TO: Honorable Mayor and City Council  
Attention: Laura C. Kuhn, City Manager  

FROM: Steven L. Hartwig, Director of Public Works/City Engineer  

SUBJECT: RESOLUTION TO WAIVE THE BID IRREGULARITY AND TO AWARD THE CONSTRUCTION CONTRACT FOR THE BROWN STREET LIFT STATION PROJECT TO THE LOW BIDDER, MOUNTAIN CASCADE, INC., OF LIVERMORE, CALIFORNIA FOR $2,050,000.00  

DISCUSSION:  

Background  
This item was considered by the City Council at its August 26, 2014. At that time, a motion was made to reject all bids. The Council voted 2-2 on the motion. The motion did not pass because a majority vote is needed. Accordingly, no action was taken on this matter.  

The Bids  
Six bids were received on August 12, 2014, for the Brown Street Lift Station Project. The apparent low bidder is Mountain Cascade, Inc., of Livermore, California, with a total bid price of $2,050,000.00, 37% above the Engineer’s Estimate of $1,500,000.00 provided by the City’s consultant, NV5.  

It has been several years since the City has done a project of this nature and staff is working with the design consultant to analyze the bids to gain further insight into the current construction market for use in estimating future projects. The differential between the bid for this project and the Engineer’s Estimate is certainly the result of multiple factors, but is at least partially an indicator that there is a certain amount of economic recovery in the construction industry. The volume of jobs being advertised for bidding is high with more money available for construction; and as a result, contractors have a backlog of construction creating a climate where their bid prices escalate. Over the last 4 years, Vacaville’s Development Impact Fees have not been increased to reflect the ENR construction cost index, which increased 12.1% during this period. Even with the higher project cost, Utilities has confirmed that adequate funds are available for the project and that it should be pursued.  

The following bids were received:  

<table>
<thead>
<tr>
<th>BID ORDER</th>
<th>CONTRACTOR</th>
<th>TOTAL BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mountain Cascade, Inc.</td>
<td>$2,050,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Con-Quest Contractors, Inc.</td>
<td>$2,170,000.00</td>
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<tr>
<td>3</td>
<td>Sierra National Construction, Inc.</td>
<td>$2,170,300.00</td>
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<tr>
<td>4</td>
<td>Anderson Pacific Engineering Construction, Inc.</td>
<td>$2,189,000.00</td>
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<tr>
<td>5</td>
<td>Conco West, Inc.</td>
<td>$2,316,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Manito Construction, Inc.</td>
<td>$2,851,500.00</td>
</tr>
</tbody>
</table>
The Project
The Project consists of the construction of a sewer lift station and masonry block control building located at 313 Brown Street. The site is located between the Solano County Transportation Department’s Maintenance Yard and Vacaville Unified School District property. The facilities include a concrete wet well, vaults, pumps, valves, piping, a control building, standby power facilities, electrical work, site work (including a bike and pedestrian path from Brown Street to the western property line), new fencing and gates, site lighting, landscaping, odor control biofilter, appurtenances, testing and commissioning, and the demolition of the existing Brown Street Lift Station.

The Project was designed by NV5, with oversight by Public Works Engineering Services and Utilities staff. The work period allowed for the completion of this project is 365 calendar days. Work is scheduled to begin in September 2014, and should be completed in September 2015.

Although the low bid received is 37% over the Engineer’s Estimate, there is sufficient funding in the project budget to complete the Project. There is no impact to the City’s General Fund as a result of this award of contract as the project is funded with Sewer-Facilities Rehabilitation and Sewer Capital Funding.

The Project is exempt from the provisions of the California Environmental Quality Act in accordance with Section 15302, Class 2 (Replace or Reconstruct) and a Notice of Exemption was filed with Solano County on July 10, 2014.

Bid Protest
A bid protest was received by the City on August 18, 2014 from the second low bidder, Con-Quest Contractors, Inc. (“Con-Quest”). On August 21, 2014, the City received a letter from Mountain Cascade’s attorney responding to Con-Quest’s letter. Copies of the letters are attached to this report. Con-Quest contends that the low bidder’s bid should be rejected because it is non-responsive to the bidding requirements due to the failure to list the license numbers of the subcontractors listed in the bid. Con-Quest further states that the City lacks the discretion to allow this information to be omitted.

Section 4104 of the Public Contract Code has historically required the prime contractor to list the name and location of any subcontractor performing work valued in excess of one half of one percent of the contract amount and the type of work to be performed. Effective July 1, 2014, Section 4104 was amended to require bids to include the California contract license number for each subcontractor listed in the bid. Con-Quest is correct that Mountain Cascade did not include the license numbers in its bid. However, the project bidding requirements require bidders to use the project bidding forms. The forms do not require bidders to include the license numbers—only the names and locations of the subcontractors and the type of work to be performed. A bid is responsive if it promises to do what the bidding requirements demand. [MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal.App.4th 359, 368].

In this case, Mountain Cascade did what the bidding requirements demanded by using the project bidding forms and by including therein all required information. Its bid, then, was responsive to the Project bidding requirements.

Moreover, a bid is responsive even if there is a discrepancy in the bid, so long as the discrepancy is inconsequential, i.e. the discrepancy does not: (1) Affect the amount of the bid, (2) Give a bidder an advantage over others, (3) Be a potential vehicle for favoritism, (4) Influence potential bidders to refrain from bidding, or (5) Affect the ability to make bid comparisons. [Ghillotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897, 906].
In this case, the failure to include the license numbers did not result in any of the foregoing. Further, even if Mountain Cascade had provided the numbers, the City would not have relied upon that information because the City has a long-standing practice of confirming that the listed subcontractors are properly licensed with the Contractors State License Board. At worst, the omission could be viewed as a minor inconvenience for City staff. Further, the omission did not affect the amount of Mountain Cascade’s bid nor did it give Mountain Cascade an unfair advantage over other bidders that included the license numbers in their bids. In addition, the information provided by Mountain Cascade was sufficient for the City to obtain the requested license information through publicly accessible records on the Contractors State License Board’s website.

Con-Quest does not explain how the omission gave Mountain Cascade an advantage over other bidders. Instead, Con-quest contends that newly-amended Section 4104 mandates that the license numbers be included and that the City has no discretion to allow the information to be omitted. The project bidding requirements, however, reserve to the City the right to waive any informalities or minor irregularities in the bids. This is consistent with State law, which provides that the rule of strict compliance with bidding requirements does not preclude a public entity from waiving inconsequential deviations. [Ghillotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897, 908].

In sum, the omission is inconsequential because the licensing information is readily available to the City and there is no evidence to show that the omission: (1) Affected Mountain Cascade’s bid amount, (2) Gave Mountain Cascade an advantage over other bidders, (3) Favored Mountain Cascade, (4) Influenced potential bidders to refrain from bidding, or (5) Affected the ability to make bid comparisons. For these reasons, staff recommends that the omitted information in Mountain Cascade’s bid be waived as an inconsequential, minor irregularity.

**FISCAL IMPACT:**

The project is funded with Sewer-Facilities Rehabilitation and Sewer Capital Funding. There is sufficient funding in the Project budget. There is no impact to the General Fund as a result of this action.

**RECOMMENDATION:**

By simple motion, adopt the subject resolution.

**ATTACHMENTS:**

Resolution – Action Item
Attachment 1: Area Map
Attachment 2: Con-Quest Contractors, Inc. Letter, dated August 18, 2014
Attachment 3: Counsel for Mountain Cascade, Inc.’s letter, dated August 21, 2014
RESOLUTION TO WAIVE THE BID IRREGULARITY AND TO AWARD THE CONSTRUCTION CONTRACT FOR THE BROWN STREET LIFT STATION PROJECT TO THE LOW BIDDER, MOUNTAIN CASCADE, INC., OF LIVERMORE, CALIFORNIA FOR $2,050,000.00

WHEREAS, the Brown Street Lift Station (“Project”) consists of the construction of a sewer lift station and masonry block control building located at 313 Brown Street, between the Solano County Transportation Department’s Maintenance Yard and Vacaville Unified School District property; and

WHEREAS, the Project facilities include a concrete wet well, vaults, pumps, valves, piping, a control building, standby power facilities, electrical work, site work (including a bike and pedestrian path from Brown Street to the western property line), new fencing and gates, site lighting, landscaping, odor control biofilter, appurtenances, testing and commissioning, and the demolition of the existing Brown Street Lift Station; and

WHEREAS, on August 12, 2014, the City of Vacaville (“City”) received 6 bids to construct the Project; and

WHEREAS, Mountain Cascade, Inc. of Livermore, California (“Mountain Cascade”), was the low bidder with a base bid of $2,050,000.00; and

WHEREAS, on August 18, 2014, the City received a bid protest from the second low bidder, Con-Quest Contractors, Inc. (“Con-quest”), stating that: (1) The bid by Mountain Cascade is non-responsive based on the omission in Mountain Cascade’s bid of the California contractor license number for each subcontractor performing work or labor or rendering service in or about the construction of the Project valued in excess of one-half of one percent of Mountain Cascade’s total bid, and (2) The City does not have discretion to allow this information to be omitted; and

WHEREAS, Section 4104 of the Public Contract Code has historically required the prime contractor to list in its bid the name and location of any subcontractor performing work valued in excess of one-half of one percent of the contract amount and the type of work to be performed; and

WHEREAS, effective July 1, 2014, Section 4104 was amended to require bidders to include in their bid the California contractor license number for each subcontractor listed in the bid; and

WHEREAS, the low bidder, Mountain Cascade, did not include the license numbers in its bid; and

WHEREAS, the Project bidding requirements require bidders to use the Project bidding forms; and,

WHEREAS, the Project bidding forms do not require bidders to include in their bids the California contractor license numbers for the subcontractors listed in their bid but only the names and locations of the subcontractors and the type of work to be performed; and

WHEREAS, Mountain Cascade utilized the Project bidding forms and included therein all information required by the forms and the Project bidding requirements; and
WHEREAS, a bid is responsive if it promises to do what the bidding requirements demand. [MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal.App.4th 359, 368]; and

WHEREAS, a bid is responsive even if there is a discrepancy in the bid, so long as the discrepancy is inconsequential, i.e. the discrepancy does not: (1) Affect the amount of the bid; (2) Give a bidder an advantage over others; (3) Be a potential vehicle for favoritism; (4) Influence potential bidders to refrain from bidding; or (5) Affect the ability to make bid comparisons. [Ghillotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897, 906]; and

WHEREAS, the omission of the license numbers in Mountain Cascade’s bid did not result in any of the foregoing and, even if Mountain Cascade had provided the numbers, the City would not have relied upon that information because the City has a long-standing practice of confirming that the listed subcontractors are properly licensed with the Contractors State License Board; and

WHEREAS, the information provided in the bid was sufficient for the City to obtain the requested license information through publicly accessible records on the Contractors State License Board website; and

WHEREAS, the omission did not affect the amount of Mountain Cascade’s bid nor give Mountain Cascade an unfair advantage over other bidders that listed the license numbers in their bids; and

WHEREAS, in its protest, Con-Quest does not explain how the omitted license numbers gave Mountain Cascade an advantage over other bidders; and

WHEREAS, the Project bidding requirements reserve to the City the right to waive any informalities or minor irregularities in a bid; and

WHEREAS, California law provides that the rule of strict compliance with bidding requirements does not preclude a public entity from waiving inconsequential deviations. [Ghillotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897, 908]; and

WHEREAS, omitting the license numbers in Mountain Cascade’s bid is inconsequential because the licensing information is readily available to the City and there is no evidence to show that the omission: (1) Affected Mountain Cascade’s bid amount, (2) Gave Mountain Cascade an advantage over other bidders, (3) Favored Mountain Cascade, (4) Influenced potential bidders to refrain from bidding, or (5) Affected the ability to make bid comparisons; and

WHEREAS, funding for the Project will be provided by sewer-facilities rehabilitation and sewer capital funding; and

WHEREAS, Mountain Cascade, as contractor, will have 365 calendar days in which to complete the work; and

WHEREAS, the Project is categorically exempt under the provisions of the California Environmental Quality Act.
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vacaville, after duly considering the record before it, makes the following findings and determinations based on the reports, testimony and other materials before it including, but not limited to, the information listed in the above recitals, which are found to be true and correct and incorporated herein by reference as findings and determinations of the City Council.

BE IT FURTHER RESOLVED that the City Council of the City of Vacaville does hereby:
(1) Deny Con-Quest’s bid protest; (2) Waive Mountain Cascade’s omission of the California contractor license numbers for the subcontractors listed in its bid as an inconsequential, minor irregularity; (3) Find that Mountain Cascade is the lowest responsive, responsible bidder whose bid complies with the Project bidding requirements; (4) Approve the Project plans, Project manual, and working details for the Project; (5) Award the construction contract for the Project to Mountain Cascade; and (6) Authorize the Director of Public Works to execute said contract in the amount of $2,050,000.00.

I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a regular meeting of the City Council of the City of Vacaville, held on the 9th day of September 2014, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

__________________________________
Michelle A. Thornbrugh, City Clerk
Via Overnight Delivery and Facsimile

Shawn Cunningham, P.E.
Assistant Director of Public Works
City of Vacaville, Public Works Engineering Services
650 Merchant Street
Vacaville, CA 95688

Re: Brown Street Pump Station
City Project No. 782-850073

Protest of Bid Submitted by Mountain Cascade, Inc.

Dear Mr. Cunningham:

Please accept this letter as Con-Quest Contractors, Inc.'s ("C-QC's") formal protest of the bid proposal submitted by Mountain Cascade, Inc. ("Mountain"). Mountain’s proposal is nonresponsive. We, therefore, respectfully request that Mountain’s proposal be rejected and that the project be awarded to C-QC, which submitted the lowest responsive bid from a responsible contractor.

1. Mountain's Bid Is Nonresponsive

Section 7 of the Instruction to Bidders states: "First tier subcontractors to the Bidder shall only be listed when the portion of work included in their subcontract equates to an amount in excess of one-half of one percent of the total bid, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code." Section 4104 of the Public Contract Code requires that "any person making a bid or offer to perform work, shall, in his or her bid or offer set forth: (a)(1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor ...” Because the Public Contract Code states general contractors “shall provide” the license number and other information regarding listed subcontractors, an awarding agency has no discretion to waive this requirement. Judith P. v. Superior Court, 106 Cal. App. 4th 535, 550 (2002) (use of the word “shall” in a statute imposes a mandatory duty.) “[W]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." Great Western Savings & Loan Ass'n v. Los Angeles, 31 Cal. App. 3d 403, 1413 (1973)

Thus, Mountain was required to list each subcontractor’s license number that will perform more than ½ of 1% of the value of its bid; Mountain did not list a single license number for any of its subcontractors.

Section 4104(a)(2) authorizes a single limited exception to the requirement that the subcontract list include license numbers: "An inadvertent error in listing the California contractor license number provided pursuant to paragraph (1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor’s license number is submitted to the public entity by the prime contractor within 24 hours after the bid opening and provided the corrected contractor’s license number corresponds to the submitted name and location for that subcontractor" (emphasis added).
This limited exception does not apply.

First, on its face, the exception only applies when the contractor has made an "inadvertent error in listing of the California license number" of the subcontract. To have made an "error in listing" requires that the contractor have actually made an attempt to provide the information at all. Cf. Public Contract Code §§ 4106 and 4017.5 (providing for clerical error in listing of subcontractors; statute does not permit contractor to list a subcontractor inadvertently omitted).

Second, even if Section 4104(a)(2) could be read as allowing a contractor to supply missing license information after the fact, Mountain did not comply with the statutory procedure to do so, which is to submit corrected license numbers within 24 hours. Cf. Coast Pump Associates v. Stephen Tyler Corp., 62 Cal. App. 3d 421, 427 (1976) (contractor could not change subcontractor listed as a result of clerical error unless it utilized specific statutory procedure to do so); Cal-Air Conditioning, Inc. v. Auburn Union School Dist., 21 Cal. App. 4th 655, 668 (1993) (provision requiring notice in two days of clerical error in listing of a subcontractor "is obligatory in nature: it sets forth a requirement that must be followed rather than followed at one's choosing.")

Third, Mountain’s failure to list any license numbers does not qualify as an “inadvertent error.” “The ordinary meaning of inadvertent is unintentional or not deliberate.” Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement, 192 Cal. App. 4th 75, 83 (2011). Mountain is a sophisticated contractor that would be well aware of the legal requirement to provide license numbers for subcontractors. The requirement to include license numbers received a substantial amount of attention; for example, the Contractors State License Board in its newsletter warned that “Contractors making public works project bids or offers must list each subcontractor license number on those documents.” See http://cslb.ca.gov/Newsletter/2013-Winter/laws.asp. Mountain and C-QC belong to the same contractor’s association and received numerous emails and bulletins referring to this new law. As a licensed contractor, Mountain is responsible for knowing the laws that pertain to its business.

C-QC, as a responsible contractor, fully complied with the law and included license numbers for each subcontractor it listed. Because Public Contract Code Section 4104 requires license numbers to be provided, the City does not have discretion to allow this information to be omitted. See MCM Construction, Inc. v. San Francisco, 66 Cal. App. 4th 359 (1998); Great Western Savings & Loan Ass’n v. Los Angeles, supra, 31 Cal. App. 3d at 1413. Mountain’s bid therefore must be rejected. See also J.L. Manta, Inc. v. Braun, 393 N. W. 2d 490 (Minn. 1986) (rejecting bid because requirement that the bid violated was mandated by statute); see Glasgow, Inc. v. Penn. Dept. of Transportation, 851 A.2d 1014 (Pa. Commw. Ct. 2004) (bid was nonresponsive because of noncompliance with subcontractor requirements); Carl Bolander & Sons Co. v. City of Minneapolis, 451 N. W. 2d 204 (Minn. 1990) (same).

2. Contact Information for Protesting Party

In accordance with Invitation to Bid Section 15, C-QC provides the following information:

Paul N. Loukianoff  
President  
Con-Quest Contractors, Inc.  
209 Tolan Street  
San Francisco, CA  94124  
(415) 206-0524 (o) (415) 206-0528 (f)  
paul@cqcontractors.com
3. **Conclusion**

Because Mountain's bid was not responsive, an award to a contractor other than C-QC would be illegal and void. *Valley Crest Landscape, Inc. v. Davis*, 41 Cal. App. 4th 1432 (1996); *Monterey Mechanical v. Sacramento Regional County Sanitation District*, 44 Cal. App. 4th 1391 (1996).

Payment of any funds to Mountain would violate the California Constitution. Section 10 of Article XI of the Constitution provides that "a local government body may not ... pay a claim under an agreement made without authority of law." A concerned taxpayer, as well as C-QC, may bring an action to enjoin payments on a contract awarded to another bidder and to require the return to the District of any such payments. *Rubino v. Lolli*, 10 Cal. App. 3d 1059 (1970); *Miller v. McKinnon*, 20 Cal. 2d 83 (1942).

The public policy underlying competitive bidding is so strong that a court is required, on its own initiative, to order the return of payments even if the parties to a lawsuit do not request such an order. *Greer v. Hitchcock*, 271 Cal. App. 2d 334 (1969).


For the reasons set forth above, we respectfully request that the District sustain the protest of Mountain's bid and award the project to C-QC, which submitted the lowest responsive bid from a responsible contractor. Please feel free to contact me if you have any questions. We reserve all rights and remedies, including the right to a writ of mandate and injunctive relief.

Very truly yours,

CON-QUEST CONTRACTORS, INC.

By --

Paul N. Loukianoff
President

8/18/14
Via Overnight Mail

Mr. Shawn Cunningham, P.E.
Assistant Director of Public Works
City of Vacaville, Public Works Engineering Services
650 Merchant Street
Vacaville, CA 95688

RE: Brown Street Lift Station
City Project No. 782-850073

Mountain Cascade, Inc.’s Response to Bid Protest of Con-Quest Contractors, Inc.

Dear Mr. Cunningham:

This office represents Mountain Cascade, Inc. (hereinafter “MCI”), the lowest responsible responsive bidder for the above-referenced project. MCI offers the following in response to Con-Quest Contractors, Inc.’s August 18, 2014 letter.

MCI first takes issue with the fact that Con-Quest failed to serve its bid protest on MCI. We believe that such an omission is fatal. Additionally, this omission delayed MCI’s opportunity to respond.

Next, Con-Quest asserts that the fact that MCI did not include license numbers for the subcontractors listed in its bid renders MCI’s bid nonresponsive. Not so. Newly amended Section 4104 of the Public Contract Code clearly states the following:

Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a)(1) The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement . . .
Section 4104 places responsibility squarely with the public agency to require that certain information regarding subcontractors be included in each bid. Here, the City of Vacaville did not include a space on which subcontractor license numbers could be inserted on the subcontractor listing sheet which was included in the “Proposal.” The addition of any such space in the “Proposal” would have necessitated MCI altering the bid documents, an action that in and of itself would render the bid nonresponsive. Indeed, Instruction to Bidders, Part A, Section 4, Proposal Forms clearly states that the bidder “shall fill out all blanks in the proposal form as therein required.” The proposal form did not require the bidder (or even give the opportunity) to list subcontractor license numbers.

Further, for Con-Quest to attempt to benefit at this late date from the City’s omission of a space on which to list subcontractor license numbers is disingenuous. Con-Quest had every opportunity to point out to the City, pre-bid, that its proposal form did not include a space for listing subcontractor license numbers. Instruction to Bidders, Part A, Section 6, Submission of Bid states that “[b]idder shall give City prompt written notice of all conflicts, errors, ambiguities or discrepancies that he has discovered in or among the Contract Documents.” Had Con-Quest provided the City with prompt written notice, the City would have issued an Addenda and provided notice to all other bidders of the change. Instead, Con-Quest sat quietly and waited to use this purported “trump card” after bid opening.

The City has been very clear, throughout the bid documents, that it reserves the right to waive minor irregularities in any bid, at its sole discretion. In the Notice to Bidders, Instructions to Bidders, Section 12 specifically states that “City may reject any or all bids and waive any informalities or minor irregularities in the bids; or find bids substantially compliant under bid requirements, in City’s sole discretion.” Again in subsection (1) of that same section, the City states that “In evaluating bids, City will consider, in its sole discretion, whether or not the bids comply with the prescribed requirements, unit prices and other data, requested in the Proposal form.” And again in subsection (3) of that same section, the City states that “City shall determine, in its sole discretion, whether a Bidder is responsible and/or a bid is responsive.” There is nothing in the language requiring that the City must dismiss a bid as non-responsive if a contractor fails to comply with the requirements, instead it is a determination that can be made by the City and the City has the option of waiving the irregularity. MCI’s failure to list subcontractor license numbers is inconsequential, and, of course, was a result of the City not including a space for such information. This omission should be waived by the City as an inconsequential bid irregularity and the City should deem MCI’s bid responsive.

There is case law that establishes that “a bid which substantially conforms to a call for bids may, though not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words if the variance is inconsequential.” (Konica Business Machines U.S.A., Inc. v. The Regents of the University of California (1988) 206 Cal.App.3d 449, 454 (Citations omitted).) Furthermore, a public entity may waive inconsequential deviations from contract specifications in a public contract
bid. *(Ghilotti Const. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 900.) To be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process. *(Id.)* MCI’s failure to include subcontractor license numbers as a result of the City not including a space for such information is inconsequential and in no way affects MCI’s bid amount nor does it provide MCI with an unfair competitive advantage. The licensure of those subcontractors listed by MCI can easily be checked and confirmed before contract award, which is the stated goal of the revised statute. MCI would not be able to claim a mistake under California Public Contract Code §5103 and withdraw its bid due to its failure to include subcontractor license numbers at bid time. MCI’s failure to submit subcontractor license numbers at bid time does not make MCI’s bid materially different than MCI intended it to be. As such, since MCI’s failure to include subcontractor license numbers is a minor irregularity and in no way does it give MCI an unfair competitive advantage.

For the reasons set forth above, the City should deem MCI’s bid responsive and award the contract to MCI as the lowest responsive, responsible bidder. If your require further information please advise promptly.

Very Truly Yours,

Erin Sheffield Sanchez, Esq.

cc: Con-Quest Contractors, Inc.
    Sierra National
    Anderson Pacific
    Conco West
    Manito