

## ENVIRONMENTAL CONSTRUCTION, INC.

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General Engineering Contractors  
21550 Oxnard Street, Suite #1060  
Woodland Hills, CA 91367  
818-449-8920

September 3, 2020

Raja Sethuraman  
Public Services Director  
City of Costa Mesa  
77 Fair Drive,  
Costa Mesa, California

**Project: Lions Park Playground Improvements**  
**Project No.: 20-15**

**Subject: Environmental Construction, Inc.'s Bid Protest**

Mr. Sethuraman,

Please allow this letter to serve as Environmental Construction, Inc.'s ("ECI") protest to the City of Costa Mesa's ("the City") Bid Proposal ("Proposal") and to the bids Handy Industrial, Act 1 Construction, Inc. ("Act 1"), and RSB Group, Inc. ("RSB") submitted for the Lions Park Playground Improvements Project, No. 20-15 (the "Project"). The City's Proposal is in violation of the California Public Contract Code Section 4106. Additionally, Handy Industrial, Act 1, and RSB's bids failed to comply with the City's Project specifications. Therefore, ECI requests that all bids be rejected and the Project be re-bid.

The nature of this protest revolves around the City's violation of the California Public Contract Code Section 4106. The City's Proposal includes a page titled "Designation of Subcontractors," which requires a prime contractor to specify only one subcontractor for each portion of the work to be performed under the contract. However, the table provided by the City on this same page did not include a section in which a prime contractor could identify a subcontractor's scope of work. Public Contract Code Section 4106 states that, in the event "a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of one percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself."<sup>1</sup> Here, Handy Industrial, Act 1, and RSB failed to designate only one subcontractor for certain scopes of work. Handy Industrial listed Bid Item Numbers that were not provided by the City, and, because the City's Proposal only included three Bid Items, Act 1 and RSB listed Item Number 1 for every subcontractor. The City's failure to provide a section to list the scope of work for the designated subcontractors provided an opportunity for Act 1 and the other bidders to bid shop and bid

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<sup>1</sup> Pub. Contract Code, § 4106

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peddle. Indeed the intent behind Section 4106 was to eliminate this possibility and to provide the public the full benefits of fair competition.<sup>2</sup>

Furthermore, Handy Industrial's bid was non-responsive and should be rejected due to its failure to comply with the City's strict requirements. On the Proposal Schedule form, Handy Industrial did not provide a Total Base Bid Amount. Therefore, Handy Industrial's Total Base Bid Amount must be designated as \$0, thus, making the Total Base Bid Including Allowances \$75,000. This is a material error that allows Handy Industrial to withdraw its bid and gain an unfair advantage over the other bidders. (See *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4<sup>th</sup> 1432). Handy Industrial's failure to provide a Total Base Bid Amount also makes its bid non-responsive as per the Project specification that, "All blanks in the bid form must be appropriately filled in." Lastly, although Handy Industrial provided a City of Costa Mesa Bidder's List form ("Bidder's List") for itself, it failed to provide a Bidder's List for each of its subcontractors, as required by the City. Thus, Handy Industrial's bid does not comply with the strict requirements of the Project specifications.

Similarly, Act 1's bid was non-responsive and should be rejected due to its failure to comply with the City's strict requirements. On the first page of the Proposal, Act 1 wrote in words, "One million eight hundred twenty-seven thousand two hundred **twenty**-six dollars," but the figures it provided above show \$1,827,236. Therefore, Act 1 has the ability to withdraw its bid due to error and gain an unfair advantage over the other bidders. (See *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4<sup>th</sup> 1432). Act 1 was also noncompliant with the City's requirements that the Total Amount for Base Bid including Allowances be written entirely in words because it used numbers to notate ninety-three (93) cents on both the first page of the Proposal and on the third page of the Proposal Schedule. Additionally, Act 1 failed to provide the Bidder's List form for each of its subcontractors although it provided one for itself. Consequently, Act 1's bid does not comply with the strict requirements of the Project specifications.

Lastly, RSB's bid was also non-responsive and should be rejected due to its failure to comply with the City's strict requirements. On the Proposal Schedule, RSB listed the Total Base Bid Amount as \$1,629,000, making its Total Base Bid Including Allowances \$1,704,000 instead of the listed \$1,829,000. Again, this is a material error that allows RSB to withdraw its bid and gain an unfair advantage over the other bidders. (See *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4<sup>th</sup> 1432). Thus, RSB's bid does not comply with the strict requirements of the Project specifications.

As you may know, any defect in a contractor's bid which grants it an unfair advantage over other bidders must be deemed non-responsive. Accordingly, ECI requests that the City reject Handy Industrial, Act 1, and RSB's bids as non-responsive, reject all other bids for this Project, and re-bid the Project due to the City's violation of the California Public Contract Code

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<sup>2</sup> Pub. Contract Code, § 4101

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Section 4106. Should you have any questions, please do not hesitate to contact me at (818) 449-8920 or at [smaraslian@environcon.com](mailto:smaraslian@environcon.com).

Sosi Maraslian



Contract Administrator  
Environmental Construction, Inc.