

## **Board of Trustees Agenda Item**

**Board Meeting Date:** December 6, 2010

**Title of Item:** Award a contract pursuant to Bid Document 1260-135, Utilities Infrastructure Upgrades Phase I at Foothill College.

### **Background and Analysis:**

The project provides for increasing the capacity of the Foothill College campus electrical and mechanical utility infrastructure to meet the future demands of the new construction and renovation projects scheduled under the Measure C Bond Program.

The scope of work includes: removal and replacement of the campus main electrical switchboard and 15kV feeders from PG&E, installation of a temporary main campus switchboard and feeders from PG&E, removal and replacement of other 15kV feeders and distribution equipment and switchboards, removal of existing campus heating water piping and installation of larger HHW distribution piping, and installation of two telecommunications duct banks. Salas O'Brien prepared the construction documents and a complete set of all bid documents are on file in the Purchasing Services Department.

At its July 12, 2010 meeting, the Board of Trustees approved a list of five (5) General Contractors and a list of three (3) Electrical Subcontractors as pre-qualified to bid on this project. Bid 1260-135 was legally advertised on October 8 and October 15, 2010. The "Invitation to Bid" was also sent to nine (9) builders exchanges, advertised in the Daily Pacific Builder, and posted on "BidNet" at [www.govbids.com](http://www.govbids.com). Bids were publicly opened and read on November 10, 2010 at 2 p.m. by Purchasing Services. Three (3) of the five (5) pre-qualified contractors submitted bids. The bid results are shown below:

General Contractors	Base Bid Price	Alternate 1	Alternate 2	Alternate 3
<b>Taber Construction Inc.</b>	<b>\$4,126,000</b>	<b>\$215,000</b>	<b>\$445,000</b>	<b>\$45,000</b>
Cupertino Electric	\$4,295,000	-\$12,000	\$330,000	\$47,800
SJ Amoroso	\$4,497,000	\$425,000	\$477,000	\$75,000

The bid document provides that the lowest bid will be determined based upon Public Contract Code Section 20103.8(a), which states that the lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

The apparent low bidder is Taber Construction Inc at a Base Bid Price of \$4,126,000. On November 15, 2010, the District received a bid protest letter from Cupertino Electric (see attached). Purchasing Services reviewed the bid protest letter with Taber Construction Inc. and District's legal counsel, Phillip Jaret, and Taber Construction Inc., provided a written response to the bid protest (see attached). Purchasing Services and District legal counsel are satisfied with Taber Construction's explanation and recommend that the Board deny the Cupertino Electric Inc. bid protest and award the contract to Taber Construction Inc.

Taber Construction Inc., has successfully completed several public works projects for the Mount Diablo Unified School District. Furthermore, Taber Construction Inc., and its subcontractors have signed the Appendix A, "Agreement To Be Bound" and Appendix C, "Agreement of Contractors" of the "Project Stabilization/Construction Careers Agreement" between the District and the Santa Clara & San Benito Counties Building and Construction Trades Council.

Regarding the bid alternates shown above, the District Construction team recommends the award of Alternates 2 and 3 at a cost of \$490,000. The total cost of the Base Bid plus Alternates 2 and 3 is \$4,616,000.

The Base Bid Price of \$4,126,000, submitted by Taber Construction Incorporated is well within the Base

Bid construction estimate of \$4,606,000. Alternates 2 and 3 are within the budget for this project. The project will be funded through Measure C.

**Recommendation:**

Deny the bid protest from Cupertino Electric and authorize the Director of Purchasing Services, Carmen Redmond, to award a contract pursuant to Bid 1260-135, Utilities Infrastructure Upgrades Phase I at Foothill College, in the amount of \$4,616,000 to Taber Construction Inc. for the Base Bid and Alternates 2 and 3.

Submitted by:	Carmen Redmond, Director of Purchasing Services
Additional contact names:	Charles Allen, Art Heinrich, Annette Perez
Is backup provided?	Yes



Phone #: 650-949-6165

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Via Email: [pereaannette@fhda.edu](mailto:pereaannette@fhda.edu)

November 15, 2010

Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, CA 94022-4599  
Attn: Annette Perez

**Re: Bid Protest– Bid #1260-135 – Utilities Infrastructure Upgrades Phase 1 (the “Project”)**

Dear Ms. Perez:

Cupertino Electric, Inc. is writing to protest the bid of November 10, 2010 for the Project. The basis for our protest is as follows:

The Subletting and Subcontracting Fair Practices Act (Public Contract Code §4100 et seq.) generally requires subcontractors to be listed on all state and local public agency contracts. Specifically, Public Contracts Code §4104 requires prime contractors to set forth the names and locations of subcontractors which will perform work in excess of one-half of one percent of the total bid.

In its Bid Proposal, Taber Construction Inc. (“Taber”), the apparent low, qualified bidder, included \$4,126,000 as its bid proposal amount (Section 1.2 of the Bid Proposal). That amount includes a Base Bid Proposal of \$3,926,000 and Allowances of \$200,000. The threshold for Taber’s listing a subcontractor is \$19,630.

Taber’s Subcontractors List includes (6) subcontractors, covering parts or all of bid divisions 2, 23, 26, and 32. That leaves the remaining bid divisions 3, 4, 5, 7, 8, 9, 10 and 31 unaccounted for. Some of the work covered by these bid divisions require specialty contractor licenses. According to the Contractors’ State License Board website, Taber has Class A and Class B licenses which would not qualify them to engage in the specialty trade work.

Section 4106 of the Public Contracts Code specifies that if a prime contractor fails to specify a subcontractor, the prime contractor agrees that is fully qualified to perform that portion and will perform that portion. If the prime contractor, after award, subcontracts any portion of the work, the prime contractor will be subject to penalties.

Based on the restrictions of the Public Contract Code and the underlying public policy in this state against bid shopping, Taber’s bid proposal is incomplete, inconsistent or in violation of the Public Contract Code.

Cupertino Electric, Inc.  
1132 N 7<sup>th</sup> Street San Jose, CA 95112  
(P) 408-808-8000 (F) 408-279-4605



November 18, 2010

VIA FACSIMILE 650-948-5194

Ms. Annette Perez  
Senior Buyer, Purchasing Services  
Foothill-DeAnza Community College District  
12345 El Monte Road  
Los Altos Hills CA 94022

Re: Foothill College Project #135 Utilities Infrastructure Upgrades Phase 1  
Subject: Cupertino Electric Bid Protest

Dear Ms. Perez,

We are in receipt of your letter dated November 16, 2010 regarding a bid protest letter submitted by Cupertino Electric Inc (Cupertino) on November 15, 2010 regarding the above referenced project.

Cupertino alleges that Taber Construction Inc (Taber) failed to list subcontractors for Division 3 Concrete, Division 4 Masonry, Division 5 Metals, Division 7 Thermal and Moisture Protection, Division 8 Openings, Division 9 Finishes, Division 10 Specialties and Division 31 Earthwork. Taber Construction did not list any subcontractors for the work that exceeded one half of one percent contained in those divisions because it intends to self-perform that work. Taber, which holds both an "A" and "B" license, is legally entitled to perform that work according to California's Business & Professions Code section 7057.

Further it should be noted that Question 4 of Addendum 1 clarified that the project did not include any Masonry work.

While we have not had the opportunity to review all aspects of Cupertino's bid a review of its Document 00 43 36 Proposed Subcontractors Form; indicates that Cupertino listed Q Builders of Palo Alto California for Divisions 3, 4, 5, 7, 8, 9 and 10. A review of Q Builders license shows that Q Builders only possesses a "B" license; Cupertino's erroneous allegation that Taber would need a specialty license to perform these divisions of work cannot be negated for Q Builders.

Given that Taber is properly licensed to perform all of the work indicated in Cupertino's protest, we request that Cupertino's bid protest be rejected and the project awarded to Taber Construction Inc., the lowest, responsible bidder.

Any questions regarding this bid protest should be directed to Mr. Bret Taber, Taber Construction Inc 2278 Pike Court Concord CA 94520; (925) 682-6133.

Sincerely,

A handwritten signature in black ink, appearing to read "Bret Taber", is written over a horizontal line.

Bret Taber  
Taber Construction Inc