

Menshek, Peggy Y

From: Novak, Tony <tnovak@larsonking.com>
Sent: Thursday, July 21, 2016 8:56 AM
To: Council Comment
Subject: Comment for July 26 TPW Meeting - Vertical Transportation Maintenance Services (Official Publication No. 8234)
Attachments: Re Schindler's response to City of Minneapolis Buyer re Bids for Vertical Transportation Maintenance Services.pdf; 5-24-16 Ltr to Asst. City Atty. Gary Winter re Public Works-Bids for Vertical Transp. Maintenance Services.pdf; Follow Up: City of Minneapolis OP 8234 Vertical Transportation Maintenance Service Projected Overtime Labor Rate Savings with Schindler

Dear Chairman Reich, Vice Chairman Palmisano and Members of the Transportation and Public Works Committee:

I represent Schindler Elevator, and submit these comments on their behalf with respect to the item noted above, which we understand will be reviewed at the upcoming Committee meeting.

We anticipate that City staff will provide the Committee with the background of Schindler Elevator's bid, and follow-up dialogue, in this matter. However, out of caution, we are attaching that dialogue for your review.

While the attached letters and emails outline the points we wish to highlight, Schindler Elevator's central position is that Schindler Elevator, not Suburban Elevator, submitted the lowest responsible bid, and that the staff recommendation (of awarding the contract to Suburban Elevator) would result in higher monthly costs to the City of Minneapolis.

The bid requests sought proposals for monthly maintenance costs, and also specifically sought overtime rates for the maintenance work to be performed, which certainly indicates that such rates will be considered in reviewing the bids when evaluating cost. It now appears that overtime rates, which are a real component of cost for elevator maintenance contracts, are not being considered as part of the bid review.

Schindler and Suburban submitted essentially identical monthly maintenance bids. However, when the overtime rates are reviewed, Schindler's is significantly lower. In other words, if even a single overtime call is received on any of the more than 80 units during the month (which is an inevitability), the actual cost to the City of Minneapolis will be lower under the Schindler bid.

We encourage the Committee to review the attached information for additional background and support, and Schindler Elevator strongly urges the Committee to accept the Schindler Elevator bid. Schindler is confident that it can provide exceptional service and, most importantly, that under any real-world scenario its bid offers the lowest actual costs to the City of Minneapolis.

Schindler Elevator has a representative available to answer any questions or to discuss further.

Thank you for your consideration.

Regards,
Tony Novak

ANTHONY J. NOVAK
Partner

Larson • King, LLP



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Menshek, Peggy Y

From: Steven.Fedel@us.schindler.com
Sent: Tuesday, June 07, 2016 4:33 PM
To: Schlueter, David E.
Cc: richard.romnes@us.schindler.com; Novak, Tony
Subject: Follow Up: City of Minneapolis OP 8234 Vertical Transportation Maintenance Service Projected Overtime Labor Rate Savings with Schindler

David:

As you may be aware, Schindler had plans to attend the City of Minneapolis Parking Transportation / Public Works Committee Meeting this morning to discuss the City of Minneapolis OP 8234 Vertical Transportation Maintenance Service RFB but did not make the agenda and were notified yesterday afternoon that the issue is likely being moved to the June 21st meeting. As such, I thought it might be beneficial to provide some additional information based on exchanges between Tony Novak, our representative from Larson King, and the City Attorney's office.

We learned that the overtime labor rates offered in our RFB response were misinterpreted and that contributed to the tentative award of the City of Minneapolis OP 8234 Vertical Transportation Maintenance Service to Suburban Elevator. I understand that even after accepting that the labor rates were incorrectly considered, the current position that the City of Minneapolis has taken is that only the monthly service cost will be considered in the award. As we discussed before, the RFB does not state that only the monthly service cost will be considered in the award and labor rates were requested and represent a real cost to the City of Minneapolis and need to be considered if the City of Minneapolis is to award the contract to the responsible, responsive elevator vendor who will truly offer the lowest overall costs to the City of Minneapolis.

As Larson King communicated the City Attorney's office, the overtime premium labor rates offered in our proposal were intentional and apply to all overtime service requests. Furthermore, our overtime pricing was offered as a direct result of the City of Minneapolis' and your feedback during the RFB prebid meeting that one of the primary reasons for the City of Minneapolis consolidating to one contract form and the Lerch Bates specification form was due to the City of Minneapolis' interest in reducing the potential for unexpected costs and due to elevator vendors' varying service costs and exorbitant labor rates.

As we communicated prior, Schindler's hourly overtime labor rate being \$140.40/hour less than Suburban Elevator (\$279 Suburban vs \$138.60 Schindler) means that if the City of Minneapolis has only 1.6 hours of billable overtime service each month between over 88 elevators and escalators in their very high usage parking ramps, Schindler would be the low bidder. It is all but inevitable that the 1.6 overtime hours will be exceeded each month-and substantially-with the number of elevators and escalator and types of facilities that they are in.

To support of our belief that the City of Minneapolis will save money by contracting with Schindler due to their requiring more than 1.6 total overtime labor hours per month, I ran reports to determine the frequency of overtime service requests by the City of Minneapolis for the two City of Minneapolis Parking facilities that we currently service as a point of reference.

Schindler services 6 of 88 total units in the City of Minneapolis' parking ramps.

In the two facilities that Schindler services the equipment-which we believe to be comparable to the others-there were 8 total overtime service visits on 6 units over the 3 year period of 2013-2015 totalling 16.2 total overtime hours (a little more than 2 hours per overtime call on average.)

8 overtime service visits / 6 units = 1.33 overtime visits per unit over the 3 year period

1.33 overtime visits per unit / 3 years = .44 overtime visits per unit per year on average

.44 overtime visits per unit per year on average x the 88 units in the City of Minneapolis portfolio = 38.72 projected overtime visits per year for the City of Minneapolis' elevator and escalator portfolio overall

38.72 overtime visits / 12 months = 3.23 overtime visits per month on average

3.23 overtime visits per month x 2 hours per overtime visit (an average typical to the industry and the Schindler experienced average) = 6.46 projected overtime hours per month on average

Again, with only 1.6 overtime hours per month on average over 88 units, Schindler is the low bid. Based on our data, we are projecting 6.46 average overtime hours per month.

6.46 average overtime hours per month x \$140 (the hourly cost difference between Suburban's and Schindler's lower overtime rates) = \$904.40 in savings on overtime services per month with Schindler's overtime rates

Schindler's projected savings due to lower overtime rates of \$904.40 - Suburban's savings due to lower their monthly service price of \$200.00= \$704.40 in projected monthly savings with Schindler versus Suburban

We project that the City of Minneapolis' overall costs with Schindler will be approximately \$704.40 lower per month or \$8,452.80 lower per year

I trust that you and the City of Minneapolis will agree that these projected savings are significant enough to warrant the City of Minneapolis to reconsider their interpretation of the bid results and award the contract to Schindler.

Please let me know if you have questions and/or if you would like to meet to discuss this in more detail.

Thank you,

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May 24, 2016

Via FedEx Overnight

Gary P. Winter, Esq.
Assistant City Attorney
350 S. Fifth Street, Room 210
Minneapolis, MN 55415

Re: Public Works -- Traffic and Parking Services
Bids for Vertical Transportation Maintenance Services
Official Publication No. 8234

Dear Mr. Winter:

As you know, this office represents Schindler Elevator in regards to the above-referenced bid and recommendation. Thank you for your letter of May 17, 2016.

As I noted in a recent voicemail to you, there is a misunderstanding outlined in your letter that requires clarification. As you know, the monthly rate proposals from Schindler and Suburban were essentially the same. It is Schindler's position that once the inevitable overtime calls were considered, Schindler's bid clearly became the lowest responsive and responsible bid. As outlined previously, a contract like this will inevitably include after-hours calls which implicate an overtime rate. Applying that real-world fact to this bid leads to a scenario where even a single overtime call results in Schindler being the low bidder for this project. In other words, the numbers from the bids indicate that the actual invoices that the City receives for this work would be lowest if Schindler is awarded the contract.

As a reminder, Schindler's bid includes an overtime rate of \$138.60/hour, which is significantly lower than the overtime rate proposed by Suburban Elevator. Your letter indicates that it appears "illogical" to you that Schindler's overtime labor rate would be lower than its straight-time rate. You therefore added the overtime rate to the overtime premium to arrive at an *adjusted* overtime rate for use in your analysis of Schindler's bid. You then compared this adjusted rate to the overtime rate offered by Suburban Elevator, finding that it was actually Suburban who had a lower overtime rate. This portion of your analysis is simply incorrect. Schindler's overtime bid rate is as-stated in its bid documents (\$138.60). That number reflects the actual amount that would be billed to the City, and does not require any adjustment. This type of bid, which is called "bonus time only," is extremely common in the industry and results

Gary P. Winter, Esq.
May 24, 2016
Page 2

in the customer only paying the bonus time (plus rate), with Schindler absorbing the straight-time portion of the overtime expense against the contract. In other words, the overtime rate requires no adjustment, and is simply lower (by a significant margin) than the rate proposed by Suburban.

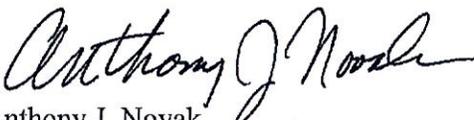
Your letter then goes on to indicate that the bid specifications do not explicitly state that the overtime rate information will be used to determine the lowest bidder. However, as you are certainly aware, the bid specifications ask for an overtime rate. And nowhere do the specifications suggest that the rates are being sought for "informational purposes only," or that the rates provided will not be considered as part of the bid award. In fact, during the bid meeting, the City expressed frustration with the unpredictability of its monthly costs for elevator service, which led Schindler to submit a bid with a low overtime rate, so as to reduce the monthly fluctuation on the City's elevator service invoices. As we discussed, to disregard the overtime rate ignores a real cost item that will be reflected in the City's monthly invoicing.

Schindler submits this additional detail because Schindler is confident that monthly invoices for the work at issue would be lower if the contract were awarded to Schindler. Schindler urges you to take a fresh look at the overtime rate issue, in light of the information provided, before the recommendation is finalized. Schindler continues to assert that under any reasonable interpretation of the submitted bids, it is actually Schindler who has submitted the lowest responsible and responsive bid.

Please do not hesitate to contact me if you need additional information or clarification.

Very truly yours,

LARSON • KING, LLP


Anthony J. Novak

AJN/eb 1527268

cc: Mark A. Solheim, Esq.

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April 26, 2016

VIA EMAIL

David E. Schlueter, CPPB
Buyer, City of Minneapolis
David.schlueter@minneapolismn.gov

Re: Public Works – Traffic and Parking Services
Bids for Vertical Transportation Maintenance Services
Official Publication No. 8234

Dear Mr. Schlueter:

This office represents Schindler Elevator, and we have been asked to write to you outlining Schindler's position regarding your pending recommendation that the above-referenced service contract be awarded to Suburban Elevator.

In its "Bid for Vertical Transportation Maintenance (VTM) Services in the Municipal Parking Ramp System," the City of Minneapolis solicited bids, from "qualified firms," related to maintenance, operation and management of vertical transportation equipment, including traction elevators, hydraulic elevators and escalators. As you know, Schindler has extensive experience in this type of work and has the qualifications and expertise needed to perform this work.

Your recent email to Mr. Steven Fedel indicated that you would be recommending that the contract be awarded to Suburban Elevator as the purported "low, responsive, responsible bidder meeting all specifications" as contemplated by the bid documents. As you are aware from your discussions with Mr. Fedel, Schindler takes issue with this statement and believes that under any reasonable interpretation of the submitted bids, it is actually Schindler who has submitted the lowest responsible and responsive bid.

It is our understanding from review of the bid results, that Suburban submitted a bid that outlined a monthly base rate of \$33,410, with overtime labor at an hourly rate of \$279/hour. Schindler submitted its bid of essentially the same monthly rate, \$33,634, with a significantly lower hourly rate for overtime labor, at \$138.60/hour. Schindler took this approach to its submitted bid based on (a) the City's explanation that it was looking for as much predictability as possible in budgeting for vertical transportation maintenance, and (b) that the City requested

David E. Schlueter
April 26, 2016
Page 2

hourly rate proposals for overtime calls, which presumes that this information is being considered as part of the bid review.

The significant difference in the bid overtime rates (difference of \$140.40 per hour) leads to an outcome where Schindler's bid is the low bid. For instance, even a single overtime call (at a union minimum 2 hours), would result in a net price where Schindler's monthly overall charges are lower than those of Suburban Elevator. Given that this contract calls for maintenance and service on 88 parking ramp elevators and escalators, overtime calls are inevitable and should certainly be factored into the bid analysis. If the City were to take the average number of monthly overtime hours across these units and apply those numbers to the submitted bids, Schindler is confident that its bid is the lowest responsive bid. Such an approach will allow specific and reasonable analysis in bid comparison, and will allow the City to review a much more realistic scenario for actual cost predictability.

Schindler highlights these issues to ensure that the City reviews the submitted bids in a manner that accurately reflects the true costs related to how this contract will be carried out, and considers the information that the City requested in its bid documents. The current recommendation, to award the bid to Suburban Elevator, considers only one cost factor and simply ignores a very significant cost component. Put another way, to award the contract to Suburban Elevator based on the submitted bids would actually result in the City accepting a higher bid, and result in an increased burden on the taxpayers of the City of Minneapolis.

In addition, while Schindler is the "low bidder," Schindler also wishes to reiterate that it is the most capable (i.e. "responsible") bidder for this project. As you have also discussed with Mr. Fedel, Schindler has more than 40 service technicians in the metro area alone, and is aware of only one, or possibly two, technicians for Suburban Elevator in this area. Schindler is the only elevator company in the area with 2 service technicians on call every day to ensure prompt response to emergency situations. Schindler also has a dedicated escalator service team, which is of significance in this bid proposal, and has more technical capabilities and experience supporting the competitor equipment covered by the proposal.

Schindler Elevator hereby makes a final request that you reconsider your decision to award the contract to Suburban Elevator, and instead recommend awarding the contract to Schindler as the low responsive, responsible bidder. If the decision cannot be reversed, Schindler requests that the City request clarification from Schindler and Suburban Elevator based on total anticipated or estimated billing to the City based on a real-world scenario, inclusive of some component of overtime expense.

Please respond to this letter by Thursday, April 28, 2016, so that Schindler can take appropriate legal action, including filing for a temporary restraining order, should it become necessary. Schindler truly hopes to avoid legal action, and its goal with this letter is to encourage a review of the issues important to this bid process as outlined above.

David E. Schlueter
April 26, 2016
Page 3

If there is additional information you would like to review or consider, please do not hesitate to contact me at the number or email address noted above.

Very truly yours,

LARSON • KING, LLP



Anthony J. Novak

AJN/cb 1522757

cc: Tom Peterson, Project Engineer, City of Minneapolis
(via email – Thomas.peterson@minneapolismn.gov)
Steven Fedel
(via email – steven.fedel@us.schindler.com)
Mark A. Solheim, Esq.