

**PUBLIC WORKS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 2024-0085

WHEREAS, The work performed under the 13th Street Safety Improvement Project (Sourcing ID No. 0000007339) consists of pedestrian and bicyclist improvements, pavement resurfacing, traffic signal and street lighting upgrades, bulbout construction, curb ramp enhancements, drainage work, traffic control improvements and other associated infrastructure work along 13th Street from Valencia Street to Isis Street in San Francisco (together the “Project”); and

WHEREAS, On August 17, 2022 Planning Department issued a determination (“Statutory Determination”) that the proposed 13th Street Safety Project (Case number 2022-005736ENV) is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Senate Bill 288 (SB288) and Public Resources Code Section 21080.25; and

WHEREAS, On October 18, 2022, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors approved Resolution 221018-097 approving the 13th Street Safety Improvement Project, including the 13th Street protected bicycle lanes, sidewalk widening, and no stopping and no parking signage that comprise part of the Project, and adopted CEQA findings (“CEQA Findings”); and

WHEREAS, On October 10, 2022, California Department of Transportation, issued a categorical exclusion determination concluding that the safety improvements on 13th Street from Valencia Street to Folsom Street to be performed under this contract are categorically excluded under the National Environmental Policy Act (“NEPA”); and

WHEREAS, On January 18, 2024, the Planning Department determined the modified 13th Street Safety Project (Case number 2022- 005736ENV) is statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.25 described in the CEQA determination issued August 17, 2022; and

WHEREAS, On February 26, 2024, California Department of Transportation, issued a re-certification of categorical exclusion determination (“NEPA Determination”) concluding that the safety improvements on 13th Street from Valencia Street to Isis Street to be performed under this contract are categorically excluded under the National Environmental Policy Act (“NEPA”); and

WHEREAS, The Project's cost estimate was \$7,900,000.00, and the contract duration is 650 consecutive calendar days; and

WHEREAS, State of California requires state-aided contracts to subcontract with Small Business Enterprises (SBE) and Disabled Veteran Business Enterprises (DVBE) and on June 7, 2024, the California Department of Transportation (Caltrans) approved the SBE and DVBE subcontracting requirements of 25% and 5%, respectively, for this contract; and

WHEREAS, On July 26, 2024, San Francisco Public Works advertised for bids for the Project, and on August 28, 2024, San Francisco Public Works received two (2) bids; and

WHEREAS, Public Works staff and Contract Monitoring Division (CMD) staff reviewed the bids and application of bid subcontracting requirement and determined that NTK Construction, Inc. is the responsive and responsible bidder that submitted the lowest bid; and

WHEREAS, NTK Construction, Inc. committed to 36.36% SBE participation and 1% DVBE participation and was found by the Contract Compliance Officer to have made adequate good faith efforts to meet DVBE goal in its bid submittal and received Contract Compliance Officer's award recommendation; and

WHEREAS, The Public Works Commission has reviewed the CEQA Findings, the Statutory Exemption, and the NEPA Determination, and the preceding documents are on file with the Public Works Commission Affairs Manager, and are incorporated herein by reference; now, therefore, be it

RESOLVED, That this Commission hereby awards the 13th Street Safety Improvement Project (Sourcing ID No. 0000007339) contract to NTK Construction, Inc. in the amount of \$8,976,980.00 with \$897,698.00 for contingency, and with 710 consecutive calendar days with 71 consecutive calendar days of contingency to complete the Project.

I hereby certify that the foregoing resolution was adopted by the Public Works Commission at its meeting of October 17, 2024.



Commission Affairs Manager
Public Works Commission



Carla Short, Director | Director's Office

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MEMORANDUM

Date: September 12, 2024

To: Lorina Louie, Project Manager, SFPW
Alex Burns, Manager, Contract Administration Manager, SFPW
Alaric Degrafinried, Deputy Director, SFPW
Boris Deunert, Manager, Regulatory Affairs, SFPW
Yadira Taylor, Deputy City Attorney

From: Selormey Dzikunu, Contract Compliance Manager, SFPW

Subject: 0000007339 PW 13TH Street Safety Improvement Project – SFPW Bid & Good Faith Effort Review and Recommendation

Overview

The San Francisco Public Works (SFPW) Contract Compliance Officer (CCO) has completed the review of the bids and Good Faith Effort documentation and determined responsiveness to the Small Business Enterprise (SBE) and Disabled Veteran Business Enterprise (DVBE) Participation Goals of this project.

An SBE subcontracting participation Goal of 25% and a DVBE subcontracting Goal of 5% were established for this project.

Finding of the City and County of San Francisco

Based on this review, the Contract Compliance Officer has determined the following:

- NTK Construction, Inc., the apparent low bidder, exceeded the 25% SBE Goal by committing **35.91% to SBE Participation**.
- NTK fell short of the 5% DVBE Goal, committing 1% to DVBE participation.
- The CCO's review of NTK's Good Faith Efforts showed that NTK performed adequate good faith efforts towards meeting the DVBE Goal.

Bid Summary

Two firms submitted bids as follows:

| Bidder | Status | Original Bid | DVBE Incentive | Adjusted Total Bid |
|---------------------------|---------|--------------|----------------|--------------------|
| NTK Construction Inc. | Non-SBE | \$8,976,980 | \$0 | \$8,976,980 |
| Bay Area Lightworks, Inc. | Non-SBE | \$10,451,845 | \$100,000 | \$10,351,845 |

NTK (8,976,980) SBE & DVBE Commitment Review

NTK, the apparent low bidder, submitted SBE/DBE Form 1, Bidder and Subcontractor Participation Commitment Report and listed the following SBE/DVBE subcontractors on the bid:

| Firm | Service | SBE Status | SBE Participation | |
|---|--|--------------------------|-------------------------------|---------------|
| SBE and DVBE Certified Subcontractors | | | SBE Commitment On Awarded Bid | |
| DR Traffic Control | Traffic Control Partial | SF SBE LBE - MBE (Micro) | \$700,000 | 7.79% |
| On The Level Concrete | Concrete flatwork | SF SBE LBE - MBE (Micro) | \$716,770 | 7.98% |
| Baytech Engineering Inc. | Electrical (Partial) | SF SBE LBE- MBE (Micro) | \$700,000 | 7.79% |
| Reliance Engineering | OCS | SF SBE LBE-MBE (Micro) | \$327,000 | 3.64% |
| Ronan Construction | Grinding & Paving | SF SBE LBE -OBE (Micro) | \$720,340 | 8.02% |
| *Crana Trucking | Trucking & Hauling for Ronan Construction | SF SBE LBE-OBE (Micro) | \$60,000 | 0.66% |
| *Delta Grinding | Grinding | Non-LBE | \$40,000 | 0.44% |
| First Vanguard Rental & Sales Inc. | CMS Rentals, signs, tape and Misc traffic control Supplies | Cal GSA DVBE | \$90,000 | 1.00% |
| Phoenix Electric | Electrical Partial | Non-SBE | \$1,600,000 | N/A |
| Total -Certified SBE Sub Award Commitment: | | | \$3,224,110 | 35.91% |
| Total DVBE Commitment: | | | \$90,000 | 1% |

NTK achieved a 35.91 SBE Subcontractor Participation but was deficient by 4% in meeting the DVBE Subcontractor Participation.

***Crana Trucking is a 2nd Tier Subcontractor To Ronan Construction. Crana Trucking is an LBE. LBE Credit applied.**

***Delta Grinding is a Non-LBE. Dollar Amount subtracted from Ronan LBE Commitment.**

Bay Area lightworks (10,451,845) Bid Review

The second lowest bidder, Bay Area Lightworks (BALW), exceeded the 25% SBE Goal and met the 5% DVBE Goal by listing the following SBE and DVBE Subcontractors:

| FIRM | SERVICE | SBE Status | SBE Participation | |
|--|-------------------------|-------------------------------------|-------------------------------|---------------|
| SBE and DVBE Certified Subcontractors | | | SBE Commitment On Awarded Bid | |
| R&S Construction MGMT | Curb Ramp Base | SF SBE LBE - MBE (Micro) | \$1,843,000 | 17.63% |
| JDB & Sons Construction | Sewer | SF SBE LBE - OBE (Micro) | \$448,900 | 4.29% |
| Reliance Engineering | Overhead | SF SBE LBE-MBE (Micro) | \$347,000 | 3.31% |
| Esquivel Grading & Paving | Paving | SF SBE LBE-MBE (Small) | \$774,000 | 7.40% |
| DR Traffic Control | Partial Traffic Control | SF SBE LBE-MBE (Micro) | \$20,000 | 0.19% |
| BKF Engineering | Engineering Surveying | SF SBE LBE-OBE (Micro) | \$20,000 | 0.19% |
| Apex Testing | Testing Services | Cal GSA SBE | \$40,000 | 0.38% |
| Total Traffic Control | Traffic Control | Cal GSA DVBE LBE OBE (Small) | \$530,000 | 5.0% |
| Total Certified SBE Sub Award Commitment: | | | \$3,452,900 | 33.03% |
| Total DVBE Commitment: | | | \$530,000 | 5% |

BALW exceeded the 25% SBE Goal and met the 5% DVBE Goal established for the bid.

Relevant Bid Specifications and Good Faith Efforts Review

Section 00 22 14. Supplementary Instructions to Bidders: Small Business Enterprise (SBE) Program. California Disabled Veteran Business Enterprise (DVBE) Program.

Section 1.7A. Good Faith Efforts of the Bid Specification states:

“If the amount of SBE participation does not meet the contract-specific goal, the SFPW Contract Compliance Officer will review the GFE report submitted by the Bidder with its bid. The SFPW Contract Compliance Officer will determine whether prior to submission of Bid, the Bidder has performed the quality, quantity and intensity of efforts that demonstrates a reasonably active and aggressive attempt to meet the contract-specific goal.”

The SFPW Compliance Officer evaluated NTK’s Good Faith Efforts documentation in accordance with 49 CFR Subtitle A (10-1-15 Edition). Appendix A to Part 26. Guidance Concerning Good Faith Efforts, Section I states:

“When, as a recipient, you establish a contract goal on a DOT- assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments

for participation by SBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a SBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient SBE participation, even if they were not fully successful.”

Evaluation of Good Faith Efforts made by NTK to comply with the 5% DVBE Goal

NTK submitted SBE/DBE Form 1, SBE/DBE Bidder and Subcontractor Participation Report and Form 2 SBE/DBE Contractor/Subcontractor Participation - Good Faith Efforts with its bid. See Attachment 1. SBE/DBE Form 2 GFE & SBE/DBE Form 1, Bidder and Subcontractor Participation Report

1. On August 15th, SFPW held a Pre Bid Meeting and invited SBEs and DVBEs from the California GSA SBE/DVBE Certification Program, SF CMD SBEs/LBE Certification Program and Caltrans DBE CUCP Program to meet and network with prospect bidders for the project. NTK was the only Prime Contractor that attended the Pre-Bid Meeting. No DVBE firm attended, and no other Prime Contractor attended the Pre-Bid Meeting. Please See Attachment 2A.
2. On August 9, NTK advertised in the Small Business Exchange for quotes from SBE and DVBE Subcontractors. The advertisement run from August 9, 2024 to August 28th, the bid due date. The advertisement stated:

We, NTK Construction, Inc. (NTK), will be bidding this project as a prime contractor and we are interested in receiving proposals/quotes from qualified subcontractors, suppliers and truckers, including but not limited to SBE & DVBE certified firms, for the following items of work: (but not limited to) Grinding & Paving, Street Light & Traffic Signal Work, Sidewalk, Curb & Gutter, Roadway Concrete Pavement and Traffic Control. The Subcontracting requirements are: SBE -25%; DVBE-5%. See Attachment 2B.

3. Email records attached to NTK's bid show that on Tuesday August 13th, 2024 an "invitation to bid" with NTK's advertisement attached was emailed by NTK to some SBEs and DVBEs including, Jeff Pike and Keith Rush, owner and Senior estimator respectively, of Total Traffic Control (TTC) a California GSA DVBE Certified firm. An email read receipt was received from both Jeff Pike and Keith Rush the same day.
4. NTK also sent a Direct email to Giron Construction, a GSA California Certified DVBE but received no response.
5. Please See Attachment 3A & 3B. At 12:19 pm August 13th, 2024, Keith Rush, Senior Estimator for Total Traffic Control sent email to NTK confirming that Total Traffic Control, Inc. will be providing a quote for the project. The email stated, **"I will be sending it to you on the morning of the 27th."** See Attachment 4.
6. On August 27th at 12:50 pm, the day before the bid was due, Tin Tran, President of NTK sent Keith Rush an email requesting the promised quote, but received no response from Total Traffic Control. See Attachment 5.
7. At 10:44 AM of August 28th, 2024, 4 hours before the bid was due, Total Traffic Control was contacted by phone by NTK for the quote and was informed that Keith Rush was no longer with Total Control and that total control will not be submitting a quote. See Attachment 6.
8. Total Traffic Control, which had been listed on NTK's Contractor listing Form 00 43 36 pending submission of quote was cancelled before bid was submitted. Please See Attachment 7, Page 3 of 3.
9. Total Traffic Control was replaced by DR Traffic Control LLC, A Minority-Owned SBE firm and listed to perform \$700,000 or 7.79% of Traffic Control work. See Attachment 7, Page 2 of 3.

- 10. After bid was submitted, SFPW Contract Compliance Officer contacted Jeff Pike, President of Total Control by phone on Tuesday September 10, 2024. Jeff Pike confirmed that Keith Rush had stopped working for Total Traffic Control Since August 25th, 2024. He also stated that he was retiring soon and Total Traffic Control will not be performing anymore Field Traffic Control work. On September 11, 2024 SFPW CCO sent an email to Jeff Spike to confirm Total Traffic Control’s unavailability for any more traffic Control field work. On September 12, 2024 Jeff Pike, President of Total Control confirmed via email Total Control will not be accepting new contracts.

Conclusion

The SFPW COO finds that NTK solicited the participation of DVBEs through all reasonable and available means, including attendance at the August 15th Pre-Bid Meeting organized by SFPW, where NTK was the only Prime Contractor present to network with prospective SBE and DVBE Subcontractors. Additionally, NTK advertised in the Small Business Exchange from August 9, 2024 to August 28th, the bid due date.

Furthermore NTK followed up initial solicitations by sending direct emails to SBE and DVBE firms. NTK determined with certainty that Total Traffic Control, a DVBE was interested in working on the project and asked for quotes from the DVBE firm. Despite assurances that quotes will be provided in time for the bid TTC never submitted quotes to NTK.

NTK also selected portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. As the SBE /DVBE table above shows NTK for instance selected Traffic Control, and Grinding and Paving portion of the project for subcontracting and solicited from Giron Construction, a DVBE Certified Paving firm but NTK did not receive any response from Giron Construction.

The SBE/DVBE commitment Report shows that NTK broke its contract items into economically feasible units to facilitate SBE/DVBE participation, even when NTK, the prime contractor might otherwise have preferred to perform these work items with its own forces.

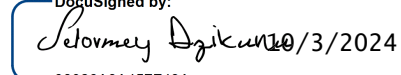
The review also shows NTK negotiated in good faith with its SBE/DVBE Subcontractors. The review found that Total Traffic Control, the DVBE firm, that promised to submit a quote to NTK and informed NTK 4 hours before the bid was due, that they will not be providing a quote for the bid, submitted a quote to BALW, the 2nd low Bidder for \$530,000 or 5%. (See SBE/DVBE Commitment Table above). NTK listed another SBE Firm DR Traffic Control for \$700,000 or 7.79% for work that would have been performed by Total Traffic Control and would have exceeded the 5% DVBE Goal.

The City and County of San Francisco finds that the Low Bidder NTK has demonstrated adequate good faith efforts to meet the DVBE participation goal for this contract, for the reasons cited above.

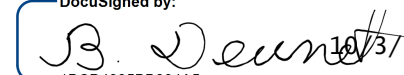
The CCO therefore recommends award of Sourcing Event No. 0000007339, 13th Street Safety Improvement Project to the low bidder NTK Construction Inc.

Should you have any questions, or need further assistance, please do not hesitate to contact me at Selormey.Dzikunu@sfdpw.org or at (628) 271-2094.

Submitted by:

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