

November 6, 2025

File No. 33498

VIA E-MAIL AND OVERNIGHT MAIL

City of San Luis Obispo

Attn: Project Manager

919 Palm Street

San Luis Obispo, CA 93401

c/o aramos@slocity.org; wbanker@slocity.org; CityClerk@slocity.org; AColunga@slocity.org

**RE: URBAN HABITAT’S BID PROTEST OF BROUGH CONSTRUCTION, INC.’S BID  
Project: Righetti Ranch Parks – Community Park, Specification No. 2000054**

Dear City of San Luis Obispo Project Manager

We represent Urban Habitat (“Urban”) with regards to its bid on the City of San Luis Obispo (the “City”) Righetti Ranch Parks – Community Park, Specification No. 2000054 (“Project”). This letter serves as Urban’s formal protest against the bid of Brough Construction, Inc. (“Brough”). The bid results were published on October 31, 2025. This bid protest follows the City’s protest instructions.

Brough’s bid is non-responsive because it failed to list the percentage of the total base bid for work of certain subcontractors performing more than ½ percent of the total base bid; and thus, Brough’s bid must be rejected. Urban requests City reject Brough’s bid and award the Project to Urban as the lowest responsive and responsible bidder.

**I. BROUGH’S BID IS NON-RESPONSIVE**

In accordance with the September 24, 2025 Addendum No. 2 for Specification No. 2000054, the Standard Specifications Section 2-133A of the bid package, was revised and therein specifically requires that the bidder state on the subcontractor list the percentage of its subcontractor’s work of the total base bid. As it relates to the subcontractor list, revised Specification Section 2-1.33A requires:

*On the Subcontractor List, you must submit:*

- 1. Name under which subcontractor is licensed*
- 2. License number*
- 3. DIR Public Works Registration Number*
- 4. Address*
- 5. Phone number*
- 6. Specific description of subcontracted work*
- 7. Percentage of total base bid amount with your bid.*

*Failure to do so results in a nonresponsive bid.*

*Furnish bid using blank forms provided in the Special Provisions. Bid must include all forms and must be signed by the bidder. Subcontractor List and percentage of each item subcontracted must be provided with the bid, on the List of Subcontractors form provided herein.*

*(Id.; [Highlights added].)*

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As excerpted below, Brough's bid does not list the "percentage of total base bid amount with your bid" for multiple subcontractors performing base bid line-item scopes of work including: (i) restroom, base bid line item 53; (ii) shade structures, base bid line item 30; and (iii) playground equipment, base bid line item 57.

	Name Under Which Subcontractor is Licensed	License Number	DIR Public Works Registration Number	Address and Phone Number of Office, Mill or Shop	Specific Description of Subcontract	% of Total Base Bid
⑤ Restroom	Abbott Reed	910378	1000644310	1308 Monteford St San Luis Obispo, CA (805) 543-2777 7277	Restroom Buildings	N/A
⑤ Shade Structures	Central Coast Playground	788877	1000039488	P.O. Box 2212 Orcutt, CA (805) 934-1814	installer	N/A
⑤ Playground Equipment	Central Coast Playgrounds	788877	1000039488	P.O. Box 2212 Orcutt, CA (805) 934-1814	Playground installer	N/A
⑤ Concrete Post Tension Slabs	Garrett Thiessen Concrete Construction, Inc	818850	1000024293	1640 South River Rd. Paso Robles, CA (805) 440-7305	Concrete Post-Tension Slabs	N/A

Thus, Brough's bid is nonresponsive because it failed to submit multiple subcontractors' "percentage of the total based bid amount" as required by Specification Section 2-1.33A. Moreover, Specification Section 2-1.33A expressly provides that the "Failure to do so results in a nonresponsive bid."

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 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. 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. The test for responsiveness focuses on the four corners of the bid documents and does not consider information or details outside of the bid and bid documents. *Great West Contractors, Inc., supra*, 187 Cal.App.4th 1425, 1428. When evaluating a bid, a public entity must follow the requirements of the Public Contract Code and any additional requirements it mandates in the bid documents. *Poza v. Department of Transp.* (1983) 145 Cal.App.3d 269 (emphasis added).

Moreover, Brough's failure to follow the bid requirements cannot be waived as an irregularity. A bid fails to comply materially with the bid package if it gives the bidder an unfair competitive advantage over other bidders. *Ghilotti Construction Co., supra*, 45 Cal. App. 4th. at 904. Unfair advantages include those errors and omissions which would allow a contractor to withdraw its bid. *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442. Specifically, Public Contract Code § 5103 allows a bidder to withdraw its bid when "a mistake was made in filling out a bid". (Id.) The *Valley Crest* Court reasoned "As such, under Public Contract Code section 5103, North Bay could have sought relief by giving the City notice of the mistake within five days of the opening of the bid. The fact that North Bay did not seek such relief is of no moment. The key point is that such relief was available. Thus, North Bay had a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an 'irregularity'." *Valley Crest, supra*, 41 Cal.App.4th at p. 1442.

To be clear, the express requirements of Specification Section 2-1.33A cannot be waived as a misunderstanding of the specifications by Brough or a clerical error, since it gives Brough an unfair advantage as it could withdraw its bid without consequence to its bid bond, thereby gaining a competitive advantage.

## II. CONCLUSION

Brough's bid must be rejected by City because Brough failed to list the percentage of the total base bid for work of certain subcontractors performing more than ½ percent of the total base bid as expressly required by Specification Section 2-1.33A. Additionally, this failure provides Brough with an unfair competitive advantage. As a result of Brough's failure to meet the bid requirements, Urban requests City reject Brough's bid and award the Project to Urban as the lowest responsive and responsible bidder.

Sincerely,



Charles K. Stec  
Attorney at Law of the Firm

cc: Via email only

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