



ENVIRONMENTAL GOLF

PUBLIC WORKS

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January 16, 2001

Mr. Ralph A. Qualls, Jr.
Director of Public Works
City Hall
City of Cupertino
10300 Tone Avenue
Cupertino, CA 95014-3255

RE: Protest of Bid on Blackberry Farm Golf Course Maintenance Project, Number 2001-08
Bid Opening January 15, 2002 at 2:00 P.M.

Dear Mr. Qualls:

Our Company, Environmental Golf, Inc. (EGI), attended the mandatory pre-bid conference held Monday, January 7, 2002, at 10:00 A.M., at the Retreat Center—all as required by the bid documents. Furthermore, we received and acknowledged Addendum No. 1.

The second page of the "B. Bid Documents Notice to Contractors", states as follows:

"Awards, if any, will be made to the responsible bidder whose proposal is most advantageous to the City."

"The City of Cupertino reserves the right to award the contract to any qualified bidder based on the proposal that is most advantageous to the City."

At the pre-bid meeting, the statement was made to all bidders present that "following opening of the proposals, interviews would be held between the City and the selected bidders on January 17, 2002."

The above-quoted language from the bid documents clearly means that this job is going to be procured by turning in a proposal for a negotiated procurement.

We therefore took the City at its word and prepared a proposal based on the City's representations and our belief that the amount of our proposal would be discussed after submission and could be modified, if necessary, at the interviews to be held on January 17th.

Preparing a proposal for review and discussion is much different than preparing a hard dollar bid for a job to be awarded to the lowest dollar bidder on competitive bidding procedures. There was nothing in the bid documents which indicated that this job would be awarded based strictly on low bid, and we were never told that until after it was too late and bids were in.

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However, our representative was told after the bids were received, in no uncertain terms, that the job would be awarded strictly on lowest dollar bid, and we were told that we were not the lowest bidder. This is extremely unfair to our Company who, in good faith, prepared for a negotiated procurement based upon the specific representations of the City through its procurement documents and oral statements at the pre-bid, as discussed above.

Furthermore, we were told that the low bidder was "Spot Water Management", whose principal is Andy Slack, a sole proprietor. In looking at his proposal, it contains many inconsistencies and indicates to us that Mr. Slack's qualifications and work history are suspect.

Under his qualifications, he claims 20+ years, in part under the name Mike Basile, Golf Course Superintendent. How does Mike Basile, as a golf course superintendent, give experience to Andy Slack as the sole proprietor of Spot Water Management?

Sierra Pacific Turf Supply was also listed for Andy Slack's experience. As its name states, Sierra Pacific Turf Supply is a supplier. As far as we know, Sierra Pacific does not maintain any golf courses.

We hereby protest his bid on the grounds that it is being awarded as a "hard dollar bid", advertised under an invitation to bid, which stated it was a negotiated procurement. This put our Company at an unfair disadvantage, and we would have prepared a much tighter bid had we known the City's true intentions, which had never been communicated to us until after bid opening. We believe we could have beat Spot Water Management's bid had we known the City's true intentions (as his bid was only \$500 per month lower than ours, an annual variance of less than 4%).

We further protest the City's stated intention to award this job to Spot Water Management under the premise that they represent themselves as having the most advantageous proposal to the City when their qualifications and work experience pale in comparison to EGI's, and the cost variance is as minimal as less than 4% between our bids.

Therefore, we make these alternative requests:

1. Proceed with the interview process and award the job as advertised, to the qualified bidder based on the proposal that is most advantageous to the City; or,
2. Reject Spot Water Management's bid on the grounds that they are not a qualified bidder as required by the bid documents and award the job to Environmental Golf, Inc. as the lowest, responsive and qualified bidder; or,
3. Reject all bids and re-advertise the procurement under the method that you really want, either hard bid or negotiated procurement, being careful to make sure that the bid documents are clear and not contradictory. Make sure that the selected process is properly followed.

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We are confident that if you follow Choice #1 above, that you will come to the conclusion that we are the qualified bidder that has submitted the proposal most advantageous to the City. We listed that choice first in fairness to all the bidders, so that they can try to convince the City representative of their position.

If Choice #1, 2 or 3 is not followed, but instead the City elects to award the job to any bidder other than Environmental Golf on the current record as it is, we will have no choice but to seek relief in a court of law by way of an Injunction or Writ of Mandate, because we believe that the course being taken by the City until now is illegal.

We stand ready, willing and able to perform the work for the City and should be given the award.

Very truly yours,

ENVIRONMENTAL GOLF, INC.



William N. Cohen, Esq.
Corporate Counsel

WNC:ml

cc: Michael Chang, City Council Member
Sandra James, City Council Member
Chuck Killian, City Attorney
Patrick Kwok, City Council Member
Richard Lowenthal, Mayor
Carmen M. Lynaugh
Terry McGuire
Michael O'Dowd
Dolly Sandoval, City Council Member