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VIA E-MAIL

Dane H. Schilling
City Engineer
City of Wheatland
111 C Street
Wheatland, CA 95692
dschilling@wheatland.ca.gov

Re: Response to Marques General Engineering, Inc. Bid Protest
Wheatland Sewer Pipeline Project; Project C-06-8753-110

Dear Mr. Schilling:

This law firm represents RCI General Engineering (“RCI”). RCI is the lowest, responsive, responsible bidder for the Wheatland Sewer Pipeline Project; Project C-06-8753-110 (the “Project”).

This letter responds to the September 1, 2026 letter submitted by Marques General Engineering, Inc. (“MGE”) protesting the City of Wheatland’s anticipated award of the contract to RCI as the apparent low, responsive, responsible bidder (the “Protest”). We have extensively reviewed the Protest. It has no legal or factual merit and should be summarily rejected.

In its effort to persuade the City to pay over \$500,000 more for the exact same scope of work, MGE’s Protest asserts objectively false facts that are foundational to its premise, manufactures requirements that don’t exist anywhere in the bid documents, and solely points to pure technicalities that have no practical impact on any aspect of RCI’s bid. It then tellingly proceeds to offer next to no analysis supporting the bald assertion that RCI’s bid “contains material irregularities that cannot be waived as a matter of law.”

Remarkably, the Protest essentially concedes its extensive shortcomings. The Protest pointed to a delay by the City in providing information and claimed that the delay resulted in “inadequate time to prepare a proper protest.” The City responded by extending the protest period to September 8 and by expressly inviting MGE to supplement the Protest. Yet MGE tellingly did not accept the City’s invitation to supplement the Protest despite MGE’s claimed inability to “prepare a proper protest.”

The Protest is not a close call and does not come remotely close to justifying the needless waste of over half a million dollars in taxpayer funds for which it advocates. Indeed, the Protest itself

tells us everything we need to know about its merits: it is the product of MGE's inability to "prepare a proper protest." RCI respectfully requests that the City reject the Protest in its entirety and proceed promptly to award the contract to RCI, the lowest, responsive, responsible bidder.

I. The City's Standard of Review.

The Protest points to five alleged irregularities in RCI's bid in support of its assertion that the bid is materially non-responsive. As the protesting party, the burden is on MGE to establish that its claimed irregularities satisfy two different tests.

First, MGE must establish that a claimed irregularity renders the bid non-responsive. A bid is responsive if it conforms to, or is "responsive" to, the bid specifications. (*Taylor Bus Service, Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331, 1341.) If the City concludes that the claimed irregularity does not render the bid non-responsive, the inquiry ends and the protest is summarily rejected without any further consideration.

Second, if MGE can establish that a claimed irregularity renders the bid non-responsive, it must also establish that the irregularity is "material." An irregularity is immaterial as a matter of law if it does not affect price, quality, quantity, or give RCI a competitive advantage. (*Konica Business Machines v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454; *Ghilotti Construction Co. v. Richmond* (1996) 45 Cal.App.4th 897, 904.) California law dictates that if the irregularity is immaterial, the City has broad discretion to waive it—and generally should, so as to avoid the delay and expense to the public of rejecting the lowest bid over an immaterial technicality. (*Ghilotti, supra*, 45 Cal.App.4th at pp. 904–905.) In the event that the claimed variance is immaterial, the City may reject the Protest.

II. Each Ground Raised in the Protest is Meritless.

Although the Protest identifies five different claimed irregularities in RCI's bid, it tellingly provides no argument or analysis regarding how each alleged irregularity: 1) makes the bid non-responsive; and 2) is material and affects price, quality, quantity, or gives RCI a competitive advantage.

The only remote analysis provided relates to argument that RCI failed to "submit a valid bid bond" and that this failure resulted in a competitive advantage. (Protest at p. 4.) But there is zero analysis supporting the conclusion that RCI's bid bond is not valid.

There is zero argument or analysis as to how any of the five claimed irregularities render RCI's bid non-responsive, let alone how any of the five claimed irregularities are material (i.e. affect price, quality, quantity, or give RCI a competitive advantage).

For this reason alone, the City should reject the Protest. The burden was on MGE to establish both non-responsiveness and materiality. The Protest does neither.

Nevertheless, RCI addresses each claimed irregularity below.

A. MGE is Mistaken About The Absence of A Corporate Seal.

MGE’s lead claimed irregularity is an assertion that RCI failed to emboss its bid with its corporate seal. That assertion is factually false. The bid that RCI submitted to the City included its embossed corporate seal. It appears that in its haste to come up with arguments to support its Protest, MGE did not consider that the scanned and emailed copy of RCI’s bid that it apparently received from the City did not capture the fact that the bid submitted to the City was, in fact, embossed. Therefore, the submitted bid is clearly responsive. For this reason alone, MGE’s lead argument must be summarily rejected.

However, even assuming that RCI did not emboss the bid it submitted to the City with its corporate seal, this would have been of no consequence whatsoever—i.e. it would not have been “material.” California law does not require a corporation to have or use a seal, and the absence of one does not affect the validity of an instrument the corporation executes. (Corp. Code, § 207.) RCI’s bid form was signed by Spencer Mendez, Chief Operating Officer, and attested by Jake Richter, Corporate Secretary — the two signatures the form itself requires — and Mr. Mendez’s authority to bind RCI is independently confirmed by the Board of Directors’ and Shareholder’s written consents submitted with the bid. The absence of an impressed seal does not affect the amount or scope of RCI’s bid, does not create any doubt that RCI is bound by its bid, and confers no advantage on RCI relative to any other bidder.

B. RCI’s Bidder’s Bond Fully Complies with Section 00 40 10.

MGE next contends that the Bidder’s Bond “does not have an acknowledgement of the Principal’s or Contractor’s signature.” This mischaracterizes the bond form and manufactures a requirement that is not stated or even contemplated in the bid documents. Section 00 40 10 requires only the Principal’s signature, printed name, and business address — all of which RCI provided (Spencer Mendez; RCI General Engineering; P.O. Box 2531, Oroville, CA 95966). The notarized acknowledgment included in RCI’s bid package authenticates the signature of Elizabeth Collodi as attorney-in-fact for Western Surety Company, because it is the surety’s delegated signing authority — not the contractor’s own signature — that requires notarial proof, consistent with the accompanying Western Surety power of attorney. RCI also submitted the California Department of Insurance Certificate of Authority confirming that Western Surety is an admitted surety in California, together with a Department of Insurance company-profile printout confirming the same, exactly as the Instructions to Bidders require. The bond, on its face, is fully executed, in the amount of ten percent of RCI’s total bid, on the form included in the Contract Documents.

Accordingly, this claimed irregularity is no irregularity at all. The bid bond is plainly valid and MGE has failed to establish that there is any responsiveness issue here.

C. RCI’s Listed Projects Satisfy Section 00 40 45, Which Does Not Request the Information MGE Claims Is Missing.

MGE next asserts that “none of the provided projects specifically indicate” that RCI meets the fused-HDPE/HDD experience threshold. But Section 00 40 45’s certification form does not ask bidders to state pipe material or linear footage for each listed project — it asks only for the

project name, owner, construction cost, contract dates, and owner/engineer contacts, and RCI completed every field the form requests.

Several of RCI's listed projects, including the Module 5 Phase C Project and the Palermo Dry Well Consolidation Project are pipeline installation projects of the type contemplated by the qualification standard. The form itself contemplates that the City will verify bidder experience with the listed references. Therefore, RCI's bid included 100% of the information that the bid documents required for project experience. Therefore, this claimed irregularity is no irregularity at all. RCI's bid is responsive.

That aside, RCI's past projects do, in fact, satisfy the condition of pipeline installations of 2,000 feet or greater. RCI will separately provide supplemental information to the City establishing the details of the past projects and welcomes the City to contact its references.

Lastly, to the extent that this requirement was an issue (it isn't), it bears on the question as to whether RCI is a responsible bidder, not whether RCI's bid is responsive. Accordingly, as a matter of law, it could not even be a basis for summary rejection of RCI's bid as non-responsive. (*Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1447–1450.)

D. RCI's Corporate Authorization Documents Establish Mr. Mendez's Authority to Execute the Bid and Bond.

Finally, MGE's final two claimed irregularities point to a reference to "Bonds from InterWest" in RCI's corporate resolutions, and to Richter Construction, Inc.'s appearance as the signing shareholder on the Shareholder's written consent, as supposed inconsistencies. Neither undermines RCI's bid.

The Board of Directors' and Shareholder's written consents broadly authorize Spencer Mendez to execute, among other things, "Bonds ... for submitting with bids on Public Works projects" and "Proposal forms for submitting bids on Public Works projects." The parenthetical reference to a particular bonding agency is, at most, descriptive template language; it does not purport to condition or narrow Mr. Mendez's authority to bonds issued through any single agency, and MGE identifies no language in the resolutions that does so. Read as a whole, the resolutions satisfy the actual requirement of Article 10.3(C)(3) — a board resolution "showing the authority of the officer signing the Bid to execute Bid on behalf of the corporation" — which they plainly do.

Richter Construction, Inc.'s appearance as a shareholder is likewise unremarkable; it reflects RCI's ownership structure and has no bearing on whether the Board of Directors validly authorized Mr. Mendez to sign. MGE has identified no evidence that Mr. Mendez lacked actual authority to execute RCI's bid or bond.

Finally, we have reviewed a September 4 letter from John Hopkins, Vice-President of InterWest Insurance Company, which will be separately forwarded to the City. The Hopkins letter explains that InterWest is a licensed bond broker for various sureties, including Western Surety Company. The Hopkins letter further explains that InterWest has the authority to legally bind Western

Surety Company and that Mr. Mendez has express authority to sign bonds brokered by InterWest. Notably, Mr. Hopkins points out that this type of relationship is standard for all sureties that provide public works bonds. There is zero question as to the validity of the bid bond.

III. Conclusion.

For the foregoing reasons, RCI respectfully requests that the City summarily reject MGE's protest and proceed promptly to award the Project contract to RCI as the lowest, responsive, responsible bidder.

RCI reserves all rights to supplement this response, to respond to any further submission by MGE, and to be heard before the City Council or other decisionmaker prior to any final determination adverse to RCI.

Please do not hesitate to contact me with any questions.

Sincerely,

DOWNEY BRAND LLP



Sean J. Filippini

cc: Jason Anderson, VP Marques General
Engineering (via email: jra@mge-ca.com)

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