



February 18, 2021

VIA CERTIFIED MAIL AND EMAIL

Mr. Brett Brennan, President
Urban Habitat Landscape Contractors
PO Box 1177
La Quinta, CA 92247

SUBJECT: City of Coachella
Landscape Maintenance Services for Landscape Lighting and Maintenance Districts
(LLMD) 1 -38
Notice of Intent to Reject Bid Protest

Dear Mr. Brett Brennan:

The City of Coachella ("City") has reviewed the bid protest letter filed by Urban Habitat Landscape Contractors ("Urban") dated February 16, 2021 ("Protest") with regards to the above captioned project ("Project"). As set forth in greater detail below, the City has thoroughly analyzed the Protest and determined that it is without merit and is hereby rejected.

Generally, the Protest alleges that the bids of both Conserve Landscape and Mariposa Landscape are non-responsive because certain information was not provided in the monthly schedule sheet and annual schedule sheet submitted with their proposals. A review of the basis for the Protest shows that it is without substantive merit.

The proposals were submitted in response to the City's Request for Proposals ("RFP"). Unlike low bid procurement and public works contracts, a non-responsiveness claim "should not apply with the same force to the inherently more flexible setting of an RFP." (See *Cypress Security, LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1015 ("Cypress").) Crucial to this RFP, courts have questioned whether this doctrine is appropriate outside of the low bid context. (See *Cypress, supra*, 184 Cal.App.4th at 1015.) Instead, a non-responsiveness claim should be "viewed 'in light of the public interest, rather than the private interest of a disappointed bidder' hoping to prevail by identifying 'minor technicalities' in the winning submission." (See *Cypress, supra*, 184 Cal.App.4th at 1018.)

With that in mind, the City has broad latitude when evaluating a responsiveness protest. This is because the RFP is a flexible procurement process. In this case, the City's RFP involved a best value procurement, and the monthly and annual schedule sheets were only one (1) factor in the RFP evaluation process. It was up to the proposers to decide how much information they wanted to include in the monthly and annual

It is not clear how the supposed minimal noncompliance with the monthly and annual schedule sheets affected the public interest in this matter. Both proposals were responsive to the RFP by submitting the monthly and annual schedule sheets for evaluation purposes.

Importantly, the Specific Terms and Conditions of the RFP and its scope of work is a requirement of all proposers and will be part of the Maintenance Services Agreement. A submission of a signed proposal means that the proposer responding to the RFP has agreed to all of the terms and conditions in the RFP and Maintenance Services Agreement, which includes the scope or work. Stated differently, no matter what was included in the monthly and annual schedule sheets, the selected proposer still has to perform in accordance with RFP and Maintenance Services Agreement.

That being said, even if there were irregularities in the proposals regarding the monthly and annual schedule sheets, the RFP reserves the right for the City to waive any informality in a proposal.

The City will consider award of this contract at its meeting on February 24, 2021. City staff intends to recommend rejection of Urban's Protest as meritless and award of the contract to Conserve Landcare Inc.

Sincerely,



Maritza Martinez
Public Works Director

cc: William B. Pattison, Jr., City Manager
Carlos L. Campos, City Attorney