



# 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

Management of Information & Records Division  
1640 East Benson Highway  
Tucson, Arizona 85714  
Phone: (520) 351-8454 • Fax: (520) 791-6666

January 21, 2020

Mr. Gaetano "Tom" Falcone  
Falcone Brothers & Associates, Inc.  
15885 N. Equestrian Trail  
Tucson, AZ 85739

RE: Appeal of the Pima County Procurement Director's decision regarding Solicitation No. IFB-PO-2000052, Ina Road Construction Debris Landfill Phase 1 – Closure (2INARD)

Dear Mr. Falcone:

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, February 4, 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 "J. Castañeda", is written over a horizontal line.

Julie Castañeda  
Clerk of the Board

c: Pima County Board of Supervisors  
Chuck H. Huckelberry, County Administrator  
Mary Jo Furphy, Procurement Director  
Nancy Cole, Manager, Project Management Office  
Stacey Roseberry, Deputy County Attorney  
Bryant Smith, President, Smithco Ent Inc., [bsmith@smithcoaz.com](mailto:bsmith@smithcoaz.com)  
Ed Anderson, KE&G Construction, [eanderson@kegtus.com](mailto:eanderson@kegtus.com)  
Anthony Alfonso, Granite Construction Company, [Anthony.alfonso@gcinc.com](mailto:Anthony.alfonso@gcinc.com)  
Dodd O'Neil, Rummel Construction, Inc., [dodd@rummelconstruction.com](mailto:dodd@rummelconstruction.com)



**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*

Pima County Procurement Dept.  
130 W. CONGRESS ST., 3RD FLOOR,  
TUCSON, AZ 85701-1207

January 15, 2020

Attn: Board of Supervisors  
Pima County Procurement

Re: IFB-PO-2000052; INA ROAD CONSTRUCTION DEBRIS LANDFILL PHASE 1 – CLOSURE  
(2INARD)

To whom it may concern,

Falcone Brothers and Associates, Inc. (FBAI) has received a letter dated 1/9/2020 regarding the protest for the Ina Road Landfill. FBAI is sending this appeal letter in response to the protest of not having a valid basis for protest.

1. SmithCo Enterprises Inc. Does not have the correct Contracting license to be a general contractor on this project as they have an Arizona registrar of contractors license classification of A5. Which CLEARLY shows that they are only allowed to do the following **A-5 EXCAVATING, GRADING AND OIL SURFACING**

This classification allows the licensee to apply oil surfacing or other similar products; place shoring, casing, geotextiles or liners; and perform incidental blasting or drilling as required for the licensee to move, alter, or repair earthen materials by: 1. Digging 2. Trenching 3. Grading 4. Horizontal boring 5. Compacting 6. Filling This license does not allow the licensee to excavate for water, gas or oil wells.

Under this License the contractor is unable to subcontract out or self-perform storm drain pipes related to bid schedule item #5 as this item requires a A-12 license from the Arizona Registrar of Contractors. Under the A-12 license it states:

**A-12 SEWERS, DRAINS AND PIPE LAYING**

This classification allows the licensee to install and repair any project involving sewer access holes, the laying of pipe for storm drains, water and gas lines, irrigation, and sewers. Includes connecting sewer collector lines to building drains and the installation of septic tanks, leach lines, dry wells, all necessary connections, liners and related excavating and backfilling.

We did meet with Matthew Sage and Nancy Cole regarding these issues and were told the pipes are temporary pipes. As we showed them in the plans and specs we did not see anywhere that indicated this to be the case and they did agree.

JAN 16 2020 09:00 POC:KCF:RD

At this time Falcone Bros & Associates Inc. feels that this project requires the correct general contractors license as was shown in the pre-bid documents.

Under the Bid documents #13. ARIZONA CONTRACTOR'S LICENSE

The contractor must have the appropriate license issued by the State of Arizona Registrar of Contractors in order to bid and maintain same through the duration of the project. Failure to have the appropriate license at the time of bid opening may result in rejection of the bid without further recourse and award of the contract to the next low responsive, responsible bidder. FBAI Being the next responsive bidder should be awarded this project as we have met ALL criteria for this Bid Advertisement.

2. Also related to the project is the Temporary fence in which was detailed to be an Adot C 12.20 in the plans. This item had a question in addendum # 2.

Q. 15) What should we figure for the temporary fence? The plans show a permanent fence detail. Would a standard 6' chain link fence with 3 strands of barbed wire suffice? Should the costs to remove this fence be included in this bid, or will the final closure bid be required to remove the fence? A. 15) Yes, a standard 6' chain link fence with 3 strands of barbed wire will suffice and should be included. Yes, the costs to remove this fence should be included with the bid.

After reviewing the plans and seeing the ADOT C 12.20 called out. We feel this is the standard 6' fence shown in the plans. When looking at the individual bidders in regards to this item on the bid tabulations all the Engineering contractors have this bid for a Standard Detail ADOT C 12.20 Fence with every bidders price above \$100,000.00 for this item.

FBAI  
1/15/2020

IFB-PO-2000052

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

Sincerely,

*Tom Falcone*  
Gaetano "Tom" Falcone





**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:

[ziotano@aol.com](mailto:ziotano@aol.com)

[falconebrothrs1@gmail.com](mailto:falconebrothrs1@gmail.com)

January 9, 2020

Mr. Gaetano "Tom" Falcone  
Falcone Brothers & Associates, Inc.  
15885 N. Equestrian Trail  
Tucson, AZ 85739

RE: Protest of Recommendation for Award

Solicitation No. IFB-PO-2000052 Ina Road Construction Debris Landfill Phase 1 – Closure  
(2INARD)

Dear Mr. Falcone,

On January 6, 2020, I received your letter protesting the Notice of Recommendation for Award of Solicitation No. IFB-PO-2000052 Ina Road Construction Debris Landfill Phase 1 – Closure issued on December 30, 2019, naming Smithco Enterprises, Inc. as the Awardee.

The basis of your protest is that you disagree with Smithco being recommended for award as they do not have the correct contracting license for the project. You acknowledge that Smithco holds an A-5 excavating, grading and oil surfacing license. This classification allows the licensee to apply oil surfacing or other similar products; place shoring, casing, geotextiles or liners; and perform incidental blasting or drilling as required for the licensee to move, alter, or repair earthen materials by: 1. Digging 2. Trenching 3. Grading 4. Horizontal boring 5. Compacting 6. Filling. This license does not allow the licensee to excavate for water, gas or oil wells. You assert that under this license, the contractor is unable to subcontract out or self-perform any concrete, headwalls, masonry, or pipes related to bid schedule item #5. The remedy you seek is that Smithco's bid should be forfeited due to the fact they do not have the correct license to perform all work as they are not able to subcontract out any portion of this project.

As a part of our bid review process, Pima County did research and consulted on the ability of Smithco to perform the necessary work under their A5 license concerning Bid Item #5 and found that there is no concrete, headwalls, or masonry in Phase 1 of this project. The splash pads are rip rap to reduce erosion, and the pipe that will be installed is a temporary high-density polyethylene (HDPE) drainage pipe. SmithCo's A-5 license allows them to dig and/or trench for placement of the pipe and move, alter or repair (stabilize) earthen materials. The concrete and headwall will be part of the final closure (Phase 2). With that said, there is concrete work shown on the Plans (page 14 of 16) for "Final Cover" and for the "Trash Rack Per MAG 502-2"; however, this again is for Final Closure (Phase 2) and not included in Phase 1. Further, the specifications do not include any information related to concrete work as shown in the Plans and neither the plans nor the specifications referenced the PAG

Mr. Gaetano "Tom" Falcone  
Falcone Brothers & Associates, Inc.  
January 8, 2020  
Page Two

Standard Specification that would have included a specification for concrete work. Lastly, no questions or clarification requests were raised while the Solicitation was advertised related to this work.

Concerning subcontracting, Smithco identifies one subtrade for temporary fencing. While we agree that for a commercial, residential, or public right of way project, contractors may only subcontract to other contractors who hold the same license classification or one that is included in the scope of work of their license. However, we confirmed with the Arizona Registrar of Contractors that Smithco may subcontract incidental work, i.e. temporary fencing that does not become a permanent part of the project.

Based on my review, the bid submitted by Smithco Enterprises, Inc. stands as a responsive bid. Pursuant to Pima County Procurement Code 11.20.010.E (1), I have determined that the protest does not state a valid basis for protest. Therefore, your protest is dismissed.

You may appeal this decision 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, CPPC  
Procurement Director

Attachment: Falcone Brothers & Associates, Inc. protest letter dated January 6, 2019 (1 page)

c: T. Spencer, Design & Construction Division Manager  
M. Sage, Procurement Officer  
N. Cole, Manager, Project Management Office  
Stacey Roseberry, Deputy County Attorney  
Interested Parties



**FBAI** Falcone Brothers  
& Associates, Inc.

15885 N Equestrian Trail • Tucson, AZ 85739 • "A" Lic. 143810  
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Pima County Procurement Dept  
130 W. CONGRESS ST., 3RD FLOOR,  
TUCSON, AZ 85701-1207

January 6, 2020

Attn: Mary Jo Furphy  
Pima County Procurement Director

Re: IFB-PO-2000052; INA ROAD CONSTRUCTION DEBRIS LANDFILL PHASE 1 - CLOSURE  
(2INARD)

Dear Mrs Furphy,

Falcone Brothers and Associates, Inc. (FBAI) has received a copy of the letter for notice of award on Friday January 3rd via email. FBAI is sending this letter in response to protest this award under the following reasons.

SmithCo Enterprises Inc. Does not have the correct Contracting license to be a general contractor on this project as they have an Arizona registrar of contractors license classification of A5. Which CLEARLY shows that they are only allowed to do the following A-5 EXCAVATING, GRADING AND OIL SURFACING. This classification allows the licensee to apply oil surfacing or other similar products; place shoring, casing, geotextiles or liners; and perform incidental blasting or drilling as required for the licensee to move, alter, or repair earthen materials by: 1. Digging 2. Trenching 3. Grading 4. Horizontal boring 5. Compacting 6. Filling. This license does not allow the licensee to excavate for water, gas or oil wells.

Under this License the contractor is unable to subcontract out or self preform any concrete, headwalls, masonry, or pipes related to bid schedule item #5.

At this time Falcone Bros & Associates Inc feels that Smithco Enterprises Inc bid should be forfeited due to the facts they do not have the correct license to preform all work as they are not able to subcontract out any portion of this project.

**Under the Bid documents #13. ARIZONA CONTRACTOR'S LICENSE**

The contractor must have the appropriate license issued by the State of Arizona Registrar of Contractors in order to bid and maintain same through the duration of the project. Failure to have the appropriate license at the time of bid opening may result in rejection of the bid without further recourse and award of the contract to the next low responsive, responsible bidder. FBAI Being the next responsive bidder should be awarded this project as we have met ALL criteria for this Bid Advertisement.

FBAI

1/6/2020

Ltr. To Mrs Mary Jo Furphy  
IFB-PO-2000052

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

Sincerely,

~~Tom Falcone~~  
Gaetano "Tom" Falcone



ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	Engineer's Estimate		SmithCo Enterprises, Inc.		KE&G Construction, Inc.		Falcone Bros. & Associates, Inc.		Rummel Construction, Inc.		Granite Construction Company	
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Mobilization and Demobilization	LS	1	\$25,000.00	\$25,000.00	\$30,000.00	\$30,000.00	\$110,000.00	\$110,000.00	\$135,005.33	\$135,005.33	\$47,250.00	\$47,250.00	\$45,000.00	\$45,000.00
2	Survey and As-Built Drawings	LS	1	\$15,000.00	\$15,000.00	\$60,331.00	\$60,331.00	\$90,000.00	\$90,000.00	\$35,000.00	\$35,000.00	\$22,000.00	\$22,000.00	\$69,000.00	\$69,000.00
3	Rough Grade Waste & Intermediate Cover Relocation and placement of the Foundation Layer to achieve sub-grade elevations shown on Sheets 3, 4 & 5 (235,493 CY cut, 243,515 CY fill & 8,021 CY net fill)	AC	78	\$8,000.00	\$624,000.00	\$7,692.31	\$600,000.18	\$14,900.00	\$1,162,200.00	\$7,000.00	\$546,000.00	\$7,000.00	\$546,000.00	\$19,000.00	\$1,482,000.00
4	Subgrade Preparation	AC	78	\$1,000.00	\$78,000.00	\$588.00	\$45,864.00	\$4,175.00	\$325,650.00	\$2,100.00	\$163,800.00	\$750.00	\$58,500.00	\$1,750.00	\$136,500.00
5	24" Culvert Pipe - ADS - N-12 WT 18 with splash pads	LF	1,194	\$28.00	\$33,432.00	\$50.25	\$59,988.50	\$71.50	\$85,371.00	\$78.00	\$93,132.00	\$98.00	\$117,012.00	\$60.00	\$71,640.00
6	Rough Grade Perimeter Stormwater Channel and road per 3 & 4/16 excluding the Rip-Rap and Non-Woven Geotextile	LF	10,612	\$25.00	\$265,300.00	\$1.00	\$10,612.00	\$3.90	\$41,386.80	\$4.00	\$42,448.00	\$13.00	\$137,956.00	\$8.00	\$84,896.00
7	Stormwater Basin B Construction	LS	1	\$90,000.00	\$90,000.00	\$147,500.00	\$147,500.00	\$86,415.70	\$86,415.70	\$60,000.00	\$60,000.00	\$190,000.00	\$190,000.00	\$180,000.00	\$180,000.00
8	Stormwater Basin C Construction	LS	1	\$28,000.00	\$28,000.00	\$43,750.00	\$43,750.00	\$61,338.00	\$61,338.00	\$20,000.00	\$20,000.00	\$49,000.00	\$49,000.00	\$55,000.00	\$55,000.00
9	Basin B Bank Protection Rip Rap (65,722 SF) and 15 oz. Non-Woven Geotextile per Detail 2/16	SF	65,722	\$4.00	\$262,888.00	\$4.00	\$262,888.00	\$3.50	\$230,027.00	\$3.00	\$197,166.00	\$4.75	\$312,179.50	\$5.50	\$361,471.00
10	Power Pole Protection per Detail 7/14	EA	2	\$800.00	\$1,600.00	\$5,000.00	\$10,000.00	\$2,750.00	\$5,500.00	\$2,500.00	\$5,000.00	\$1,335.00	\$2,670.00	\$500.00	\$1,000.00
11	Removal of Existing Fencing and Installation of Temporary Fencing	LF	4,581	\$8.00	\$36,648.00	\$4.37	\$20,018.97	\$41.50	\$190,111.50	\$22.00	\$100,782.00	\$33.15	\$151,860.15	\$27.00	\$123,687.00
12	AZPDES Permit/NOI/BMPs	LS	1	\$10,000.00	\$10,000.00	\$8,902.03	\$8,902.03	\$42,000.00	\$42,000.00	\$35,000.00	\$35,000.00	\$15,500.00	\$15,500.00	\$12,250.00	\$12,250.00
<b>Total Bid</b>				<b>\$1,469,868.00</b>		<b>\$1,299,864.68</b>		<b>\$2,430,000.00</b>		<b>\$1,433,333.33</b>		<b>\$1,649,927.65</b>		<b>\$2,622,444.00</b>	

\*\*\*Scavener's error, unit prices match for the yellow highlights - wrong calculation totaling \$1.32, as road bid amount \$1,299,868.00