

# BOARD OF COUNTY COMMISSIONERS



May 9, 2019

Mr. Drew Petonick  
Outside Sales  
Ferguson Waterworks  
1950 NW 18th St  
Pompano Beach, FL 33069  
[drew.petonick@ferguson.com](mailto:drew.petonick@ferguson.com)

**Reference:** *Decision Regarding Protest of Indian River County Bid 2019048*

Dear Mr. Petonick:

We are in receipt of your email of May 7, 2019 protesting the "award" of the subject bid. After review, the protest made by Ferguson Waterworks ("Ferguson") is denied.

## **Background**

Your protest asserts Ferguson's failure to provide its bid form electronically as a Microsoft Excel file is a "minor technicality and "does not constitute" the disqualification of your bid.

Your protest also asserts Ferguson was "low overall bidder", and "clearly... low on a significant amount of ... items", based on the initial bid tabulation released immediately after the bid opening and prior to verification of the contents of the USB drives submitted, and awarding to Core & Main, LP ("Core & Main") would be a "reckless use of tax payers money".

Finally, your protest states to "award the entire bid to one unopposed party is unjust" and requests your bid be reinstated for consideration or all bids be rejected due to lack of competition and the items be rebid.

## **Basis for Denial of Protest**

The technical specifications within the bid documents state "The following documents **must** be submitted to the Purchasing Division prior to the due date and time:

- Completed, printed and executed Bid Form
- A CD or USB thumb drive with the completed Microsoft Excel Bid Form in excel (not pdf)..."

The omission of items identified as mandatory to a bid (such as the executed bid form) is not considered a technicality, but rather a failure to be responsive to the requirements of the bid. The Purchasing Manual defines a responsive bidder as: "a bidder whose bid, proposal or submittal complies in all material respects with the bid invitation or solicitation request, as determined by the County." The Excel bid form was identified in the bid documents (as provided above) as a material requirement, and therefore Ferguson's failure to provide it renders your bid non-responsive.

Your assertion that Ferguson was the lower of the two bids initially considered responsive during the public bid opening, and that your line item pricing was lower on many items is unfounded. The total from the bid forms

## *Response to Ferguson Protest*

read during the bid opening only indicates the sum of the items Ferguson bid on was lower than the sum of the items Core & Main bid on. Bidders were not required to provide pricing on every one of the 1,174 line items included in the bid, and no disclosure of the total number of line items bid on by either firm has been made. Therefore, there is no indication to support your claim that Ferguson was the low bidder prior to its disqualification for lack of responsiveness.

In regards to your protest that your bid should be reinstated or the entire bid be rejected and reissued to ensure competition, the Instructions to Bidders in the bid documents state under the Award paragraph (page 10): "When it is determined there is no competition to the lowest responsive, responsible Bidder, evaluation of other bids is not required." Core & Main has thus far been identified as responsive, and if determined by the Department of Utility Services to be responsible, can be recommended for award.

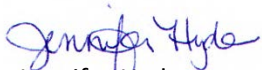
### **Conclusion**

Should Ferguson disagree with the denial of the protest and the bases described in this response, you may appeal this decision to the Board of County Commissioners. To do so, you must provide written notice of your appeal to me within seven (7) calendar days of receipt of this decision, per the protest procedure detailed in the Purchasing Manual.

As a reminder, the cone of silence remains in effect, and will remain in effect until the Board of County Commissioners meets to consider an award or rejection of the subject bid. Per the cone of silence policy, you and your agents shall not communicate in any way with the Board of County Commissioners, County Administrator or any County staff other than Purchasing personnel until that time.

Please feel free to contact me at 226-1575 or by email at [jhyde@ircgov.com](mailto:jhyde@ircgov.com) if you have any questions regarding the protest procedure.

Sincerely,

  
Jennifer Hyde  
Purchasing Manager

cc:

Mr. Mosleh Rezakhani, District Manager, Core & Main LP

Attachments:

Ferguson Protest Memo, dated May 7, 2019

**From:** [Drew.Petonick@Ferguson.com](mailto:Drew.Petonick@Ferguson.com)  
**To:** [Jennifer Hyde](#)  
**Subject:** Protest of Award: Bid# 2019048  
**Date:** Tuesday, May 07, 2019 11:23:29 PM  
**Importance:** High

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Dear Jennifer,

First, I would like to acknowledge that I submitted the flash drive with the information in the incorrect format. I apologize for any inconvenience this may have caused you or your team.

However, this error was made in good faith and does not constitute our entire bid being rejected. In fact, to remedy this error, would take mere minutes to correct.

Furthermore, by throwing Ferguson's bid out along with the third bidder, you will essentially be awarding the entire Annual Bid to one unopposed bidder.

We were already sent the overall bid tab where we were low overall bidder. I understand when you have multiple bidders, the County will pick and choose which items to award to whom. Clearly, Ferguson was low on a significant amount of these items and would stand to be awarded a good amount of items if our bid is not thrown out.

In summary, we feel that the reasoning for throwing Ferguson's bid out is a minor technicality and an error made in good faith. To award the entire bid to one unopposed party is unjust and a reckless use of tax payers money. The County is essentially choosing to pay more for a great deal of items on the Annual Bid to the detriment of the taxpayers.

We formally request that:

1. Our bid be reinstated for consideration  
or
2. All bids are rejected due to a lack of competition and the County calls for a rebid

Thank you for your time and consideration.

Sincerely,

**Drew Petonick**

**Outside Sales**

**Ferguson Waterworks**

1950 NW 18th St Pompano Beach, FL 33069

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