

**THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
OFFICE OF CONTRACT ADMINISTRATION
MUNICIPAL BUILDING
NEW YORK, N.Y. 10007-2341**

**Scott M. Stringer
Comptroller**

Date: 7/28/2021

Lisa M. Flores
Deputy Comptroller for Contacts and Procurement

To : LORRAINE HOLLEY
From : FLORES, LISA
Re: Contract No. : 20211424946
Batch No. : 1011251958

The referenced contract transaction is being rejected or returned to you because of the reason(s) stated below. The contract transaction package can be picked up at the Central Image Facility Room 1225, Municipal Building

Reason(s) for Contract Transaction Rejection or Return

1 SEE COMMENTS

Comments

The above-referenced contract submission is being returned to allow the agency additional time to address the following:

1. Explain the Mayor's Office of Contracting Services (MOCS) determination, as noted in their e-mail dated 7/22/2021, that the PASSPort profile for the vendor, IPC Resiliency Partners (IPC), does not also need to reflect the disclosures found in PASSPort for any of the three controlling entities of Iovino Associates JV (specifically MLJ Contracting Corp., J-Track LLC, and Welkin Mechanical LLC), given that Iovino Associates JV is actually listed as a controlling entity of IPC. Instead, MOCS determined that IPC's PASSPort profile need only list the disclosures and cautions for CAC Industries, which was then only approved and posted mid-morning today, 7/28/2021. NYC Administrative Code §6-116.2 and PPB Rule § 2-08 regarding disclosures and responsibility determination requires full disclosure of material requirements for registration. The creation of new entities or ventures for the limited purpose of contracting for a particular project does not entail a block to responsibility investigations of all the comprising entities related to the project, as new entities could then be constantly formed to veil any adverse findings of their comprising members. Consider the following:

- a) The vendor, IPC, is a partnership of three firms: lovino Affiliates JV (which itself is a tri-venture of MLJ Contracting Corp., J-Track LLC, and Welkin Mechanical LLC), Posillico Civil Inc., and CAC Industries Inc.
- b) Upon initial registration review, it was found that there were disclosures and/or cautions for both CAC Industries, and for all three controlling members of lovino Affiliates JV (MLJ, J-Track, and Welkin Mechanical), for either themselves, or, in some cases, their affiliates.
- c) On 7/7/2021, the Agency was asked to “explain why the PASSPort profile for lovino Affiliates JV does not also reflect the PASSPort disclosures and/or cautions for any of the 3 underlying firms: MLJ Contracting, J-Track, or Welkin Mechanical.” The Agency was also asked on 7/7/2021 to “explain why the PASSPort profile for IPC Resiliency Partners does not also reflect the PASSPort disclosures and/or cautions for the aforementioned three lovino Affiliates JV firms, or CAC Industries.” Finally, the Agency was asked to justify why the originally provided Responsibility Determination did not address some of the found disclosures and/or cautions in PASSPort under the individual PASSPort profiles for CAC Industries, Welkin Mechanical LLC, MLJ Contracting and J-Track LLC.
- d) On 7/14/2021, the Agency replied that both lovino Affiliates JV and IPC had “been notified to update their PASSPort disclosure.” The Agency also provided a revised Responsibility Determination including the omitted information.
- e) On 7/21/2021, the Agency was asked for a status update on the PASSPort changes since they still had not posted as final for either IPC or for lovino Affiliates JV, and such disclosures are a material requirement for registration to comply with the PPB Rules Section 2-08 regarding disclosures and responsibility determination.
- f) On 7/22/2021, the Agency then replied with a new response that “[a]s per MOCS, the vendor only needs to disclose information on itself, principal entity owners/controlling entities, and any affiliates (in terms of entities). They stated that only CAC’s information needs to be disclosed on IPC’s PASSPort profile. IPC is currently working on updating their profile. We expect to have the update posted to PASSPort by July 23, 2021.” The agency further responded that “DDC will work with MOCS to have the updated information finalized in PASSPort once IPC’s profile has been updated.”
- g) On 7/26/2021, the Agency was asked for a status update (as changes still had not been approved and posted in PASSPort), and to clarify MOCS’ determination that IPC’s and lovino Associates’ JV PASSPort profiles do not need to also disclose the information found under the PASSPort profiles for MLJ Contracting, J-Track, or Welkin Mechanical, given that these three firms are controlling entities of lovino Associates JV, which in turn is a controlling entity of IPC.
- h) Further, the Agency was asked on 7/26/2021 to explain how they found the vendor to be responsible, given that these PASSPort disclosures were still missing as of 7/26/2021, and how “the firm and the Agency has complied with the requirements of PPB Rules Section 2-08 and the New York Administrative Code to find IPC as responsible, given that [the vendor] ha[s] an obligation to file all disclosures truthfully and completely (for themselves, their principal/controlling entities, and any affiliates), MOCS has a responsibility as maintainer of the PASSPort system to review such filings and populate resulting cautions, and the Agency then has an obligation to review such disclosures

and cautions to determine that the vendor is responsible.”

i) On 7/27/2021, the Agency replied that “[a]ll information was provided to MOCS. See attached email from MOCS where they state that IPC only needs to update their profile to disclose the information for CAC,” and that “IPC’s profile information has been updated in PASSPort and is under review with MOCS.” The response did not clarify why that determination applied, and how our interpretation was incorrect.

j) Mid-morning on 7/28/2021, the IPC’s PASSPort profile was finalized to post the PASSPort disclosures and cautions for CAC Industries only, but it does not reflect any of the disclosures and cautions found for MLJ, J-Track, and Welkin Mechanical.

2. The agency has set a 16% M/WBE utilization goal for this \$1,272,222,100 contract action, despite the City’s publicly stated goal of 30% of M/WBE utilization across all LL1 city procurement. The 16% utilization goal for this contract corresponds to a calculated M/WBE amount of \$203,555,376, compared with the City’s 30% goal, which would correspond to \$381,666,330 for M/WBEs on this contract. This is a difference of \$178,110,954. This 16% utilization goal is justified by the agency, as per narratives in the M/WBE Goal Setting Worksheet and prior responses to questions, by stating that 16% was the maximum percentage of the contractual work that could be subcontracted due to the nature of the project, and that the “work will be done simultaneously and due to the nature of this contract, majority of the line items are specialized and cannot be broken up further. After coordination with the Program unit, we have exhausted all potential subcontracting line items for this contract” (emphasis added). However, the winning vendor indicated in their Schedule B that 32% of total work could be subcontracted. Thus, the assumptions by the agency regarding total subcontracting amount (which then formed the basis of limiting M/WBE utilization to 16%) in the M/WBE Goals Setting Worksheet were contradicted by the Schedule B and the winning vendor.

a) Why did DDC not re-evaluate the M/WBE participation goal once the vendor indicated the ability to subcontract more than the agency assumed could be done? As per the M/WBE Goal Setting Worksheet, the Agency only evaluated M/WBE availability for those line-items deemed able to be subcontracted. Thus, the additional 16% of subcontracting could have significant M/WBE availability and potential utilization that has not been considered by the agency in setting a goal.

b) Did the agency engage in negotiations with the vendor on increasing the M/WBE utilization beyond the original goal that was based on an incorrect assumption, given that the agency has confirmed that the vendor plans to subcontract a total of \$395,456,000 of which \$203,556,000 will utilize M/WBE subcontractors, contrary to the justifications made by the agency in setting the M/WBE utilization goal?

c) Also explain why Section 4 of Schedule B indicates a 32% subcontracted amount, which would equate to a total of \$407,110,752, but then the vendor’s attached pages to Schedule B, where they actually listed the scope items and amounts being subcontracted only indicated \$395,456,000, which actually correlates to a subcontracting percentage of only 31.08% of the \$1,272,221,100 contract total.

Reviewed By: 3390

Approved: 3700

If you have questions or comments, please contact The Office of the Comptroller, Bureau of Contract Administration.