

Susan M. Domen, MMC

From: Jason Simpson
Sent: Tuesday, October 24, 2017 12:19 PM
To: Grant Yates; Robert Magee; Natasha Johnson; Daryl Hickman; Steve Manos; Brian Tisdale
Cc: Susan M. Domen, MMC; Barbara Liebold CC; David Mann
Subject: RE: Bid protest ... Diamond Stadium Terraces
Attachments: 2017-10-24 RESPONSE TO BID PROTEST.pdf; 2017-10-23 ECI bid protest re Diamond Stadium Terraces.pdf

Good afternoon All:

City staff and the City Attorney's office has reviewed Environmental Constructions, Inc.'s bid protest letter dated October 23, 2017 that you all received by email last night. City staff was aware of the cited irregularity prior to receipt of the protest letter and had considered whether the missing "0" digit had created any ambiguity in this context. We determined that it did not and the omission of a zero immediately to the left of the decimal point was immaterial.

Furthermore, following consultation with David Mann, there appears to be case law supportive overall for the City awarding to Maples and Associates, as staff recommends in the staff report. Also, this case law reference noted that the public agency went through the bids, saw the clerical error and awarded the bid based on the line items, ignoring the adding error. For this item tonight, City staff added the line items and they totaled the amount in "words". As such, staff recommends awarding the bid to Maples and Associates. I also believe it would be a good idea to have the Mayor pull the item off consent and request staff to introduce the attached protest letter and response into the record.

Please advise if you have any questions or concerns.

Sincerely,

Jason Simpson
Assistant City Manager
City of Lake Elsinore

From: Eric Gamonal [mailto:egamonal@environcon.com]
Sent: Monday, October 23, 2017 5:37 PM
To: Jason Simpson <jsimpson@Lake-Elsinore.org>
Cc: Robert Magee <rmagee@Lake-Elsinore.org>; Natasha Johnson <njohnson@Lake-Elsinore.org>; Daryl Hickman <dhickman@Lake-Elsinore.org>; Steve Manos <smanos@Lake-Elsinore.org>; Brian Tisdale <btisdale@Lake-Elsinore.org>
Subject: Bid protest ... Diamond Stadium Terraces

Good afternoon,

I'm attaching a bid protest from Environmental Construction, Inc. regarding the bid proposal submitted by Maples and Associates for the Diamond Stadium Terraces & Seating Improvements Project, CIP Project No. Z20003.

I would ask that the related item (#21) on tomorrow's City Council meeting agenda be tabled until the protest procedure is completed.

Thank you, Eric

Eric Gamonal

Contract Administrator

Email: egamonal@environcon.com



Environmental Construction, Inc.

21550 Oxnard Street, Suite 1050

Woodland Hills, CA 91367

Phone: 818-449-8920

Fax: 818-703-9073

Riverside Office

4371 Latham Street, Suite 204

Riverside, CA 92501

ENVIRONMENTAL CONSTRUCTION, INC.

General Engineering Contractors
21550 Oxnard Street, Suite 1050
Woodland Hills, CA 91367

October 23, 2017

Jason Simpson
Assistant Executive Director
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530

Re: Diamond Stadium Terraces & Seating Improvements Project, CIP Project No. Z20003

Dear Mr. Simpson:

Environmental Construction, Inc. ("ECI"), hereby protests the bid submitted by Maples and Associates ("Maples") on October 18, 2017 for the above-noted project. Because the proposed contract award to Maples is on the City Council agenda for October 24, 2017, I would urge you to delay consideration of that proposed award until this bid protest procedure has been exhausted.

ECI has requested to review the complete bid package submitted by Maples. We have not been given that opportunity. Instead, the City provided us with two pages of the Maples bid package.

The two pages of Maples's bid package provided by the City (See Attachment) contain serious clerical errors. Maples did not complete the Bid Schedule. Maples did not fill in the quantity, unit of measure or unit price for any of the bid items, as was required by the bid form. Maples's total bid price as written in figures ("\$1,472,00.00" [sic]) does not match the total as written out in words ("One Million, Four Hundred Seventy-Two Thousand Dollars").

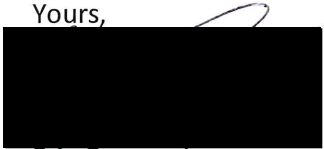
Maples's bid is materially non-responsive. Because its bid contained incomplete and contradictory price information, Maples could use such numerical errors to withdraw its bid after the bid opening under the provisions of Public Contract Code section 5103. Bidding errors of this nature render a bid proposal materially non-responsive because they allow unfair advantages to the non-conforming bidder. See *Valley Crest Landscape, Inc. v. City of Davis*, 41 Cal.App.4th 1432 (1996).

The bid package sets out that, "In case of discrepancies between unit prices and totals, the unit prices shall govern." Maples submitted a bid with discrepancies between its unit prices and line totals. The unit prices are blank. Maples's bid amount, therefore, is constructively zero.

ECI urges the City to reject Maples's bid as materially non-responsive and to award the project to ECI, a responsible, responsive bidder. Alternatively, we would ask for the opportunity to review the entire bid proposal submitted by Maples and to potentially amend our bid protest using information from that review.

Thank you for your time and attention.

Yours,



Eric Gamonal
Contract Administrator

Attachment

CC: Robert E. Magee, Mayor/Chair
Natasha Johnson, Mayor Pro Tem/Vice-Chair
Daryl Hickman, Council Member/Agency Member
Steve Manos, Council Member/Agency Member
Brian Tisdale, Council Member/Agency Member

BIDDER'S PROPOSAL

**DIAMOND STADIUM PROJECT
CIP PROJECT NO. Z20003**

Company: Maples and Associates

Honorable Mayor Members of the Council:

In accordance with the Notice Inviting Bids pertaining to the receiving of sealed proposals by the City Clerk of the City of Lake Elsinore for the above titled improvement, the undersigned hereby proposes to furnish all Work to be performed in accordance with the Specifications, Standard Drawings, and the Contract Documents, for the unit price or lump sum set forth in the following schedule:

BID SCHEDULE A –

Item No.	Description	Quantity	Units	Unit Price (\$)	Total Bid (\$)
1	Mobilization & Demobilization Including Construction Schedules (Not To Exceed 3% of Total Bid)			\$	\$ 44,106
2	Demolition			\$	\$ 89,707
3	Terraces (All Upper & All Lower)			\$	\$ 858,600
4	Canopy			\$	\$ 97,000
5	Electrical			\$	\$26,105.50
6	Plumbing			\$	\$24,871.50
7	Metal Railing			\$	\$ 331,610
8				\$	\$
9				\$	\$
10				\$	\$

SCHEDULE A Total Bid: \$1,472,00 00

(Figures)*

SCHEDULE A Total Bid: One Million, Four Hundred Seventy-Two Thousand Dollars

(Words)*

***BID MAY BE REJECTED IF TOTAL IS NOT SHOWN FOR BOTH FIGURES AND WORDS.**

The undersigned agrees to enter into and execute a contract, with necessary bonds, at the unit prices set forth herein and in case of default in executing such contract, with necessary bonds, the check or bond accompanying this bid and the money payable thereon shall be forfeited thereby to and remain the property of the City of Lake Elsinore.

The above unit prices include all work appurtenant to the various items as outlined in the Contract Documents and all work or expense required for the satisfactory completion of said items. In case of discrepancies between unit prices and totals, the unit prices shall govern.

The undersigned declares that it has carefully examined the Specifications, and Contract Documents, and has investigated the site of the work and is familiar with the conditions thereon.

Maples and Associates

Contractor

Date: October 18, 2017

By: 

Contractor's State License No.: 704701

Class: A & B

Address: 24977 Washington Ave., Suite J

Murrieta, CA 92562

Phone: 951-491-9562

FAX: N/A