

TRANSMITTED VIA E-MAIL: ed@ezcaulkingandwaterproofing.com
ed@ezcaulking.com

February 28, 2019

Edward Zubik
EZ Caulking & Waterproofing, Inc.
4100 North Powerline Road, Suite P6
Pompano Beach, Florida 33073

RE: Protest Filed Pursuant to Award Recommendation on Invitation to Bid (ITB) 2018-232-ZD for Waterproofing – Traffic Coating Services for Parking Garage Decks at the 12th, 16th, 17th Street 1755 Meridian Avenue Garages (Individual Projects).

Dear Mr. Zubik:

This letter is in response to the letter submitted on February 25, 2019 by EZ Caulking & Waterproofing, Inc. ("EZ Caulking") in response to the City's denial of EZ Caulking's protest to the City Manager's award recommendation on the above referenced ITB. Specifically, in its February 25, 2019 letter, EZ Caulking alleges that its alternate bid is somehow the lowest bid to the ITB for Bid Locations 2 (12th Street) and Bid Location 3 (16th Street) and, therefore, it should be awarded the contract for those locations. After considering EZ Caulking's follow up protest, the City denies said protest and, in support thereof, finds as follows.

For Bid Locations 2 and 3, EZ Caulking provided a base bid and an alternate bid. While the base bid submitted by EZ Caulking complies with the specifications of the ITB regarding the requirement that the material be applied with a thickness of 123 mils, the alternate bid submitted by EZ Caulking, which proposes to apply the coating material at a thickness of 74 mils, is not in compliance with the specifications of the ITB. Accordingly, EZ Caulking's alternate bids for Bid Locations 2 and 3 cannot be considered.

At no time did the ITB, nor any addenda issued to the ITB, specify a material thickness of 74 mils as acceptable for Bid Locations 2 and 3. In fact, Appendix F of the ITB, Section 2, Sub-section 2.02(B) (p. 2), explicitly requires that the total dry film thickness shall be 123 dry mils minimum. Additionally, Addendum 9, Question 1, (p. 1) further emphasizes the requirement that Bid Locations 2 and 3 must be coated with a material thickness of 123 mils. It is important to note that the specifications to the ITB were very specific with regard to the material thickness required at each of the four locations, allowing 74 mils at Bid Locations 1 and 4, and requiring 123 mils at Bid Locations 2 and 3, because of the use requirements of each location. Although an addendum issued to the ITB did allow for alternate coating systems, at no time did the ITB, nor any addenda issued to the ITB, authorize a material thickness of less than 123 mils at Bid Locations 2 and 3.

INVITATION TO BID (ITB) 2018-232-ZD Waterproofing- Traffic Coating Services for Parking Garage Decks at the 12th, 16th, 17th Street, And 1755 Meridian Avenue Garages (Individual Projects).

Therefore, it would be improper to accept EZ Caulking's alternate bid since it significantly differs from the standard to which other bidders are held and would expose the City to bid protests by other bidders that adhered to the requirements of the ITB.

Finally, Florida courts have repeatedly made clear that, in reviewing challenges to a public agency's procurement decisions, a "public body has wide discretion" in the bidding process and "its decision, when based on an honest exercise" of the discretion, should not be overturned **"even if it may appear erroneous and even if reasonable persons may disagree."** Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912, 913 (Fla.1988)(quoting Liberty County v. Baxter's Asphalt & Concrete, Inc., 421 So.2d 505 (Fla.1982)) (emphasis in original). "[The] sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." Groves-Watkins, 530 So.2d at 914.

Thank you,



Jimmy L. Morales
City Manager

C: Mayor Dan Galber
Members of the City Commission
Jimmy L Morales, City Manager
Raul Aguila, City Attorney
Alex Denis, Procurement Director