



May 22, 2020

Lynden  
300 4th Street  
Lynden, WA 98264

Attn: Mark Sandal  
Program Manager

Re: 17<sup>th</sup> St. Extension Final Design  
**Recommendation to Award**

Dear Mark Sandal;

We have reviewed all construction bid proposals for the above referenced project. Stremler Gravel, Inc. provided the lowest responsive bid at \$1,581,269.48 including Tax. The Certified Tabulation of Bids Received and the Bidder's Checklist are attached for your information and review.

Tiger Construction provided the lowest bid proposal for the project at \$1,523,590.18. However, DOT Form 271-015A EF "Local Agency Subcontractor List" as provided in Addendum No. 1 was not submitted as required by RCW 39.30.060 (See Attached) which states "Every invitation to bid on a prime contract that is expected to cost one million dollars or more... shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract the performance of the work of HVAC, plumbing as described in chapter 18.106 RCW; and electrical...". In addition, the project specifications section 1-02.13.1 state that "A Proposal will be considered irregular and will be rejected if:". Item g under section 1-02.13.1, reads "The Bidder fails to submit or properly complete a Subcontractor list, if applicable, as required in Section 1-02.6." See attached for the referenced specification excerpts.

We recommend that you award the contract to Stremler Gravel, Inc., subject to the following:

1. Required project funds are available.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tyler Buys', with a stylized flourish at the end.

Tyler Buys, P.E.  
Reichhardt & Ebe Engineering, Inc.

**RCW 39.30.060****Bids on public works—Identification, substitution of subcontractors.**

\*\*\* CHANGE IN 2020 \*\*\* (SEE [5457.SL](#)) \*\*\*

(1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under [RCW 39.04.010](#) or an institution of higher education as defined under [RCW 28B.10.016](#) shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter [18.106](#) RCW; and electrical as described in chapter [19.28](#) RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

- (a) Refusal of the listed subcontractor to sign a contract with the prime contractor;
- (b) Bankruptcy or insolvency of the listed subcontractor;
- (c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;
- (d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or
- (e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

(4) This section does not apply to job order contract requests for proposals under [\\*RCW 39.10.130](#).

[ [2003 c 301 § 5](#); [2002 c 163 § 2](#); [1999 c 109 § 1](#); [1995 c 94 § 1](#); [1994 c 91 § 1](#); [1993 c 378 § 1](#).]

**NOTES:**

**\*Reviser's note:** RCW [39.10.130](#) was recodified as RCW [39.10.420](#) pursuant to 2007 c 494 § 511, effective July 1, 2007.

**Intent—2002 c 163:** "This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects." [ [2002 c 163 § 1](#).]

**Application—1994 c 91:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after June 9, 1994." [ [1994 c 91 § 2.](#)]

**Application—1993 c 378:** "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after July 25, 1993." [ [1993 c 378 § 2.](#)]

### **1-02.6 Preparation of Proposal**

*(July 11, 2018 APWA GSP)*

Supplement the second paragraph with the following:

4. If a minimum bid amount has been established for any item, the unit or lump sum price must equal or exceed the minimum amount stated.
5. Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid.

Delete the last two paragraphs, and replace them with the following:

If no Subcontractor is listed, the Bidder acknowledges that it does not intend to use any Subcontractor to perform those items of work.

The Bidder shall submit with their Bid a completed Contractor Certification Wage Law Compliance form, provided by the Contracting Agency. Failure to return this certification as part of the Bid Proposal package will make this Bid Nonresponsive and ineligible for Award. A Contractor Certification of Wage Law Compliance form is included in the Proposal Forms.

The Bidder shall make no stipulation on the Bid Form, nor qualify the bid in any manner.

A bid by a corporation shall be executed in the corporate name, by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign).

A bid by a partnership shall be executed in the partnership name, and signed by a partner. A copy of the partnership agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

A bid by a joint venture shall be executed in the joint venture name and signed by a member of the joint venture. A copy of the joint venture agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

### **1-02.7 Bid Deposit**

*(March 8, 2013 APWA GSP)*

Supplement this section with the following:

Bid bonds shall contain the following:

1. Contracting Agency-assigned number for the project;
2. Name of the project;
3. The Contracting Agency named as obligee;
4. The amount of the bid bond stated either as a dollar figure or as a percentage which represents five percent of the maximum bid amount that could be awarded;
5. Signature of the bidder's officer empowered to sign official statements. The signature of the person authorized to submit the bid should agree with the signature on the bond, and the title of the person must accompany the said signature;
6. The signature of the surety's officer empowered to sign the bond and the power of attorney.

### **1-02.12 Public Opening Of Proposal**

*(February 1, 2008 R&E GSP)*

Section 1-02.12 is supplemented with the following:

The completed Bid Proposal Form and any other documents required in accordance with the Special Provisions shall be received at the following location prior to the time specified:

Lynden City Hall  
300 4<sup>th</sup> St.  
Lynden, WA 98264

All bids must be in an opaque envelope and plainly marked on the outside:

Proposal for Contract  
(Name of Bidder)  
Project: 17<sup>th</sup> Street Extension  
City of Lynden Project No. 2004-27  
Lynden, WA

Bid proposals shall be deposited at the designated location prior to the date and time for receipt of bid proposals as indicated in the "Invitation to Bid", or such revised date as may be specified by an addendum.

No oral, telephonic or telegraphic bids or modifications will be considered.

The bid opening date for this project is **May 21, 2020**. The bids will be publicly opened and read after **11:00 am** on this date.

### **1-02.13 Irregular Proposals**

*(December 19, 2019 APWA GSP)*

Delete this section and replace it with the following:

1. A Proposal will be considered irregular and will be rejected if:
  - a. The Bidder is not prequalified when so required;
  - b. The authorized Proposal form furnished by the Contracting Agency is not used or is altered;
  - c. The completed Proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
  - d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
  - e. A price per unit cannot be determined from the Bid Proposal;
  - f. The Proposal form is not properly executed;
  - g. The Bidder fails to submit or properly complete a Subcontractor list, if applicable, as required in Section 1-02.6;
  - h. The Bidder fails to submit or properly complete an Underutilized Disadvantaged Business Enterprise Certification, if applicable, as required in Section 1-02.6;

- i. The Bidder fails to submit written confirmation from each UDBE firm listed on the Bidder's completed UDBE Utilization Certification that they are in agreement with the bidder's UDBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;
  - j. The Bidder fails to submit UDBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award was made;
  - k. The Bidder fails to submit a UDBE Bid Item Breakdown form, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
  - l. The Bidder fails to submit UDBE Trucking Credit Forms, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
  - m. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or
  - n. More than one Proposal is submitted for the same project from a Bidder under the same or different names.
2. A Proposal may be considered irregular and may be rejected if:
- a. The Proposal does not include a unit price for every Bid item;
  - b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;
  - c. Receipt of Addenda is not acknowledged;
  - d. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
  - e. If Proposal form entries are not made in ink.

**1-02.14 Disqualification of Bidders**

*(May 17, 2018 APWA GSP, Option A)*

Delete this section and replace it with the following:

A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended.

The Contracting Agency will verify that the Bidder meets the mandatory bidder responsibility criteria in RCW 39.04.350(1). To assess bidder responsibility, the Contracting Agency reserves the right to request documentation as needed from the Bidder and third parties concerning the Bidder's compliance with the mandatory bidder responsibility criteria.

If the Contracting Agency determines the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1) and is therefore not a responsible Bidder, the Contracting Agency shall notify the Bidder in writing, with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within two (2) business days of the Contracting Agency's determination by presenting its appeal and any