City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

MEMORANDUM

TO: General Government Awards Committee

FROM: Gregory Pease, Chief Procurement

DATE: June 15, 2020

SUBJECT: **PROTEST – Bid No.: CP-0071-20**
Title: Southside Senior Center

The attached bid protest filed by **C.C. Borden Construction**, is presented for action by the General Government Awards Committee, on Thursday, June 18, 2020 at 1:00 PM.

The General Government Awards Committee action is as follows:

UPHELD:	**DENIED:**
Dir. Adm. & Finance or Designee	Dir. Adm. & Finance or Designee
General Counsel or Designee	General Counsel or Designee
Director of Public Works or Designee	Director of Public Works or Designee

ACTION OF AWARDING AUTHORITY
Date _____

Approved _____ **Disapproved** _____

Signature of Authentication _____

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

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GENERAL COUNSEL

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*BOARD CERTIFIED CITY, COUNTY AND LOCAL GOVERNMENT LAW

May 29, 2020

VIA ELECTRONIC MAIL

Judson C. Bradley, Esq.
Regan Atwood P.A.
9905 Old St. Augustine Rd., Suite 400
Jacksonville, Florida, 32257
JBradley@ReganAtwood.com

Re: C.C. Borden Construction, Inc.'s Notice of Protest
Bid No. CP-0071-20, Southside Senior Center

Dear Judson:

Thank you for reaching out to us earlier this week. We write on behalf of our client, City of Jacksonville, Procurement Division.

We are in receipt of your client, C.C. Borden Construction, Inc.'s bid protest regarding the Southside Senior Center project, in which you explain that C.C. Borden's Base Bid amount was erroneously transcribed on the Proposal Form in the amount of $1,830,615 versus the intended $1,380,615. Your client's argument is that the dollar amount entered on the Total Bid accurately reflected the intended total of $3,281,726, and that the City would have known this if it subtracted the Bid Alternate 1 amount of $1,901,111 from the Total Bid revealing an intended Base Bid of $1,380,615. Accordingly, your client has requested a bid protest hearing to be heard on same.

Pursuant to paragraph B of the Lump Sum Bid Proposal, "The project may be awarded to the lowest responsive, responsible Bidder contingent on the availability of funds within the project's approved budget. **The Total Base Bid plus selected Alternate(s), if any, will be used to determine the lowest bidder.** If selected, Alternate(s) will be awarded in the order listed (i.e. – 1,2,3...). The CITY has the right to reject any or all bids." Accordingly, the City determined that Warden Construction Corp. is the lowest bidder based upon its Total Base Bid of $1,037,302 plus its Bid Alternate of $2,359,118, as opposed to the higher total of C.C. Borden's Total Base Bid of $1,830,615 plus its Bid Alternate of $1,901,111. As you can understand, the Total Base Bid controls because the City may not choose to award any Alternate at all.

Further, section 2.8.2 of the City's Invitation to Bid states: "In the event of mathematical errors in the extension of prices or in the addition total for any base bid, unit prices will prevail." In this instance, the City had no way of knowing that C.C. Borden's Base Bid dollar amount (which was incorrectly submitted in <u>both</u> <u>numeric</u> and <u>written</u> form) was erroneous due to scrivener's error, as there was no unit pricing to support same and justify a corrected base bid.

For these reasons, the City awarded the Southside Senior Center bid to Warden Construction as the lower bidder. In accordance with the City's bid protest procedures, your client's bears the burden of proving that the intended decision is clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in law or fact. Accordingly, the likelihood of success in this case is very low. Lastly, the City was never notified of any bid errors prior to bid opening, which is also fatal for this claim.

If you would like to discuss this matter further, please give me a call anytime. Meanwhile, my client continues to schedule a hearing in this matter.

Sincerely,

Tiffiny Douglas Pinkstaff

Tiffiny Douglas Pinkstaff
Assistant General Counsel

c: Gregory W. Pease, Chief of Procurement

REGAN ATWOOD, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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JUDSON C. BRADLEY, ESQUIRE
JBradley@ReganAtwood.com
Direct Dial (904) 861-0768

May 13, 2020

Via Email

Mr. Gregory Pease
Chief Procurement Division
City of Jacksonville
214 North Hogan Street, Suite 800
Jacksonville, FL 32202
GPease@coj.net

Re: **NOTICE OF PROTEST**
Protestant: **C.C. Borden Construction, Inc.**
Bid No.: **CP-0071-20, Southside Senior Center (the "Project")**

Dear Mr. Pease:

Regan Atwood, P.A. represents C.C. Borden Construction, Inc. ("C.C. Borden") and submits this Protest on C.C. Borden's behalf based upon the May 14, 2020 GGAC Agenda posted on May 12, 2020 at or about 12:00PM, recommending an award of the Project be given to Warden Construction Corp ("Warden"). Accordingly, this Protest is timely, as it is being delivered within forty-eight (48) hours from the City's posting or written notification of its decision to recommend award of this Project to Warden.[1]

As set forth in §126.106 (e), Protestant respectfully submits:

Protestant
C.C. Borden Construction, Inc.
1019 Rosselle Street
Jacksonville, Florida 32204

Protestant's Representatives
Jeffrey C. Regan, Esq. and Judson C. Bradley, Esq. of Regan Atwood, P.A.,
9905 Old St. Augustine Road, Suite 400
Jacksonville, Florida 32257.

[1] On May 13, 2020, the Chief of Procurement confirmed electronic mail is a sufficient method of serving/filing this Notice of Protest.

C.C. Borden's substantial interests are affected by the City's determination of this Protest and Project. C.C. Borden is the lowest responsible and responsive Bidder qualified for award of this Project.

C.C. Borden's proposal is attached hereto as Exhibit "A" and, as with all other bidders' proposals, contains the following language:

> In accordance with the Invitation to Bid to construct the **SOUTHSIDE SENIOR CENTER** for the City of Jacksonville, Florida, subject to the Drawings, Specifications, Standard Specifications and Details, and Addenda thereto, if any, all of which are made a part of this Proposal, the undersigned proposes to construct the **SOUTHSIDE SENIOR CENTER** for the Total Bid as follows:

Thus, based on the plain language of the proposal, the award of the Project is to be based upon the "Total Bid". However, despite C.C. Borden's Total Bid being $3,281,726, and Warden's Total Bid being $3,396,420—a difference of $114,694—the proposed awardee for the Project is Warden.

The City's intended decision to award the Project to Warden apparently stems from a minor mistake and scrivener's error in C.C. Borden's tabulation, *to wit*, with respect to C.C. Borden's base bid for site work, C.C. Borden mistakenly listed $1,830,615 instead of $1,380,615. The clerical and minor nature of this mistake can easily be confirmed by subtracting the amount C.C. Borden listed for Alternate 1 ($1,901,111) from the amount C.C. Borden listed as its Total Bid ($3,281,726), *i.e.*, the difference between the amount C.C. Borden listed as it's Total Bid and Bid Alternate 1 is $1,380,615, not $1,830,615.

As a result of the above, C.C. Borden is the lowest responsive and responsible bidder and should receive an award of the Project.

Finally, pursuant to §126.106(e)(4), C.C. Borden hereby requests a three (3) business day extension of time to supplement this protest with additional documentation and/or legal authority or argument.

Sincerely,

Judson C. Bradley, Esq.

JCB/skg
Enclosure

Cc:
(via email)

Camille C. Borden
camille@ccborden.com

Daryl Joseph
DJoseph@coj.net

Marilyn Laidler
MLaidler@coj.net

Dan Pearson
Pearson@coj.net

Robert Scott
Scott@coj.net

SOUTHSIDE SENIOR CENTER
SECTION 3
PROPOSAL

BID NO.: CP-0071-20

BID DATE: March 4, 2020

TO: THE CITY OF JACKSONVILLE, FLORIDA

FROM: CC BORDEN CONSTRUCTION INC.

In accordance with the Invitation to Bid to construct the **SOUTHSIDE SENIOR CENTER** for the City of Jacksonville, Florida, subject to the Drawings, Specifications, Standard Specifications and Details, and Addenda thereto, if any, all of which are made a part of this Proposal, the undersigned proposes to construct the **SOUTHSIDE SENIOR CENTER** for the Total Bid as follows:

BASE BID SITE WORK: (see next page for detailed breakdown of items)

$ 1,830,615 (Numerals)

one million eight hundred thirty, thousan six hund Fifteen (Written)

BID ALTERNATE 1: BUILDING and all items not in Base Bid above:

$ 1,901,111 (Numerals)

one million nine hundred one thousand one hundred eleven (Written)

TOTAL BASE BID SITE WORK AND ALTERNATE 1:

$ 3,281,726 (Numerals)

three million two hundred eighty one thousand seven hundred twenty six (Written)

See next page for a detailed breakdown of items.

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Exhibit "A" to Notice of Protest