



July 15, 2009

Board of Education
Gadsden Independent School District
PO Drawer 70
Anthony, New Mexico 88021

**Re: Bidding
Re-Bid Gadsden High School
Gadsden Independent School District
Anthony, NM**

Dear Board Members:

Seven bids have been received for the above referenced project with the low bid of \$5,869,000.00 from an Alamogordo firm, White Sands Construction. The enclosed bid tabulation sheet shows the second low bidder, Gencon Corporation as \$225,000.00 higher, and Gencon has protested White Sands bid in the enclosed letter form Keith Burn- Attorney. This protest has been rejected by Steven Suggs, Superintendent of Finance, in a letter (enclosed copy) to Gencon. There are no other apparent problems with the bids and the District can now proceed to evaluate and determine what appropriate action to take. Six of the bids are within the project budget.

White Sands is not well known in the Mesilla Valley, but they have experience doing many public and private projects. The enclosed Bidder Qualifications Sheet lists some of their projects and references. Our firm has spoken with three of these references who have high regard for White Sands' quality of work and field supervision.

Alley Associates recommends the acceptance of White Sands bid and awarding them a contract. If you have any questions regarding this letter please contact me.

Sincerely,

Rembert C. Alley, Jr.
Alley Associates, P.C.

Cc: Steven Suggs
Rebecca Acuna
Richard Chavez
Ralph Gallegos
David Boyd



ALLEY ASSOCIATES
ARCHITECT-PLANNERS

BID TABULATION

1691 HICKORY LOOP, STE. A
LAS CRUCES, NEW MEXICO
88005
(505) 523-1310

PROJECT: GAD2006-03
RE-BID GADSDEN HIGH SCHOOL BUILDING &
ADDITION - 2009

BID DATE: May 26, 2009
BID TIME: 2:00 PM

CONTRACTOR	Bid Lot #1 Lib./Admin. Bldg. & Gym Add't	Bid Lot #2 Remodeling Existing Gym.	Subtotal;	Taxes	Total:			
CLASSIC INDUSTRIES	\$5,368,380.00	\$1,160,122.00	\$6,528,502.00	\$403,951.00	\$6,932,453.00			
CRESTLINE BUILDING CORP.	NO BID							
DND CONTRACTORS	\$5,370,000.00	\$990,000.00	\$6,360,000.00	\$393,525.00	\$6,753,525.00			
GENCON CORP.	\$5,162,000.00	\$932,000.00	\$6,094,000.00	\$377,066.00	\$6,471,066.00			
JAYNES CORP.	\$5,825,000.00	\$1,018,000.00	\$6,843,000.00	\$423,411.00	\$7,266,411.00			
RAY WARD & SONS INC.	\$5,400,000.00	\$1,027,000.00	\$6,427,000.00	\$397,671.00	\$6,824,671.00			
VALDEZ & SONS CONSTRUCTION	NO BID							
WHITE HORSE CONSTRUCTION	NO BID							
WHITE SANDS CONSTRUCTION	\$4,940,000.00	\$929,000.00	\$5,869,000.00	\$363,144.00	\$6,232,144.00			

Budget

Gadsden High School Building and Addition 2009
(New Library/Administration Building, Addition and Remodeling Existing Gymnasium)
Gadsden Independent School District

February 27, 2009

Construction

Library/Administration Building	19,528 SF @ \$150	\$2,929,200.00	
Gymnasium Addition	10,309 SF @ \$160	\$1,649,440.00	
Gymnasium Remodel			
Building	9,500 SF @ \$105	\$ 997,500.00	
Demolition	4,080 SF @ \$55	\$ 224,400.00	
Bleachers		\$ 125,611.00	
Goals/Scoreboards		\$ 63,000.00	
Site Improvements			
Fire Protection		\$ 555,000.00	
Utilities		\$ 132,500.00	
Sidewalks		\$ 36,000.00	
Demolition		\$ 61,000.00	
Taxes @ 6.187%		<u>\$ 419,086.00</u>	
		\$7,192,737.00	\$7,192,737.00

Fees

Building, Additions/Site Work	\$5,363,140 @ 6%	\$ 321,788.00	
Remodeling	\$1,410,511 @ 7%	\$ 98,736.00	
Reimbursables	Soils Tests	\$ 6,980.00	
	Survey	\$ 5,700.00	
	Printing, Etc.	\$ 27,900.00	
Taxes @ 7.375%		<u>\$ 34,006.00</u>	
		\$ 495,110.00	\$ 495,110.00
<u>Roof Consultant</u>		\$ 31,863.00	\$ 31,863.00

BEAUDIN GANZE CONSULTING

\$ 27,544.00 \$ 27,544.00

Furniture

Administration/Library

\$ 211,517.00

Gymnasium

\$ 10,000.00

\$ 221,517.00 \$ 221,517.00

Contingency 3.3%

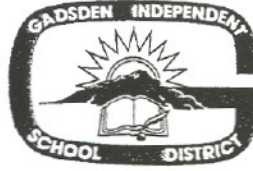
\$ 274,140.00 \$ 274,140.00

Total

\$8,242,911.00

SUPERINTENDENT
Cynthia Nava

ASSOCIATE SUPERINTENDENT FOR
FINANCE
Steven W. Suggs



4950 MCNUTT,
SUNLAND PARK, NM

P. O. DRAWER 70
ANTHONY, NM 88021
PHONE (575) 882-6243
FAX (575) 882-6265

July 1, 2009

Michael P. Clute – President
Gencon Corporation
P.O. Box 448
Mesilla, NM 88046

**Re: Protest of Gencon Construction Co.
Re-Bid Gadsden High School Building and Addition – 2009
Gadsden Independent School District (GISD)
Anthony, New Mexico**

PROTEST DETERMINATION

Dear Mr. Clute:

I have reviewed the Bid Protest submitted by Attorney Keith Burn for your firm on the above referenced project which protest was timely filed. I have considered it along with the letter of response from White Sands Construction (enclosed), reviewed the Gencon and White Sands bids, and have met with Rembert Alley – Architect. It is my determination as GISD Central Purchasing Agent that the protest is rejected based on the reasons stated below for each of the three items listed in Mr. Burn's letter dated June 2, 2009 (also enclosed).

1. **FAILURE TO PROVIDE A BID BOND**

Determination - White Sands Construction listed Enoch Mechanical for the mechanical, controls and plumbing. Enoch submitted a bid bond for the mechanical/plumbing part of the project. Having a MM98 construction license they can include or exclude second tier work which may require additional licenses. White Sands Construction excluded the fire protection tank from Enoch's bid and elects to subcontract directly with D and R Tank. Having GF-7 and GF-8 construction licenses, D and R Tank can furnish and install the fire protection tank, but they do not have a Mechanical license and are therefore not a Mechanical Contractor requiring a bid bond.

2. **FAILURE TO LIST SUBCONTRACTORS**

Determination - Lynco Electric is listed as the Electrical Subcontractor. This firm, having construction licenses EE-989 and EL-1, can do all electrical work on this project including the Special Systems and high voltage. All parts of the Special Systems can be by Lynco or by their second tier subs. Second tier subs are not required to be listed as subcontractors.

2B. THE USE OF "N/A" FOR CATEGORIES OF WORK LISTED BUT NOT APPLICABLE

Determination - The lack of "N/A" for five (5) categories of work does not affect the bidding integrity and is waived as a technical irregularity.

3. FAILURE TO SIGN ALTERATION OF SUBCONTRACTOR LISTING

Determination - The lack of initials at a bid alteration does not affect the bidding integrity and is waived as a technical irregularity. The alteration was done by the contractor prior to the sealed bid being submitted to the purchasing agent.

This determination having been issued, the District shall proceed with the award of this contract, such action being deemed necessary to protect substantial interests of the District.

As the protestant, Gencon has the right to judicial review of this determination pursuant to Section 13-1-183, NMSA 1978 of the Procurement Code (13-1-175, NMSA 1978).

Thank you for the work Gencon has performed and is currently performing for GISD. We have given your protest our sincere consideration and request that you continue to bid on our projects and perform work for our district.

Sincerely,



Steven W. Suggs, CPA
Associate Superintendent for Finance

Enclosures:

- (1) Bid Protest letter
- (2) Letter of response from White Sands Construction

cc: Cynthia Nava, Superintendent GISD
Richard Chavez, Associate Supt. for Support Services GISD
Rebecca Acuna, Purchasing Agent
Ralph Gallegos – GISD
David Boyd – GISD
Tim Berry – PSFA
Pat McMurray – PSFA
Brent Flenniken – PSFA
Classic Industries
DND Contractors
Gencon Corp.
Jaynes Corp.
White Sands Construction
Wooten Construction
Keith Burn
Cuddy & McCarthy, LLP

The Pickett

Law Firm, LLC

500 N. CHURCH STREET
P.O. BOX 1239
LAS CRUCES, NEW MEXICO 88004

Tel. (575) 526-3338
Fax (575) 526-6791

Lawrence M. Pickett
e-mail: larry@picklawllc.com

Mark Pickett
e-mail: mark@picklawllc.com

Keith S. Burn
e-mail: kburn@picklawllc.com

Mollie C. McGraw
e-mail: mmcgraw@picklawllc.com

June 2, 2009

Pamela S. Wright
Purchasing Agent
Gadsden Independent School District
Administrative Complex
100 Laura Court
Santa Teresa, NM 88008

Re: **GenCon Corporation Bid Protest**
Re-Bid Gadsden High School, Building and Addition 2009
PSFA Project No.: P07-007
GISD Bid No.: 08-09-026 (the "Project")

Dear Ms. Wright:

On behalf of our client, GenCon Corporation, we protest the bid of White Sands Construction on the above-referenced Project. It is our position that White Sands Construction's bid was not responsive, that White Sands violated the Subcontractors Fair Practices Act, that White Sands' bid must be rejected, and that the contract should be awarded to GenCon, the low responsive bidder.

1. Failure to Provide Bid Bond. White Sands Construction did not provide the required bid bonds for all mechanical and plumbing contractors as required by Section 01001 Special Conditions, Item 18 B.1. which states that, "1. Bid Bond for Mechanical, Plumbing, and Electrical Subcontractors ~ Each General Contractor's proposal must be accompanied by an acceptable bid bond from the above-listed subcontractors . . ." On its subcontractor listing form, White Sands designated D & R Tank as its subcontractor for the water tank which is an integral part of mechanical, plumbing, and fire protection. D & R Tank's bid for this tank is well over the listing threshold of \$40,000.00. White Sands listed Enoch Mechanical for all other portions of the mechanical and plumbing work and, in fact, included a bid bond from Enoch Mechanical for Enoch's work. However, White Sands did not provide a bid bond for D & R Tank whose work is an integral part of the plumbing and fire protection. Enoch Mechanical's bid does not include the tank and Enoch's bid bond does not cover work by D & R Tank. There is no bid bond for the tank. The specifications clearly require that a bid bond must be submitted covering all mechanical and plumbing work to be done on the Project. White Sands Construction did not provide a bid bond for D & R Tank and, therefore, did not comply with the requirements in the specifications. White Sands Construction's bid is non-responsive.

Pamela S. Wright
June 2, 2009
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2. Failure to List Subcontractors. White Sands Construction failed to list subcontractors, and its bid is in violation of the Subcontractors Fair Practice Act. The pre-printed Subcontractor Listing Form for the Project specifically lists Special Systems as a category of work to be performed for which a licensed subcontractor must be listed. White Sands did not list a subcontractor. The Subcontractors Fair Practices Act, § 13-4-38, Failure to Specify Subcontractor, states "If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself." White Sands Construction listed no subcontractor for the Special Systems category of work and, in fact, left this space blank. This category is well over the listing threshold of \$40,000.00. By leaving this space blank, White Sands has stated that it is licensed to do this work and that it will perform this Special Systems work. In fact, White Sands Construction is not licensed to perform this category of work. By leaving this space blank, White Sands stated that it will perform this work itself. White Sands is not licensed to do so, and it thereby failed to list a subcontractor in violation of the Subcontractors Fair Practices Act.

Additionally, the Subcontractor Listing Form specifically requires that the "Contractor must fill in all types of work listed below. Where work noted is not applicable, use 'N/A' for entity number." White Sands Construction did not comply with this requirement on the Subcontractor Listing Form. It left the entity name blank for the categories of Glazing, Furnishings, Landscape, Elevator, and Special Systems. This renders the bid non-responsive.

3. Failure to Sign Alteration, Interlineation. White Sands Construction is in violation of Instructions to Bidders, Item 4 – Bidding Procedures wherein 4.1.4 states, "Any interlineations, alteration, or erasure must be initialed by the signer of the bid." On White Sands Construction's Subcontractor Listing Form under Type of Work – Electrical, there is an alteration which was not initialed. This renders the bid non-responsive.

We submit that these violations are not clerical errors and that they required that White Sands Construction's bid be deemed non-responsive.

Pamela S. Wright
June 2, 2009
Page 3

Because of these violations, we respectfully request that GenCon Corporations's bid be declared the responsive low bid for this project. This being the case, we request that the project be awarded to GenCon Corporation.

Sincerely,

THE PICKETT LAW FIRM

A handwritten signature in black ink, appearing to read "Keith S. Burn", written over a horizontal line.

KEITH S. BURN

KSB:clf

Jun. 2, 2009, 3:07PM
 opened bid opening date: 5/26/09

GADSDEN INDEPENDENT
 SCHOOL DISTRICT

CONTRACTOR: White Sands Construction
 Re-Bid Gadsden High School Building and Addition -
 2009

INVITATION TO BID NUMBER:

PSFA Project No.: P07-007

GISD BID NO.: 08-09-026

Subcontractor Listing
 (Subcontractor's Fair Practices Act)

*Signature not required until after Bid but, before Award

TYPE OF WORK	ENTITY NAME	CITY & STATE	*** Minimum Wage Act Registration # (if over \$50,000)	SIGNATURE *
SITE WORK	Renegade Const.	Las Cruces, NM	0952520090513	
CONCRETE	Diesel Enterprises	Dona Ana, NM	0057020050617	
MASONRY	Meadow Vista	Sumland Park, NM	12975201020218	
FRAMING Sheetrock	A+P Const.	El Paso, TX	0107892000814	
STEEL ERECTION	Alamo General	El Paso, TX	52226050614	
ROOFING	Progressive Services	Albuquerque, NM	01126200601216	
INSULATION Acoustic / Prefabricated Panels	Ontiveros	Las Cruces, NM	6020720050524	
DRYWALL	A+P Const.	El Paso, TX	0107892000814	
GLAZING				
PLASTER	Ray's Stucco	Alamogordo, NM	01272820100128	
FLOORING	Casey Carpet	Las Cruces, NM	under threshold	
PAINTING	Building Finishes	Albuquerque, NM	0982920090617	
FURNISHINGS				
LANDSCAPE				
ELEVATOR				
HVAC	Enoch Mech.	Las Cruces, NM	01001620090703	
CONTROLS	Enoch Mech.	Las Cruces, NM	01001620090703	
PLUMBING	Enoch Mech.	Las Cruces, NM	01001620090703	
ELECTRICAL	Lynette	Las Cruces	0101432009070	
SPECIAL SYST.				
Doors/Frames	APCD	Anthony, NM	01386480100501	

* Contractor must fill in all types of work listed below. Where work noted is not applicable, use "N/A" for entity number. In blank spaces list additional subcontractors as required by listing.

505-293 1362 JALAN ARSANA

STATEMENT OF BIDDER'S QUALIFICATIONS

WHITE SANDS CONSTRUCTION, INC
P.O. BOX 1745, ALAMOGORDO, NM 88311-1745

LICENSE #: 50235 (GB-98)

ORGANIZED IN 1985

INCORPORATED IN THE STATE OF NEW MEXICO # 1526862 (06/19/91)

CONSTRUCTION EXPERIENCE:

RAY NELL CRIMMINS - PRESIDENT 25 YEARS EXPERIENCE; DENNIS C. CRIMMINS - DIRECTOR OF OPERATIONS 30 YEARS EXPERIENCE; MELVIN BRAZEAL - CONTROLLER 40 YEARS EXPERIENCE; STEVEN MALETT - SUPERINTENDENT / PROJECT MANAGER 20 YEARS EXPERIENCE

PROOF OF FINANCIAL RESOURCES:

FIRST SAVINGS - 723 NEW YORK AVE. - ALAMOGORDO, NM 88310 - ALL REQUIRED FUNDS AND A LINE OF CREDIT ARE AVAILABLE TO PERFORM AND COMPLETE THE PROJECT

PRODUCTION OF SERVICE FACILITIES/SERVICE REPUTATION AND EXPERIENCE:

<u>PROJECT TITLE</u>	<u>VALUE</u>	<u>COMPLETION DATE</u>
CHAPARRAL CLINIC	\$ 233,845	CURRENT
WNMU JUAN CHACON ADDITION	\$ 4,025,092	CURRENT
CORONA WELDING SHOP ADDITION	\$ 356,647	CURRENT
OTERO COUNTY FAIRGROUNDS NEW EXHIBIT BLDG	\$ 1,172,616	CURRENT
OTERO COUNTY COURTHOUSE PARTIAL REMODEL	\$ 1,085,782	CURRENT
NMSU-A HEALTH SCIENCES REIDLINGER ADDITION	\$ 4,598,174	CURRENT
HOLLOMAN AIR FORCE BASE - MULTIPLE LOCATIONS	\$ 4,247,556	JUNE 2009
HOLLOMAN AIR FORCE BASE - IDIQ	\$ 2,000,000 PER YEAR	JUNE 2009
AMERICAN FAMILY ENTERTAINMENT CENTER - DEMING	\$ 5,682,018	MAY 2009
SIERRA COUNTY COURTHOUSE	\$ 4,411,194	FEBRUARY 2009
NMSBVI NATATORIUM	\$ 602,742	OCTOBER 2008
CORINTH BAPTIST CHURCH	\$ 247,500	MAY 2008
FLOOD DAMAGE - ENMU RUIDOSO	\$ 721,250	MARCH 2008
HOLLOMAN AFB - COMMISSARY LOADING DOCK	\$ 582,200	FEBRUARY 2008
BEN ARCHER HEALTH CENTER	\$ 1,420,465	JANUARY 2008
T OR C ELEMENTARY ROOFING, HVAC RENOVATIONS	\$ 1,497,000	DECEMBER 2007
FIVE FIRE STATIONS REMODEL - LAS CRUCES	\$ 1,189,525	NOVEMBER 2007
DEMING PIT PARK	\$ 1,472,338	OCTOBER 2007
RUIDOSO NEW MAIN FIRE STATION	\$ 3,861,082	OCTOBER 2007
NEW MEXICO FARM CREDIT	\$ 1,732,000	OCTOBER 2006
LUNA COUNTY COURTHOUSE	\$ 2,130,000	OCTOBER 2006
CLOVIS CIVIC CENTER	\$ 4,775,840	FEBRUARY 2006

JOB REFERENCES:

DEKKER / PERICH / SABATINI LTD

POC: BILL SABATINI - PRINCIPAL ARCHITECT
505-761-9700
FARM CREDIT OF NEW MEXICO - 1,732,000
CLOVIS CIVIC CENTER - 4,775,840
CARLSBAD BORDER PATROL STATION - 2,445,644
EL CAMINO REAL HERITAGE CENTER - 3,506,411

HOLLOMAN AIR FORCE BASE

POC: RON HARRINGTON - SABER OFFICER
575-572-3125
SABER CONTRACT - 5,000,000 PER YEAR
HERITAGE / HONOR GUARD - 590,445
BUILDING 868 HANGER REMODEL - 2,088,094
IDIQ DESIGN BUILD - CURRENTLY IN PROGRESS

LUNA COUNTY - COUNTY MANAGER

POC: SCOTT VINSON - COUNTY MANAGER
575-546-0494
LUNA COUNTY COURTHOUSE REMODEL - 2,130,000

ROHDE MAY KELLER MCNAMARA

POC: DON MAY - PRINCIPAL ARCHITECT
505-243-5454
RUIDOSO NEW MAIN FIRE STATION - 3,861,082

ASA ARCHITECTS STUDIO

POC: GENARO MIER - ARCHITECT
915-544-4887
BEN ARCHER HEALTH CENTER - 1,420,465
ALAMOGORDO, NM

ASA ARCHITECTS STUDIO

POC: BENSON POIRIER
575-526-3111
OTERO COUNTY COURTHOUSE REMODEL -
1,085,782 ALAMOGORDO, NM