

SHEET METAL WORKERS' LOCAL UNION NO. 104

COMPLIANCE DEPARTMENT

July 18, 2025

City of Salinas

ATTN: Mayor and Council

To Salinas Mayor Donohue and Esteemed Council Members:

Letter of Advisement

This is a formal Letter of Advisement informing the City of Salinas that the Sheet Metal Workers, Local 104 (hereinafter "SMW 104") has discovered evidence that the apparent low bidder's mechanical subcontractor, B&M Builders, for the City of Salinas - Sherwood Rec Center Renovation project is a nonresponsible bidder. SMW 104 requests a careful review of the bid submitted by Otto Construction for the City of Salinas - Sherwood Rec Center Renovation project.

Non-Responsibility

Public Contract Code Section 1103 defines "responsible bidder" as follows: "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public work contract." An analysis of B&M Builders, or lack thereof, would involve accounting for the multiple Civil Wage and Penalty Assessments ("CWPAs") and OSHA citations issued against the contractor. Just from this office, there have been two issued with the Division of Labor Standards Enforcement (see attached) within the last year, but there may certainly be many others with which we are not privy to filed by other third-party compliance programs). Additionally, there have been multiple OSHA citations within the last year, including a "serious" violation as defined by OSHA.

These assessments, from the Office of the Labor Commissioner, document the contractor's failure to pay the prevailing wage when mandated, the under-reporting of hours, failure to hire apprentices, failure to comply with apprenticeship ratios, and failure to comply with apprenticeship program requirements. Additionally, the contractor has failed to meet reporting requirements as per Labor Code § 1771.4. These CWPAs speak to the contractor's non-responsibility to satisfactorily perform public work contracts.

Onus of the Awarding Agency

An awarding agency has full discretion to determine whether a low bidder is both responsive and responsible. (City of Inglewood-L.A. County Civic Center Authority v. Superior Court (1972) 7 Cal. 3d 861,867, 103 Cal. Rptr. 689.). Here, SMW 104 only requests that the awarding body – the City of Salinas – thoroughly investigate the contractor in question.

Recommendation

Prior to rejecting an apparent low bidder on the basis of nonresponsibility, the public agency must notify the low bidder of the evidence supporting this finding and afford the bidder an opportunity to present evidence in rebuttal and to demonstrate that the bidder is qualified to perform the contract. Although the public agency need not conduct a quasi-judicial hearing, due process requires that the public agency at least follow the procedures set forth above before rejecting the apparent low bidder on the basis of nonresponsibility (i.e., ensuring our underlying facts are true). (City of Inglewood-Los Angeles Civic Center Authority, supra, at p. 871.).

Should the City of Salinas agree with our contention, that B&M Builders is a non-responsible contractor, it would be incumbent on the City of Salinas to allow the contractor to present its case. If then, upon review, the awarding agency was not satisfied, the agency may reject the nonresponsible bidder and proceed to award the contract to the next lowest responsible bidder, or rebid the project entirely.

I am available should you have any inquiries about my work, conclusions, or the underlying facts of this letter. Thank you very much for your time and consideration.

Respectfully,

A handwritten signature in dark ink, appearing to read "David Vincent". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Vincent".

David Vincent
Compliance Representative
SMART, SMW Local Union No. 104