation, and must use without modification the forms provided by the solicitation"- The Estimated Usage Quantity in the bid item list, Unit Prices, was modified.
- 2) Per the instructions in Amendment No.1, replacement of Product or Service Specifications & Scope, page 1 of 13 from the original bid package with the Amendment 1 Product or Service Specifications & Scope, page 1 of 13, was required. The signed and submitted bid did not contain Amendment 1 page 1 of 13."

As to the first reason, we do admit that we did change the 2,000 hours that was originally listed in the table to 3,040 hours. But we don't think that should count as modifying the form and be a reason to deem our bid as "non-responsive." First, technically by adding any numbers into the table it would be considered to have been modified as there were no numbers in the form originally. Secondly, the header for that particular column was "The Estimated Usage Quantity." The word I want to emphasize is estimated, meaning a guess. Lastly, at no point in the solicitation or in the instructions to the bidders does it state that the project must be priced at the 2,000 hours. I think the county would appreciate that we were trying to be honest and give the county the most accurate estimate we could in regards to the duration of the project, instead of inflating the hourly rate in order to leave the hours at 2,000.

As to the second reason, we admit that somehow we inadvertently made an error and page 1 of 13 of Amendment No. 1 didn't make it into the bid package to replace the original page 1 or 13. However, in the Amendment No.1 documents there is a line that states, "... Failure to include acknowledgement of all amendments may be cause for rejection." Now there are a few issues with that. The first being that we did include acknowledgement of all amendments in the correct section on page 5 of the offer agreement, as that line states to do. And Secondly, the words "may be" do not mean that an error has to result in the rejection of our bid or to deem our offer as "non-responsive."

We do not believe that the county or its residents should have to incur an additional nearly \$60,000 in costs based on the two issues above that could be interpreted in multiple ways. And also, the two issues have no bearing on the scope of work being completed or the total price of project.

POC 24-19W1201 POC KDF RD

DL

NELSON J. GREER

3945 E. HAYHURST LANE • TUCSON, AZ 85712

Tel. (520) 325-5800 • Fax (520) 326-3882



PAINTING CONTRACTORS, INC.

The relief being requested through this protest is that our company, Nelson J. Greer Painting Contractors, Inc. and our bid be reconsidered for the project. And due to being the original low bidder, receive the recommendation of award for this project.

Thank you for your time.

A handwritten signature in dark ink, appearing to read 'Chris Greer'.

Chris Greer





**PIMA COUNTY PROCUREMENT DEPARTMENT**

130 W. CONGRESS ST., 3RD FLOOR, TUCSON, AZ 85701-1207

PHONE: (520) 724-8161 FAX: (520) 222-1484

Mary Jo Furphy  
Procurement Director

11/19/2019

**AMENDMENT NO. 01**

**SOLICITATION NO. IFB-PO-2000051 VETERANS MEMORIAL BRIDGE PAINTING SERVICE**

Be advised of the following changes, clarifications and/or additions to the above-referenced Solicitation as stated in the following Amendment.

**SOLICITATION DUE DATE:**

Please note that the Solicitation due date remains unchanged.

**CHANGES AND/OR ADDITIONS:**

1) **CHANGE-** Replace Offer Agreement, Product or Service Specifications & Scope, page 1 of 13 from the original bid package with the attached Amendment 1 Product or Service Specifications & Scope, page 1 of 13.

2) **ADDITION-** Optional Site Visit at Veterans Memorial Plaza, Richey Blvd and Aviation Pkwy on Thursday, November 21, 2019 at 9:00 AM Local Tucson, AZ time.

**QUESTIONS/ANSWERS:**

Q. 1) Can we get approval, if possible, to directly attach outriggers/planks/guardrails/scaffold/swing stage or any other safety equipment to the bridge via concrete anchors/through bolts/powder actuated fasteners or other means of direct attachment for temporary or if approved, permanent placement?

A. 1) This would be approved for temporary use only, not for permanent placement.

Q. 2) Pending approval from Union Pacific, will there be any restrictions, or preferences, on night-time work for this job?

A. 2) We have no restriction so long as the lighting does not impact drivers traveling under the structure.

Q. 3) Does the concrete section of the bridge need to be painted or just the railing, flags ext. at the top on both sides?

A. 3) The concrete areas are not currently painted and should not be included. The only areas that need to be painted are the red, white and blue areas on both sides that run the whole length of the bridge.

Q.4) In regards to the Unit Price, Labor is listed with 2,000 hours, yet the other items are 1 item each. Is this the intent to be a cost per hour (T&M type) cost plus contract or a lump sum?

A. 4) The intent of this contract is a one-time purchase for the re-painting of the bridge. It's a maintenance and repair project. The labor needs to be priced by the hour and calculated to a total extended amount and the equipment and materials need to be listed as one total sum to complete the project.

Q. 5) Are there plans and specs to download for this bid or will something be provided at the Pre-bid Meeting?

A. 5) Specifications are located in the bid packet, in section 4. An optional site visit will be provided for further clarification.

Q. 6) Does the concrete signage at the entrances need to be painted?

A. 6) No.

All other requirements and terms of the Solicitation remain unchanged. Failure to include acknowledgment of all amendments may be cause for rejection.

This Amendment is a total of 3 pages.

If any questions, please contact me via e-mail at @pima.gov.

/s/ Meagan Lynch

Meagan Lynch, Procurement Officer