

City of Scottsbluff, Nebraska

Monday, January 5, 2015

Regular Meeting

Item Reports2

Council to consider a request by Simon Contractors to reduce the damages on the Avenue I project.

Staff Contact: Rick Kuckkahn, City Manager



SIMON CONTRACTORS

1914 W. Overland, PO Box 147, Scottsbluff, NE 69361, Phone 308-632-4111, Fax 308-632-4111

October 17, 2014

Rick Kuckkahn
City Manager
City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361

Re: URB-5703(2), Avenue I, Liquidated Damages

Dear Mr. Kuckkahn:

We at Simon Contractors acknowledge that at this point in time, the work on Avenue I is well beyond the original contracted completion date. We also acknowledge that as far as our selection of a DBE subcontractor we had other options to start with. However, as the bid process stands, low bid is typically awarded the contract. Just as the City of Scottsbluff chose the lowest, prequalified, bid presented at bid time, Simon Contractors chose the lowest prequalified bid presented to us.

In order to be awarded the contract, we were required to come in as low bid with a percentage of the total work going to an NDOR certified DBE subcontractor. Simon Contractors followed protocol and contacted a number of NDOR certified DBE subcontractors to request quotes on items within their scope of work on Avenue I. From the bids presented to us we selected Perkins & Perkins out of Omaha, Nebraska, who came in as the significantly lower bid. By selecting Perkins & Perkins as our concrete flatwork subcontractor, we were able to lower our total bid price for the project and meet the DBE requirements in the contract. Simon Contractors was awarded the contract for Avenue I based upon our low bid and meeting the DBE requirements. The bid price we presented to the City of Scottsbluff reflects not only the cost of the work done by Simon Contractors, but all the subcontractors included. By taking Perkins & Perkins' low bid, we were able to pass on the substantial savings to the City of Scottsbluff. At the start of the project, work progressed at a reasonable pace and it seemed that everything was on track to finish within the contracted 55 working days.

Shortly after work began on April 7, 2014, issues began to arise with Perkins & Perkins not being able to meet the requirements of the plans and specifications. When these problems became constant in Perkins & Perkins' work, Simon Contractors contacted the NDOR DBE Compliance officer. We were instructed to mentor and guide Perkins & Perkins and were reminded that their scope of work could not be reduced, nor could Simon Contractors step in to help or even physically show their crews how to perform their items of work. If we had stepped in to physically help Perkins & Perkins, under the protections provided by the DBE program,

Simon Contractors could have been penalized for not following the mandates of the federal DBE program. Penalties could include a substantial or placing limit on Simon Contractors' ability to bid and perform work in the future. Funding available to the City of Scottsbluff could also be affected if we together with the City did not meet the requirements of the DBE requirements in the contract. Simon Contractors continually acted on "good-faith efforts" in mentoring and guiding Perkins & Perkins with the assistance and guidance from the NDOR DBE department.

Perkins and Perkins continued to have work rejected for non-conformance to plans and specifications and Simon Contractors began the process of attempting to terminate the subcontract. Again, under the protections provided by the DBE program, we could not just simply fire Perkins & Perkins from the job. The first time Perkins & Perkins walked off the job from May 23, 2014 through June 6, 2014, Simon Contractors attempted to gain NDOR approval to terminate the subcontract. We informed Perkins & Perkins they would be held in breach of contract for walking off the job if they did not return by Friday, June 6, 2014. Before NDOR could grant us approval to terminate the subcontract, Perkins & Perkins returned to the job on Monday, June 9, 2014. The quality of work did not approve when they returned to the job. Perkins & Perkins officially walked off the job entirely on June 25, 2014. Simon Contractors was given approval to terminate the subcontract with Perkins & Perkins on June 26, 2014.

Through June 26th, 2014 the project had been charged 50 working days. Of these 50 days 14 days were days Perkins and Perkins was removing and replacing out of spec. work and 8 days were charged when Perkins & Perkins walked off the job the first time. This amounts to a total of 22 working days being charged to the project as a direct result of Perkins and Perkins non-performance.

Once the subcontract with Perkins & Perkins was officially terminated with NDOR's approval Simon Contractors began the process to find a new subcontractor to complete the concrete work on Avenue I. NDOR informed Simon Contractors that we were no longer required to use a certified DBE subcontractor for the remaining concrete work as we had originally fulfilled the DBE requirement of the contract and had continued "good faith efforts" with Perkins & Perkins. We contacted several local companies, specifically Paul Reed Construction and Sunshine Holdings, LLC, which are not NDOR certified DBE subcontractors and Infinity Construction which is a NDOR certified DBE subcontractor. Due to scheduling conflicts, Sunshine Holdings, LLC ("Sunshine") was the only subcontractor that could complete the work at the time. It took 12 working days to solicit quotes, gain NDOR approval to sublet and execute subcontracts. Sunshine's crew began work on July 14, 2014. In addition to the 12 days spent on the approval process, Sunshine spent another 5 working days from July 14th through July 18th removing and replacing out of specification concrete done by Perkins & Perkins. This amounts to an additional 17 working days charged to the project due to the issues surrounding Perkins & Perkins. Sunshine finished their concrete work on August 6, 2014, ending with a total of 13 actual working days.

Simon Contractors began the asphalt milling and paving operations on July 21, 2014 and finished on August 27, 2014. At this time the project open to traffic. The project day count at this time was 92 days, of which 39 days can be directly attributed to Perkins and Perkins non-performance.

Before the asphalt paving was completed, Simon Contractors contacted our striping subcontractor DP Sawyer Barricades (“DPS”) out of Lincoln, Nebraska. We informed them of our completion date and that we wanted them on site beginning September 2, 2014. DPS was unable to be on this project before September 15, 2014. DP Sawyer was unable to accommodate us as originally bid and scheduled because this project was so far behind schedule due to Perkins and Perkins lack of performance.

Through October 13, 2014 this project has been charged 122 working days. Thirty nine of these days can be directly attributed to Perkins and Perkins non-performance. Thirty of these days have been charged after the paving was complete and the road was opened to traffic. These days can also be attributed to the delays caused by Perkins and Perkins because DP Sawyer had to reschedule this project as best they could, but they did have conflicts with other projects. If we subtract all of the days counted on this project that were spent waiting for Perkins and Perkins, redoing work originally performed by Perkins and Perkins, or waiting for other subcontractors whose schedule had to be changed because of Perkins and Perkins the day count would be 53 working days as of October 13, 2014. This was originally a 55 working day contract with 4 days added by change order.

Perkins and Perkins was unable to perform their scope of work on this project even with Simon Contractor’s and Baker and Associates best mentoring efforts and this project took longer than anyone could have anticipated. Simon Contractors did its best to deliver a quality project and meet the requirements of the attached special provision regarding compliance with the DBE program from pre-bid until completion. Even though Simon Contractors has received approval to withhold liquidated damages from Perkins and Perkins it is certain that we will not be able to recover any of those costs from Perkins and Perkins. Therefore, Simon Contractors requests that liquidated damages are not withheld from this project.

Respectfully,



Darren Gebhart
Simon Contractors