



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: General Services  
Department No.: 063  
For Agenda Of: August 14, 2012  
Placement: Departmental  
Estimated Tme: 20 Minutes  
Continued Item: No  
If Yes, date from: N/A  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** General Services Robert Nisbet, Director (805-560-1011)  
Contact Info: Paddy Langlands, Assistant Director (805-568-3096)  
**SUBJECT:** Joseph Centeno Betteravia Administration Building “D” Addition,  
Project 8676 PH2 – Award Construction Contract; Fifth District

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Other Concurrence:** Risk Management

As to form: Yes

**Recommended Actions:**

That the Board of Supervisors:

- a) Find that the bid submitted by K.J. Cain, Inc. for the Joseph Centeno Betteravia Administration Building “D” Addition Project (Fifth District) is non-responsive;
- b) Reject the bid of K.J. Cain, Inc. on the basis that it is non-responsive;
- c) Find that Diani Building Corp. is the lowest responsible bidder submitting a responsive bid;
- d) Award a Fixed Price Construction Contract in the amount of \$902,000 to Diani Building Corp., subject to the provisions of the documents and certifications as set forth in the plans and specifications applicable to the project and as required by California Law;
- e) Authorize the chair to execute the Construction Contract upon return of the Contractor’s executed contract documents, and the review and approval of County Counsel, Auditor-Controller and Risk Manager or their authorized representatives;
- f) Authorize the Director of General Services or designee to approve change orders up to the limit specified in Public Contract Code Section 20142, or \$57,600 for this contract; and
- g) Find that pursuant to California Environmental Quality Act (CEQA) Section 15162, no substantial changes are proposed, and no new information of substantial importance has come to light regarding environmental effects of the project, and therefore the project is within the scope of the Notice of Exemption approved by your Board pursuant to 14 CCR 15301 on March 20, 2012, and that therefore no new environmental document is required.

**Summary Text:**

On March 20, 2012, the Board of Supervisors authorized General Services to advertise for bids for the Joseph Centeno Betteravia Administration Building “D” Addition Project. On June 28, 2012, five bids were received ranging from \$841,826 to \$1,287,290, with K.J. Cain, Inc. submitting what initially appeared to be the lowest bid. Following the bid opening, further review by staff found deficiencies in K. J. Cain Inc.’s bid, and soon after a bid protest was filed by another bidder which was found to have merit. Ultimately, K.J. Cain Inc.’s bid was determined to be non-responsive. Staff therefore recommends K.J. Cain, Inc.’s bid be rejected on that basis, and that the award be made to the next lowest bidder, Diani Building Corp., whom staff finds to have submitted the lowest bid that is responsive to the County’s Request for Bids. With Board approval of the recommended actions, the construction contract in the amount of \$902,000 will be awarded to Diani Building Corp., and the completion of the project will be scheduled for May 2013. No additional funds beyond those previously authorized by the Board are required as a result of the recommended Board action.

**Background:**

On May 10, 2011, the Board of Supervisors directed General Services to proceed with this project using a financing method recommended and approved by the Debt Advisory Committee (DAC). The total budget for the project is estimated to be \$1,387,000.

The existing 14,661 sq. ft. Joseph Centeno Betteravia Administration Building in Santa Maria (Building D) houses the Auditor-Controller, Clerk-Recorder-Assessor, CRA Elections, Treasurer-Tax Collector, Veterans Administration, and the Fourth and Fifth District Supervisor Offices. Additionally, the building is used as the Northern Santa Barbara County Board of Supervisors Hearing Room.

There are long standing space deficiencies within the Betteravia Government Center Administration Building. The Board of Supervisors Hearing Room is often times at or near capacity during Board proceedings, and at times has had insufficient capacity. Also, the building’s main lobby space is inadequate to current occupancy standards.

After studying several options, the proposed plans and specifications were deemed to be the most cost effective and efficient way to help alleviate the space deficiencies and improve hearing room function for public meetings. The proposed 2,000 sq. ft. addition includes the construction of a new lobby, men’s and women’s restrooms, the CSBTV office, and includes storage space for hearing room equipment. The project also minimally renovates the existing hearing room, including a revised entry, increased seating capacity, improved circulation, audio video improvements and new finishes.

On June 28, 2012, five bids were opened for the Joseph Centeno Betteravia Administration Building “D” Addition. Bids ranged from \$841,826 to \$1,287,290 with an average bid of \$1,017,433. K.J. Cain, Inc. of Santa Maria submitted what appeared initially as the low bid with their bid of \$841,826. However, further review by staff found deficiencies in the bid submittal, and on July 2, 2012, a letter protesting the consideration of the apparent low bid was received from the second lowest bidder, Diani Building Corp. The protest suggested that K.J. Cain, Inc.’s bid was non-responsive; asserting that K.J. Cain, Inc. failed to list subcontractors for fire protection and fire alarm work required of the contract. The provisions in California Public Contract Code Section 4104 (a) (1) require that a prime contractor list the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor, in an amount in excess of one-half of 1 percent of the prime contractor's total bid. Diani Building Corp.’s protest asserts that K. J. Cain, Inc. is not qualified or properly licensed to self-perform the fire protection and fire alarm scope of work. Diani states that by not listing a licensed fire alarm and fire protection subcontractor, Cain enjoyed an unfair advantage over

other bidders who had listed fire protection and fire alarm sub-contractors. K.J. Cain, Inc. submitted a written response to Diani Building Corp.'s protest on July 11, 2012. K.J. Cain, Inc. maintains that their bid submitted on June 28, 2012 is responsive. In the matter specific to the fire alarm subcontractor listing, K. J. Cain, Inc. states that the intent for the fire alarm system was not clear within the contract documents and, therefore, not bid; although K. J. Cain, Inc. suggests that it can be accomplished through a change order. It should be noted that Diani Building Corp.'s bid includes the fire alarm and fire protection subcontractor's listings.

Staff, having reviewed K. J. Cain, Inc.'s bid, the protest, and the other bids submitted, finds that K.J. Cain, Inc.'s bid should be considered non-responsive based on the following:

1. K.J. Cain, Inc. admitted that their bid excluded a significant portion of work (fire alarm) that was required within the bid documents and was bid by other bidders. K. J. Cain, Inc.'s recommended solution to include the fire alarm work through a non-competitive bid change order after the contract is awarded to them, allows the contractor an unfair advantage over other bidders who competitively bid the fire alarm work as required by the contract documents.
2. Neglecting to list fire alarm and fire protection subcontractors in K. J. Cain, Inc.'s 'Designation of Subcontractors' allowed K. J. Cain, Inc. an unfair advantage over other bidders who had listed these trades. If the contract is awarded to K. J. Cain, Inc. the Contractor could then shop for a bid to fulfill the contractual obligations, which is prohibited by California Public Contract Code.
3. Additionally, K. J. Cain, Inc.'s bid was submitted with a bid bond form other than what is provided to the bidders in the bid package. This deviation could allow K. J. Cain, Inc. an unfair advantage by allowing the contractor to exclude specific County bonding details from the bid bond form. All other bids received included bid bonds submitted on the correct County provided bid bond form.
4. Furthermore, the subcontractor list contained the incorrect license numbers for Tunnel Roofing, Mid State and Contractor's Flooring, and it does not appear as if corrections were provided within 24 hours after the bid opening as required by Section 4104(a)(2)(A).
5. Accepting K. J. Cain, Inc.'s bid would require a waiver of what K. J. Cain, Inc. might characterize as minor deviations from the bid specifications, but under California law, such a waiver is not available when it confers a benefit or advantage not available to other bidders.

#### California Environmental Quality Act (CEQA) Documentation

A CEQA categorical exemption was approved for this project on March 20, 2012, as it consists of maintenance, repair and alteration of an existing public structure with no expansion of use beyond that existing at the time of the lead agency's determination in accordance with 15301 (Class 1). This exemption includes minor additions onto existing structures in areas that are not environmentally sensitive.

**Fiscal and Facilities Impacts:**

Budgeted: Yes **Fiscal Analysis:**

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized</u> <u>On-going Cost:</u>	<u>Total One-Time</u> <u>Project Cost</u>
General Fund			
State			
Federal RZEDB			\$1,264,118
Fees			
Other: COP			\$123,496
Total	\$ -	\$ -	\$1,387,614

**Narrative:**

Funding for this project remains available in Dept. 063, Fund 0030, Program 1930, Account 8700, Project 8676 PH2. The financing proposed to be used for this project is composed of Recovery Zone Economic Development Bonds (RZEDB's) that were made available to municipalities through the Federal Stimulus legislation passed in early 2009 (\$1,264,118), and Certificates of Participation (COP's) in the amount of \$123,496. This financing is part of a larger financing plan that includes the Santa Barbara Emergency Operation Center Project and the Public Defender Remodel project.

**Staffing Impacts:**

**Legal Positions:**  
0

**FTEs:**  
0

**Special Instructions:**

Please send one (1) copy of the Minute Order, and (2) duplicate executed originals of the Construction Contract to John Green, GS / Support Services Division, Courthouse East Wing.

**Attachments:**

1. Construction Contract and two (2) duplicate original Contracts.
2. Protest by Diani Building Corp.
3. Protest Response by K.J. Cain, Inc.

**Authored By:**

JG General Services, Capital Projects