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Dan Herrera, P.E.
City of Petaluma
Department of Public Works and Utilities
202 N. McDowell Blvd
Petaluma, CA 94954
RE: Oak Hill Municipal Well Project
Project # C67501611

Dan,

In response to the protest letter submitted by Nar Heer of Norcal Pump & Well Drilling, WII would like to address the following complaints

Protest #1

- **“WII lacks the experience to perform the project. Per the questionnaire and financial assurance statement submitted at the time of the bid, WII only listed their experience drilling wells in Arizona for Peacock Nuts. they did not include the project size and length which were required to submit per that form”**

The “questionnaire and financial assurance” portion of the bid package, as stated under the document title, are “submitted in conjunction with the proposal”.

The purpose of the questionnaire and financial statement form was not to determine the contractors previous experience with projects of similar scope, but to determine if the contractor has:

1. Failed to satisfactorily complete a contract awarded to contractor
2. Claims and lawsuits presented or filed against them in the last five (5) years
3. Financial responsibility

This document does not represent contractors qualifications, as this is addressed specifically in the document titled “**STATEMENT OF QUALIFICATION**” (Spec Page 41)

In the mentioned document, it is stated that

“The apparent low Bidder shall submit a Statement of Qualifications as specified herein as a submittal to the City within 24 hours of the bid opening.

A. The following are minimum requirements for the Bidder to be found responsible to perform the Work. Bidder's compliance with the minimum qualification requirements will be measured by the experience of the supervisory personnel who will have responsible charge of the various major components of the Work. If Bidder subcontracts portions of the Work, City, in its determination of whether the minimum qualification requirements have been met, will consider the qualifications of the Subcontractor's supervisory personnel.

1. Five years experience as a continuously operating entity engaged in the performance of similar work.
2. Experience on public works projects, with no history of default termination.

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3. Within the past five years, completed two construction projects of a similar nature (water well) and complexity with a contract dollar amount of at least \$100,000 each.

4. Sufficient financial strength, stability and resources as measured by Bidder's equity, debt-to-assets ratio, and capability to finance the Work to be performed."

If the questionnaire and financial assurance document were the sole determination of a contractor's capabilities and experience, why would there be need for an additional and individual document specifically addressing the contractor's "Statement of Qualifications"? WII has provided the appropriate information, and has met the listed criteria in the document provided to Dan Hererra via email titled "Statement of Qualifications", and has proven their experience sufficient to the requirements of the city at no competitive advantage.

Protest #2

- **"WII did not notarize the site visit affidavit form that was included in their bid package at the time of the bid. Per the Site Visit Affidavit itself, the document is "to be executed by bidder, notarized, and submitted with bid" Although Ronald Stilwell is the President of WII, he is not an active Notary Public and is not able to self-certify this portion of the bid."**

WII acknowledges the statement made in protest to the site visit affidavit submitted as part of the bid documents.

In NCP's protest letter, cited

"Both bids are deficient, and per item 10 of the Notice to Inviting Bids, The CITY reserves the right to reject all or any part of all bids submitted..."

The entirety of Item 10 in Notice to Inviting Bids states:

"10. REJECTION OF PROPOSALS: The CITY reserves the right to reject all or any part of all bids submitted, waive informalities and irregularities, and will not, to the extent allowed by law, be bound to accept the lowest bid."

WII recommends that the city make their decision to waive or reject the noted informality or irregularity based on their best interest, and note that no competitive advantage has been provided by lack of notary.

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Protest #3

- **“Per page 1 of the SOQ, it is stated at the top that “apparent low bidder shall submit a statement of qualifications as specified herein as a submittal to the city within 24 hours of the bid opening” If the time of bid opening was August 17th 2023 at 2:00Pm, then WII was required to provide their statement of qualifications by Friday August 18th 2023 at 2:00 PM. Based on this contract document, granting this extension is not allowed. There is no other language in the specifications that permits an extension past August 18th 2023 at 2:00 PM”**

Please refer to Protest Item #2. Where in the contract documents does it explicitly state that extensions are not allowed? The city made reasonable accommodations to the financial reports requested due to the degree of invasivity of requested financials. The financial documents to be provided upon notice of low bidder were not specified in the bid documents, and could not be put together until a request for these items were sent to the contractor.

Cited from an email from the City Representative:

“We need to see evidence of your company operating for at least 5 years drilling wells, working on public works projects, and provide information within the last 5 years of completing at least two well drilling project in excess of \$100K. This is generally done with a list of project in the last 5 or 10 years with type of project, who the project was for, the dollar amount of the project, and a reference that we can contact and verify. The financial strength one is a little tricky. We have contractor project their finance strength indicators of “debt to asset ratio, current ratio, and quick ratio”. This comes with a balance sheet showing the current assets of the company (liquid, CD’s, Inventory, Accounts and Services receivable, equipment, depreciation, etc. as well as their liabilities, including accounts payable, credits, leases. We just want to make sure your company has being doing business for a while and has the financial strength to complete the project “

WII submitted the requested information within the extension provided, and again has received no competitive advantage in doing so.

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Additionally:

Please read through bid protest protocol as listed in item 16 of Instructions to Bidders

***16. BID PROTEST.**

Any Bid protest must be submitted in writing to the City Manager before 5:00 p.m. on the fifth (5th) working day following Bid opening.

A. The initial protest document must contain a complete statement of the basis for the protest, and all supporting documentation.

B. The party filing the protest must have actually submitted a Bid for the WORK. A subcontractor of a party submitting a Bid for the WORK may not submit a Bid protest. A party may not rely on the Bid protest submitted by another Bidder, but must timely pursue its own protest.

C. The protest must refer to the specific portion of the bid document which forms the basis for the protest.

D. The protest must include the name, address and telephone number of the person representing the protesting party.

E. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest which may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

F. The CITY will give the protested Bidder five (5) working days after the receipt of the protest to submit a written response. The responding Bidder shall transmit the response to the protesting Bidder concurrent with delivery to the CITY.

G. The procedure and time limits set forth in this paragraph are mandatory and are the Bidder's sole and exclusive remedy in the event of Bid protest. The Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.

H. If the CITY determines that a protest is frivolous, the protesting bidder may be determined to be non-responsible and that bidder may be determined to be ineligible for future contract awards."

As noted in the email chain that I, Henry Suden have been included in between the city and NCP:

A phone call was made to Dan Hererra regarding disagreement in bid documents of the apparent low bidder (WII). Following the said phone call, an email was sent to Jonathan Giert summarizing the complaint, timestamped **Thursday, August 24, 2023 2:23 PM**. Following that chain of communication, a letter was later submitted from the office of Norcal Pump & Well Drilling at a later time

Per the above cited: "A bid protest must be submitted in writing to the city manager before 5:00 PM on the 5th working day following Bid opening... initial protest document must contain a complete statement of the basis for the protest, and all supporting documentation" Under this, **the last working day to submit a written bid protest was 5:00 PM 8/24/2023.**

The phone call stating intent to protest does not constitute a written Bid Protest, nor did the "initial document contain a statement of the basis for the protest and all supporting documentation." This will come later in the letter submitted by NCP, dated **8/30/2023.**

Following bid protest procedure, NCP did not submit a bid protest within the allowed timeframe, and any pursuit of protest or rejection of the apparent low bidders documents is not justified.

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It is with this that WII asks the city's consideration of Item 16 Bid Protest Subsection H to find the mentioned protests to be frivolous, and that the protesting bidder be determined to be non-responsive and ineligible for future contract awards

Respectfully Submitted,

Henry Suden
Well Industries, Inc
(530) 891-5545

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