

LAW OFFICES OF

POINDEXTER & DOUTRÉ, INC.

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JOSEPH A. SIFFERD
EXTENSION: 327
EMAIL: jsifferd@pdlawyers.com

October 14, 2019

VIA FEDEXCity of Hayward
Office of the City Clerk
777 B Street
Hayward, California 94541**Re: BID PROTEST – Abatement and Deconstruction Services
Phase 2, Project No. 05276**

To Whom It May Concern:

This law office represents Resource Environmental, Inc. (“Resource”). This letter shall serve as Resource’s formal bid protest for the City of Hayward’s (the “City”) Abatement and Deconstruction Services Phase 2, Project No. 05276 (the “Project”). Resource hereby protests the preliminary bid results on the grounds Asbestos Management Group of California, Inc.’s (“AMG”) bid is nonresponsive due to material miscalculations on its bid sheet. As such, AMG is not the low bidder.

AMG’s bid sheet fails to list unit prices in figures, but does in words, on all 37 line items of the Base Bid. The totals are correct on all Base Bid line items except Line Item 37. Line Item 37 calls for the unit price of BAAQMD notifications, with an estimated quantity of 18. AMG wrote “twenty-two thousand four hundred” as its unit price AND total price, failing to multiply the unit price by 18. The City’s bid results spreadsheet contains this same error. The correct calculation for the line item (18 x \$22,400) is \$403,200. Therefore, AMG’s actual base bid, after correctly tabulating its bid sheet, is \$1,261,000. AMG’s correct total with alternates is \$1,681,515.

The City is required to pay the listed unit price for each billing and all change orders. For example, Proposal to the City Council of the City of Hayward, Page 1, states, “...and that he (the contractor) will take in full payment therefor the amounts shown on the following unit price schedule, to wit...” Additionally, Specifications, Section 10 Construction Details, Subsection 10-1.16, Administrative Change Orders, states, “The extra work due to changes or deviations in the scope of work will be performed and paid for at the contract unit prices...” The City cannot

City of Hayward
Office of the City Clerk
October 14, 2019
Page 2 of 2

allow AMG to make any changes to its unit price schedule after the bid opening, as this would give AMG an unfair competitive advantage over other bidders.

Resource's bid amount was \$1,301,243 and is, in fact, the lowest submitted bid. Resource followed all required guidelines detailed in the invitation to bid. Accordingly, Resource hereby demands the City of Hayward deem AMG's bid materially inaccurate and nonresponsive, and award the contract to Resource as the lowest responsive and responsible bidder.

Attached hereto as **Exhibit A** are relevant documents supporting this bid protest. The attached documents shall be incorporated herein by this reference. Also, pursuant to Section 3-1.04A of the City's Bid Protest Procedures, I have enclosed a check in the amount of \$500 made payable to the City for the bid processing fee.

I am hopeful this matter can be resolved without litigation. To the extent the City rejects this bid protest, Resource will have no choice but to pursue all available remedies under the law.

Please feel free to contact me to discuss this matter further. Should the City retain counsel in this matter, please have your counsel contact me directly.

Very truly yours,



Joseph A. Sifferd
for POINDEXTER & DOUTRÉ, INC.

Enclosures

cc: Sundaresh Begur, Project Manager, City of Hayward (via email Sundaresh.Begur@hayward-ca.gov)
Irene Perez, Senior Secretary, City of Hayward (via email Irene.Perez@hayward-ca.gov)
Kathy Garcia, Deputy Director of Public Works, City of Hayward (via email Kathy.Garcia@hayward-ca.gov)
Brent Bates, President, Asbestos Management Group of California, Inc. (via FedEx and email bbates@amgofca.com / corporate@amgofca.com)
Richard Miller, Resource Environmental, Inc. (via email miller@resource-env.com)
Joshua Dome, Resource Environmental, Inc. (via email josh@resource-env.com)
Cynthia Skiff, Resource Environmental, Inc. (via email cynthia@resource-env.com)
Chase Tinsley, Resource Environmental, Inc. (via email chase@resource-env.com)
Jeffrey A. Kent, Esq., Counsel for Resource Environmental, Inc. (via email)

EXHIBIT A

AMG

BID SHEET



CITY OF HAYWARD
 PROJECT TITLE: ABATEMENT AND DECONSTRUCTION SERVICES PROJECT - PHASE 2
 PROJECT NO. 05276

BID SHEET REVISED - ADDENDUM 1

ITEM NO.	ITEM DESCRIPTION	EST. QUANTITY	UNIT	UNIT PRICE (In Words)	UNIT PRICE (In Figures)	TOTAL (In Figures)
1	Hazardous Material Abatement 981 Broadway Avenue	1	LS	six thousand three hundred		\$6,300
2	Building Deconstruction 981 Broadway Avenue	1	LS	nineteen thousand six hundred		\$19,600
3	Hazardous Material Abatement 1054 Central Boulevard	1	LS	twenty five thousand two hundred		\$25,200
4	Building Deconstruction 1054 Central Boulevard	1	LS	twenty two thousand four hundred		\$22,400
5	Hazardous Material Abatement 25931 Central Court	1	LS	eleven thousand two hundred		\$11,200
6	Building Deconstruction 25931 Central Court	1	LS	nineteen thousand six hundred		\$19,600
7	Hazardous Material Abatement 25338 Bunker Hill Court	1	LS	twenty two thousand four hundred		\$22,400
8	Building Deconstruction 25338 Bunker Hill Court	1	LS	twenty eight thousand		\$28,000
9	Hazardous Material Abatement 25825 Bunker Hill Boulevard	1	LS	fourteen thousand		\$14,000
10	Building Deconstruction 25825 Bunker Hill Boulevard	1	LS	twenty five thousand two hundred		\$25,200
11	Hazardous Material Abatement 25426 Bunker Hill Boulevard	1	LS	eight thousand four hundred		\$8,400
12	Building Deconstruction 25426 Bunker Hill Boulevard	1	LS	thirty thousand eight hundred		\$30,800
13	Hazardous Material Abatement 25464 Bunker Hill Boulevard	1	LS	thirty thousand eight hundred		\$30,800
14	Building Deconstruction 25464 Bunker Hill Boulevard	1	LS	twenty five thousand two hundred		\$25,200
15	Hazardous Material Abatement 25410 Bunker Hill Boulevard	1	LS	thirty six thousand four hundred		\$36,400
16	Building Deconstruction 25410 Bunker Hill Boulevard	1	LS	thirty six thousand four hundred		\$36,400
17	Hazardous Material Abatement 25550 Bunker Hill Boulevard	1	LS	thirty nine thousand two hundred		\$39,200

AMG

BID SHEET



CITY OF HAYWARD
 PROJECT TITLE: ABATEMENT AND DECONSTRUCTION SERVICES PROJECT - PHASE 2
 PROJECT NO. 05276

BID SHEET REVISED - ADDENDUM 1

ITEM NO.	ITEM DESCRIPTION	EST. QUANTITY	UNIT	UNIT PRICE (In Words)	UNIT PRICE (In Figures)	TOTAL (In Figures)
18	Building Deconstruction 25550 Bunker Hill Boulevard	1	LS	thirty six thousand four hundred		\$36,400
19	Hazardous Material Abatement 25832 Bunker Hill Boulevard	1	LS	thirty six thousand four hundred		\$36,400
20	Building Deconstruction 25832 Bunker Hill Boulevard	1	LS	forty two thousand		\$42,000
21	Hazardous Material Abatement 25840 Bunker Hill Boulevard	1	LS	DELETED	DELETED	DELETED
22	Building Deconstruction 25840 Bunker Hill Boulevard	1	LS	forty five thousand five hundred		\$45,500
23	Hazardous Material Abatement 25853 Bunker Hill Boulevard	1	LS	thirty two thousand two hundred		\$32,200
24	Building Deconstruction 25853 Bunker Hill Boulevard	1	LS	twenty two thousand four hundred		\$22,400
25	Hazardous Material Abatement 21320 Oak Street, Castro Valley	1	LS	twenty nine thousand		\$29,000
26	Building Deconstruction 21320 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000
27	Hazardous Material Abatement 21322 Oak Street, Castro Valley	1	LS	twenty five thousand two hundred		\$25,200
28	Building Deconstruction 21322 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000
29	Hazardous Material Abatement 21324 Oak Street, Castro Valley	1	LS	twenty five thousand two hundred		\$25,200
30	Building Deconstruction 21324 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000
31	Hazardous Material Abatement 21326 Oak Street, Castro Valley	1	LS	twenty five thousand two hundred		\$25,200
32	Building Deconstruction 21326 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000
33	Hazardous Material Abatement 21328 Oak Street, Castro Valley	1	LS	twenty five thousand two hundred		\$25,200
34	Building Deconstruction 21328 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000

AMG

BID SHEET



CITY OF HAYWARD
 PROJECT TITLE: ABATEMENT AND DECONSTRUCTION SERVICES PROJECT - PHASE 2
 PROJECT NO. 05276

BID SHEET REVISED - ADDENDUM 1

ITEM NO.	ITEM DESCRIPTION	EST. QUANTITY	UNIT	UNIT PRICE (In Words)	UNIT PRICE (In Figures)	TOTAL (In Figures)
35	Hazardous Material Abatement 21330 Oak Street, Castro Valley	1	LS	twenty eight thousand		\$28,000
36	Building Deconstruction 21330 Oak Street, Castro Valley	1	LS	fourteen thousand		\$14,000
37	Bay Area Air Quality Management District BAAQMD Job Number (J No.) - 18 Parcels, Abatement & Demo.	18	EA	twenty two thousand four hundred		\$22,400
TOTAL BASE BID						\$880,200

(18 x 22,400) =
403,200

= 1,261,000

ALTERNATE BID NO. 1

ITEM NO.	ITEM DESCRIPTION	EST. QUANTITY	UNIT	UNIT PRICE (In Words)	UNIT PRICE (In Figures)	TOTAL (In Figures)
1	Hazardous Material Abatement	7	EA	eighteen thousand five hundred seventy one	\$18,571	\$130,000
2	Building Deconstruction	7	EA	thirty one thousand four hundred twenty nine	\$31,429	\$220,000
3	Bay Area Air Quality Management District BAAQMD Job Number (J No.) - 7 Parcels Abatement & Demo.	7	EA	one thousand three hundred fifty eight	\$1,358	\$9,506
4	36-inch High Compacted Dirt Bern	800	LF	eighteen dollars and seventy five cents	\$18.75	\$15,000
5	Remove Underground Septic Tank (Plastic or Concrete, 500 to 2,000 Gallons Capacity)	6	EA	seven thousand six hundred sixty seven	\$7,667	\$46,000
TOTAL ALTERNATE BID NO. 1						\$420,506

Abbreviations: See Special Provisions & Technical Specifications for definitions of the unit of measure.

NOTE: Bidder is responsible for reading the entire contract documents. The estimate of construction quantities set forth herein is approximate only, being given as a basis for the comparison of bids. The City does not expressly or by implication agree that the actual amount of work will correspond therewith, and reserves the right to change the amount of any class or portion of the work or to omit portions of the work as may be deemed necessary or expedient by the Engineer in accordance with Section 4-1.05, "Changes & Extra Work", of the Standard Specifications, and as amended in these Special Provisions and Technical Specifications. All bids will be compared on the basis of the Engineer's Estimate of the quantities of the work to be done. The undersigned declares, by their signature to this Proposal, that the bidder has checked carefully all the above figures and understands that the City shall not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

Brent Bates, President
SIGNATURE

Oct. 9, 2019
DATE

PROPOSAL TO THE CITY COUNCIL OF THE CITY OF HAYWARD

for

ABATEMENT AND DECONSTRUCTION SERVICES – PHASE 2 Project
Project No. 05276

Name of Bidder: Asbestos Management Group of California, Inc., (AMG)
Business Address: 3438 Helen St.
City: Oakland Zip Code: 94608
Phone No.: (510) 654-8441 Fax No.: (510) 654-8447

Various Locations, City of Hayward, Castro Valley, County of Alameda

The work to be done and referenced to herein is in the City of Hayward or the adjacent vicinity, State of California, and extends over property owned or controlled by the City of Hayward, and is to be constructed in accordance with special provisions (including the payment of not less than the minimum wage rates referred to in the special provisions) and the contract annexed hereto and also in accordance with adopted Standard Specifications, Standard Plans and Standard Details of the City of Hayward, which are hereby specially referred to and by such reference made a part hereof.

The work to be done is shown upon plans entitled:

<u>Drawing No.</u>	<u>Title</u>
N/A	N/A

TO THE CITY COUNCIL, CITY OF HAYWARD

The undersigned, as bidder, does hereby declare that the only persons or parties interested in this proposal are the undersigned and this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes and agrees, if this proposal is accepted, that he will contract with the City of Hayward, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus, and other means of construction and to do all the work and furnish all the materials specified in the contract, in the manner and the time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the amounts shown on the following unit price schedule, to wit:

10-1.16 Administrative Change Orders

Markup allowed for subcontractor work specified in paragraph two of Section 9-1.04A, "General," of the Standard Specifications is revised as follows.

All work performed under an Administrative Change Order (ACO) must be authorized by the Engineer's written order. No work in excess of that shown on the plans shall be done without a written change order. The extra work due to changes or deviations in the scope of work will be performed and paid for at the contract unit prices, on a force account basis in conformance with Section 9-1.04, "Force Account," of the Standard Specifications, or by negotiated price. The general contractor's mark-up for ACO work performed by subcontractors shall be limited to 5%.

The ACO form (Exhibit E) attached at the end of these Special Provisions shall be used for documenting all ACO. The form and all language noted on it shall be considered as part of the contract documents and shall be binding to the contractor. The contractor's proposed amount and time extension for ACO work shall represent the full and complete compensation for the change order, including any and all schedule changes and delays and/or cost impact that may be created by the ACO work.

Upon mutual execution of an Administrative Change Order by Contractor and the City of Hayward, Contractor is directed to make changes set forth in the ACO form. Contractor agrees that the net change in the contract sum stipulated in the ACO form shall constitute full compensation, as described under payment in the ACO form, for the work required by the Change Order, including revised work schedules or changes to other contract work. Contractor further agrees that the additional contract time allotted (if any) is sufficient, and that there shall be no further time extensions or delay claims resulting from the Change Order.

10-1.17 Record Drawings

At the end of construction, the Contractor shall submit, to the City, a set of redlined, marked-up plans showing work that has been deviated from the plans. Full compensation for preparing the marked-up plans shall be considered as included in the contract prices paid for the various items of work and no additional compensation will be allowed therefor.

10-1.18 Warranties, Guarantees, and Instruction Sheets

Contractor's workmanship, furnished material, and equipment warranties against defect shall be in conformance to manufacturers' warranties and guarantees furnished for materials used in the work, and instruction sheets and parts lists supplied with materials, shall be delivered to the City Engineer's office prior to acceptance of the project. In addition to guarantees required elsewhere, the Contractor shall and hereby does guarantee all work and materials for a period of one (1) year after the date of final acceptance of the project by the City and shall repair and replace any and all such work defective in labor and/or materials, together with any other work, which may be displaced in so doing, without expense whatsoever to the City, except for ordinary wear and tear and neglect.

In the event the Contractor fails to comply with the provisions of the above mentioned guaranty by commencing repair within fifteen (15) days after being notified in writing and diligently completing said repairs, the City is hereby authorized to proceed to have the defects repaired and made good at the expense of the Contractor, who hereby agrees to pay the cost and charges therefore immediately on demand.



Asbestos Management Group of California, Inc.

California Contractors License No. 586844
Department of Occupational Safety & Health No. 271

October 15, 2019

SENT VIA FACIMILE

City of Hayward
Office of the City Clerk
777 B Street
Hayward, CA 94541

Re: Response to Resource Environmental, Inc's Bid Protest
Project No.: 05276; Phase2

To Whom it May Concern:

This letter represents Asbestos Management Group of California, Inc's. ("AMG") response to the bid protest by Resource Environmental, Inc. ("Resource").

AMG acknowledges the clerical error noted on the bid sheet, page 2.3, item 37. In lieu of inserting a unit price for Bay Area Air Quality fee, AMG mistakenly inserted a lump sum amount. The confusion is a result of line items 1 through 36 directives to insert a lump sum total amount. AMG assumed, in error, that item 37 was a lump sum calculation, as evidenced by AMG also using the amount of \$22,400 as its total price for line 37.

AMG contends that the error is inconsequential and, therefore, AMG's bid is responsive. The logical reading of AMG's bid is that the figure \$22,400.00 represents the total price for all properties requiring BAAQMD asbestos and demolition fees. Furthermore, the Bid Sheet states that "All bids will be compared on the basis of the Engineer's Estimate of the quantities of the work to be done." The only number necessary to determine responsiveness is the total amount (\$22,400). Based on the number in the total column, the only reasonable conclusion is that AMG's entry is a lump sum for all BAAQMD fees. Resource's suggestion that \$22,400 should be multiplied by 18 is not logical or reasonable and would provide a number different than the total listed. This is a simple clerical error that is not material to the bid submission.

It is important to also look at this issue in the context of the language governing the bid process:

Part 1 – General Conditions, Section 2-1.01 states that the City of Hayward ("City") can "waive any informalities or irregularities in the bids received." Further, Section 3-1.04 of the General Conditions also states that the City's "right is also reserved to waive any informalities or irregularities in bids received."



Asbestos Management Group of California, Inc.

California Contractors License No. 586844
Department of Occupational Safety & Health No. 271

Section 3-1.04A states “the City reserves the right to waive inconsequential deviation from the bid requirements or other bid irregularities not affecting the time of performance, quality of performance or the amount of the bid, except where such waiver could give the low bidder and advantage or benefit not allowed to other bidders.”

AMG’s clerical error does not give AMG any advantage or prejudice other bidders because there is no effect on the amount of the bid nor on the performance of the work. AMG’s bid is responsive.

Lastly, Resource’s reference to Section 10-1.16 is not appropriate. The argument that Section 10-1.16 stipulates that “extra work due to changes or deviations in the scope of work will be performed and paid for at the contract unit prices” would not apply to BAAQMD fees because the “average unit price” would not equal the “actual fee” imposed.

The city would best serve its duty to uphold the competitive bidding process by waiving AMG’s clerical error and upholding its responsive bid.

Please contact me if I can provide any further information to assist your evaluation of this matter.

Sincerely,

Asbestos Management Group of California, Inc.

Brent Bates, President

cc:

Aaron R. Gruber
Ralls Gruber & Niece LLP
1700 S. El Camino Real Suite 150
San Mateo, CA 94402
Neil Hornberg nhornberg@rallsgruber.com
Sundaresh Begur, Project Manager Sundaresh.Begur@hayward-ca.gov
Kevin Briggs, Sr. Civil Engineer/Project Manager Kevin.Briggs@hayward-ca.gov
Irene Perez, Senior Secretary Irene.Perez@hayward-ca.gov
Kathy Garcia, Deputy Director of Public Works Kathy.Garcia@hayward-ca.gov
Richard Miller, Resource Environmental, Inc. miller@resource-env.com

RESOURCE

October 17, 2019

City of Hayward
Office of the City Clerk
777 B Street
Hayward, CA 94541

RE: BID PROTEST – Abatement and Deconstruction Services Phase 2, Project No. 05276

To Whom It May Concern:

Resource Environmental, Inc. (Resource) rebuts Asbestos Management Group of California, Inc. (AMG)'s response to Resource's protest of the Abatement and Deconstruction Phase 2, Project No. 05276. Resource contends AMG's bid price is miscalculated, and its unit price errors are material and consequential, providing AMG an unfair competitive advantage.

AMG asserts the bid documents asked for lump sum amounts on the unit price bid schedule for line items 1 through 36. This is incorrect. The bid schedule asks for a lump sum **unit price**, multiplied by 1, for line items 1 through 36. AMG may not have been as confused if it had correctly followed instructions and inserted the unit price in figures as well as words. The bid schedule clearly asks for a unit price in figures, then in words, then the extension, or total, just as it does on the Alternate Bid Schedule. AMG correctly followed instructions on the Alternate Bid Schedule.

Our assertion is that the City of Hayward has no real way of knowing whether this was administrative or calculated, as further outlined. Either way AMG privileged itself with an unfair competitive advantage.

AMG contends its error is inconsequential because it would be illogical to state a price of \$22,400 for a BAAQMD asbestos and demolition fee. Given there is no line item for mobilization, it is more plausible AMG was "front-loading", or subtracting amounts from other line items and adding it to a beginning billing line item, to cover its mobilization costs and receive compensation early in the contract.

Any error resulting in a different bid amount that affects another bidder is material. If the City were unconcerned with the unit price versus total extensions, it would not have provided an official bid result spreadsheet, calculating the unit prices versus extensions. Had the City correctly used a formula for Line Item 37, as it did with all alternate line items, Resource would reflect as the lowest and most responsible bidder. Using the City's unit price bid structure, AMG's bid is \$380,800 higher than Resource; therefore, as previously stated, Resource is the lowest and most responsive, responsible bidder.

AMG can clearly argue its position **now** that it has "seen" all the bidders numbers. AMG's total bid amount is \$1,681,615. Having seen Resource's total bid amount, AMG is afforded the

Resource Environmental Inc.
6634 Schilling Ave. Long Beach, Ca 90805
Office: 562.468.7000 Fax: 562.468.0600
License #864417 / DIR #1000003121

RESOURCE

comfort of knowing all bid results---thus, providing an unfair competitive advantage which allows AMG to change their position (after bid results) claiming simple administrative error rather than the actual material error resulting in an unfair competitive advantage. Additionally, AMG's actual bid amount of \$1,681,615 is not unreasonable, given the fourth-place bidder estimated its costs at \$1,504,260.

AMG also asserts Resource's reference to Section 10-1.16 is not appropriate, as changes to the scope of work would not apply to BAAQMD fees. This too is incorrect. As stated in the original protest, "extra work due to changes or deviations in the scope of work will be performed and paid for at the contract unit prices." These costs would be paid for at the contract unit prices, not at actual costs--this continues to magnify the materiality of AMG's supposed administrative error and further emphasizes the importance of unit prices.

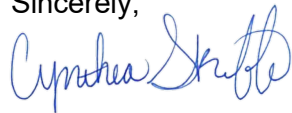
AMG's arguments are without merit. Resource followed all instructions, correctly noting unit prices in words and figures, multiplying its unit prices by the respective quantities to reflect accurate extension totals.

The City must elect to award the contract to the lowest responsive bidder - Resource Environmental, Inc. Awarding the contract to AMG would be providing them an unfair competitive advantage as detailed and exemplified above. Should the City decide to rebid the project, AMG, having seen the bid numbers of other contractors and with additional time to assess its own bid, would continue to reap unfair advantages over other bidders. It would then have the proverbial "two bites at the apple." This situation would be in direct contrast with California law, which calls for fair, open, and transparent bidding practices.

Resource strongly recommends moving forward with an award to the lowest responsive, responsible bidder, Resource Environmental, Inc.

Resource hopes this matter can be resolved without litigation. To the extent the City rejects this bid protest, Resource will have no choice but to pursue all available remedies under the law.

Sincerely,

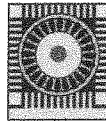


Cynthia Skiff
Vice President

cc:

Sundaresh Begur, Project Manager Sundaresh.Begur@hayward-ca.gov
Kevin Briggs, Sr. Civil Engineer/Project Manager Kevin.Briggs@hayward-ca.gov
Irene Perez, Senior Secretary Irene.Perez@hayward-ca.gov
Kathy Garcia, Deputy Director of Public Works Kathy.Garcia@hayward-ca.gov
Joshua Dome, President/ CEO josh@resource-env.com
Richard Miller, President/ COO miller@resource-env.com
Chase Tinsley, Director, of Bids and Project Management chase@resource-env.com

Resource Environmental Inc.
6634 Schilling Ave. Long Beach, Ca 90805
Office: 562.468.7000 Fax: 562.468.0600
License #864417 / DIR #1000003121



CITY OF
HAYWARD
HEART OF THE BAY

October 18, 2019

Joseph A. Sifferd, Esq.
POINDEXTER & DOUTRE, INC.
One Wilshire Building Suite 2420
624 South Grand Ave.
Los Angeles, CA 90017-3325
jsifferd@pdlawyers.com

OVERNIGHT DELIVERY

Re: Bid Protest – City of Hayward Abatement and Deconstruction Services Phase 2, Project No. 05276

Mr. Sifferd:

The City of Hayward acknowledges receipt of your bid protest dated October 14, 2019 regarding the above referenced project. This matter has been referred to me for handling. Your correspondence states, in part, as follows:

Line Item 37 calls for the unit price of BAAQMD notifications, with an estimated quantity of 18. AMG wrote “twenty-two thousand four hundred” as its unit price **AND** total price, failing to multiply the unit price by 18. The City’s bid results spreadsheet contains the same error. The correct calculation for the line item (18 x \$22,400) is \$403,200. Therefore, AMG’s actual base bid, after correctly tabulating its bid sheet, is \$1,261,000. AMG’s correct total with alternates is \$1,681,515.

The bid specifications for this project, at P3 “DIRECTIONS TO BIDDERS”, states, in part, as follows:

In case of discrepancy between the item price and the total set forth for a unit basis item, the item price shall prevail, provided however, if the amount set forth as an item price is ambiguous, illegible or uncertain for any cause, or is omitted, **or in the case of unit basis items, is the same amount as the entry in the “Total” column, then the amount set forth in the “Total” column for the item shall prevail in accordance with the following** (emphasis added):

- (1) As to lump sum items, the amount set forth in the “Total” column shall be the item price.
- (2) As to unit basis items, the amount set forth in the “Total” column shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

OFFICE OF THE CITY ATTORNEY

777 B STREET, HAYWARD, CA 94541-5007

TEL: 510/583-4450 • FAX: 510/583-3660 • TDD: 510/247-3340

Based on the above, AMG's entry for Line Item 37 would be evaluated as follows: The "Total" entry of \$22,400 would be accepted as the total price and the unit price would be obtained by dividing \$22,400 by 18 (the estimated quantity), yielding a unit price of \$1,244.44.

Since the bid specifications provide a mechanism for evaluating this specific situation, the City concludes that it is an inconsequential deviation from the bid requirements that did not affect the bid amount. Furthermore, since the bid specifications provide the City a mechanism for reviewing the line item in question, AMG would not have been allowed to withdraw their bid without forfeiting their bid bond. Consequently, the City may waive the informality since it would not provide AMG a competitive advantage over the other bidders. Staff will recommend that the City Council reject the bid protest and proceed with award to AMG.

This item is scheduled to be considered by the City Council during the City Council meeting of October 29, 2019 at 7:00 p.m at Hayward City Hall. All correspondence related to this item will be provided to the City Council when considering this item. If you wish to submit additional materials for consideration or would like to appear at the meeting, you are free to do so. Please submit materials to the City Clerk no later than close of business on Thursday October 24, 2019. Thank you.

Very truly yours,

MICHAEL S. LAWSON, City Attorney

By:

A handwritten signature in black ink, appearing to read "Michael G. Vigilia", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Michael G. Vigilia
Senior Assistant City Attorney

Enclosures

cc: Public Works Director
Brent Bates, Asbestos Management Group (via overnight delivery)

DIRECTIONS TO BIDDERS:

The following are directions to bidders by the City of Hayward and this proposal is made with reference to them:

Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items. The total of unit basis items will be determined by extension of the item price bid on the basis of the estimated quantity set forth for the item.

The bidder shall set forth for each item of work, in clearly legible figures, an item price and a total for the item in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "Total" column shall be the extension of the item price bid on the basis of the estimated quantity for the item.

In case of discrepancy between an item price in words and the price in figures, the price in words shall prevail. In case of discrepancy between the item price and the total set forth for a unit basis item, the item price shall prevail, provided however, if the amount set forth as an item price is ambiguous, illegible or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

- (1) As to lump sum items, the amount set forth in the "Total" column shall be the item price.
- (2) As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

All questions concerning bids are to go to the City Project Engineer designated on the cover of the Specifications, and any changes to the Contract Documents shall be made by addendum.

The bidder's attention is directed to Section 2, "Bidding," of these Special Provisions regarding submittal of proposal on City furnished forms.

If this proposal shall be accepted and the undersigned shall fail to contract as aforesaid and to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory to the City of Hayward, within ten (10) days, not including Sundays and legal holidays, after the bidder has received notice from the City of Hayward that the contract has been awarded, the City of Hayward may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of Hayward.