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File No. 24855

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VIA E-MAIL AND OVERNIGHT MAIL

Raja Sethuraman
Public Services Director
City of Costa Mesa
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Costa Mesa, CA 92626
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**RE: KAZONI, INC.'S BID PROTEST OF GLOBAL BUILDERS, INC. AND CALIBA, INC.
Project: Fire Station 4- Training Facility, City Project No. 23-04**

Dear Mr. Sethuraman,

We represent Kazoni, Inc. dba Kazoni Construction ("Kazoni") with regards to its bid to the City of Costa Mesa (the "City") for the Fire Station 4-Training Facility ("Project"). This letter serves as Kazoni's formal protest against the bids of both Global Builders, Inc. and Caliba, Inc. This bid protest follows the City's Protest Instructions set forth in Section 23 of the Instructions to Bidders. Both Global Builders and Caliba's bids on the Project are non-responsive and thus must be rejected, as addressed in detail below. Kazoni requests that the City reject Global Builders and Caliba's Bids and award the Project to Kazoni as the lowest responsive and responsible bidder.

We note that Kazoni has requested Bid information from the City on this Solicitation and not received responsive documents. Kazoni is submitting this Protest to meet the timing deadlines set forth in the Bidder's Instructions. However, Kazoni reserves the right to supplement its Protest upon receipt of additional documentation from the City.

**I. BOTH GLOBAL BUILDERS AND CALIBA'S BIDS ARE NON-RESPONSIVE
BECAUSE THEY FAILED TO LIST TRADE CONTRACTORS**

A bid is responsive if it promises to do what the bidding instructions demand. *Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. *Id.* at 1342. A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted. A truly nonresponsive bid may be summarily denied by a public entity even if the bid is otherwise monetarily the best for the entity. *Great West Contractors, Inc. v. Irvine Unified School Dist.* (2010) 187 Cal.App.4th 1425, 1428.

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In California, public works bids must comply with California's Subcontractor Listing Law. *Cal. Pub. Contr. Code* §4104. Section 4104 specifically requires a bidding contractor to list: (a) name, (b) location, (c) Contractor's State License Number and (d) Department of Industrial Relations (DIR) number for any trade subcontractor whose value of work exceeds one half of one percent of the bid price. §4104(a)(1).

Failure to list a subcontractor renders a bid non-responsive and rejection of the bid is mandatory. *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359.

Both Global Builders and Caliba failed to list several critical trades on the Project:

- Electrical - No listed subcontractor and no license information (Caliba does have C-10).
- Plumbing/Site Utilities - No listed subcontractor and no license information.
- HVAC- No listed subcontractor and no license information.
- No listed subcontractor for specified work for the installation of the following bid items:
 - 3,000 gallon Jensen Clarifier;
 - 13,000 gallon Xerxies Fiberglass underground tank;
 - Gas/propane pipes for training tower; and
 - Water detention system.

Both Global Builders and Caliba's Bids are fatally non-responsive and must be rejected. As these mistakes are not clerical in nature, they cannot be waived by the City, therefore rendering both Bids non-responsive.

II. BOTH GLOBAL BUILDERS AND CALIBA'S BIDS ARE ALSO NON-RESPONSIVE BECAUSE THEY CANNOT MEET THE BID SPECIFICATION REQUIREMENT FOR 24-HOUR A DAY EMERGENCY MANAGEMENT

In addition to these deficiencies, the Bid Specifications mandate that the successful bidder must have qualified staff on-hand for site utility emergencies (gas, water, sewer, fire water, etc.) This requirement includes 24-hour a day responsiveness. This is a critical safety component of the Project work and exists to protect the public. This requirement cannot be met without trade subcontractors.

Because neither Global Builders, nor Caliba have specialty licenses in the above-referenced areas, they cannot self-perform this work and therefore, cannot meet this important Specification requirement.

Again, both Global Builders and Caliba's Bids are fatally non-responsive and must be rejected. As these mistakes are also not clerical in nature, they cannot be waived by the City and therefore render the Bids non-responsive.

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III. THE TROUBLING BID SPREADS FURTHER ILLUSTRATE GLOBAL BUILDERS AND CALIBA'S FAILURE TO LIST TRADE SUBCONTRACTORS

There is a significant bid spread on this Project. We note the significant discrepancy between both Global Builders and Caliba's Bid price, and Kazoni. That discrepancy can be attributed to the two low bidders' failure to list trade subcontractors to perform the Project work. This is further evidence that both Global Builders and Caliba missed listing subcontractors, to the detriment of the Project and in violation of the *Public Contract Code*.

Once again, both Global Builders and Caliba's Bids must be rejected as non-responsive.

IV. KAZONI IS THE ONLY BIDDER WHO FULLY MEETS THE BID SPECIFICATION REQUIREMENTS

Kazoni is the only bidder on this Project that properly listed trade subcontractors and therefore, is the only bidder that can successfully perform this work. Kazoni's bid is fully responsive. Therefore, the City should award this Project to Kazoni.

V. CONCLUSION

Kazoni respectfully requests that the City uphold its Bid Protest and award this Project to Kazoni as the lowest responsive and responsible bidder. In the alternative, the District may elect to re-bid this Project based on the non-responsiveness of two its bidders.

Kazoni is appreciative of the City's attention to this matter, and we look forward to hearing from you.

Sincerely,



COLIN K. MCCARTHY, LEED A.P.
Principal Attorney at Law for the Firm

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