

Resolution 2012-2013: 126

Revision to Resolution 2012-2013: 107 Bar of MDI from future Phase 1 Contracts

By Board Giess

WHEREAS, the Rochester School Facilities Modernization Program Act (“the Act”) established the Rochester Joint Schools Construction Board (“RJSCB”), a seven voting member board consisting of equal representation by the City of Rochester (“City”) and the Rochester City School District (“District”), as well as a member jointly selected by the City and the District; and

WHEREAS, under the Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, Vargas Associates (the “Move Management Consultant”), with the advice of the RJSCB’s Executive Director and its general counsel, prepared a request for qualifications/bids (“Request for Bids”) package for furniture and equipment moves in preparation for the start of construction at four of the Phase 1 schools (School 17, School 50, School 58, and Charlotte High School); and

WHEREAS, the RJSCB authorized the release of the Request for Bids at its monthly meeting on April 9, 2012 (Resolution 2011-12: 91); and

WHEREAS, the Executive Director received bids on May 15, 2012, and those bids were subsequently publicly opened and read aloud at the location stated in the Request for Bids; and

WHEREAS, the Program Manager, Move Management Consultant and Independent Compliance Officer (“ICO”) reviewed the bids submitted, conducted de-scoping meetings, and concluded that the apparent low bidder for each scope of work package was also a qualified and responsible bidder; and

WHEREAS, the RJSCB developed, approved and adopted a preliminary diversity plan (“Diversity Plan”) designed to increase the number of minority and women owned businesses entities as well as small business and disadvantaged entities contracting with the RJSCB to perform work on the various projects for the RSMP; and

WHEREAS, the Request for Bids included the diversity goals from the Diversity Plan and stated that each company providing services on the projects for the RSMP needed to comply with the goals and submit the utilization plan and other forms which were attached to the Request for Bids; and

WHEREAS, MDI represented throughout the bid process and during de-scoping meetings that it was aware of, understood and would comply with the diversity goals as outlined in the Diversity Plan and included in the Request for Bids; and

WHEREAS, MDI indicated in its sworn statement of bidder qualifications (“Sworn Statement”), dated May 14, 2012, and its contract documents, on form DDP-1, dated July 2, 2012, that it would comply with the diversity goals by utilizing the services of certain minority-owned, women-owned and small business entities; and

WHEREAS, based in part upon the representations made in its bid and contract documents concerning its agreement to comply with the diversity goals set forth in the Diversity Plan, the RJSCB issued a

purchase order to MDI (Resolution 2011-12: 102) (the "Contract") to perform the scope of services defined in the contract documents for moving services; and

WHEREAS, the RJSCB has concluded that MDI willfully failed to utilize the services of any minority-owned, women-owned or small business entities in violation of its contractual obligations and in direct contradiction with MDI's utilization plan in the form DDP-1 dated July 2, 2012, and signed by MDI's CEO, Frank Zemer; and

WHEREAS, under the penalty provisions set forth in the Diversity Plan, the RJSCB, through its ICO, has certain enumerated powers to address the willful failure of a prime contractor, supplier, professional service firm or other business providing goods or services to the Program, to comply with the goals and provisions of the Preliminary Diversity Plan; and

WHEREAS, the RJSCB considered and discussed the above at its monthly Board meeting on February 4, 2013, and subsequently approved Resolution 2012-2013: 107 designating MDI as a non-responsive bidder for all future contract bid in Phase 1 of the RSMP; and

WHEREAS, following the approval of Resolution 2012-2013: 107, the Move Management Consultant brought certain concerns to the attention of the Program Manager relating to the possibility of MDI participating as a subcontractor, vendor, or supplier to another prime contractor or the possibility of another named firm owned or managed by the same Officers and Directors of MDI participating in future contracts; and

WHEREAS, the RJSCB MWBE and Services Procurement Committee further discussed the concerns raised by the Move Management Consultant related to MDI's participation in future contract bids at its meeting on February 28, 2013;

THEREFORE, BE IT RESOLVED:

1. Move, Design & Installation Services (MDI), or any of its Officers and/or Directors, is hereby designated a non-responsive bidder for all future contract bids in Phase 1 of the RSMP.
2. Any other firm owned in full by Move, Design & Installation Services (MDI) or any of its Officers and/or Directors, or managed in whole or in part by any Officer and/or Director of MDI, or in which MDI or any Officer and/or Director of MDI has a controlling interest, is hereby designated a non-responsive bidder for all future contract bids in Phase 1 of the RSMP.
3. Any prime bidder for any future contract bid issued by the RJSCB for Phase 1 of the RSMP who includes Move, Design & Installation Services (MDI), or any firm owned in full by Move, Design & Installation Services (MDI) or any of its Officers and/or Directors, or managed in whole or in part by any Officer and/or Director of MDI, or in which MDI or any Officer and/or Director of MDI has a controlling interest, as a subcontractor, vendor, supplier, or joint venturer will be designated a non-responsive bidder.

Second by Member Pifer

Approved 6-0 with Member Castro away