



City of Temecula

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April 9, 2024

VIA EMAIL ONLY: Panikos@Leonidabuilders.com

Panagiotis Leonida, President
Leonida Builders, Inc.
32023 Crown Valley
Acton, CA 94510

RE: SANTA GERTRUDIS CREEK TRAIL PHASE II – MARGARITA ROAD UNDER-CROSSING (REBID) – PROJECT NO. PW19-04 (the “Project”)

The City of Temecula (“City”) has reviewed and considered Leonida’s email dated April 2, 2024, sent at 2:31 p.m. (“resent with typos corrected”). Leonida cited *Colombo Construction Co. v. Panama Union School Dist.*, 136 Cal. App. 3d 868, 875-77 (1982), where the Court found that the contractor was prevented from bidding on the rebid because it was substantially similar to the original bid. Contrary to Leonida’s position, and consistent with *Colombo*, the City concludes that virtually the same Project was the subject to rebid, and thus, Leonida is barred from rebidding on the Project as it sought and was granted relief from bid due to a claimed clerical error on the original bid.

In *Colombo*, the court noted in relevant part: “[W]e do not feel that every change will necessarily transform a project into a different project. This is borne out by the evidence where witnesses for each side agreed the seven addenda to the original bid did not make the project a new project and were not unusual for a project of this size. We must therefore look to the nature of the change in the plans and specifications between the bids.”

Most of the changes were ‘deferments’ — matters which had originally been planned but dropped for the time being to reduce the cost of the project. These “deferments” included chain link fencing with mow strip, electrical changes, landscaping and a sprinkler system, and a burglar alarm. The only major structural change was the flooring on the relocatable classrooms, a difference in price of approximately \$65,000. While the cost may have been affected, we do not believe the deletion of the “deferments” changed the identity of the project. Appellant used basically the same figures for his second bid to work from, and merely deleted these items. As to the relocatable classrooms, the change in the dollar figure on the bids was less than 4 percent of the total cost of the bid.

Indeed, the project remained virtually the same. The location and number of rooms, square footage and the architect were all identical. The financing and the plans and specifications for the buildings (with the exception of the relocatable classrooms) were unchanged. Reapprovals were not required for the project from the state building fund, the Department of Education, or the Office of Local Assistance. It was not necessary to obtain a new environmental impact report or geological reports. In the opinion of the architect, the job was the same.” (underline added).

The same factors and considerations apply to the Project to conclude that -- for the purposes of Public Contract Code § 5105 -- the original and rebid did not constitute different projects, and thus, Leonida is barred from rebidding on the Project:

First, the length, width and location of the bike/ped trail is identical in both bids.

Second, additional appropriation of funds will be implemented to award the contract. There is no “financing” required for the Project.

Third, no re-approvals were required from outside agencies to rebid the Project. The City Council previously rejected all bids and authorized rebidding of the Project.

Fourth, no new environmental reports or technical studies were needed/performed.

Fifth, attached is a letter dated April 8, 2024, from the Engineer of Record detailing why the rebid Project is virtually the same as the originally bid Project.

Finally, Leonida’s reliance on the difference in the Engineer’s Estimate from the original advertisement and rebid is misplaced. On the original advertisement, all valid bids received were significantly higher than the Engineer’s Estimate as well as the Project’s construction budget. The City exercised its discretion to reject all bids on so that it could (1) re-review the contract documents; (2) re-assess the Engineer’s Estimate; and (3) research additional funds that might be necessary to construct the Project, without materially changing the nature and the scope of the Project.

Thank you for your interest in the Project. The City wishes you the best in all your future endeavors.

Truly,



William Becerra
Associate Engineer II - CIP

cc: Patrick A. Thomas – Director of Public Works / City Engineer
Ron Moreno, Assistant Director of Public Works
Amer Attar, Engineering Manager
Avlin R. Odviar – Principal Civil Engineer – CIP
B. Tilden Kim, City Attorney
Beador Construction



April 8, 2024

Will Becerra Jr.
Associate Engineer II
City of Temecula
41000 Main Street
Temecula, CA 92590

SUBJECT: CONSTRUCTION SCOPE CONFIRMATION – SANTA GERTRUDIS CREEK TRAIL PHASE II – MARGARITA ROAD UNDERCROSSING (REBID) – PROJECT NO. PW19-04

Dear Mr. Becerra:

EXP U.S. Services Inc. (EXP) is writing to confirm that the construction scope of work for the Santa Gertrudis Creek Trail Phase II – Margarita Road Undercrossing remained the same between the original bids opened on November 16, 2023 and the rebids opened on March 21, 2024.

The scope and quantities of the following major improvement items remained unchanged:

IMPROVEMENT	ORIGINAL BID QUANTITY	REBID QUANTITY
New Trail	608 LF	608 LF
Articulating Concrete Block	4,965 SF	4,965 SF
Slope Paving	1,700 SF	1,700 SF
Retaining Wall	588 LF	588 LF
Tie-Back Wall	133 LF	133 LF
20" Welded Steel CML&C Pipe	97 LF	97 LF

In addition, new approvals from third party agencies including Rancho California Water District and Riverside County Flood Control and Water Conservation District were not required for the rebid, and the approved Environmental Document dated March 2022 and associated regulatory permits did not require any updates and/or revisions.

Should you require any further information, please do not hesitate to contact me directly at 909.239.6249.

Sincerely,

EXP U.S. SERVICES INC.



Gabriel Rodriguez, P.E.
Project Manager