



July 6, 2016

CALL AND NOTICE OF A SPECIAL MEETING
OF THE OPERATIONS AND DEVELOPMENT COMMITTEE
OF THE
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY

NOTICE is hereby given that a special meeting of the Operations and Development Committee will be held Thursday, July 7, 2016, at 8:30 a.m. in the Airport Skyroom of the Bob Hope Airport, 2627 Hollywood Way, Burbank, CA 91505.

The items to be discussed are listed on the attached agenda.

Sue Loyd, Board Secretary
Burbank-Glendale-Pasadena Airport Authority

SPECIAL MEETING
OF THE
OPERATIONS AND DEVELOPMENT COMMITTEE

Airport Skyroom
Thursday, July 7, 2016
9:00 A.M.

NOTE TO THE PUBLIC: Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the Authority to the Commission less than 72 hours prior to that meeting are available for public inspection at Hollywood Burbank Airport (2627 Hollywood Way, Burbank) in the administrative office during normal business hours.

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In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call the Board Secretary at (818) 840-8840 at least 48 hours prior to the meeting.

AGENDA

1. Approval of Agenda
2. Public Comment
3. Contracts and Leases
 - a. Award of Contract/Authorizations/Approvals
Project Number E15-01
Runway 8/26 Rehabilitation Project (Phase 2A)

- Staff Report Attached

[See page 1]

Staff seeks a Committee recommendation to the Commission that it:

- i) Award a contract in the amount of \$8,098,985 to PALP, Inc., dba Excel Paving Company, for the construction of Phase 2A of the Runway 8/26 Rehabilitation Project;***
- ii) Authorize the issuance of a work order to the existing professional services agreement with RS&H for a lump-sum amount of \$875,782 for designer of record construction administration services, on-site technical services, inspection and materials testing;***

iii) Approve the deployment of the TBI Force Account, including in-house consultants for project/construction management services, field observation and security for a not-to-exceed amount of \$550,000; and

iv) Authorize the establishment of a Project Aggregate Contingency of \$600,000, which is approximately 6% of the estimated total Phases 1A and 2A project costs.

4. Other Contracts and Leases and Capital Projects

5. Adjournment

**STAFF REPORT PRESENTED TO THE
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY
OPERATIONS AND DEVELOPMENT COMMITTEE
JULY 7, 2016**

**AWARD OF CONTRACT / AUTHORIZATIONS / APPROVALS
PROJECT NUMBER E15-01
RUNWAY 8/26 REHABILITATION PROJECT (PHASE 2A)**

SUMMARY

Staff seeks an Operations and Development Committee ("Committee") recommendation to the Commission that it:

- i) Award a construction contract in the amount of \$8,098,985 to PALP, Inc., dba Excel Paving Company ("Excel Paving"), for the construction of Phase 2A of the Runway 8/26 rehabilitation project;
- ii) Authorize the issuance of a work order to the existing professional services agreement with RS&H for a lump-sum amount of \$875,782 for designer of record construction administration services, on-site technical services, inspection and materials testing;
- iii) Approve the deployment of the TBI Force Account, including in-house consultants for project/construction management services, field observation and security for a not-to-exceed amount of \$550,000; and,
- iv) Authorize the establishment of a Project Aggregate Contingency of \$600,000, which is approximately 6% of the total Phases 1A and 2A project costs.

PROJECT DESCRIPTION AND PHASING

Approximately every ten years, the Authority must rehabilitate both runway pavements. Staff has identified a multi-phase runway rehabilitation and Engineered Materials Arresting System ("EMAS") program to be executed over the course of three (3) fiscal years (FY 2016, FY 2017 and FY 2018).

Phase 1A	Design for Runway 8/26 Rehabilitation
Phase 1B	Bridging documents for Runway 8/26 design-build EMAS
Phase 1C	Design for Runway 15/33 Rehabilitation
Phase 2A	Runway 8/26 Rehabilitation – Encompasses the construction phase of Runway 8/26 in FY 2017
Phase 2B	EMAS – Encompasses the design-build phase of the EMAS in FY 2017
Phase 2C	Runway 15/33 Rehabilitation – Encompasses the construction phase of Runway 15/33, which will be proposed to be included in the FY 2018 Capital Plan

BACKGROUND

Runways 8/26 and 15/33 were originally reconstructed in the early 1980s after the Authority acquired the Airport (then named Hollywood-Burbank Airport). Due to normal wear and

tear, Runways 8/26 and 15/33 were subsequently rehabilitated in several phases in the 1990s and were last rehabilitated ten (10) years ago, in 2006. They now, again, require rehabilitation. This rehabilitation historically has consisted of removal and replacement of the asphalt pavement, with only as much removal as can be placed each night so that the runways are made operational each day. This process requires complete removal of the entire thickness of pavement. Each time the runways were rehabilitated, the process of milling and removing the pavement required increasingly thicker pavements (with the original four-inch thick pavement now five inches thick). Because five-inch thick pavement is the upper limit on single layer pavements, a different rehabilitation method is required.

PROJECT DETAILS

The Authority engaged the firm of RS&H under a \$1,085,770 professional services agreement to design both the Runway 8/26 and 15/33 Rehabilitation projects along with the preparation of the bridging documents for the design-build solicitation of the EMAS component of the project. The Runway 8/26 Rehabilitation Project (Phase 2A) will encompass replacement of the existing five-inch thick pavement and a portion of base material with an eight-inch hot mix asphalt ("HMA") runway pavement. The project runway rehabilitation will actually result in a more durable runway, due to the increased thickness of the pavement, without any alteration to the elevation of the runway. It will allow future rehabilitation projects to simply remove only four inches of bituminous pavement and replace with four inches of bituminous pavement.

Because of funding limitations from the Federal Aviation Administration ("FAA"), the project has been split into several phases. Phase 1 was implemented in FY 2016; Phases 2A and 2B will be implemented in FY 2017, and Phase 2C is proposed to be implemented in FY 2018. Phase 1A, the design for Runway 8/26, is \$484,343.

DBE PROGRAM

The Commission's recently adopted "race-conscious" Disadvantaged Business Enterprise ("DBE") Program goal of 14% was incorporated into the construction bid documents. Staff held a mandatory pre-bid meeting and job walk on May 11, 2016, at 10:00 a.m. in the Airport Skyroom as a means by which disadvantaged, local, and small contractors would be afforded the opportunity to meet the prime contractors intending to bid the project. An "eblast" email was sent to several hundred contractors—General Contractors ("Primes"), DBEs, and local and Small Business Enterprises ("SBEs")—in advance of the pre-bid meeting, utilizing an email list assembled during the outreach phase of the Regional Intermodal Transportation Center project.

PROCUREMENT (SOLICITATION/BID EVALUATION/RECOMMENDATION FOR AWARD)

Staff initiated the bid process on April 26, 2016, by posting bid documents on PlanetBids and advertising in the *Dodge Construction News* and local and minority newspapers, reaching out to DBEs and local construction companies, and providing public postings on the Internet and in the Burbank, Glendale and Pasadena city halls. Bids were opened publicly on May 26, 2016, and four (4) contractors submitted bids with the following results:

CONTRACTOR	BID	"Good Faith"	DBE %
PALP, Inc. dba Excel Paving Company (Long Beach, CA)	\$8,098,985.00	Yes	1.40%
C. A. Rasmussen, Inc. (Valencia, CA)	\$8,419,182.60	Yes	14.30%
Griffin Company (Santa Fe Springs, CA)	\$8,478,994.70	Yes	3.75%
Sully-Miller Contracting Company (Brea, CA)	\$9,731,712.40	Yes	8.70%

DBE PROGRAM – BID EVALUATION

Following receipt of the bids, the Staff DBE Liaison evaluated the responsiveness of each bidder specifically as it pertained to DBE Participation, to confirm attendance at the mandatory pre-bid conference, and, further, to confirm that each bidder who was not successful attaining DBE Participation of 14% provided evidence of "good-faith" efforts as defined by 49 CFR Part 26.53. The DBE Liaison determined that all of the bidders provided evidence that they engaged in "good-faith" efforts to secure DBE participation. The apparent low bidder, PALP, Inc. dba Excel Paving Company ("Excel Paving"), provided evidence that it contacted forty-seven (47) DBE subcontractors, further provided evidence that it subsequently received bids from thirteen (13) DBE subcontractors and ultimately included two (2) DBE suppliers/vendors as part of its bid, which represents a DBE Participation commitment of 1.4% of the total bid amount and will provide trucking and traffic control services.

ENGINEERING – BID EVALUATION

The bids were evaluated by Staff to determine responsiveness to the bid documents. Staff inspected the inventory of documentation required of each bidder and determined that all bids were "responsive" as 100% of the documentation requirements was received from each bidder. An additional evaluation was conducted to determine whether there were any bid anomalies, and it was determined that each bidder bid the entirety of the scope of the project.

BID PROTEST

On June 15, 2016, C. A. Rasmussen, Inc., ("Rasmussen") filed a bid protest contending that Excel Paving's bid is non-responsive for failing to reach the DBE goal and failing to perform a good faith effort to do so. In accordance with the bid protest procedure for this project, Staff provided Excel Paving an opportunity to respond to the bid protest, and Excel Paving submitted written comments on June 24, 2016. The Executive Director then duly evaluated Rasmussen's allegations, Excel Paving's bid materials, and Excel Paving's response to the bid protest. Additionally, the Executive Director considered a memorandum from the DBE Liaison describing in detail the basis for the finding that Excel Paving had satisfied the good faith efforts requirement. Based on this information, the Executive Director rejected the bid protest. Copies of Rasmussen's bid protest, Excel Paving's response to the bid protest, the DBE Liaison's memorandum, and the Executive Director's determination are attached.

ENGINEER'S ESTIMATE

An Engineer's Construction Estimate prepared by RS&H estimated the construction cost for Phase 2A at \$8,420,000 (excluding contingency). The four (4) bids range from 3.81% below

-3-

the engineer's estimate to 15.57% over the engineer's estimate. It is noted that the highest bid, which had the highest DBE participation, did so by using a DBE pavement grooving subcontractor whose unit costs were four times the cost of the non-DBE pavement grooving subcontractor (comparison of \$1.90/SF vs. \$12.00/SF).

SCHEDULE

The contractor's performance period is 195 calendar days and shall commence as soon as possible following Commission approval, following receipt by Staff of all contractual prerequisites to the commencement of construction and following the issuance of a Notice to Proceed.

CONSTRUCTION ADMINISTRATION; TECHNICAL SERVICES AND TESTING

As part of the competitive selection process for the design team, RS&H was also selected to provide construction administration, and inspection and materials testing services. Those services include regular site visits, weekly progress meeting participation, materials compliance testing (quality assurance/quality acceptance), compaction testing, non-compliance reporting and corrective actions followup, FAA Acceptance Testing Summary reporting. Staff negotiated Work Order #2 with RS&H in the lump-sum amount of \$875,872.

FORCE ACCOUNT (TBI) / IN-HOUSE CONSULTANTS

Project and construction management, field coordination, and security is proposed to be performed by the combined TBI Engineering, Operations and Maintenance Departments and two "in-house consultants"—Azrial (Dan Lichtner) and EQLaunch (Randy Duncan)—for a budgeted amount of \$550,000, which is 5.5% of all costs. These efforts will be augmented by RS&H and its subcontractors in areas where additional assistance or expertise is required.

OPERATIONS IMPACTS

Construction will primarily be performed during night shifts, with the contractor authorized to work seven (7) days per week. The contractor is afforded up to ten (10) Saturday night simultaneous closures of both Runway 8/26 and Runway 15/33. There are substantive contractually imposed liquidated damages for failure to complete the work prior to scheduled commencement of airport operations each morning. These liquidated damages are assessed in terms of "minutes" of delay.

Staff will communicate regularly with the airlines and will provide advance notification over the course of the delivery of the project. Construction activities will preclude the use of Runway 8/26 for normal airside operations during hours of construction work. The runway and associated movement areas will be reopened after each shift in time each morning to commence with normal airside operations.

BUDGET APPORTIONMENT

The following chart summarizes all of the costs for the Phase 2A project (including Phase 1A Runway 8/26 design):

CATEGORY OF WORK	AMOUNT	% of Costs	Hard Costs	Soft Costs	Project Contingency
Design (Phase 1A portion)	\$ 484,343	4.8%		4.8%	
Construction	8,098,985	80.9%	80.9%		
Construction Administration/Testing	875,782	8.7%		8.7%	
TBI Force Account / In-House Consultants Construction Management	550,000	5.5%		5.5%	
Total – Phases 1A and 2A	10,009,110	100%	80.9%	19.1%	
Project Aggregate Contingency	600,000				6.0%
Total Fiscal Impact (Phases 1A and 2A)	\$10,609,110				

The Project Aggregate Contingency of \$600,000 represents approximately 6% of the estimated total Phases 1A and 2A costs (6% of \$10,009,110). In the event additional contingency is needed, Staff will come back to the Committee and the Commission to seek authorization to utilize additional contingency.

The percentage distribution between the various categories of work is within the historic range of costs for similar projects, with soft costs typically ranging between 15% and 25% of airfield projects.

FISCAL IMPACTS

The Phase 2A project is to be funded through an FAA grant and Passenger Facility Charges (“PFCs”) for \$12,000,000. The FAA grant application was submitted to the FAA on March 28, 2016. FAA policy requires that the Authority obtain construction bids before receiving federal grant funding. There are no fiscal impacts other than the planned utilization of airport funds for the grant matching portion of the project prior to receiving approval of PFC utilization by the FAA.

BUDGET IMPACTS

The Runway 8/26 Rehabilitation Project – Phase 2A is part of the Runway 8/26 and EMAS Project, within the “Runway / Taxiway / Roadway Projects” section of the proposed FY 2017 (FY 2016/2017) Capital Plan with an approved budget of \$17,000,000 defined as Phase 2A and Phase 2B. The Runway 8/26 Rehabilitation Phase 2A total project budget is \$12,000,000, whereas, the EMAS Phase 2B total project budget is \$5,000,000 and is being procured under a separate design-build solicitation that will be brought to the Committee and Commission for approval at future meetings.

STAFF RECOMMENDATION

Staff seeks a Committee recommendation to the Commission that it:

- i) Award a construction contract in the amount of \$8,098,985 to Excel Paving for the construction of Phase 2A of the Runway 8/26 rehabilitation project;
- ii) Authorize the issuance of a Work Order to the existing professional services agreement with RS&H for a lump-sum amount of \$875,782 for designer of record construction administration services, on-site technical services, inspection and materials testing;
- iii) Approve the deployment of TBI Force Account including in-house consultants for project/construction management services, field observation and security for a not-to-exceed amount of \$550,000; and,
- iv) Authorize the establishment of a Project Aggregate Contingency of \$600,000.



C. A. RASMUSSEN, INC.

General Engineering Contractors
License No. 254681 A

Valencia Commerce Center
28548 Livingston Avenue
Valencia, CA 91355-4171
Telephone 661.367.9040
Fax 661.367.9099
www.carasmussen.com

VIA OVERNIGHT MAIL AND EMAIL – mjohnston@bur.org

To: Burbank-Glendale-Pasadena Airport Authority
Director of Engineering and Planning
2627 North Hollywood Way, Building #9
Burbank, CA 91505

Date: June 15, 2016

From: Eric Landegger
Chief Estimator
C. A. Rasmussen, Inc.

Project No. E15-01
Project: Runway 8-26 Rehabilitation

**Subject: EVALUATION OF EXCEL PAVING COMPANY'S GOOD FAITH EFFORT
PROTEST TO PENDING AWARD TO EXCEL PAVING COMPANY**

DBE Contract Goal: 14%
DBE Commitment by Excel Paving Company: 1.4%
Revised DBE Participation: 1.1%
Excel Paving Company Bid Amount: \$8,098,985
Bid Advertising Date: April 26, 2016
Bid Opening Date: May 26, 2016
Type of Work: Runway Rehabilitation

C. A. Rasmussen, Inc. (CAR) requested the bid documents for Excel Paving Company (Excel) from the Airport Authority on May 31, 2016. CAR received a portion of the bid documents on June 6, 2016 and the remaining good faith effort (GFE) portion on June 7, 2016.

CAR has reviewed Excel's good faith effort and DBE Commitment submittal, and has concluded that they did not meet the DBE goal for Project No. E15-01 and did not make a good faith effort to meet the goal. Based on this determination, Excel has not met the requirements for award of the contract. CAR is the lowest responsive, responsible bidder and should be awarded the Contract.

After reviewing Excel Paving Company's (Excel) DBE Commitment form, we determined that not all DBEs claimed for participation are eligible and cannot be counted toward the goal. Excel's GFE listed E-Nor Innovations, Inc. (E-Nor) for light tower rental on the DBE commitment form (exhibit 15-G). This is in conflict with the DBE participation form, in which Excel stated E-Nor will be providing traffic control services. In addition, E-Nor's work codes and/or NAICS codes do not cover work related to equipment rental for light towers. E-Nor's work codes, NAICS codes and state license numbers are:

NAICS 423990	Other Misc. Durable Goods Merchant Wholesalers (Signs (except electrical) merchant wholesalers, reseller
NAICS 541340	Drafting Services
NAICS 541620	Environmental Consulting Services
NAICS 561990	All Other Support Services (Flagging (i.e. traffic control) services
C1200	Construction Area Signs
C1201	Traffic Control System
C8700	Consultant, Non-engineering
C8765	Drafting
C9999	Broker
J9510	Environmental Quality
C31	Construction Zone Traffic Control Contractor
D42	Sign Installation

Finally, E-Nor's quote submitted within Excel's bid package does not include prices for renting light towers. For all of these reasons, the DBE commitment should not include renting light towers from E-Nor. After making this change to Excel's DBE commitment form, the total DBE participation should be reduced from \$110,000 (1.4 percent) to \$90,000 (1.1 percent) of the bid amount.

EVALUATION OF GOOD FAITH EFFORT DOCUMENTATION

Since Excel failed to meet the goal, it must demonstrate that it made a good faith effort to find DBE participation. Based on the documentation provided, Excel did not perform a good faith effort to meet the DBE contract goal for the reasons set forth below.

SUMMARY OF FACTS

- Excel solicited DBEs less than one week prior to the bid date.
- Excel did not solicit the vast majority of DBEs who are listed in the California Unified Certification Program (CUCP) who may have been available to participate on this contract.
- Excel did not follow through in good faith to receive quotes from DBEs that said they would be bidding according to Excel's telephone log.
- Excel did not utilize DBEs who were selected by the second and possibly third bidder for the same amount.
- Excel only achieved 1.1 percent DBE commitment while the next bidder exceeded the contract goal

1. Documentation of Solicitation and Publication Efforts

The job was advertised on April 26, 2016. Excel provided proof of publications for Compliance News Monthly Trade Journal & Daily Focus Journal for an ad published on May 19, 2016 – more than three weeks after the project was advertised and only one week prior to the bid date. This is an insufficient amount of time to expect DBE subcontractors to be able to respond and participate in the contract. Additionally, running only one daily advertisement would limit the number of DBEs who find the advertisement and respond.

In comparison, CAR advertised in publications on May 10 and May 13, 2016. Providing advertisements on multiple days and several weeks in advance shows significant good faith effort was made by CAR to meet the contract goal.

2. Initial Search Efforts

DBE firms identified by Excel: 46

DBE firms identified by CAR: 248

Excel did not provide a copy of their CUCP search for DBE subcontractors. CAR outreached to significantly more areas of work. Excel searched for subcontractors for only 16 areas of work; whereas, CAR searched for 26 work categories. This demonstrates that the additional effort made searching for DBEs by CAR resulted in a significantly higher amount of solicited DBEs. Excel did not perform outreach to the majority of DBEs listed in the CUCP that would have been available to participate on this contract.

3. Confirmed Solicitation Efforts

According to the DBE contact log provided by Excel, invitations to bid the project were telephoned, e-mailed and/or faxed to a total of 46 DBE firms on May 19, 2016 after 5 pm. Because this outreach was made after the close of business, it was done with only four working days left to respond prior to bid the opening. As with the advertisements, this window did not provide sufficient time for DBEs to respond.

CAR performed outreach to 248 DBEs on May 9, 2016, nearly three weeks in advance of the scheduled bid date. This provided CAR's DBE subcontractors ample time to respond and participate in the contract.

4. Rejected DBEs

DBE Bids Actually Received by Excel: 2

DBE Bids Actually Received by CAR: 8

None of the subcontractors listed on Excel's "Bidder's List Collection Form" are DBE firms. This is contrary to Excel's DBE participation forms. As part of their bid package, Excel included DBE participation forms from E-Nor and John Payne Trucking.

Excel's follow-up phone log identified thirteen (13) DBEs from which they anticipated receiving quotes for the project. However, Excel recorded receiving only two (2) DBE quotes, per the submitted participation forms, from E-Nor and John Payne Trucking. Additionally, according to

Section D of Excel's submittal package, the company claims to have rejected two (2) DBE firms (PCI and PRS) – neither are not DBE and therefore should not be counted.

Although Excel had initial confirmation that the above DBEs would be bidding on this project, they did not follow through and obtain the quotes to be able to consider them for award. Therefore, Excel was unable to provide evidence that they negotiated with the rejected DBEs that submitted reasonable quotes. Receiving these quotes and considering them for award could have considerably enhanced Excel's DBE commitment percentage.

Line No.	Item of Work	DBE Firm	Telephone Log Shows Will Bid (Y/N)	Quote Received (Y/N)
1	Grooving Spall Repair	Austin Enterprises	Y	N
2	Cold Milling, Grooving	Cindy Trump	Y	N
3	Asphalt Oil, Oil/Tack	E.M. Oil Transport	Y	N
4	Traffic Control	E-Nor Innovations	Y	N
5	Equipment Rental	Fine Grade Equipment	Y	N
6	Cold Milling	LMN Concrete & Grinding	Y	N
7	Asphalt Oil, Oil/Tack, Equipment Rental	LMS Transport/LMN Inc.	Y	N
8	Traffic Control	Maneri Traffic Control	Y	N
9	Equipment Rental	R.J. Lalonde, Inc.	Y	N
10	SWPPP, Testing	Sequoia Consultant, Inc.	Y	N
11	Asphalt Material	SM Sales	Y	N
12	Joint & Crack Repair, Spall Repair, Striping	Super Seal & Stripe	Y	N
13	Asphalt Trucking, Trucking (Hauling Removals)	YMD Material Broker	Y	N

5. Bidder Comparison of DBE Commitment

Bidder	Bid Amount	DBE Commitment	DBE Percentage
Excel	\$8,098,985.00	\$90,000.00	1.11%
CAR	\$8,419,182.60	\$1,200,886.80	14.26%

Excel utilized just one (1) DBE firm. CAR utilized five (5) DBE firms. Of these five firms that CAR utilized, Excel received initial confirmation from three (Sequoia Consultant, LMS Transport and Super Seal & Stripe) that they would be bidding on this project. However, Excel failed to show good faith by following through and obtaining their quotes.

CAR utilized a DBE surveyor whereas Excel did not. This was due to CAR actively and aggressively outreaching to more DBE work categories than Excel. Excel did not outreach to surveyors.

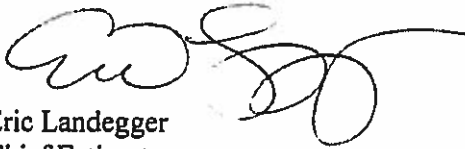
CONCLUSION

Excel's bid is non-responsive because they did not reach the DBE goal nor did they perform an adequate good faith effort to do so. Excel did not meet the requirements of 49 CFR § 26.53 and Appendix A. It is clear that because CAR performed a higher quality good faith effort to meet the contract DBE goal, CAR was able to not only reach the goal, but exceed it. CAR is the lowest responsive, responsible bidder and should be awarded the contract.

We request to be informed as soon as any staff reports or recommendations concerning any issues pertaining to the award of this contract are available.

Thank you in advance for your consideration and timely response on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Eric Landegger', with a long horizontal flourish extending to the right.

Eric Landegger
Chief Estimator
C. A. Rasmussen, Inc.

June 24, 2016

Mike Duong
Senior Manager, Business & Compliance
Hollywood Burbank Airport
2627 N. Hollywood Way Burbank, CA 91505
MDuong@bur.org

PROJECT: E15-01 Runway 8-26 Rehabilitation

SUBJECT: C.A. Rasmussen's Protest of Excel Paving's Bid

Dear Mr. Duong:

Excel Paving has reviewed C.A. Rasmussen's protest letter dated June 15, 2016. Excel was the lowest, responsive bidder with a total price of \$8,098,985.00, which was \$320,197.00 lower than Rasmussen's bid of \$8,419,182.00.

Prior to the protest, the Hollywood Burbank Airport Authority had deemed Excel's bid to be responsive and planned to award the project to Excel this month. The disruptive protest undermines the award process and has caused an unnecessary delay. Based on the fact that Rasmussen's protest was late and therefore invalid, the Airport should summarily dismiss the protest. Furthermore, the Airport makes (and indeed in this case, had already made) the final judgment regarding bid responsiveness, not Rasmussen. The Airport should continue with its plan, award the project to Excel, and avoid any other delays.

Per the "Bid Protest Procedure" specifications found on page 26, Section VI., Part B., "any bid protest regarding the evaluation of bids or award of contract must be filed no more than five days after bid opening." Rasmussen's protest was filed on June 15, 2016, which is 20 days after the bid date of May 26, 2016. Therefore, Rasmussen's protest was not filed per the specifications and should be disallowed.

Rasmussen requested information from the Airport six days after the bid, which was already past the deadline. Even if Rasmussen is given a second chance by starting the five day window after Rasmussen received the requested information, Rasmussen still did not file their protest (a.k.a., attempt to have all bids rejected) within the timeframe; the protest was filed eight days later.

If bidders do not follow the established bid protest rules, then bidders could conceivably protest a bid at any time, even after the project has been awarded or even started. The Airport set the protest deadline to protect its interests, finances, and schedules.

The Airport spent over two weeks analyzing and reviewing Excel's Good Faith Effort (GFE) and subcontractors. The Airport's due diligence led to the conclusion that Excel's bid was

responsive. *Appendix A to Part 26* states: "We emphasize, however, that your (the Agency's) determination concerning the sufficiency of the firm's good faith efforts is a judgment call." The judgement is solely made by the Airport, and the Airport concluded that Excel's bid was responsive. Rasmussen's conclusion carries no weight and Rasmussen should not be in a position to second guess the Airport's decision, especially three weeks after the bid date.

Appendix A also states that, "Determinations should not be made using quantitative formulas." Rasmussen's protest attempts to falsely force quantitative measures into the discussion as a determination of a GFE. The Airport has made the final determination and Rasmussen should not be the arbitrator of bid responsiveness. Imagine the chaos if every bid was protested and delayed by a biased GFE review by the second bidder.

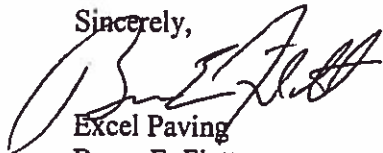
Excel performed a GFE per the specifications and submitted documentation per the deadlines. For the last 25 years, Excel has successfully participated in several hundred federally funded projects and bids. Excel's GFE followed the Caltrans format, which is used by nearly every agency. Excel's GFE met the requirements listed in *Appendix A to Part 26*, and Part IV of the Appendix states that the items listed are, "not intended to be a mandatory checklist, nor is it intended to be exclusive or inclusive or exhaustive." This again highlights the fact that the determination of the GFE responsiveness is a judgment call to be made by the Airport.

In the end, this was a competitive bid. Excel took every measure to make sure that all qualified companies could participate in this project, and at the same time, provided the lowest, responsive bid to the Airport.

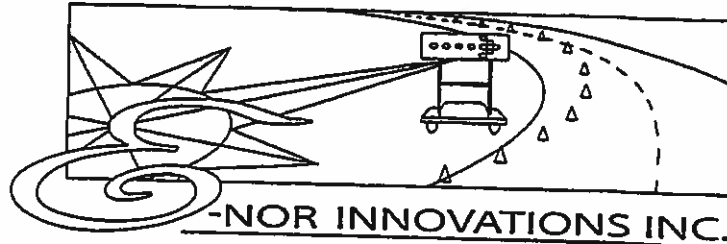
Rasmussen also raised an objection that light towers are not related to traffic control. Excel disagrees and has used light towers as part of traffic control for all night time projects. Excel has worked with E-NOR Innovations (a DBE / DVBE / SBE / MBE company) for years (please see attached letter from E-NOR). Even before E-NOR, Excel rented light towers from traffic control companies for night time projects, including past projects at the Burbank Airport.

In conclusion, Excel believes that the Airport should summarily dismiss the protest and continue with its initial plan and award the contract to Excel because Excel submitted the lowest, responsive bid per the specifications.

Sincerely,



Excel Paving
Bruce E. Flatt
Vice President



DVBE/SBE CERTIFIED CO. LIC. #931953

DBA: E-nor Traffic Control

16213 Illinois Ave. Paramount, CA 90723
(310)513-6209 Ph 310-513-6299 Fax

DVBE/SBE# 37084

UDBE/DBE/MBE/SBE#37718

Public Works DIR#1000007079

Date: 6/24/16

Project Name: BURBANK AIRPORT


RE: Light Tower Rental

E-nor Innovations Inc. provided an estimate for light towers for the Burbank Airport to Excel Paving Co. Light tower rental is standard practice in our industry and daily operation for our company.

Excel Paving Co. is a valued customer of ours and continually utilizes our services when needed. As a Disabled Veteran and Minority owned company, we appreciate the opportunities Excel affords us to participate on project such as this.

We look forward to working with them on this project, allowing us to grow our business and keep our employees working.

Thanks,


Kenny Jones
Vice President

INTER-DEPARTMENTAL COMMUNICATION



To: Dan Feger

Date: June 29, 2016

From: Mike Duong

Subject: Project E15-01 Project

I. Chronology

On May 26, 2016, bids were opened for Project E15-01 (Runway 8-26 rehabilitation) with PALP dba Excel Paving (Excel) being the lowest bidder at \$8,098,985 with DBE participation of 1.4% (\$110,000 in total).

On May 31, 2016 C.A. Rasmussen (CAR) emailed the Authority requesting a copy of Excel's bid documents.

On June 2, 2016 a second request from CAR was emailed requesting bid documents.

On June 6, 2016 a third request from CAR was emailed requesting bid documents and Staff provided the bid documents via email to CAR.

On June 7, 2016 CAR requested the Good Faith Efforts documentation from Excel's bid and Staff emailed the Good Faith Efforts documentation to CAR.

CAR filed a protest which was dated and received by Staff on June 15, 2016 asserting that Excel did not meet the Good Faith Efforts requirement as outlined in Appendix A of 49 CFR Part 26 (Part 26).

Staff provided the protest letter to Excel on June 21, 2016 for review and for an opportunity to respond. Excel submitted a response to Authority on June 24, 2016.

II. Evaluation of Excel's Good Faith Efforts Documentation

Disadvantaged Business Enterprise Liaison Officer's (DBELO) response to the protest is as follows:

The DBELO reviewed the good faith effort conducted by Excel to ensure that Excel adhered to the guidelines outlined in Appendix A of Part 26.

The DBELO confirmed that Excel did meet Section IV (A) of Appendix A by soliciting interest in DBEs through fax, email and advertisement through Compliance News Daily Focus Journal and the Compliance News monthly Trade Journal in addition to soliciting information and requests prior to the bid due date from 12 agencies whose members are comprised of minority and disadvantaged businesses and companies. Excel was able to solicit bids from several DBEs, with two committing to provide subcontract work. DBELO reached out at random, to 10% of the DBE participants on Excel's Bidder's list to confirm if they had in fact been contacted by Excel and if the comments by Excel confirmed the actions of the DBE on whether they would bid the project or not. All participants contacted by the DBELO confirmed that they were contacted by Excel and verified if they had submitted a bid.

Excel met Section IV (B) of Appendix A by breaking out the items of work offered to DBE Firms (approximately 65% of total work) which included asphalt material, striping, traffic control and trucking.

Excel met Section IV(C) of Appendix A by specifically providing the PlanetBids URL in which the bid solicitation from the Airport could be downloaded in addition to having the document available on its own FTP site. Copies of the bid documents were also made available at their office in Long Beach.

Excel met Section IV (D) of Appendix A by soliciting participation of two firms that are listed in the DOT website under the California Unified Certification Program. (E- Nor Innovations Firm ID 37718 and YMD Trucking Firm ID 37852). DBELO will monitor the project post award to ensure that both DBE firms are utilized during the project. Excel Paving broke out items that DBE firms could potentially bid on and provided a bidder's list that outlined the names, addresses and contact information of DBEs that were contacted for participation. Excel Paving also provided information on DBE firms that were rejected in lieu of non DBE firms confirming that negotiations between DBE and non DBE subcontractors had taken place.

Excel met Section IV (E) of Appendix A by itemizing and breaking down project components including work that the Prime could normally perform.

Excel selected the DBE subcontractors whose quotes were competitive relative to the other subcontractors bidding on the same type of work. Firms whose quotes were uncompetitive or unreasonable were not selected for the project.

Excel met Section IV (F) of Appendix A by displaying in its outreach faxes and advertisements that assistance would be provided in obtaining bonding, lines of credit, or insurance as required.

Excel met Section IV (G) of Appendix A by displaying in its outreach faxes and advertisements that assistance would be provided in necessary equipment, supplies and materials.

Excel met Section IV (H) of Appendix A by reaching out to 12 local community outreach agencies for information and potential placement of potential DBE subcontractors. Agencies included the Engineering Contractors Association, National Association of Minority Contractors, Southern California Minority Business Development, American Indian Chamber of Commerce, National Association of Women Business Owners, Latin Business Association, Chinese American Construction Professionals Association, Korean Chamber of Commerce, Black Business Association, Asian Business Association, Asian American Engineer's Association, American Indian Enterprises.

III. Conclusion

Overall, although Excel did not meet the contract goal of 14% (3 out of 4 bidders were not able to meet the contract goal), Excel did however conduct a good faith effort in soliciting, obtaining and contracting with DBEs for portions of the overall project. The DBELO does not believe the CAR protest has merit.



July 1, 2016

Eric Landegger, Chief Estimator
C.A. Rasmussen, Inc.
28548 Livingston Avenue
Valencia, CA 91355

Re: Project Number E15-01 Runway 8-26 Rehabilitation - Bid Protest

Dear Mr. Landegger:

In a letter dated and received on June 15, 2016, C.A. Rasmussen Inc. ("CAR") protested the bid submitted by Excel Paving Company ("Excel") for the above-referenced project. The bid protest contends that Excel is non-responsive for failing to reach the DBE participation contract goal for this project and failing to perform a good faith effort to do so. Although the bid protest was filed 20 days after the deadline specified by the bid protest procedure for this project, I have considered CAR's contentions on the merits. For the reasons discussed below, I am rejecting the protest.

In evaluating whether bidders have made sufficient good faith efforts to meet a DBE participation contract goal, the Authority must follow the Federal Aviation Administration guidance set forth at Appendix A of 49 C.F.R. Part 26. As reflected in the following passage from Section II of Appendix A, this determination requires an exercise of judgment:

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

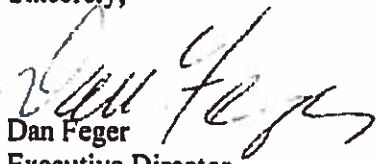
Section IV of Appendix A sets forth a list of factors that agencies must consider when determining whether a bidder has satisfied the good faith effort requirement. However, this list "is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive." An agency cannot ignore bona fide good faith efforts.

Utilizing this regulatory guidance, I have considered CAR's protest letter, Excel's bid materials, Excel's response to CAR's protest letter, and a memorandum from the DBE Liaison describing in detail the basis for his finding that Excel satisfied the good faith efforts requirement. Based on this information, I have determined that Excel made bona fide good faith efforts to meet the DBE goal for this project. Accordingly, CAR's bid protest is rejected.

Eric Landegger, Chief Estimator
C.A. Rasmussen, Inc.
Project Number E15-01 Runway 8-26 Rehabilitation - Bid Protest
July 1, 2016
Page 2

The Authority appreciates CAR's participation in this bid solicitation and encourages your firm to pursue other projects at the Bob Hope Airport.

Sincerely,


Dan Feger
Executive Director

cc: Bruce E. Flatt, Vice President, Excel Paving Company