



**Bid Protest – Re: Murrieta Creek Trail Solar Lights
Failure to List Required Subcontractors**

To:

City of Temecula – City Clerk’s Office
41000 Main Street
Temecula, California 92590

Dear Randi Johl, Legislative Director / City Clerk,

Pursuant to and in compliance with the City of Temecula’s Municipal Code and Bid Protest Procedures (attached for reference), we hereby submit this formal protest regarding the bid submitted by Metrocell for the Murrieta Creek Trail Solar Lights Project.

1. Identification of Bid and Project

This protest concerns the bid submitted by Metrocell for the City of Temecula’s Murrieta Creek Trail Solar Lights Project.

Project No.: PW21-13

Bid Opening Date: 06/03/2025 10:00 AM (PDT)

2. Legal and Factual Grounds for Protest

We formally protest the apparent low bid submitted by Metrocell on the basis that it is **non-responsive** due to the **failure to list required subcontractors**, in direct violation of the bid instructions.

On **Page P5 (Page 35 of the Front-End Documents)**, the contract documents clearly state:

“ALL SUBCONTRACTORS REGARDLESS OF DOLLAR VALUE SHALL BE LISTED.”

Despite this mandatory requirement, Metrocell wrote “NONE” for all subcontractors. This is a material omission given that the contract requires:

- A **qualified biologist** (for nesting bird surveys – per SP-3), and
- A **licensed land surveyor** (for staking, control, and as-builts – per SP 3-10, 3-10.1, 10-03).

We conducted a license check through the **California Board for Professional Engineers, Land Surveyors, and Geologists** and confirmed that **Metrocell is not licensed** in either of these professional categories.

These scopes **cannot legally be self-performed** without appropriate licensure. Thus, failure to list subcontractors for these tasks renders the bid **materially non-compliant**.



3. Anticipated Counterarguments and Rebuttals

Counterargument: *"The bidder intends to self-perform the work."*

Response: Metrocell lacks the professional licenses to lawfully self-perform biological or land surveyor scopes.

Counterargument: *"The biologist or surveyor is a vendor, not a subcontractor."*

Response: These are **licensed professional services**, not material suppliers. The bid documents classify them as subcontracted scopes. They are also **subject to DIR registration and prevailing wage compliance**, further confirming their subcontractor status.

Counterargument: *"The scope is under \$10,000 and doesn't need to be listed."*

Response:

1. The bid documents override threshold limitations and explicitly require **all subcontractors to be listed regardless of value**.
2. The **legal requirement to use a licensed professional still applies**, regardless of cost.
3. It is implausible that a licensed firm would perform full survey scope (staking, layout, as-builts) for under \$10,000.

Counterargument: *"The failure to list was an inadvertent omission."*

Response: The listing requirement is **material, not clerical**. Allowing post-bid corrections would undermine fairness and transparency and violate the public contracting process. The omission deprives the City of essential information to evaluate bid responsibility and statutory compliance.

4. Conclusion

Metrocell has failed to list subcontractors for scopes that:

- Are explicitly required by the contract,
- Require professional licensure,
- Cannot legally be self-performed, and
- Are subject to DIR compliance.

As such, the bid is **non-responsive** and **must be rejected** in accordance with the City's stated procedures and the principles of competitive public bidding.

5. Reservation of Rights

This protest is submitted in good faith and based on the information available at the time of writing.

Nothing in this letter shall be construed as a waiver or limitation of our right to assert additional grounds for protest, raise further arguments, or submit supplemental documentation should new facts or legal authority become known. We expressly reserve all rights available to us under the City of

Temecula's procurement procedures, the California Public Contract Code, and any other applicable laws and regulations.



We respectfully request that the City of Temecula **disqualify the bid submitted by Metrocell** and proceed with award to the next responsible and responsive bidder.

Sincerely,
Arman Tehrani
Managing Member
ASAD Holdings LLC dba OrangeBlue General Contractors
ArmanT@OrangeBlue.org (949) 332-0652
06/12/2025

PROJECT NO. PW21-13

PRIME CONTRACTOR DBE?: YES ☐ NO ☒

REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS. The Bidder's attention is directed to Labor Code Section 1725.5, which provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a Bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of any contract that is subject to Labor Code Section 1720 et seq., unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

[illegible]

Signature of Bidder

SECTION 2 – SCOPE OF THE WORK.

2-2 PERMITS.

[Replace the first sentence with the following]:

Prior to the start of any work, the Contractor shall take out the applicable City permits and make arrangements for City inspections. The Contractor and all subcontractors shall each obtain any and all permits, licenses, inspections, certificates, or authorizations required by any governing body or public utility.

The Contractor shall be responsible for obtaining a New Building permit from the City's Building and Safety Department prior to work. The City will waive the Building Permit fee.

Building Permit Number B25-1397 - Electrical

Contractor shall comply with applicable conditions of all required permits and agreements with the U.S. Army Corps of Engineers (USACE) and Riverside County Flood Control and Water Conservation District (RCFC). These agreements are made a part of this contract and included as Exhibits "E" and "F" respectively. Listed below are some of the notification requirements for the permits.

- **RCFC requires (5) days written Notice prior to commencing work. In the event contractor fails to give proper notice before starting work, contractor shall be required to remove the backfill for inspection and/or reconstruction of the work described in this permit, as directed by District's Permit Engineer. In addition, after any period of inactivity of three (3) working days or longer, the Permittee will again be required to notify the District at least one working day in advance of the resumption of work. Failure to properly notify the District could result in the permit being revoked.**
- **RCFC will provide a punch list for contractor to complete and schedule final inspection with the RCFC inspector prior to RCFC providing final approval.**
- **Within (10) working days after completing construction, construction completion notice shall be submitted to RCFC and RCFC must receive the construction completion notice before acceptance of work is authorized.**
- **USACE requires a construction schedule and start date two (2) weeks in advance of construction. Construction shall not impair the USACE-SPL access to perform maintenance, inspections, and patrolling activities. Invitation to the kickoff meeting and final walkthrough shall be sent to USACE-SPL**
- **Ensure that damage is not caused to existing trail and adjacent structures.**
- **If previously unknown historic or archaeological remains are discovered while carrying out the Section 408 Activity, the contractor shall immediately cease activity and protect the site in conformance with 36 C.F.R. § 800.13. Within 24 hours of the discovery, RCFC shall notify USACE-SPL Section 408 Coordinator. The Contractor shall not resume construction or activity in the area containing the potential cultural resources until USACE-SPL issues a notice to proceed to the Requester.**
- **An inspection for USACE project w/ USACE-PSL and RCFC may be required prior to use of structure to document existing conditions**
- **A preconstruction nesting survey should be conducted by a qualified biologist up to 5 days prior to work commencement if the proposed action occurs during the general bird-nesting season (February 15 through August 31). If an active nest is found, construction should occur after the young have fledged.**

- b) Last day submittal can be delivered to keep the project schedule (factor in response time and resubmittal/response time).

Unless otherwise stated in the Contract Documents, the Contractor shall deliver via Virtual Project Manager (VPM) all submittals in PDF format to the Project Manager at: www.virtual-pm.com. Such submittals shall be returned via VPM in PDF format. Some submittals may require material samples or hard copy of the submittal packages at the discretion of the Engineer. In such cases the hard copy and/or material samples shall be delivered to City Hall or the Project site as directed by the Engineer, this is in addition to and not in lieu of, uploading the documents to VPM including pictures of the materials samples delivered.

3-10 SURVEYING.

3-10.1 General.

[Replace with the following]:

The Contractor shall take all necessary measures to ensure the preservation of survey monuments, ties and benchmarks. The Contractor shall not disturb permanent survey monuments, ties or benchmarks without the consent of the Engineer. The Contractor will bear the expense for replacing any monumentation that may be disturbed without permission.

When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, the Contractor shall adjust the monument cover to the new grade or remove and replace the monument and/or ties per the City of Temecula Standard No.'s 700, 700A, and 701, unless otherwise specified. All new monuments and ties shall conform to the Professional Land Surveyors' Act of the Business and Professions Code, Section 8700 et seq. When a monument or tie is to be re-set, the Contractor will be required to record a map, field notes, and/or other pertinent record, with the County of Riverside and shall submit a copy to the City Permit Engineer.

Surveying and/or construction staking for the entire project shall be the responsibility of the Contractor and performed by a registered Civil Engineer or Land Surveyor at the Contractor's expense. The Contractor shall submit a copy of all survey notes and a Certificate of line and grade to the City.

All existing monumentation, which may be destroyed or covered by the proposed work, shall be referenced prior to construction; and Corner Records shall be filed, pre and post construction, in accordance with Section 8771 of the Business and Professions Code (AB 1414). Final monumentation of alignments and new right-of-way lines shall be performed in accordance with the State of California Surveys Manual (latest edition); Records of Survey, or In- Lieu Maps, as applicable, shall be prepared and filed. One reproducible copy of all filed maps, and one photocopy of all filed Corner Records, shall be delivered to the City Permit Engineer within ten days of such fillings.

3-12 WORK SITE MAINTENANCE.

3-12.3 Noise Control.

[Add the following]:

A noise level limit of 86 DbA at a distance of 50 feet shall apply to all construction equipment on or related to the job whether owned by the Contractor or not. The use of excessively loud warning signals shall be avoided except in those cases required for the protection of personnel.

[Add the following section]:

300-1.4 Payment.

[Replace the First Paragraph with the following]:

The contract lump sum price for Clearing and Grubbing shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, for removal and disposal of all resulting materials, including but not limited to specified removal and salvaging, abandoning and plugging existing pipes, and all work not covered under another bid item, which is necessary to complete the work as shown on the plans and specified herein, and as directed by the Engineer. The Contractor's attention is directed to the Disposal of Materials section in the General Specifications.

10-03 ENGINEERING/CONSTRUCTION SURVEYING AND GRADE CONTROL.

Engineering/Construction Surveying shall be performed in accordance with these Special Provisions.

The City of Temecula is ONLY providing a map of streets/limits of work and other information that is only suitable for showing the project location and general limits of work. The City is not providing any other survey, grade, or location data.

The Contractor SHALL BE FULLY RESPONSIBLE for acquiring and/or establishing any survey information, grade control, or any other location information necessary to achieve the following:

- Install solar lights per the layout provided in Exhibit B and D.
- Construct solar lights such that the elevation of the lights are consistent and that the solar lights logically follow the trail.
- Final deliverable to the City will be a CADD file (2024 format) showing the elevations and locations of the solar lights.
- Perform record search to locate survey monuments and ties and reset any survey ties and/or monuments which may be disturbed or destroyed as a result of this work.

As a minimum, the Contractor must provide the following:

- a) Control Points
- b) Clearing and Grubbing Limits
- c) Base Grade Certification
- d) Location and/or Grade Stakes (for new and relocated work such as: waterline and appurtenances, drainage pipes and structures, sewer manholes and pipes, streetlights, traffic signals, walls, bridge foundations, etc.)
- e) Boundary/ROW lines
- f) Record of Survey or Corner Records (for monuments set or reset)
- g) Jurisdictional Delineation Boundary

The Contractor must provide to the Engineer control and cut sheets for all work identified under this Bid item.

Section 309 Monuments

[Replace entire section with the following]:

This work shall consist of furnishing and installing right-of-way monuments and/or property corners, and monuments for street centerline control.

Monuments shall conform to Standard No. 903 Type "B" Monuments of the County of Riverside Road Improvement Standards and Specifications. Placement of Street Centerline Monuments shall conform to Standard No. 901 of the County of Riverside Road Improvement Standards and Specifications. Tie – Out standards shall conform to Standard No. 900 of the County of Riverside Road Improvement Standards and Specifications.

At least 10 working days prior to installing any monuments the contractor shall submit, for the Engineer's approval, details of proposed monumentation.

Payment. The contract lump sum price for Engineering/Construction Surveying shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals including, travel to and from the job site, any re-staking required, filing of any Corner Records or Records of Survey and field surveying required to set new monuments, re-establish any monuments and property corners lost or obliterated during construction, providing "As-Builts", and for doing all the work involved, complete in place, as shown on the Plans, as specified by the Greenbook and these Special Provisions, and as directed by the Engineer and no additional compensation will be allowed therefor.

The contract lump sum price for Engineering/Construction Surveying shall also include full compensation for furnishing all labor, materials, tools, equipment and incidentals, including offset ties, and for doing all the work involved in furnishing and installing Survey Monuments, and for doing all the work involved, complete in place, as shown on the Plans, as specified by the Greenbook and these Special Provisions, and as directed by the Engineer and no additional compensation will be allowed therefor.

No separate payments will be made for Lead and Tack (L&T) or steel pin monuments installed as ties to permanent monuments.

10-04 NPDES COMPLIANCE.

402. Introduction.

The Contractor shall follow and comply with all of the applicable NPDES requirements outlined in the following documents:

- NPDES General Permit for Construction Activities (Order No. 2022-0057-DWQ, NPDES No. CAS000002) issued by the State Water Resources Control Board (SWRCB), hereafter referred to as the "Permit". Copies of the Permit may be obtained from the State Water Resources Control Board (SWRCB) website at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml;
- City of Temecula Grading, Erosion and Sediment Control Ordinance and Standard Erosion and Sediment Control Notes, as applicable
- These Special Provisions

The Contractor shall prevent unauthorized discharge from the project site, including areas of disturbance inside and outside the project limits, during all phases of construction to the maximum extent practicable.

The Contractor shall conduct, at a minimum, weekly inspections throughout the entire site to identify areas requiring implementation, maintenance, replacement, or addition of pollution prevention

Title 3. Revenue and Finance

Chapter 3.32. PUBLIC WORKS CONTRACTS

§ 3.32.090. Protest procedures.

- A. Any actual or prospective bidder, proposer, or contractor (collectively "bidder") who believes he or she has been aggrieved in connection with the solicitation or award of a contract pursuant to this chapter may protest, in writing, to the office of the city clerk, within three business days after posting of the award recommendation at the location where bids or proposals are submitted. The protest shall be deemed filed only when it is actually received by the office of the city clerk.
- B. The bidding documents shall include a statement referencing this section as the requirement for filing a protest.
- C. In the event a timely protest is filed as provided in this section, the director of finance may, but is not required to, suspend the award of the contract until the protest is resolved.
- D. The protest shall be in writing and shall contain the following information:
 - 1. The name, address and telephone number of the protester;
 - 2. A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
 - 3. A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subsection **A** of this section;
 - 4. A precise statement of the relevant facts;
 - 5. An identification of the issue or issues to be resolved;
 - 6. Argument and authorities in support of the protest; and
 - 7. A statement that copies of the protest have been mailed or delivered to the director of finance.
- E. If applicable, the director of finance shall meet and confer with the protestor in an effort to resolve the issues described in the protest.
- F. If the director of finance is unable to resolve the protest, the protest shall be referred to the city manager. The city manager shall have authority to settle and resolve a protest. The city manager may, but is not required to, solicit written responses to the protest from other interested parties. The city manager may establish additional procedures for the resolution of a protest and may refer the matter to a hearing officer. The city manager's decision shall be final and conclusive and shall not be subject to appeal to the city council under Chapter **2.36** of this code.

(Ord. 11-05 § 3; Ord. 18-11 § 1)