



October 30, 2023

Michael Simmons
HiTech Lights, Inc.
78365 Highway 111 Ste 400
La Quinta, CA 92253

Re: RFP #072023 Bid Award Protest Response – Holiday Lighting and Decorations

Dear Mr. Simmons:

The City of Coachella (“City”) is in receipt of HiTech Lights’ (“HiTech”) letter dated October 1, 2023 (“Protest”), protesting the City’s selection of The Christmas Kings (“TCK”) to perform holiday lighting services in response to the City’s above-referenced Request For Proposals (“RFP”). In short, although HiTech provides several reasons, its sole point is that the RFP scope of work was ambiguous and that the City intentionally made the scope of work ambiguous to benefit TCK. After a review of the Protest, City staff has determined that the Protest lacks merit and is, in part, time-barred.¹

First, contrary to HiTech’s assertions in the Protest, the RFP was not let under the City’s formal competitive bidding process and HiTech erroneously reviews TCK’s proposal under that framework. Even so, HiTech’s assertion that the structure and format of the RFP somehow granted a competitive advantage to TCK is entirely speculative. Since HiTech provided no actual, overt evidence that the City intended to benefit TCK by drafting an ambiguous scope of work, HiTech’s protest lacks merit. (See *Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1188; *Konica Business Machs. U. S. A. v. Regents of Univ. of Cal.* (1988) 206 Cal.App.3d 449, 454.) Nor does HiTech’s assertion withstand scrutiny because it failed to explain why the City issued numerous addenda seeking to clarify the scope of work in the RFP if the City in fact intended the ambiguity in that scope to benefit TCK.

Moreover, even under this standard, a bid is responsive if the bid promises to do what the bidding instructions demand. (*Great West Contractors, Inc. v. Irvine Unified School District* (2010) 187 Cal.App.4th 1425, 1452, quoting *Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341; *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368.) This is not a complex question and can usually be determined from “the face of the bid.” (*Great West Contractors, Inc. v. Irvine Unified School District, supra*, 187 Cal.App.4th at p. 1452.) HiTech has not expressly alleged that TCK’s

¹ The Protest alleges that the City violated the California Public Records Act (“CPRA”). As a protest is not the proper channel to assert CPRA violations, the City will not respond to those assertions here and is currently reviewing HiTech’s allegation.

proposal deviated from the RFP requirements, let alone substantiated that the deviation was material and could not be waived.

It is for that reason, that the City would not be able to review HiTech's allegation that TCK is suspended by the Franchise Tax Board. That allegation requires a review of information outside of TCK's proposal and may in effect transform this inquiry into an inquiry of responsibility that triggers due process concerns. *See D.H. Williams Construction, Inc. v. Clovis Unified School Dist.* (2007) 146 Cal.App.4th 757, 763-770. Nevertheless, the City has satisfied itself that TCK is a fictitious business name and TCK is operating under a corporation that is active.

Second, the Protest does not show why the City should not award the contract to TCK under the more lenient standard of review applicable to competitive solicitations. While the City generally may not be able to consider evaluation factors not specified in a competitive solicitation, and may not improperly influence the selection process (see, e.g., 10 McQuillin, Mun. Corp. (3d ed.) § 29:31; see also *Schram Construction, Inc. v. Regents of University of California* (2010) 187 Cal.App.4th 1040, 1061), neither occurred here.

In short, the Protest, in large part, simply asserts that the RFP was not sufficiently detailed, which impacted HiTech's ability to provide a competitive proposal. This assertion is flawed for several reasons. The City provided adequate opportunity for any prospective proposer to ask questions throughout the competitive solicitation process, which HiTech could have availed itself of. Indeed, section XI(A) of the Instructions to Proposers in the RFP provides: "Protests based on the content of the RFP shall be submitted to the City no later than ten (10) calendar days prior to the scheduled submittal deadline." Accordingly, this Protest is thirty-eight (38) days late, and to the extent that the RFP was not sufficiently detailed to allow for an adequate bid, HiTech has expressly waived any protest on that basis. Finally, the fact that HiTech was able to provide pricing indicates that HiTech was sufficiently familiar with the requirements of the RFP and was able to respond and generate its proposal.

For these reasons, staff has determined that the Protest is meritless and otherwise time-barred and will recommend that the City Council **REJECT** the Protest and award the contract to TCK at the November 8, 2023 City Council meeting.

Please contact the undersigned with any questions or concerns.

Very Truly Yours,



Maritza Martinez
Public Works Director
City of Coachella