



PUBLIC WORKS DEPARTMENT

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March 28, 2017

Micon Construction, Inc.
Attn: Gene F. Holle
1616 Sierra Madre
Placentia, CA 92870

**SUBJECT: RESPONSE TO BID PROTEST OF MICON CONSTRUCTION INC.
SPLASH PAD AT RIDGELINE PARK, PROJECT 2016-12**

Dear Mr. Holle:

We received your letter dated March 23, 2017, protesting the award of the Splash Pad at Ridgeline Park Project (Project) to California Waters Development, Inc. dba California Waters (California Waters), the apparent lowest bidder for bids received on March 20, 2017.

The City has reviewed the bid proposal submitted by California Waters, and determined that it is responsive. California Waters' bid package was submitted to the City with all required information, forms, and the bid bond. Responsiveness must be determined from the face of the bid (*Taylor Bus Serv., Inc. v. San Diego Bd. Of Edu. (1987) 195 Cal.App.3d. 1331*). A bid must be deemed responsive if, on its face, it promises to do what the request for bids demands (*Williams v Clovis Unified Sch. Dist. (2007) 146 Cal.App.4th 757, 764*). From the face of California Waters' bid, we can ascertain no material defects that would render the bid non-responsive.

The issues that Micon Construction, Inc. (Micon) have raised in its protest are inconsequential and do not affect the amount of bid, the integrity of the bidding process, or the responsiveness of California Waters' bid. California courts have held that:

[Bid protests] must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. 'It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher

bid. Such construction would be adverse to the best interests of the public and contrary to public policy.' (Judson Pacific-Murphy Corp. v. Durkee (1956) 144 Cal.App.2d 377, 383, cited in MCM Construction v. City and County of San Francisco (1998) 64 Cal.App.4th 359, 370.)

Below are more specific responses to each issue raised by Micon in the order presented in the Micon bid protest letter dated March 23, 2017.

1. Micon asserts that California Waters submitted an unenforceable bid bond because the signature of Mark Pitman on page 16 was not accompanied by a notarized California All Purpose Acknowledgement, provided by the City on page 17.

It was not the City's intent to mandate that the contractor have its signature notarized. We cannot find anywhere within the City's bid documents citing this as a requirement. Having the notary acknowledgment form is not the same as mandating such information. We also cannot find any state law mandating the signature(s) on a bid bond be notarized. The fact is, the bid is enforceable against the contractor and the surety as executed, and thus there is no unfair competitive advantage to accepting the bid as submitted. Therefore, the City considers allegation 1 to be without merit.

2. Micon asserts that California Waters submitted an incomplete bid because pages 21-23 are missing. Micon asserts that these pages are the Contractor and Subcontractor Registration Forms that are "Contract Documents" to be submitted with the bid, and that these forms specifically state, "All prospective bidders, as well as Subcontractor, are required to complete this Form."

Micon's claim that California Waters submitted an incomplete bid is not valid for the following reason. The "**BID FORM**" page 10 of the Contract Specification lists five items that are required to be submitted with the bid. This form specifically stipulates that the following items are required to be submitted with the bid:

1. Attached is the required bid security in the amount of not less than 10% of the Total Bid Price.
2. Attached is the fully executed Non-Collusion Declaration form.
3. Attached is the completed Designation of Subcontractors form.
4. Attached is the completed Bidder Information Form.
5. Attached is the completed Contractor's Certificate Regarding Workers' Compensation.

Micon's claim is not factually correct as the "Contractor/Subcontractor Registration Form" is clearly not listed as a document that is to be submitted with the bid. The Contractor/Subcontractor Registration Form is a City form, and is

not required by state or federal law. Micon's third item of protest is identical to the second.

We have reviewed the basis of Micon's bid protest and all relevant information submitted. Accordingly, we have concluded that the protest is without merit, and will therefore recommend its rejection and proceed with the award of the Project to California Waters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nelson D. Nelson", with a long horizontal flourish extending to the right.

Nelson D. Nelson, P.E.
Public Works Director