

WAHLUND CONSTRUCTION, INC.

A General Engineering Contractor

Lic. #678993 A, B, C-10 (Electrical), C-22 (Asbestos & Hazmat)

DIR No. 1000006404

January 29, 2024

Redwoods Community College District
Attn: Leslie Marshall, Director – Facilities & Planning
7351 Tompkins Hill Rd.
Eureka, CA 95501

Re: Community Stadium Upgrade Project Bid Protest

Dear Ms. Marshall,

Please consider this letter as Wahlund Construction, Inc.'s official protest of the bid submitted by KYA Services LLC (KYA Group) for the Community Stadium Upgrade Project, which was issued by the Redwoods Community College District (RCCD) and for which bids were received and publicly opened and read aloud on January 25th, 2024 at 11:00 a.m..

After attending the public bid opening, we believe that the decision to include KYA Group's bid on the bid results tabulation spreadsheet was made in error, as their bid was not received in compliance with the Project Specifications and therefore should have not been considered after the public bid opening had concluded. Under California Law, RCCD is required to disregard and reject KYA Group's bid.

The basis of our protest is as follows:

1. KYA Group's bid was submitted via email—a submission method that is expressly prohibited by the Bid Documents (See Instructions to Bidders, Paragraph 19 which states "Emailed or faxed bids or modifications will not be accepted."). This, alone, dictates that KYA Group's bid must be disregarded and rejected. But additional material variances exist in the bid, which serve as additional and independent reasons to reject the bid. Those additional reasons are set forth below.
2. KYA Group's bid was not received in a sealed envelope in Board Room SS202A as required in the Notice Inviting Bids, item 1 ("...will receive sealed bids...will thereafter be publicly read aloud") and item 6.c ("The envelopes containing the Bids shall be sealed, addressed to the District...").
3. KYA Group's bid was not opened or publicly read aloud during the scheduled public bid opening on January 25th, 2024 at 11:00 a.m.
4. With the time of the bid being received at 11:00 a.m., KYA Group's bid was not received in time to be considered.

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5. Per the Instructions to Bidders Items 6.g ("...in ink...") and Item 7 ("All items on the form shall be filled out in ink"), KYA Group's bid must be submitted in ink on the bid forms provided, which it was not.

California Law Mandates that RCCD Follow its Prohibition on Emailed Bids.

A public entity may not deviate from the express requirements of its own bid documents. (*Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269, 271 (when awarding construction contracts, public entities must follow the rules that they establish in their bid documents.)

As set forth above, the bid documents expressly prohibit email submission of bids. The language in the bid documents is unqualified and unequivocal. On this basis, alone, KYA Group's bid must be disregarded and rejected.

The Other Variances in the Bid Render the Bid Materially Non-Responsive.

California law prohibits RCCD from awarding the contract to a non-responsive bidder. (*Konica Business Machines v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454 ("Konica").) To be responsive, a bid must conform to the material terms of the bid documents. (*City of Inglewood v. Los Angeles County Civic Center Authority*, (1972) 7 Cal.3d 861, 867; *Konica, supra*, 206 Cal.App.3d at p. 456-57; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1180 ("Menefee").) While a public entity may waive minor or inconsequential irregularities in a bid, bids that differ materially from the bid specifications must be rejected. (*DeSilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1422; *Ghilotti Construction Co. v. Richmond* (1996) 45 Cal. App. 4th 897, 904 ("Ghilotti").) Typically, the material terms of a bid, which are not waivable, are those that affect price, quantity, quality, or delivery, and those terms that the bid package clearly identifies as mandatory. (*Konica, supra*, 206 Cal.App.3d at p. 454-45; *Ghilotti, supra*, 45 Cal.App.4th at p. 906-07; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442 ("Valley").)

As set forth above, the additional variances in KYA Group's bid are all inconsistent with mandatory requirements set forth in the bid documents. Moreover, the very nature of the email submission utilized by KYA Group created an unfair advantage over the other bidders. None of the other bidders had the opportunity to sit in their offices up until 11:00am on bid day and simply hit send from their desk. All other bidders had to have their bids prepared and finalized in sufficient time to physically transport their completed bids to RCCD's offices. This additional time is significant as the last minutes prior to bid submission are frequently a scramble to finalize subcontractor numbers and bid totals. It is a significant advantage that the other bidders were not afforded.

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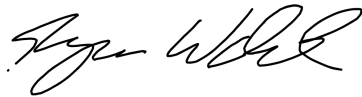
Conclusion.

With KYA Group's bid being nonresponsive and unable to be considered, Wahlund Construction, Inc. is the lowest, responsive, responsible bidder and, therefore, RCCD should award it the Project.

Lastly, as you are aware, Wahlund Construction, Inc. requested a copy of KYA Group's bid, but has yet to receive it. As such, this protest is being provided solely based on the information we have to date and we reserve the right to raise additional arguments and basis to protest the KYA Group bid upon receipt of additional information.

We understand the importance of a fair and transparent procurement process and trust that our concerns will be given the attention they deserve. We request an expedited review of our protest and appreciate your prompt attention to this matter.

Sincerely,



Ryan Wahlund
V.P. of Operations
Wahlund Construction, Inc.

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