



CITY OF LYNDEN
Jim Kaemingk Sr. Trail - Phase 3
 Thursday, April 18, 2024



Bidder Name Address City, State, Zip	Bidder Identification Completed	Non-Collusion Declaration	Contractor Certification Wage Law Compliance - Responsibility Criteria	Proposal Signed & Notarized	Addendum No 1. Acknowledged	Bid Bond Included	Total Bid
Ripper Dirt and Asphalt	✓	✓	✓	✓	✓	✓	289,688.02
WRS	✓	✓	✓	✓	✓	✓	336,918.00

308,697.02

✓



April 19, 2024

NOTICE OF PROTEST

Reichhardt & Ebe Engineering Inc.
423 Front Street.
Lynden, WA 98264

Attention: Tyler Buys, Principal & Project Manager

RE: Jim Kaemingk Sr. Trail Depot Road to 8th Street Phase 3 Project, Construction Documents prepared by Reichhardt & Ebe Engineering Inc.

Mr. Buys.

Pursuant to Washington State RCW39.04.105, Western Refinery Services does protest the bid of Ritter Dirt & Asphalt for the referenced project. This letter shall serve as written notice in accordance with the conditions of that section.

Ritter Dirt & Asphalt failed to provide a complete bid. Within the owner provided bid documents the owner retains the right to reject contractor bids that are incomplete. The Ritter Dirt & Asphalt bid must be considered incomplete and therefore non-responsive.

WSDOT 1-02.13 section D states that a proposal is considered irregular if "The Proposal form is not properly executed." WSDOT 1-02.6 outlines how a proposal is properly executed when they write, "All prices shall be in legible figures (not words) written in ink or typed and expressed in U.S. dollars and cents." Ritter Dirt & Asphalt's bid proposal does not follow 1-02.6 for the following reasons:

- a. Bid Items 1, 2, 4, 5, 6, 11, 14, 18, 23, 24, 34, 35, 36, and 40 are all missing the cents as required in 1-02.6.
- b. Bid Items 2, 26, and 39 all have been crossed out and lack an initial.

Last, WRS requests that Reichhardt & Ebe confirm that the proposal was completed in pen as required by 1-02.6. It appears in the scanned document that Ritter Dirt & Asphalt's bid proposal is written in pencil.

The Washington State RCW is clear that bids must be awarded to the lowest responsible bidder with a responsive bid. An incomplete bid is non-responsive.

Western Refinery Services does request acknowledgement of this Bid Protest and confirmation of the Ritter Dirt & Asphalt bid proposal rejection.

We look forward to your prompt response.

Dustin Bliss
WRS Construction Manager

A handwritten signature in black ink, appearing to read 'Dustin Bliss', is written over a horizontal line.



ROBERT A. CARMICHAEL | Attorney
bob@carmichaelclark.com

April 26, 2024

VIA E-MAIL ONLY

Mr. Jon Hutchings
Public Works Director
City of Lynden
300 4th Street
Lynden, WA 98264

Re: Jim Kaemingk Sr. Trail – Depot Road to 8th Street Phase 3 Project

Dear Mr. Hutchings:

This letter is in response to the City of Lynden’s request for legal review of the bids and related documents associated with the bid opening on April 18, 2024 for the above-referenced project. I have also reviewed the bid protest filed by WRS on April 19, 2024. Following review of the WRS bid protest, a letter from Reichhardt & Ebe Engineering dated April 23, 2024, and the bid documents, including Project Specifications, it is my opinion that the City of Lynden (“City”) has the right and authority to reject Ritter Dirt & Asphalt (Ritter)’s low bid for the Jim Kaemingk Sr. Trail – Phase 3 project.

Under Chapter 39.04 RCW, local agencies are required to award public works contracts to responsible bidders with the lowest responsive bids. A bid is deemed responsive if it is submitted on time and includes all information as requested by the agency. Bids with material defects are nonresponsive and must be rejected by the agency. Material defects are those irregularities that give one bidder a substantial advantage over others, thereby undermining fair competition. While agencies are required to reject bids containing material defects, minor variances or errors may be considered informalities in the bidding process and may be waived if they do not significantly affect the competitive character of the bidding process.¹ However, the City is not required to waive such irregularities, and maintains discretion to reject nonconforming bids. The Ritter bid is nonconforming, and the City has the right to reject it.

There are two irregularities in Ritter’s bid proposal and two math errors. Several bid items are missing the cents in the unit price and totals, as required by WSDOT Standard Specification 1-02.6. In addition, several bid items have been crossed out or were otherwise altered, and none of them are initialed by the signer of the bid as required by Contract Special Provision 1-02.6,

¹ [Land Constr. Co. v. Snohomish Cty., 40 Wn. App. 480, 482, 698 P.2d 1120, 1122 \(1985\)](#)

item 5.² While omitting cents in unit prices may be considered a minor irregularity, Ritter's failure to initial alterations to unit prices in violation of Special Provision 1-02.6 raises concerns. The failure to explain or initial changes to a unit price could potentially advantage one bidder unfairly. This letter is not suggesting that Ritter would seek to disavow the altered unit prices; the concern is that without initials accompanying the alterations, the potential to do so exists.

The issue of whether failure to initial alterations to unit prices is a material defect has not been addressed in Washington. However, a New Jersey court addressed a bid with similar defects and held that failure to explain or initial changes to a unit price constitutes grounds for rejection of a bid. In that case, the Borough of Fort Lee rejected the lowest bid because the bid contained alterations that were not explained or noted in the bid over the signature of the bidder as required by the Bid Specifications, raising concerns that because of this, the contractor could disclaim the alterations as having been made without authorization and seek to withdraw its bid on this ground.³ That court determined that failure to initial alterations to unit prices constituted an irregularity, and that it was not necessary to determine whether the irregularity was material because an irregularity in the bid can be grounds for rejection even if the irregularity is not a material defect.

Here, as in the Borough of Fort Lee case, it is not necessary to determine whether the flaws in Ritter's bid were material defects or minor irregularities. If the flaws were material defects that undermined fair competition, the City has a duty to reject the bid. If the flaws were minor irregularities, the City has the discretion to reject the bid based on prudent judgment.⁴ In short, the City is well within its legal right and sound discretion to reject the Ritter bid for its failure to initial alteration of unit prices, as required by the bid specifications.

Please let me know if you have questions.

Yours truly,



Robert A. Carmichael
Lynden City Attorney

c: John Williams, City Administrator
Brent DeRuyter, Parks Director
Mark Sandal, Programs Manager, Public Works

² Per Contract Special Provision 1-02.6, item 5, "Any correction to a bid made by interlineation, alteration, or erasure shall be initialed by the signer of the bid."

³ [Serenity Contracting Grp., Inc. v. Borough of Fort Lee, 306 N.J. Super. 151, 153, 703 A.2d 352, 353 \(Super. Ct. App. Div. 1997\)](#)

⁴ The existence of the two math errors add to Ritters bid nonconformance, but are not necessary for this opinion.



April 29, 2024

City of Lynden
300 4th Street
Lynden, WA 98264

Attn: Mark Sandal
Programs Manager

Re: City of Lynden
Jim Kaemingk Sr. Trail - Depot to 8th - PHASE 3

Recommendation to Award

Dear Mark,

We have reviewed all construction bid proposals for the above-referenced project. Western Refinery Services provided the lowest responsive bid at \$336,918.00. The apparent low bid was supplied by Ritter Dirt and Asphalt, but is recommended to be rejected based on consideration of the Project Special Provisions, the WSDOT Standard Specifications, and the attached letter from Robert A. Carmichael with Carmichael Clark, P.S. Attorneys At Law, dated April 26, 2024. The bid for Western Refinery Services was read as a total of \$336,918.00.

We recommend that you award the contract to Western Refinery Services subject to the following:

1. Required project funds are available.
2. Consideration of the City's Attorney to reject the bid of Ritter Dirt and Asphalt.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tyler Buys', written over a horizontal line.

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

CITY OF LYNDEN



PUBLIC WORKS DEPARTMENT

Jon Hutchings, Public Works Director
(360) 354 - 3446

April 30, 2024

Alysha Ritter
Ritter Dirt & Asphalt, LLC
PO Box 1006
Lynden, WA 98264

RE: Jim Kaemingk Sr. Trail - Depot to 8th - Phase 3
Notice of Irregular bid

Dear Ms. Ritter,

Thank you for your interest and bid for the City's Jim Kaemingk Sr. Trail, Depot to 8th – Phase 3 Project ("Phase 3 Trail Project"). This letter is to notify you that the bid documents submitted by Ritter Dirt & Asphalt for this project are irregular, and therefore have been rejected by the City of Lynden.

Ritter Dirt & Asphalt provided the lowest bid proposal for the project at \$308,697.02. However, the following irregularities were observed on the bid proposal from Ritter Dirt and Asphalt:

1. Bid Item unit prices for items 2, 26, and 39 were crossed out and altered, with no initials present. Per the Contract Special Provisions section 1-02.6, item 5 "Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid."
2. Unit prices and totals for bid items 1,2,4,5,6,11,14,18,23,24,34,35,36, and 40 did not include cents. Per the WSDOT Standard specifications section 1-02.6, second paragraph, "All prices shall be in legible figures (not words) written in ink or typed and expressed in U.S. dollars and cents."

A bid must comply with the bid specifications provided in the notice requesting proposals. Ritter Dirt & Asphalt's bid is not in compliance with requirements as stated in the WSDOT Standard Specifications and the Project Special Provisions. The WSDOT Standard Specification 1-02.6 specifies that only properly executed proposals will be accepted, and Section 1-02.13 of the Contract Special Provisions reiterates that a proposal will be deemed irregular and rejected if the proposal form is not properly executed. Ritter Dirt and Asphalt's bid is irregular due to its failure to conform to the above cited bid requirements and is therefore rejected for the Phase 3 Trail Project.

We appreciate your interest in the project and hope for an opportunity to work with Ritter Dirt & Asphalt in the future.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Mark Sandal".

Mark Sandal
Programs Manager

cc: Jon Hutchings, City of Lynden Public Works Director
Brent DeRuyter, City of Lynden Parks Director
Tyler Buys, P.E., Reichhardt & Ebe Engineering, Inc.
Barbara Burke, Reichhardt & Ebe Engineering, Inc.
File



Jason Ritter
1350 Ten Mile Rd
Everson WA 98247
(360) 739-3472
Jasonritter007@gmail.com

May 1, 2024

Hi Mark,

I am writing to dispute your decision on the Jim Kaemingk Sr. Trail Project. I have review bid items 2, 26, and 39 which states a very clear dollar amount for these items. I realize that it is your policy to have initials by each one, but this document is signed by me under oath and notarized which make this a legally binding document. The bid tabs have a significant difference in price from 1st to 2nd bidder and above all that it does not change the fact that J Ritter Dirt & Asphalt is low bidder. I hope that we can come together on this to avoid any legal implications.

I would be happy to provide you with several references that we have worked with in the past if you find that helpful.

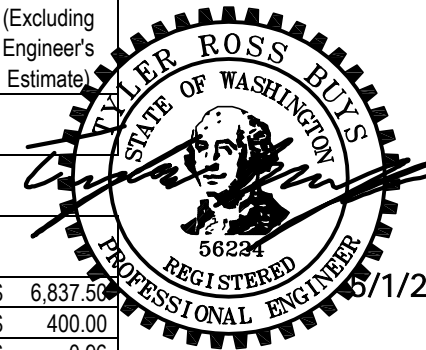
Sincerely,

A handwritten signature in blue ink that reads 'Alysha Ritter'.

Alysha Ritter
Ritter Dirt & Asphalt, LLC
360-739-2972

423 Front Street
Lynden, WA 98264
Phone: (360) 354-3687

Called By:	City of Lynden	Bidder's Name	Engineer's Estimate	1 Ritter Dirt & Asphalt PO Box 1006 Lynden, WA 9264	2 Western Refinery Services 2380 Grandview Road Ferndale, WA 98248	Average (Excluding Engineer's Estimate)	Standard Deviation (Excluding Engineer's Estimate)
For:	Jim Kaemingk Sr. Trail - Depot to 8th - PHASE 3 300 4th Street Lynden, WA 98264 CERTIFIED TABULATION OF BIDS RECEIVED	Address					
By:	Tyler Buys, P.E.						
Date:	April 18, 2024						



Item No.	Item Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount		
1	Mobilization	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 38,675.00	\$ 38,675.00	\$ 25,000.00	\$ 25,000.00	\$ 31,837.50	\$ 6,837.50
2	SPCC Plan	1	LS	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 200.00	\$ 200.00	\$ 600.00	\$ 400.00
3	Temporary Trench Patch	610	SF	\$ 5.00	\$ 3,050.00	\$ 3.07	\$ 1,872.70	\$ 5.00	\$ 3,050.00	\$ 4.04	\$ 0.96
4	Project Temporary Traffic Control	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 6,725.00	\$ 6,725.00	\$ 8,000.00	\$ 8,000.00	\$ 7,362.50	\$ 637.50
5	Clearing and Grubbing	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 25,000.00	\$ 25,000.00	\$ 3,000.00	\$ 3,000.00	\$ 14,000.00	\$ 11,000.00
6	Removal of Structures and Obstructions	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 15,000.00	\$ 15,000.00	\$ 25,000.00	\$ 25,000.00	\$ 20,000.00	\$ 5,000.00
7	Sawcut ACP	1,530	LF-IN	\$ 1.50	\$ 2,295.00	\$ 0.84	\$ 1,285.20	\$ 1.50	\$ 2,295.00	\$ 1.17	\$ 0.33
8	Sawcut PCC	670	LF-IN	\$ 2.50	\$ 1,675.00	\$ 1.62	\$ 1,085.40	\$ 4.00	\$ 2,680.00	\$ 2.81	\$ 1.19
9	Gravel Borrow Incl. Haul	220	TON	\$ 25.00	\$ 5,500.00	\$ 15.75	\$ 3,465.00	\$ 26.00	\$ 5,720.00	\$ 20.88	\$ 5.13
10	Roadway Excavation Incl. Haul	250	CY	\$ 20.00	\$ 5,000.00	\$ 24.50	\$ 6,125.00	\$ 30.00	\$ 7,500.00	\$ 27.25	\$ 2.75
11	Subgrade Final Conditioning	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 6,000.00	\$ 6,000.00	\$ 4,100.00	\$ 4,100.00	\$ 5,050.00	\$ 950.00
12	Water	10	M GAL.	\$ 150.00	\$ 1,500.00	\$ 39.00	\$ 390.00	\$ 200.00	\$ 2,000.00	\$ 119.50	\$ 80.50
13	Crushed Surfacing Top Course	140	TON	\$ 50.00	\$ 7,000.00	\$ 20.16	\$ 2,822.40	\$ 65.00	\$ 9,100.00	\$ 42.58	\$ 22.42
14	Commercial HMA	230	TON	\$ 160.00	\$ 36,800.00	\$ 132.00	\$ 30,360.00	\$ 160.00	\$ 36,800.00	\$ 146.00	\$ 14.00
15	Infiltration Trench	136	LF	\$ 35.00	\$ 4,760.00	\$ 110.95	\$ 15,089.20	\$ 30.00	\$ 4,080.00	\$ 70.48	\$ 40.48
16	Solid Wall PVC Storm Sewer Pipe 12 In. Diam.	5	LF	\$ 200.00	\$ 1,000.00	\$ 181.28	\$ 906.40	\$ 100.00	\$ 500.00	\$ 140.64	\$ 40.64
17	Stormwater Filtration System	1	EA	\$ 30,000.00	\$ 30,000.00	\$ 18,097.89	\$ 18,097.89	\$ 27,500.00	\$ 27,500.00	\$ 22,798.95	\$ 4,701.06
18	Adjustments to Finished Grade	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	\$ 1,000.00	\$ 1,000.00	\$ 3,000.00	\$ 2,000.00
19	High Visibility Silt Fence	315	LF	\$ 5.00	\$ 1,575.00	\$ 2.09	\$ 658.35	\$ 5.00	\$ 1,575.00	\$ 3.55	\$ 1.46
20	Inlet Protection	4	EA	\$ 150.00	\$ 600.00	\$ 33.84	\$ 135.36	\$ 60.00	\$ 240.00	\$ 46.92	\$ 13.08
21	Seeding and Mulching	0.40	AC	\$ 12,000.00	\$ 4,800.00	\$ 8,364.60	\$ 3,345.84	\$ 25,000.00	\$ 10,000.00	\$ 16,682.30	\$ 8,317.70
22	Bark Mulch	230	SY	\$ 15.00	\$ 3,450.00	\$ 11.75	\$ 2,702.50	\$ 10.00	\$ 2,300.00	\$ 10.88	\$ 0.88
23	Plant Selection Thuja occidentalis 'Smaragd'	152	EA	\$ 145.00	\$ 22,040.00	\$ 115.00	\$ 17,480.00	\$ 150.00	\$ 22,800.00	\$ 132.50	\$ 17.50
24	Topsoil Type A	280	TON	\$ 55.00	\$ 15,400.00	\$ 14.75	\$ 4,130.00	\$ 70.00	\$ 19,600.00	\$ 42.38	\$ 27.63
25	Cement Conc. Traffic Curb and Gutter	130	LF	\$ 50.00	\$ 6,500.00	\$ 41.70	\$ 5,421.00	\$ 45.00	\$ 5,850.00	\$ 43.35	\$ 1.65
26	Cement Conc. Pedestrian Curb	40	LF	\$ 40.00	\$ 1,600.00	\$ 43.75	\$ 1,750.00	\$ 55.00	\$ 2,200.00	\$ 49.38	\$ 5.63
27	Cement Conc. Driveway Entrance	15	SY	\$ 90.00	\$ 1,350.00	\$ 104.50	\$ 1,567.50	\$ 150.00	\$ 2,250.00	\$ 127.25	\$ 22.75
28	Chain Link Fence Type 3	381	LF	\$ 40.00	\$ 15,240.00	\$ 37.42	\$ 14,257.02	\$ 40.00	\$ 15,240.00	\$ 38.71	\$ 1.29
29	Custom Chain Link Fence	108	LF	\$ 60.00	\$ 6,480.00	\$ 120.95	\$ 13,062.60	\$ 130.00	\$ 14,040.00	\$ 125.48	\$ 4.53
30	Temporary Chain Link Fence	402	LF	\$ 5.00	\$ 2,010.00	\$ 6.52	\$ 2,621.04	\$ 10.00	\$ 4,020.00	\$ 8.26	\$ 1.74
31	Split Rail Fence	194	LF	\$ 18.00	\$ 3,492.00	\$ 19.79	\$ 3,839.26	\$ 22.00	\$ 4,268.00	\$ 20.90	\$ 1.11
32	Cement Conc. Curb Ramp Type Parallel A	2	EA	\$ 3,500.00	\$ 7,000.00	\$ 3,025.00	\$ 6,050.00	\$ 3,500.00	\$ 7,000.00	\$ 3,262.50	\$ 237.50
33	Cement Conc. Sidewalk	25	SY	\$ 85.00	\$ 2,125.00	\$ 93.50	\$ 2,337.50	\$ 150.00	\$ 3,750.00	\$ 121.75	\$ 28.25
34	Cement Conc. Retaining Wall	60	LF	\$ 225.00	\$ 13,500.00	\$ 209.00	\$ 12,540.00	\$ 220.00	\$ 13,200.00	\$ 214.50	\$ 5.50
35	RRFB Foundation	1	LS	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00	\$ 5,000.00	\$ 5,000.00	\$ 4,500.00	\$ 500.00
36	Permanent Signing	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00	\$ 2,000.00	\$ 3,500.00	\$ 1,500.00
37	Paint Line	120	LF	\$ 2.00	\$ 240.00	\$ 2.30	\$ 276.00	\$ 3.00	\$ 360.00	\$ 2.65	\$ 0.35
38	Plastic Crosswalk Line	80	SF	\$ 20.00	\$ 1,600.00	\$ 17.25	\$ 1,380.00	\$ 25.00	\$ 2,000.00	\$ 21.13	\$ 3.88
39	Bollard Type 1	6	EA	\$ 4,000.00	\$ 24,000.00	\$ 832.31	\$ 4,993.86	\$ 1,500.00	\$ 9,000.00	\$ 1,166.16	\$ 333.85
40	Pothole Existing Underground Utility	6	EA	\$ 750.00	\$ 4,500.00	\$ 375.00	\$ 2,250.00	\$ 450.00	\$ 2,700.00	\$ 412.50	\$ 37.50
41	Repair Existing Public and Private Facilities	1	EST	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ -
	Sub-Total				\$ 332,582.00		\$ 308,697.02		\$ 336,918.00		
	Total				\$ 332,582.00		\$ 308,697.02		\$ 336,918.00		

Denotes Mathematical Error

Denotes Nonresponsive Bid