



November 21, 2014

Mr. Ryan Dowdy
President
RKM Utility Services, Inc.
1805 Royal Lane
Dallas, Texas 75229

Re: Redbud Boulevard from Wilmeth Road to Bloomdale Road and Associated 12-inch Water Line - Notice of Disqualification of Bid (Project Nos. ST4257 & WA4258) (the "Redbud Project")

Dear Mr. Dowdy:

The City of McKinney ("City") has reviewed your bid proposal for the above-referenced project, and has determined that RKM Utility Services, Inc. ("RKM") is not a responsible bidder under Section 102.12 of the NCTCOG specifications (amended by Special Condition 09) as such specifications are incorporated into the bid documents. Consequently, the Engineering Department intends to recommend that RKM be disqualified and its bid not be considered for the Redbud Project. The relevant sections of Section 102.12 of the NCTCOG specifications applicable to the disqualification of RKM are outlined below:

Bidders may be disqualified and their proposals not considered for any of the following specific reasons:

- 4. the bidder or its surety having defaulted on a previous Contract, or the bidder performing poorly on a previous Contract;*
- 5. lack of competency, skill, judgment, financial capability, integrity, reputation, reliability or responsibility to perform the work as revealed by the bid proposal, bid questionnaires, financial statement, performance history or other relevant information obtained by the owner;*

Should the Bidder fail to produce evidence satisfactory to the Owner on any of the foregoing points, he may be disqualified and the Work awarded to the next Bidder so qualifying.

City of McKinney • Engineering Department

P.O. Box 517 • McKinney, Texas 75070 • Metro 972-562-6080

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This letter is being sent to you to afford RKM an opportunity to meet with the City's Engineering Department on either Monday, November 24, 2014, or Tuesday, November 25, 2014, and present evidence of RKM's responsibility, to the satisfaction of the City, pursuant to Section 271.027(b) of the Texas Local Government Code. The City's basis for determining that RKM is not a responsible bidder is founded on RKM's performance on the Throckmorton Street Drainage Project, Project No. DR0206 ("Throckmorton Project") that the City awarded to RKM and the continuing dispute regarding the quality of RKM's work and its failure to perform under the Contract Documents. Despite the requirements of the Contract Documents for the Throckmorton Project, the defective work has still not been corrected by RKM. A copy of the City's original demand letter that was sent to you on January 7, 2013, is attached hereto as Exhibit A for your convenience.

At this time, it is the Engineering Department's intention to recommend to the City Council a construction contract with the second lowest bidder on December 1, 2014. Please feel free to contact me or Gary Graham to schedule a meeting at a time of your convenience on either Monday, November 24, 2014, or Tuesday, November 25, 2014, to present evidence regarding RKM's responsibility pursuant to Section 271.027(b) of the Texas Local Government Code.

Thank you for your submittal on this project.

Very truly yours,

A handwritten signature in blue ink that reads "Gary Graham for".

MARK HINES, P.E.
Director of Engineering

cc: Tom Muehlenbeck, Interim City Manager
Barry Shelton, Interim Assistant City Manager
Michael Hebert, P.E.
Gary Graham, P.E.
Joshua Cotton, P.E.
Mark Houser, City Attorney
ST4257 & WA4258 File

EDWIN P. VOSS, JR.
Board Certified,
Civil Appellate Law
Texas Board of Legal Specialization
(214) 747-6135
evoss@bhlaw.net

Telephone: (214) 747-6100
Telecopier: (214) 747-6111
www.bhlaw.net

January 7, 2013

Mr. Ryan Dowdy
RKM Utility Services, Inc.
1544 Valwood Pkwy., Suite 100
Carrollton, TX 75006

Via Certified Mail,
Return Receipt Requested

Re: Project: Throckmorton Street Drainage Project (Project No. DR0206)
Construction Agreement, dated June 1, 2010
Demand for Warranty Work

Dear Mr. Dowdy:

On behalf of the City of McKinney, Texas ("City"), this letter constitutes formal demand under the above-referenced Construction Agreement ("Agreement"), requesting RKM Utility Services, Inc. ("RKM") to satisfy its warranty obligations under said Agreement. Under the Agreement, RKM agreed to construct the improvements specified in the above-referenced Project, including gabion walls as part of the drainage structures. As has been discovered recently, problems exist with the gabion walls in certain locations, which prompted a review and analysis by the City and CP&Y, Inc. ("CPY"), the design engineer on the Project.

Consistent with the terms of the contract documents for the Project, representatives of RKM, the City, and CPY met onsite on October 24, 2012, in order to conduct a warranty inspection of the Project. Several issues were noted and detailed in a report prepared by CPY, dated November 6, 2012 ("CPY Report"), a copy of which is attached to this correspondence. Since that time, it is my understanding that City Staff has met with RKM and CPY representatives on at least two separate occasions to discuss resolution of the problems identified in the CPY Report. It is my further understanding that, to date, there has been no resolution reached as a result of those meetings.

As set forth in the CPY Report, and not by way of limitation to what is stated in the CPY Report, some of the issues observed at the Project site during the warranty inspection include:

1. South Gabion Wall – East/Downstream: Wall and soil settlement, the soil behind the wall is sloughing off considerably, and other problems noted in the CPY Report;

2. North Gabion Wall – West/Upstream: Bulging of the gabion wall on the northwest side of Throckmorton where the headwall and the gabion wall connect, and other problems noted in the CPY Report; and
3. North Face of the Concrete Headwall – West/Upstream: Sloughing off of the cement grout parging on the face of the concrete headwall, as noted in the CPY Report.

Noting these observations, City staff and CPY have researched these issues and determined that there are not enough soil density testing reports to know whether the soil behind the wall was compacted properly. As noted in the CPY Report, it is at areas where no soil density testing reports exist that significant soil settlement and other problems are observed. Furthermore, photos taken during construction indicate that the soil backfill was not constructed in eight inch (8") lifts as required in the construction plans. The problems outlined herein, and which are provided in more detail in the CPY Report, indicate that construction of these gabion wall structures was not performed in accordance with the Agreement.

On November 28, 2011, the City provided RKM with written acceptance of the Project based upon RKM's representation that the Project had been constructed in accordance with the requirements set forth in the Agreement. According to Section M of the Agreement (on page 12 thereof), RKM agreed to a Contractor's Warranty (the "Warranty") that is in place for a two-year period after written notice of acceptance of the work. That two-year period runs to November 28, 2013. The Warranty requires RKM to provide and pay for all labor and materials that the City determines are necessary to correct all defects in the Project arising because of defective materials or workmanship supplied or provided by RKM or any subcontractor to RKM.

Since it has been established by the CPY Report that there are defects in RKM's work, the City Engineer has determined that repair and reconstruction of the gabion walls is necessary for the preservation of the public health, safety and welfare. As a result, the City is providing RKM with this written notice and demand for RKM to make the following repairs and corrections (which correlate by number to items 1-3, listed above):

1. South Gabion Wall – East/Downstream: Remove the entire upper tier wall (rows 5-8) on the south east side of Throckmorton. Remove the backfill material behind the lower tier wall. The fill material will then need to be benched and re-compacted to the proper design compaction and moisture content. The gabion wall should then be reconstructed in accordance with the construction drawings already approved. Additionally, the grade in front of the upper tier gabion wall should be sloped away from the face of the wall to the top of the lower tier wall. The grades at the top of the upper tier wall should be shaped to minimize longitudinal flow of surface water to the East end of the upper wall. These areas must both be constructed with a minimum 1'-0" thick high plasticity index clay to seal the grade to provide resistance to water penetration. See CYP Report, pp. 5-6 (Recommendations).

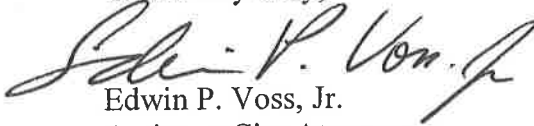
2. North Gabion Wall – West/Upstream: Remove the upper tier gabion wall to the east of the concrete headwall. The backfill material below the wall to the east of the concrete headwall shall be filled and compacted in eight inch (8”) lifts to the specified design compaction and moisture content. The gabion wall should then be replaced per the construction drawings already approved. Additionally, the grade in front of the gabion wall should be sloped away from the face of the wall, and must be constructed with a minimum 1’-0” thick high plasticity index clay to seal the edge of the gabions and to provide resistance to erosional loss. Further, consideration may be given to the movement of the upper section of the gabion wall toward the north to prevent it from bearing on the top of the concrete headwall, and warrants further discussion with the City. See CPY Report, p. 8 (Recommendations).
3. North Face of the Concrete Headwall – West/Upstream: Remove the parging material from the entire face of the concrete headwall. Apply a specialty coating to the face of the wall in accordance with the recommendations of and under the supervision of a representative of the manufacturer. The proposed materials and procedures for this specialty coating should be submitted to the City and CPY for review prior to the execution of this work. See CPY Report, pp. 9-10 (Recommendations).

Please contact City staff as soon as possible to coordinate the above necessary warranty work, and provide the City with written notice of when the above-listed work is scheduled to begin, so that the City can employ a testing laboratory to perform the proper material testing.

Under the contracting requirements applicable to this Project, RKM provided a maintenance bond to the City, Bond No. sb001000478, dated June 1, 2010, through Ullico Casualty Company (“Maintenance Bond”). The term of the Maintenance Bond is also two (2) years from the completion and final acceptance by the City of this Project. While this letter does not constitute a claim under the Maintenance Bond, the bonding company is being provided a copy of this correspondence for informational purposes.

This correspondence is intended to resolve a disputed warranty claim, and in no way should be seen as an admission of any wrongdoing on the part of the City, or as a waiver of any of the City’s applicable rights under the Agreement or applicable law, which rights are specifically and expressly reserved. Thank you for your prompt attention to this matter.

Yours very truly,


Edwin P. Voss, Jr.
Assistant City Attorney

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cc (w/enc):

William J. Nemecek
Ullico Casualty Company
1710 N. Douglas Dr., Suite 110
Golden Valley, MN 55422
Via Certified Mail, Return Receipt Requested

Jason Gray, City Manager
Robert Daake, Deputy City Manager
Jack Carr, P.E., City Engineer
Michael Hebert, P.E., Assistant Director of Engineering
Lissa M. Shepard, P.E., Project Manager
Mark S. Houser, City Attorney