



San Diego and Imperial Counties Labor Council

December 8, 2020

VIA E-MAIL ONLY

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Mayor and City Council of Chula Vista
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, California 91910

**RE: December 8, 2020 City Council Agenda
Objections to Agenda Item 3 – 20-0357 (Resolution to Award Open Space Tree
Maintenance Services Contract to Arbor West Tree Surgeons, Inc.)**

Dear Mayor Salas and Members of the City Council:

The San Diego & Imperial Counties Labor Council (“Labor Council”) with 136 affiliated unions representing over 200,000 workers in San Diego County across a broad spectrum of industries, including nurses, teachers, firefighters, retail workers, truck drivers, construction tradespeople, grocery employees, domestic workers, janitors, stagehands, college professors, and more. The Labor Council is writing to voice our concerns regarding the referenced Agenda Item on the Chula Vista City Council’s December 8, 2020 meeting agenda.

The staff of the City of Chula Vista (“City”) has recommended that the City award the contract for Open Space Tree Maintenance Services (“Tree Services”) to Arbor West Tree Surgeons, Inc. (“Arbor West”). As addressed below, the Labor Council has several concerns regarding the award of the Tree Services contract to Arbor West.

As you know, Section 28(a) of the City’s Notice to Bidders – General Provision, requires that bids, such as for the Trees Services, be awarded to the “lowest, responsive **and responsible bidder** whose bid conforms to the solicitation and whose bid is considered to be most advantageous to the City, price and **other factors considered.**” (**Emphasis added.**) As stated in the applicable RFB documents, these other factors include a contractor who “has the necessary experience, skills, business standing, equipment, staffing, and financial stability to properly maintain and complete the scope of work identified in th[e] request for bids.” For purposes of evaluating the bid that is most advantageous to the City and in consideration of the **other factors** that should be taken into account by the City, the Labor Council submits the following for the City’s deliberation:

Safety Concerns

Undoubtedly, safety is one of the primary considerations of the City in evaluating bids by prospective contractors. In this matter, the Labor Council has serious concerns regarding how Arbor West can safely and adequately perform the required tree maintenance service with a bid that is over \$140,000 lower than the second lowest bid. Here, Arbor West's bid was \$343,520, while the second-lowest bidder, West Coast Arborist, bid \$483,985. In addition, the third-lowest bidder, Atlas Environment Services, bid \$529,455.

Based upon information supplied by Contelligence®, which is an organization that analyzes, tracks, and monitors contractors' safety and workers' compensation records, Arbor West's most recent Experience Modification Rating is 211, which is dangerously high and is nearly twice as high as the second-lowest bidder, West Coast Arborist, which has an Experience Modification Rating of 113. The Experience Modification Rating is used to calculate workers' compensation premiums and the lower the Experience Modification Rating the better for purposes of, among other things, calculating workers' compensation premiums. An Experience Modification Rating of 211 is concerning and the Labor Council does not believe that it is an acceptable industry standard.

Further, when it comes to tree maintenance services, the Tree Care Industries Association (TCIA) is America's oldest and most respected tree-care trade association. In response to questions by potential bidders during the pre-bid process, it is the Labor Council's understanding that the City did not require TCIA accreditation. However, the City should require, or at least give preference to, TCIA accreditation because TCIA accreditation involves an extensive qualification and annual reevaluation process to ensure that accredited tree care companies conduct business in a safe, legal and ethical manner, that the companies have good consumer satisfaction ratings, and that the companies satisfy industry standards. Accordingly, TCIA accreditation is relevant and useful in determining, for example, whether a contractor has the necessary experience, skills, or business standing, which are part of the "other factors" considered by the City. TCIA accreditation helps ensure that the City is contracting with contractors who have met TCIA's strenuous criteria for meeting industry standards and customer satisfaction. It is the Labor Council's understanding that Arbor West is not a TCIA accredited company.

C-31 Traffic Control License

The RFB (RFB B02-20.21) for the Tree Services bid requires traffic control by individuals possessing a C-31 License. Here, according to the California Contractors State License Board's online records, Arbor West does not possess a C-31 traffic control license. Given this, if awarded to Arbor West, the traffic control required as part of the Tree Services contract may not be performed by licensed individuals in contravention of the requirements of the contract.

Prevailing Wage Concerns

As the City's December 8, 2020 Staff Report provides, the "contractor is required to pay prevailing wages to persons employed by them for the work performed under this contract and shall ensure compliance with all applicable state and local laws governing the payment of prevailing wages." The Labor Council is informed that Arbor West is currently under investigation by the State of California Department of Labor Standards and Enforcement ("DLSE") for potential prevailing wage

violations involving a separate City of Chula Vista project. Given that there is a pending investigation by the DLSE against Arbor West, the City, as part of its determination, should ensure that it is awarding the Tree Services contract to a contractor that will fully comply with all applicable state and local prevailing wage laws, including a contractor's history with compliance with prevailing wage requirements.

Lack of Transparent Process

It is the Labor Council's understanding that, after notification that Arbor West was the lowest bidder, West Coast Arborist has made multiple Public Records Act requests for Arbor West's bid proposal, but has been denied the public records by the City despite the Supreme Court's ruling in *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, which found that Public Records Act requests for competitively bid proposals could only be withheld during the period in which a public agency was actively negotiating a final contract with the apparent low bidder, but that disclosure was required prior to the contract award. Despite controlling legal authority, the City continues to refuse to provide the requested public records even though it is apparently prepared to award the Tree Services contract to Arbor West.

Open and transparent government, as well as an open and competitive bidding process, are hallmarks of our government. The requested documents are critical in assessing whether the Tree Services contract is being award to the lowest responsive and responsible bidder and, accordingly, the Labor Council supports the request for these public records to be released to ensure and maintain transparency in the bidding process.

The Labor Council appreciates the consideration by the Mayor and Members of the City Council of its concerns regarding the Tree Services contract. Based on the concerns identified in this letter, the Labor Council requests that the City **not** adopt the recommendation of City staff at this time to approve the contract and, instead, that the City continue the matter to a future date to provide the City and public with adequate time to consider and address the matters raised in this letter, and also so that the public records requested relating to Arbor West's bid can be released.

Sincerely,

A solid black rectangular box redacting the signature of Keith Maddox.

Keith Maddox
Executive Secretary-Treasurer
San Diego & Imperial Counties Labor Council

cc: Kerry K. Bigelow, City Clerk (via email: cityclerk@chulavistaca.gov)