

# SEALS CONSTRUCTION INC.

Kyle Taylor, County Capital Projects Coordinator III  
General Services Agency / Capital Projects Division  
County of Tulare  
2637 W. Burrel Ave., Suite 200  
Visalia, CA 93291

September 27, 2018  
Re: Bid Protest – Probation Vocational Education Building

Dear Mr. Taylor,

Seals Construction, Inc. ("Seals") hereby respectfully submits this Bid Protest challenging an award of the contract for the above referenced construction project (the "Project") by the County of Tulare (the "County") to the apparent low bidder, Atkins Bergreen, Inc. ("Atkins Bergreen").

Seals submitted a sealed bid to the County for the Project on Wednesday, September 26, 2018 prior to 2pm. Shortly after 2pm, the County opened four sealed bids and furnished copies of the List of Subcontractors for Atkins Bergreen. Based on the review of the List of Subcontractors for Atkins Bergreen, it appears they are deficient.

Specifically, Atkins Bergreen failed to identify in its bid subcontractors for Rebar, Masonry and Painting; all of which have a value greater than one-half of one percent of the total bid. Seals listed LMS for Rebar whose bid amount was \$13,485, Sequoia for Masonry whose bid amount was \$9,800 and Kreel for Painting whose bid amount was \$21,200. The failure of Atkins Bergreen to list a subcontractor who's bid was \$6,769 or greater is in violation of Public Contract Code 4106 and therefore renders Atkins Bergreen's bid non-responsive. Additionally, please reference the Project Manual, Instructions to Bidders specification section 00100-2, which states, ***"No bid will be valid without the complete listing of subcontractors performing more than one-half (1/2) of one (1%) of total contract"***. Therefore, Atkins Bergreen's failure to list Rebar, Masonry and Painting subcontractors on their List of Subcontractors must render their bid invalid and nonresponsive.

For the foregoing reason, Seals respectfully requests the County not award a contract to the apparent low bidder, Atkins Bergreen, and instead award the contract to Seals.

Please do not hesitate to contact me with any questions or concerns you may have about this. We look forward to receiving an award of the County of Tulare for the Project.

Sincerely,



Mike Kottage  
Seals Construction, Inc.

cc: Atkins Bergreen, Inc.

**SECTION 00506 - AGREEMENT BETWEEN COUNTY AND CONTRACTOR**

**AGREEMENT**

**BETWEEN**

**COUNTY AND CONTRACTOR**

**AGREEMENT**

Made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Two Thousand and Eighteen.

**BETWEEN** the County: **COUNTY OF TULARE, STATE OF CALIFORNIA**

and the Contractor: \_\_\_\_\_

The Project: Tulare County – Probation Vocational Educational Building,  
11150 Avenue 368, Visalia, CA 93291

The County's Representative: Kyle Taylor – Capital Projects - County of Tulare

The Architect: Chas Rhoads Architects

The County and the Contractor agree as set forth below.

**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the General Conditions and those documents enumerated in Sub-paragraph 1.1.1 of the General Conditions, which documents are hereby incorporated into this Agreement and made a part hereof.

**ARTICLE 2**

**THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for the Tulare County – Probation Vocational Education Building construction project, 11150 Avenue 368, Visalia, CA 93291.

**ARTICLE 3**

**TIME OF COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall be commenced within Ten (10) calendar days after the date the Notice to Proceed is received by the Contractor and, subject to authorized adjustments, Completion of the Work shall be achieved for The Project within **150** calendar days from the date to be established in the "NOTICE TO PROCEED". The Agreement includes provisions for Liquidated Damages if the Project is not completed within the agreed time of completion. If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to County, as liquidated damages and not as a penalty, the sum of **\$500.00** for each day after the expiration of

the Contract Time that the Work remains incomplete. County and Contractor agree that if the Work is not completed within the Contract Time, County's damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. County may deduct any liquidated damages due from Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of County in the event of any other default of Contractor other than failing to complete the Work within the Contract Time.

**ARTICLE 4**

**CONTRACT SUM**

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of \_\_\_\_\_.

**ARTICLE 5**

**PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the County by the Contractor and Project Certificates for Payment issued by the County's Representative, the County shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: The Contractor shall, on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the County's Representative for checking and approval. On or about the 20th day of the month, following the month in which the work was performed, the County shall pay to the Contractor ninety-five (95%) percent of the value of said work in place, as checked and approved by the County's Representative. The balance of five (5%) percent of the estimate shall be retained by the County until the time of final acceptance of said work.

**ARTICLE 6**

**FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor when the Work has been completed; the Contract fully performed, the County's Representative has issued a Project Certificate for Payment, which approves the final payment due the Contractor and the Board of Supervisors of Tulare County has formally accepted the project as complete by Resolution.

**ARTICLE 7**

**MISCELLANEOUS PROVISIONS**

7.1 Terms used in this Agreement, which are defined in the "GENERAL CONDITIONS" of the contract shall have the meanings designated in those Conditions.

7.2 Notices shall be addressed as follow:

**COUNTY**

**Board of Supervisors**  
County of Tulare  
County Civic Center  
2800 W. Burrel Avenue  
Visalia, CA 93291  
(559) 636-5000

**CONTRACTOR**

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**COUNTYS REPRESENTATIVE**

Kyle Taylor  
County of Tulare  
Capital Projects  
5953 S. Mooney Blvd.  
Visalia, CA 93277  
(559) 636-5300 – Phone

**SURETY**

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- 7.3 **PREVAILING WAGES.** The Contractor agrees that State Prevailing Wages apply to this Project, and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The State Wage Determinations are on file with the Clerk of the Board of Supervisors, Administration Building, County Civic Center, Visalia, California, and will be made available to any interested person on request; and the Payroll Submittal Information attached hereto as Section 00508 are incorporated herein as if set forth in full and are a part of this Contract. The Contractor agrees to repay the County any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109.
- 7.4 **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- 7.5 **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.
- 7.6 **INDEPENDENT CONTRACTOR STATUS:**
  - a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or

officer of COUNTY.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7.7 **INDEMNIFICATION AND DEFENSE:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees in accordance with paragraph 4.17 of the General Conditions. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

The absence of insurance or insufficient insurance limits will not eliminate the obligation to indemnify and defend hereunder.

7.8 **CONFLICT OF INTEREST:**

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant participates in or influences any COUNTY

decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

b. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests' laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

- 7.9 **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.
- 7.10 **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- 7.11 **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
- 7.12 **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 7.13 **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.
- 7.14 **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
- 7.15 **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 7.16 **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
- 7.17 **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.
- 7.18 **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition



This Agreement entered into as of the day and year first written above.

**COUNTY**

**CONTRACTOR**

\_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

**COUNTY OF TULARE**  
**Civic Center**  
**Visalia, CA 93291**

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\_\_\_\_\_  
\_\_\_\_\_  
Address

ATTEST: Jason T. Britt  
County Administrative Officer/Clerk of  
The Board of Supervisors of the  
County of Tulare

BY: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
County Counsel

**END OF SECTION 00506**