



February 5, 2021

iBuild Spectrum Design & Build
540 N. Golden Circle Ste, 201
Santa Ana, CA 92705

Bill Zimmerman
Mayor

Robert Karwin
Councilmember

Dean Deines
Councilmember

**Matthew
Liesemeyer**
Councilmember

Lesia Sobek
Mayor Pro-Tem

To Whom It May Concern:

The City of Menifee is in receipt of your bid protest (Attachment 1) received electronically via email from farshad.civileng@gmail.com on January 27, 2021, related to Capital Improvement Project **CIP 19-16: Lazy Creek Recreation Center Improvements Project**, which had its bid opening on January 13, 2021.

Pursuant to the bid documents, and specifically the bid protest instructions outlined within the Notice of Intent to Award issued for the project, Bidders may file a "bid protest" of any Bid(s) with the Agency's Purchasing Department at City Hall, 29844 Haun Rd, Menifee, California 92586. The bid protest must satisfy all of the following requirements:

- A. Be filed in writing not later than 5:00 p.m. on the fifth business day after the Notice of Intent to Award has been posted;
- B. Clearly identify the specific alleged irregularity or other basis for the bid protest;
- C. Specify, in detail, the factual and legal grounds for the bid protest; and
- D. Include all relevant supporting documentation with the bid protest at time of filing.

If the bid protest does not meet all of these requirements, the Agency may reject it without further review.

If the bid protest is timely and complies with all of the above requirements, the Agency's Procurement Manager, or other designated Agency staff member, shall review the bid protest, any response from the challenged Bidder, and all other relevant information. The Agency may at its discretion prepare a response to the bid protest. Agency staff may make recommendations to the awarding authority to consider, accept, or reject any bid protest(s) in connection with the award of the contract for the Project.

In awarding a competitively bid public works project, California Public Contract Code requires the City determine the lowest apparent bid received is "responsive" and "responsible".

At issue from the bid protest received is determining whether the lowest apparent bidder, **Optima RPM, Inc**, failed to meet the "responsive" and/or "responsible" requirements. In reviewing the bid protest letter received, we have analyzed and separated the concerns submitted into "Responsive" and "Responsible" categories.

Following review and analysis of the protest and consultation with legal counsel, the City has determined that your protest will be rejected for the reasons discussed in detail in the following sections.

“Responsiveness” and “Responsible” Concerns:

Responsiveness refers to the bid itself, which encompasses all of the documents that must be submitted by each bidder within its sealed bid envelope. That includes the bid proposal form, bid security, the subcontractor list form, the non-collusion declaration, and any other documents that the bidders are required to submit for a particular bid.

A Responsible bidder is one who is physically organized and equipped with the financial ability to undertake and complete the contract.

Concern #1 (Responsiveness): Optima RPM did not include the right number of fire Alarm portion in their proposal per your knowledge for Existing Building and the new Building there is no possibility of \$1,000 only fire alarm would be right number for that portion and per Spec on this project and attached paperwork from the Spec, if the numbers are not accurate, the Contractor will be not responsive. Please see attached page from the Specification (Page 2)

In reviewing the project plans and confirming with the project architectural firm responsible for preparing the design/plans & specifications of the project, a Fire Alarm system is not required as part of the project, and is therefore not included in the actual plans/specifications. Reference to any fire alarm is included within the standard general notes section, but in examining the plan details there are no actual fire alarm improvements included. Bid Line Items #16 and #38 (Fire Alarm) were erroneously included in the final bid schedule. The City will ultimately process these as a deductive change order and remove from the total schedule. With that said, in evaluating the concern of a “materially unbalanced bid”, the City does not deem the fire alarm item as sufficient to consider the bid from Optima RPM as materially imbalanced. The difference between the Line Item #16 and #38 from Optima RPM and the next lowest bidder, IBuild Spectrum Design & Build, is \$23,900. However, the overall bid difference between the two bidders is \$67,383. Line Item #16 and #38 do not weigh Optima RPM’s bid for the majority of the bid difference between the next apparent lowest bidder.

Concern #2 (Responsiveness): Per Attached Plan (page 3 to 10) on this file and Green book and Government Job laws, for all the Specialty Portion of the work , Such as fire Alarm and fire Sprinkler and others, they have to have a specialty Subcontractor to take care of the trades, But They haven't included any Fire Alarm Company to do the Design and Procedure regarding that Also they are not even qualified to hire a Specialty Subcontractor based on General A and B license which they have, because its specialty and needs to be done b required Subcontractor. We know that Optima RPM have A and B License and Can hire most of the Subcontractors to do the work, But for the Specialty portion like fire Alarm, they need to have a C-16 License in their Licenses or Name a Subcontractor which the include and it makes them non responsive.

With regards to fire sprinkler system/improvements, as clarified within Addendum #4 (issued 12/23/2020), Question #13 response:

“No Fire Sprinklers required due to the occupancy level below 100 in each building”

The project does not include any fire sprinkler/protection improvements. Any remaining references to such on the bid packet are unintentional/erroneous and were clarified through Addendum #4.

With regards to the Fire Alarm system, as stated in the response to Concern #1, in reviewing the project plans and confirming with the project architectural firm responsible for preparing the design/plans & specifications of the project, a Fire Alarm system is not required as part of the project. Bid Line Item #16 and #38 (Fire Alarm) were erroneously included in the final bid schedule. The City will ultimately process as a deductive change order and remove from the total schedule.

Further, with relation to C-16 Fire Protection work and the corresponding relationship with the General License B requirements/eligible work, the City concludes the following:

- The City agrees, pursuant to the License B requirements of the Contractors License Board (CSLB), and as summarized by the Fast Facts provided in your protest letter attachments (Attachment 2):
 - o A “B” General Building Contractor **cannot** enter a prime or sub-contract for any project involving trades other than framing and carpentry unless:
 - The prime contract requires at least two other, unrelated building trades or crafts, or
 - The “B” General Building contractor holds the appropriate license classification or subcontracts with an appropriately licensed specialty contractor to perform the work.

The Lazy Creek Recreation Center Improvements Project involves two (2) or more separate and unrelated trades and therefore, Optima RPM, Inc. is able to enter to contract as the prime for the project, satisfying these conditions.

- The City also agrees, pursuant to the License B requirements of the Contractors License Board (CSLB), and as summarized by the Fast Facts provided in your protest letter attachments:
 - o A “B” General Building Contractor **cannot** enter a contract for any project which includes the C-16 Fire Protection or C-57 Well Drilling unless:
 - The “B” General The “B” General Building contractor holds the specialty license, or
The “B” General Building contractor sub-contracts with the appropriately licensed specialty contractor (pursuant to Sections 7026.12 and 7026.13 of the BPC and Section 13750.5 of the Water Code, respectively).

However, the City disagrees with IBuild Spectrum’s argument that the “specialty portion like Fire Alarm” require a C-16 license. Per the California Code of Regulations, Title 16, Division 8, Article 3: Classifications, a C-16 Fire Protection Contractor includes the following work (Attachment 3):

A Fire protection contractor lays out, fabricates and installs all types of fire protection systems; including all the equipment associated with these systems, excluding electrical alarm systems.

Work involving Fire alarm systems is eligible to be completed as electrical work, and does not require a License “B” building contractor hold the specialty license or subcontract with a specialty contractor.

Therefore, the City has determined:

- No Fire Sprinkler or Fire Alarm System improvements will be required, and bid line item #16 & #38 shall be removed as a deductive change order.
- Even without removing Line Item #16 & #38 (Fire Alarm), Optima RPM, Inc. still meets the licensing requirements for such work, as electrical alarm systems are not within the C-16 Fire Protection Contractor work definition restrictions.

Responsiveness Concern #3: In Regard to Roofing System that Plan call for it and installation Method and Manufacture requirement, the hasn't include the Roofing Company in their bid package, we know they can hire a Roofer under their license but there is some qualification per Specification on this project which is going to be:

5 Year Contractor Warranty and 20 Year NDL Manufacturer's Registered Warranty

if the General Contractor Company doesn't carry the Roofing License, then they can't get a NDL Manufacture warranty because they are not qualified from the Manufacture and it's not what Specification call for it. (Please See Page 11 to 27, Roofing Section)

In reviewing the Optima RPM bid, the City has determined Optima meets the Polyvinyl-Chloride (PVC) Roofing requirements referenced in the protest letter, by the following:

- Optima RPM will be subcontracting this component of the project to a qualified subcontractor with an active C-39 license that can perform the work thereby meeting the specifications of the plans, including the warranty requirements.

Pursuant to the bid documents, "Instructions to Bidders", Section 8, "Listing of Subcontractors":

The Bidder shall set forth in the List of Subcontractors, of the Bid Forms:

- The name, address, and phone number of the place of business of each subcontractor who will perform work, provide labor, or render service to the Bidder on or about the construction of the Work for this Project, or a subcontractor licensed by the State of California who, under subcontract to the Bidder, specially fabricates and installs a portion of the work or improvement according to these Bid and Contract Documents, **in an amount in excess of one-half (½) of one percent (1%) of the Bidder's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half (½) of one percent (1%) of the Bidder's total bid or ten thousand dollars (\$10,000), whichever is greater.***

This also meets the California Public Contract Code, Division 2, Part 1, Chapter 4, Section 4104 requirements.

Optima RPM has provided documentation confirming they received a quote (dated 1/6/2021) from a qualified subcontractor before the bid submittal deadline of 1/13/2021. The work to be completed with respect to the Polyvinyl-Chloride (PVC) Roofing by the subcontractor will be less than .5% of the total bid, thereby by satisfying the conditions of the bid submittal requirements.

Conclusion:

The City appreciates iBuild's concerns regarding **CIP 19-16: Lazy Creek Recreation Center Improvements Project**, and wants to assure all interested parties that in its in evaluation/analysis of the bid responses and bid protests received, the City's main focus is to ensure a fair and competitive process and make a decision that is in the best interest of the City of Menifee and bidders. In reviewing the submitted concerns, the City has determined that the concerns presented are either not valid and would not result in the disqualification of Optima RPM as a responsive and responsible bidder for this project. Therefore, the City rejects your bid protest and recommends proceeding with an award of the contract to **Optima RPM, Inc.**

Sincerely,

DocuSigned by:

Margarita Cornejo

8A443F266C844C5...

Margarita Cornejo
Financial Services Manager (Purchasing)

DocuSigned by:

Yolanda Macaladad

83B6AC84EAF147B...

Yolanda Macaladad
Acting City Engineer

DocuSigned by:

Jonathan Nicks

953267A9A8A34B4...

Jonathan Nicks
Director of Public Works/Director of Community Services

Attachments:

- 1. Bid Protest Received (1/27/2021)
- 2. CSLB Fast Facts "B" General Building Contractor License
- 3. C-16 Licensing Classification