



August 19, 2010

Dr. Larry L. Whitworth, President
Washtenaw Community College
4800 East Huron River Drive
PO Box D-1
Ann Arbor, MI 48106-1610

RE: Washtenaw Community College
Occupational Education Building Renovation Project

Dear President Whitworth;

Spence Brothers was extremely disappointed with this week's decision by the Washtenaw Community College Board of Trustees to take away our contract for the WCC Occupational Education Building Renovation project and to pay more for another contractor to perform the same work. However, we were not surprised, considering the Trustees' decision was based upon misleading and partial information, provided by WCC staff.

We were prepared to just walk away shaking our heads in disbelief that the College would do business in this manner. However, now that misleading statements by the College are being reported in the media, we feel compelled to respond, in order to uphold our reputation for building trust and important facilities in Washtenaw County and throughout Michigan over the past 117 years.

For the record, the College requested quotes from all bidders for the Project, for the "Base Bid" scope of work and twenty-two (22) "Alternates" (potential changes to the base scope of work, resulting in additions or deletions to the base bid quotation). As is often the case, many of the alternates involved significant changes in scope and cost. Quotes received on the alternates from subcontractors, especially the mechanical bidders, varied widely. We even received adds **and** deducts from the different mechanical bidders on the same alternates. It should be obvious, that if any alternates were ultimately accepted by the College it could, and did, affect which subcontractors would be used for the job.

The prime contractor bidders were directed by the bid documents to list their intended subcontractors on the bid form. In light of the good possibility that alternates could affect which subcontractors were used, the College issued an official Bid Clarification, a copy of which is attached, to all bidders more than a week before the bid date. It stated clearly, "**Please list the base bid subcontractors only on the bid form. Once the alternates are selected the subcontractor list can be adjusted accordingly.**"

Based on our analysis of all base bids received for the mechanical work on the project, Spence listed the John E. Green Co. as our **base bid** mechanical contractor with our proposal. Subsequently, after the College decided which alternates they chose to accept, we analyzed all subcontractor bids and determined the low responsive and responsible subcontractors after considering all accepted alternates. We, then, submitted our adjusted subcontractor list, in accordance with the Bid Clarification issued by the College.

John E. Green's bid, adjusted by the alternates, was significantly higher than that of Heights Mechanical, the extremely qualified and financially sound union main mechanical contractor we included on our post-alternate sub list. Heights Mechanical has a \$40 million bonding capacity and was the mechanical contractor on many major Washtenaw County facilities, as well as Ford Field in Detroit.

The statement from the College reported in the media that "Spence Brothers asked Washtenaw Community College to pay an additional \$200,000 to return to its original plan" is not accurate and very misleading. The College decided they did not **want** the "original plan", which was the Base Bid proposal, when they chose to accept many of the Alternate bids. This decision changed the scope of work and adjusted the total cost of the project, because of alternate bids submitted by the prime bidders and subcontractors.

As discussed above, the varying bids submitted by subcontractors for these accepted alternates could have affected, and did affect, which subcontractors would be used on the project. The College demanded that Spence give up our clear right to use the low responsive subcontractors, considering all accepted alternates, even though doing so had **saved** the College significant money through our ability to **lower** our bid and resulting contract amount by over \$200,000.

As is common, the bidding documents do give the College the right to ask Spence, as the prime contractor, to switch a subcontractor from the low responsive subcontract bidder, considering all accepted alternates, that we used, to another subcontractor the College would prefer to have on the project. The documents also clearly state that, if this is done, the College would be required to reimburse the additional cost Spence would incur to go to the higher bid of the subcontractor the College requests.

It was clearly unfair of the College to demand Spence absorb the extra cost we would incur to use John E. Green as our mechanical contractor at Green's significantly higher bid, considering all accepted alternates. The College's justification for its actions is that Spence had no right to rely on the official Bid Clarification. This is inconsistent with the bidding procedures and remarkably inconceivable.

Since Spence's post-alternate main mechanical contractor, Heights, is obviously financially sound and extremely qualified, it seems the College should have no clear reason to pay more to switch to Green. However, they seem to be doing just that, by deciding to pay significantly more money for the same work by taking the project away from Spence and giving it to another prime contractor, apparently so they can have the subcontractor they want.

The statement the College made that the union issue is "totally irrelevant" is equally hard to believe, based on the true sequence of events, which was apparently not presented to WCC Trustees before their decision. The College knew whom our post-alternate main mechanical sub was **before** they gave us the Notice to Proceed during the same meeting at which we gave them our revised post-alternate subcontractor list. They directed us and our mechanical and other subcontractors **who were at the meeting** to proceed immediately, which we all did. The following day we were asked to meet with the College facilities staff and a union representative, who insisted that the low geothermal contractor, who was non-union (as were all other specified geothermal contractors), hire union employees to perform the mechanical piping work. The union representative indicated that a "local" mechanical contractor like Green (based in Highland Park) would ensure this happened. When Spence tried to explain to the union representative the related cost implications of switching subcontractors, the College staff stated that Spence is going to be required to use our original (base bid) subcontractor list (which included Green). Later that afternoon, when Spence returned to the College to attend a meeting scheduled by the College to discuss resolution of the issue, the College refused to attend the meeting or discuss the issue further and simply presented Spence with a

printed email ultimatum giving us three hours to commit to using our original (base bid) list of subcontractors or Spence would be dismissed from the project.

Although we understand the union desire to demand things that benefit union members, frankly, Spence was shocked by the College's apparent support of the union's unfounded demands. As a union contractor, Spence is grateful for the union's valuable training programs at the College and other contributions the union makes to the College's academic mission. However, the financial benefits the College receives from the union should not be permitted to detract from the propriety of public bidding or to bend the rules in favor of one contractor or subcontractor over another. We hope this did not happen in this case. However, it is hard to believe the union interests were really "totally irrelevant" in this decision.

It seems like the College is now grasping at straws to try to justify their unbelievable decision to, abruptly, in less than one day, abandon the clear results of their two month-long selection process, which awarded the project to Spence Brothers, based on our being their #1 rated qualified contractor and our #1 lowest cost proposal, per the attached rankings from the Board of Trustees meeting agenda on July 27, 2010.

To help the College justify Spence's termination, the College also advised the Trustees at their August 17, 2010 Board meeting, that Spence had also changed its "project team" in violation of bid requirements. This statement is completely false. In fact, Spence **added** two key members of our organization to our project team (its Assistant Vice President of Project Management and a senior superintendent), all other members of the team staying the same. These additions at the early stage of the project simply enhanced Spence's ability to deliver the project on time and on budget to the benefit of the College. Had Spence been afforded the opportunity to respond to this baseless allegation at the Trustees' meeting, it could have accurately explained the situation.

As a direct result of the College's unjustified and unwarranted action of terminating Spence's contract as they have, the project start up has been delayed by almost a month and the College and taxpayers will spend an additional \$84,000 to proceed with the same work using a contractor the College ranked as less qualified for this project than Spence Brothers.

We are still shaking our heads in disbelief.

Very truly yours,

SPENCE BROTHERS



Herbert A. Spence III, PE
LEED AP
President & CEO

HASIII/jb

Enclosures:

1. Bid Clarification #008 issued by the College
2. Recommendation from College to Trustees to award contract to Spence Brothers, approved at July 27, 2010 Trustees meeting
3. Contractor Selection Rankings done by College from July 27, 2010 Trustees meeting



400 Galleria Officentre
Suite 555
Southfield, Michigan 48034
phone 248.352.8310
fax 248.352.1821
www.neumannsmith.com

BID CLARIFICATION REQUEST FOR INFORMATION #008

DATE July 12, 2010

AUTHOR COMPANY Spence Brother
4343 Concourse Drive
Suite 100
Ann, Arbor Mi 48108

Mike Truax

SUBJECT Bid Form - Subcontractors

PROJECT NAME Washtenaw Community College
Occupational Education Building Renovation

PROJECT NUMBER 29067

Question:

Can you give me any direction regarding listing of subcontractors on the bid form versus any priority of the alternates? Alternate bids will obviously change which subcontractors are low. We cannot possibly know which subs we would be using until we know which alternates will be accepted. Is it possible to hold up providing names of subcontractors until the school advises which alternates will be accepted? Otherwise names would only apply to the base bid.

Answer:

Please list the base bid subcontractors only on the bid form. Once the alternates are selected the subcontractor list can be adjusted accordingly.

ANSWERED BY: STAN COLE, RA

Date: 07-12-10

ATTACHMENTS
none

Board of Trustees
Washtenaw Community College

ACTION

4800 E. Huron River Drive
Ann Arbor, Michigan 48105

Subject

Date

Facility Contract: Occupational Education Building Renovations Project

July 27, 2010

RECOMMENDATION

That the Board of Trustees approve the cost proposal and authorize the College administration to enter into a contract to be awarded to Spence Brothers of Ann Arbor in an amount of \$11,365,935; contingent upon the College administration obtaining a satisfactory contract with the firm.

A ROLL CALL VOTE WILL BE TAKEN.

Prepared by: Damon B. Flowers

Recommended by:

Title: Associate Vice President

Larry Whitworth, President

Facility Development/Operations

Washtenaw Community College*Office of Facilities Management*

July 22, 2010

OEB RENOVATIONS PROJECT**Contractor Selection****RFP Stage I ranking**

1. Spence Brothers
2. Walbridge
3. Turner Construction
4. O'Neal Construction
5. Kasco Construction Services
6. Granger

RFP Stage II ranking

- | | |
|---------------------------------|--------------|
| 1. Spence Brothers - | \$11,365,935 |
| 2. O'Neal Construction- | \$11,450,500 |
| 3. Turner Construction- | \$11,736,293 |
| 4. Phoenix Contractors - | \$11,756,800 |
| 5. Granger- | \$11,758,000 |
| 6. Walbridge- | \$11,826,400 |
| 7. Kasco Construction Services- | \$12,564,000 |