

**LESTER & CANTRELL, LLP**  
ATTORNEYS AT LAW

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January 31, 2019

**Sent via Certified Mail Return Receipt**  
**& Email – [trigoni@rialtoca.gov](mailto:trigoni@rialtoca.gov)**

City of Rialto  
Attn: Ted Rigoni, PE, PMP  
Lockwood Engineering Consultant  
335 W. Rialto Avenue  
Rialto, California 92376

**Sent via Certified Mail Return Receipt**  
**& Email – [reisenbeisz@rialtoca.gov](mailto:reisenbeisz@rialtoca.gov)**

City of Rialto  
Attn: Robert Eisenbeisz, PE  
150 S. Palm Avenue  
Rialto, California 92376

**Re:    *RC Construction Services, Inc. Bid Protest on Frisbee Park Expansion***  
***(City of Rialto Project No. 150304)***  
***Our File No. 1022-001***

Dear Messrs. Rigoni and Eisenbeisz:

As legal counsel for RC Graves Construction ("RCG"), I am writing to address the rebuttal letters RAL Investment Corp. d/b/a Silverstrand Construction ("Silverstrand") and Horizons Construction Co. Int'l, Inc. ("Horizons") provided the City of Rialto in support of their bid protests for the Frisbee Park Expansion Project (the "Project"). The rebuttal letters primarily center on the same two items stated in the bid protests: (1) the contract requirement that the bidder perform at least 50 % of the work itself; and (2) RCG's ability to self-perform work.

As to the first item, the rebuttal letters essentially repeat the bid protest argument that RCG's bid is non-responsive because RCG's subcontractor work allegedly exceeds 50% of the total work on the Project. RCG's prior letters to the City have explained at length the flaw in this argument arising from the protesting bidders' failure to follow the bid instructions pertaining to Specialty Work Items and Greenbook Section 2-3.2. RCG respectfully refers the City to the first section of its letter to the City dated January 9, 2019.


Horizons' rebuttal letter of January 23, 2019 incorrectly argues Greenbook Section 2-3.2 conflicts with the Special Provisions on the Project. This "order of precedence" argument fails because no conflict exists. The Special Provisions and the referenced Greenbook provisions need to be read and understood together as part of the same Bid Forms document. The Special Notes on Bid Forms page 11 state bidders shall perform not less than 50% of the Work. The protesting bidders overlook the fact the requirement on page 11 was explained earlier in the Bid Forms on page 5 where bidders are instructed to see Section 2-3.2 of the Greenbook. There was nothing secrete or undisclosed about the self-performance calculation. The Bid Forms clearly instructs bidders to "see full description within Section 2-3.2 of the Greenbook".

Moreover, Horizons' rebuttal letter baldly asserts the City cannot accept RCG's Specialty Item percentages at face value. This argument lacks legal support and contradicts the law cited earlier in Horizons' letter, which states "public agency's determination of questions regarding bid responsiveness is determined on the face of the documents submitted before the bid date."

As to the second item, RCG has established its qualifications as a bidder and its ability to self-perform the work. Horizons and Silverstrand's repeated argument that RCG lacks employees to self-perform the work has been completely refuted by section IV of RCG's letter dated January 9, 2019, and subsequently submitted proof of RCG's workers compensation insurance coverage.

RCG has provided the District with more than enough information in its bid and post-bid letters for the District to determine with confidence that Silverstrand and Horizons' bid protests do not render RCG's bid non-responsive. Consequently, RCG respectfully requests the District award the Project to RCG as the lowest responsive and responsible bidder.

Best Regards,

A handwritten signature in black ink, appearing to read "Matthew J. Kraus", followed by the word "FOR" in a stylized, underlined font.

Matthew J. Kraus  
Lester & Cantrell, LLP

MJK/mob

cc: Fred Galante, City Attorney (via email only: [fgalante@awattorneys.com](mailto:fgalante@awattorneys.com))  
Brian Wright-Bushman (via email only: [bwright-bushman@awattorneys.com](mailto:bwright-bushman@awattorneys.com))  
Hector Gonzalez (via email only: [hgonzalez@rialtoca.gov](mailto:hgonzalez@rialtoca.gov))