

MARQUES

General Engineering

VIA EMAIL WITH RETURN RECEIPT, FAX, & CERTIFIED MAIL

Tuesday, September 1, 2026

City of Wheatland
111 C Street
Wheatland, CA 95692
P: (530) 633-2761
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Attn: **Mr. Dane H. Schilling, P.E.**
dschilling@wheatland.ca.gov

Re: Letter of Protest for the City of Wheatland Regional Sewer Pipeline Project

Please treat this letter as the formal bid protest of Marques General Engineering, Inc. (“MGE”), the lowest, responsive, responsible bidder on the City of Wheatland Regional Sewer Replacement Project. Please know that we contend that the lowest bid submitted, of RCI General Engineering (“RCI”), is non-responsive and contains material irregularities which cannot be waived as a matter of law and as such is not eligible to receive the award and should be properly rejected. Given that our bid is therefore the lowest, and we properly completed and submitted our bid form timely, we are entitled to receive the award of the procurement.

The facts supporting this bid protest are clear and concise and there is legal authority provided below to substantiate MGE’s position.

In furtherance of this timely protest, submitted in compliance with Article 39.3 of the Instructions to Bidders, we submit the following legal authorities:

The bid by RCI must be rejected because it:

- (1) failed to comply with the mandatory bid requirements; and,
- (2) is non-responsive to the call of the bid.

A basic rule of competitive bidding is that bids must conform to the specifications and bidding documents, and that if a bid does not so conform, it may not be accepted (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904-905 (“Ghilotti”). A bid that varies materially from the bidding instructions must be rejected (*Id.*). To be responsive, a bid must be in strict and full accordance with the material terms of the bidding instruction (*Taylor Bus Serv., Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331 (“Taylor”). Moreover, a public agency, such as the City of Wheatland (the “City”), must follow its own rules in awarding public contracts (*Pozar v. Dept. of Transportation* (1983) 145 Cal.App.3d 269 (“Pozar”).

The City's published Bidding Documents Submittal Requirements expressly state as follows:

Instructions to Bidders; Art. 9.1-3. Each Bid must be accompanied by cash, a certified or cashier's check, or an original Bidders Bond in an amount not less than ten percent (10%) of the total aggregate of the Total Bid Price to be used in determining the lowest monetary Bid for the Project. A Bid will be considered non-responsive if not accompanied by proper Bidder's Security... All bonds must be provided on the forms included with the Contract Documents or the Bid will be considered non-responsive.

...

Instructions to Bidders; Art. 10.3 (C)(3). Bid Form must be signed by Bidder or duly authorized representative... If Bidder is a corporation, name of the corporation must be stated, the state of incorporation must be listed, the title of the person with authority to sign and bind corporation, must be stated, and the corporate seal must be affixed. If the Bid is made by a corporation; a copy of the bylaws or resolution of the Board of Directors of the corporation shall be furnished, showing the authority of the officer signing the Bid, to execute Bid on behalf of the corporation.

...

Section 00 40 45, Subsection B. For Bid Schedule A – Pipelines: Fused HDPE pipeline installations not less than 2,000-ft in length and Horizontal Directional Drill (HDD) installations of not less than 300-feet in length.

RCI's failure to submit documents completely and in compliance with the call for the bids renders its bid non-responsive.

RCI has failed to do the following:

- Page 17; next to the signature line, it indicates "(SEAL)", and beneath the primary signature it indicates "(CORPORATE SEAL)". This page should have the official corporate seal affixed to it. Based upon the scanned version provided, it does not appear that the document was properly sealed.
- Page 21; Bidders Bond does not have an acknowledgement of the Principal's or Contractor's signature.
- Page 39-41; None of the provided projects specifically indicate RCI meets the condition for Fused HDPE Pipeline installations of 2,000 linear feet or greater.
- Page 62; The Written Consent document outlines signatory authority for "Bonds from Interwest", however, the bid bond submitted and signed is from Western Surety. Interwest is the bonding agent.

- Page 62; The Written Consent document is for RCI General Engineering, however the signatory portion indicates Richter Construction, Incorporated.

The purpose of the public contracting statutes is to ensure full compliance with the competitive bidding laws as a means of protecting the public from misuse of public funds, to provide all qualified bidders the fair opportunity to join the bidding process, and to eliminate favoritism, fraud and corruption in the awarding of public contracts (see Cal Pub Contract Code § 100). Even the appearance or possibility of an impropriety is forbidden in public contracting, even where it is clear that no impropriety occurred (see, e.g., *Thomson v. Call* (1985) 38 Cal.3d 633, 649 (“*Thomson*”)). The mere possibility of such a situation requires rejection of RCI’s bid.

California law and the rules governing this project and contract are clear that the Owner can only award the project to the lowest, responsive responsible bidder. RCI cannot qualify as a responsive bidder because its bid was and is non-responsive. *Pozar, supra*, 145 Cal.App.3d at pp. 271-272, stands for the proposition that a public agency owner must strictly follow its own procurement rules in awarding a public works construction contract; and because the facts detailed below show that RCI’s bid does not comply, it is ineligible to receive the award and it is requested that the Owner reject RCI’s bid and determine that MGE is the lowest, responsive responsible bidder.

To reinforce the absolute legal infirmity of RCI’s bid, we provide you with a brief synopsis of California law relating to public works procurements, which demonstrates that the Owner is not legally able to award the contract to RCI.

A basic rule of competitive bidding is that bids must conform to specifications and bidding documents, and that if a bid does not so conform, it may not be accepted (47 Ops.Cal.Atty.Gen. 129, 130 (1966), quoted with approval in *National Identification Systems, Inc. v. State Bd. of Control* (1992) 11 Cal.App.4th 1446, 1453 (“*National Identification*”); *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904-905; and *Konica Business Machines U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454 (“*Konica*”) (bidders must strictly comply with bid requirements)).

A bid that varies materially from the bidding instructions must be rejected (*Id.* at p. 130). To be responsive, a bid must be in strict and full accordance with the material terms of the bidding instructions. *Taylor Bus Serv., Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331. Moreover, a public agency must follow its own rules in awarding public contracts. *Pozar v. Dept. of Transportation* (1983) 145 Cal.App.3d 269, 271-272.

A bidder may not correct its bid after bid opening. See, e.g., *National Coach Corp. v. Board of Control* (1982) 137 Cal.App.3d 750, 757 (“*National Coach*”) (“bids may not be modified after opening . . . [if] this were not the rule a speculating low bidder could salt his bid with deviations ready to waive them only if the calculations of the other bidders revealed the desirability of the enterprise”).

The appearance or possibility of an impropriety is forbidden in public contracting, even where it is clear that no impropriety occurred. See, e.g., *Thomson, supra*, 38 Cal.3d at p. 649; see also

Konica Business Machines U.S.A., Inc. v. Regents of the University of California (1988) 206 Cal.App.3d 449, 454 (setting aside a nonresponsive bid is appropriate “even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money”).

RCI’s failure to submit a valid bid bond on bid day allows it a clear unfair competitive advantage not shared by the other bidders. The court in *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180–1181 (“*Menefee*”), observed that “*Williams v. Bergin, supra*, 129 Cal. 461, 62 P. 59 established the principle that waiver should not be allowed if the irregularity would give the bidder an unfair advantage by allowing him to withdraw his bid without forfeiting the bid bond.” (Emphasis added.) That is precisely the situation at hand. Because RCI failed to submit the required bid bond on bid day (and its bid proposal was therefore void and unenforceable), it had the opportunity to withdraw its bid without “losing” its bid bond (since none had been properly provided). As noted above, under California law, the mere possibility of this occurring makes the deviation material, and such material deviations cannot be waived in RCI’s bid. See also *Valley Crest Landscape v. The City Council of the City of Davis* (1996) 41 Cal.App.4th 1432, 1442 (“*Valley Crest*”).

Valley Crest, supra, is squarely applicable to the present matter. In *Valley Crest*, an unsuccessful bidder, *Valley Crest*, asserted that the bid documents expressly required bidders to confirm that they would subcontract no more than 50% of the work, but the face of the apparent low bid disclosed that it intended to subcontract 83% of the work. Subsequently, after the bid opening, the apparent low bidder submitted a letter to the project owner advising that the “actual correct subcontractor percentage” was 44.65 percent. The owner awarded the contract to the apparent low bidder on the grounds that errors in the subcontractor percentage were immaterial and could be waived. The trial court denied *Valley Crest*’s writ.

On appeal, however, the trial court was reversed. In its holding, the Court of Appeal determined that the erroneous subcontractor percentage afforded the apparent low bidder an unfair competitive advantage because the low bidder could have simply withdrawn its bid under Public Contract Code section 5103 by claiming it made a mistake in filling out the bid, which gave it “a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an ‘irregularity.’” (See *Valley Crest, supra*, 41 Cal.App.4th at p. 1442.) The Court of Appeal concluded that:

...The subcontractor percentages were not required by the Act, but simply to ensure compliance with section 8-1 of the bid specifications. This specification made listing the subcontractor percentages a material element of the bid. Since it was a material element of the bid, North Bay could not change its bid to correct the mistake in stating the percentages. North Bay's bid provided for more than 50 percent of the work to be done by subcontractors; therefore, it was nonresponsive to section 8-1 of the specifications. The City could not permit the mistake as to this material element of the bid to be corrected by purporting to “waive an irregularity.” Since North Bay's bid was nonresponsive, its contract is invalid. Valley Crest, supra, 41 Cal.App.4th at p. 1443.

Similar to the bid submission at issue in *Valley Crest*, RCI's bid submission does not comply with the bidding documents (or California law) and affords RCI an unfair competitive advantage not enjoyed by all other bidders. Indeed, the mere possibility of impropriety by failing to comply with the competitive bidding rules requires rejection of RCI's bid, since it would be provided an unfair advantage – the opportunity to withdraw its bid without losing its bid bond. The Owner is therefore legally required to reject RCI's bid. Failure to do so would be an abuse of discretion.

MGE has fully and completely complied with the City's requirements. In light of the present facts and circumstances, the bid of RCI must be rejected and the Contract awarded to the lowest responsive, responsible bidder, MGE. If you require additional information or clarification of any of the information contained in this letter, please do not hesitate to contact the undersigned. To the extent the City awards this Project to any bidder other than MGE, please consider this correspondence as a formal request on behalf of MGE for an immediate hearing prior to the award of the Contract to RCI or any other bidder.

Furthermore, MGE requested information material to this protest's production from the City on Wednesday, August 26, 2026, and did not receive that information until a week later, on Tuesday, September 1, 2026. Article 39.3(A) of the Instructions to Bidders provides that "Any protest relating to any particular Bid opened by the City, or the award of the Contract must be submitted in writing to the City Representative before 5:00 p.m. on the Fifth (5th) working day after the City has received and opened Bids." This places the due date for this protest at Tuesday, September 1, 2026. Given the inadequate time to prepare a proper protest, MGE formally requests additional time to prepare and amend this protest over the next five (5) working days.



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