RE: Muir and McKinley HVAC Bid Protest (*Environmental Systems Inc. v. Strawn Construction*)

On November 9, 2015 at 2pm Harris & Associates conducted a bid opening for the Muir Middle School and McKinley Elementary School HVAC system upgrade. We had 3 bidders: Environmental Systems, Inc.,

Strawn Construction and Dowdle & Sons Mechanical, Inc. .

The bid opening revealed Environmental Systems Inc. (ESI) as the apparent low bid for both projects and Strawn second low bid, also on both projects. Bids were as follows:

Muir MS	McKinley ES
ESI - $747,000	ESI - $1,290,000
Strawn - $874,000	Strawn - $1,449,000
Dowdle & Sons - $878,342	Dowdle & Sons - $1,497,560

At this point, Strawn made it known that if ESI were awarded the project based on them (ESI) being low bidder, they (Strawn) plan to protest. We received two official protest letters from Strawn on November 12, 2015 one for Muir MS and the other McKinley ES.

Strawn's protest at Muir was that ESI failed to list a demolition/abatement subcontractor, a drywall subcontractor or a painting subcontractor. Strawn valued these scopes of work at 3.4%, 1.7% and 1.4% of the total value of the bid respectively, violating Contract Code 4104 and Specification Section 00-21-13, Article 8 due to the fact they felt the work exceeded the ½ of 1% of the total bid. Strawn also stated that ESI is not properly licensed to perform these scopes of work and therefore should be deemed non responsive.

Strawn's protest for McKinley was identical to that of Muir except the values of these scopes of work; demolition/abatement subcontractor, the drywall subcontractor and painting subcontractor came in at 2.3%, 1.2% and .7% respectively by their estimation.

All parties were made aware of the protest, including the District's Counsel at Orbach Huff Suarez & Henderson LLP , and ESI stated they would have a response to the protest by noon November 17, 2015. We received ESI's response letter November 16, 2015.

At Muir MS, ESI countered that the value of the scope of work called out in the protest was less thatn$3,735 (which represents ½ of 1% of ESI's total bid $747,000) and that ESI is not required to list subcontractors for these works. Attached to ESI's response was a proposal from Coastwide Environmental Technology supporting the cost of the work. ESI also stated that they, in fact, are licensed to perform sheetrock, painting, and framing using their B General building license being that the work is "incidental and supplemental" to the work covered by ESI's specialty license.

In ESI's response to the Strawn protest at McKinley is identical to that of Muir except Strawn c stated that ESI had not listed a subcontractor acoustical, drywall or painting. In fact, ESI did list RC Benson & Sons, Inc., a general contractor, to perform this work. ESI also stated that they, in fact, are licensed to perform sheetrock, painting, and framing using their B General building license being that the work is "incidental and supplemental" to the work covered by ESI's specialty license.

The District's Counsel at Orbach Huff Suarez & Henderson LLP reviewed both the protest and protest response carefully along with all of the backup documents. Based on their review, the District Counsel will be advising the District staff to recommend that the District's governing Board that the Muir and McKinley HVAC Upgrade project be awarded to ESI. This recommendation is based on the facts that ESI has clarified that the scope of work at Muir does not exceed the ½ of 1% of the total project bid and ESI was in fact responsive on both bids and hold the correct B license in addition to its specialty license for these projects. For trades not listed, pursuant to Public Contract Code 4106, ESI shall perform that portion of the work itself.