



FROM THE DESK OF:
Anthony R. Traverso
Executive Vice PRESIDENT

May 2, 2023

City of Merced
Business Services & Engineering Department
678 West 18th Street Merced, CA 95340
Attn: Michael Beltran, City Engineer, Beltranm@cityofmerced.org
Paul Flores, Project Manager, floresp@cityofmerced.org
Joe Cardoso, Project Manager, cardodoj@cityofmerced.org
Maber Minami, Project Manager, minamia@cityofmerced.org

Re: Bid Protest from AMG & Associates, Inc. to Bid of Thompson Builders Corporation for Merced Yosemite Regional Airport Terminal Replacement – (PROJ NO. C230060)

Dear Mr. Beltran, Mr. Flores, Mr. Cardoso, & Ms. Minami,

AMG & Associates, Inc. ("AMG"), the lowest responsive and responsible bidder for the City of Merced ("City") Merced Yosemite Regional Airport Terminal Replacement Project ("Project") submits this bid protest letter. On April 27, 2023 at 2:00PM, AMG submitted its bid for the Project. While the City's tabulation of bid results indicates that AMG is the apparent second-low bidder, there are significant irregularities in the bid documents of the apparent low bidder, Thompson Builders Corporation ("Thompson"), which leads to the legal conclusion that AMG is the true lowest responsive and responsible bidder. This letter sets forth the legal and factual grounds for AMG's challenge of any potential award of the contract for the Project to Thompson.

1. The *Notice Inviting Bids, Section N-1*, clearly states: "Sealed bids for the work show on the plans will be received at the Office of the Purchasing Agent of the City of Merced, until 2:00PM (PST) on April 27, 2023." It was noted by representatives from AMG and Deide Construction that the bid package turned in by Thompson was not sealed and submitted **before** 2:00PM as required by the Notice to Bidders. The representative from Thompson was still outside the building at 2:00PM. Their bid should have been rejected immediately. Turning in their bid late gave Thompson an unfair time advantage that the other bidders did not receive. This was brought to the attention of the City representative when bids were turned in. This representative accepted Thompson's bid even though all of the bidders in the room saw that this bid was turned in after 2:00PM. This alone deems Thompson's bid non-responsive. Please see EXHIBIT 1 – NOTICE OF TIME AND DATE.

2. The *Instructions to Bidders, Completion of Bid Forms*, Clearly States: "Bidders should fill in all blank spaces." Thompson did not complete the *Bid Schedule* in full as required by the contract documents. In addition to not following the directions on the *Instructions to Bidders*, AMG submitted a Pre-Bid Question to the City regarding the completion of the *Bid Schedule*. This question was answered

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and posted to the City website by April 20, 2023. Question one asks if the City of Merced would consider allowing the General Contractors to turn in the *Bid Schedules* 24 hours after the bid, or would the City consider accepting the values in numbers only and allowing the General Contractors to turn in the words for each line item within 24 hours of the bid date. The response to this question was no. The *Bid Schedule* requirements are standard for FAA-funded projects and are required to analyze bids for being responsive and responsible. Thompson did not complete 1 of the 86 line items correctly. They also did not total each base bid in words and numbers as required. Thompson did not total their bid in the final page of the *Bid Schedule*. And finally, Thompson submitted the required *Bid Schedule* unsigned, with the addendums blank. This form cannot be overlooked as it was a requirement of the bid documents and was specifically clarified in the *Questions from Bidders* document. This gave Thompson a huge unfair time advantage that was not shared by the other bidders that completed their forms correctly. Neglecting to complete and submit the required information with their bid is grounds for rejecting Thompson's bid as non-responsive. See EXHIBIT 2 – COMPLETION OF BID FORMS.

3. The *Instructions to Bidders, Subcontractors*, clearly requires that all subcontractors performing work in excess of ½ of 1% of the total bid amount must be listed on the *Listing of Subcontractors* form. If a general contractor fails to specify a subcontractor, the contractor agrees that they are fully qualified to self-perform those trades. Thompson failed to list a subcontractor for Structural Concrete. This scope of work was approx. \$350,000. Thompson should have listed all subcontractors performing work valued over \$75,000, which is ½ of 1% of their total base bid. In addition to not listing a key subcontractor for which Thompson does not self-perform those scopes, Thompson also failed to List a License & DIR number for the Baggage Handling System subcontractor. Thompson also did not complete the % of Work section for Metal roof, Metal Panels, and TPO Roof. Another large error made by Thompson was listing the Casework subcontractor as Specialized Graphics. This is a Signage company that does not perform casework. This is evidence of another Bid Document that has not been completed correctly by Thompson, which also gave them an unfair time advantage. Please see EXHIBIT 3 – LISTING SUBCONTRACTORS.

4. The *Bid Form*, Page 23 asks the bidder to check if they are an individual, corporation, or partnership. Thompson Builders Corporation checked that they are an individual, not a corporation. According to their license they are listed as a corporation. In addition to they error on page 23, Thompson again did not complete their entity type on page 32 as part of the *Bidder Information and Experience Form*. This was left blank instead of inserting the entity type "Corporation". This is another error made on Thompson's bid documents. Please see EXHIBIT 4 – CORPORATION STATUS.

5. The Bid Form clearly states: "For bid to be considered "responsive" the following documents are required to be fully executed and submitted with your bid. Bidder is also required to submit the following written statements of qualifications (there are no templates for forms for these) at time of bid: EVIDENCE OF COMPETENCY AND EVIDENCE OF FINANCIAL RESPONSIBILITY" Each of these items refers the bidder to FAA General Provisions Section 20-02 of the project specifications for details. Bidders were



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required to submit full statements covering the bidder's past experience on similar work, a list of equipment and a list of key personnel that would be available for the work. Bidders were also asked to furnish satisfactory evidence of their financial responsibility. By omitting these sections, Thompson failed to submit a complete bid, therefore making it un-responsive. Please see EXHIBIT 5 – EVIDENCE OF COMPETENCY & FINANCIAL RESPONSIBILITY.

California law mandates that all bidders must properly complete their bid documents as required by the City's bid forms, especially where the failure to do so provides the non-complying bidders with a material advantage not shared by the complying bidders. All bidders must be afforded a "level playing field" when submitting bids to a public entity. As demonstrated herein, the Thompson bid is non-responsive because it is incomplete and it does not comply with the material requirements of the City's bid documents, which non-compliance provided Thompson with a material advantage over complying bidders. Under these circumstances, the City does not have the "discretion" to waive the errors and omissions in the Thompson bid; rather, Thompson's bid must be found non-responsive under California law.

AMG therefore respectfully requests that the City find the Thompson bid non-responsive, and that the City accept AMG's bid, the actual lowest responsive and responsible Bidder. AMG understands that the City needs to start this project right away and stands ready, willing, and able to perform the work set forth in its bid.

This letter also serves as a request under Government Code § 54954 for e-mailed notice of the City's meetings at which any issue pertaining to the award of this contract is on the agenda. If there is any fee for this service, please provide this information to us immediately so we can immediately inspect these reports and recommendations. Further, we request the right, on behalf of AMG, to address the City before or during consideration of any issue pertaining to the contract award as guaranteed by Government Code § 54954.3(a).

AMG reserves all rights and remedies



FROM THE DESK OF:
Anthony R. Traverso
Executive Vice PRESIDENT

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anthony R. Traverso', written over a light blue horizontal line.

Anthony R. Traverso
Executive Vice President – AMG & Associates, Inc.

Enclosures

EXHIBIT 1 – NOTICE OF TIME AND DATE

EXHIBIT 2 – COMPLETION OF BID FORMS

EXHIBIT 3 – LISTING OF SUBCONTRACTORS

EXHIBIT 4 – CORPORATION STATUS

EXHIBIT 5 – EVIDENCE OF COMPETENCY & FINANCIAL RESPONSIBILITY

cc: Albert M. Giacomazzi, President, AMG Associates, Inc. (via e-mail w/encls.)