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April 16, 2025

Elizabeth Dorsa
Brannon Corporation
10492 Dougherty Ave
Morgan Hill, CA 95037

Re: Bid Protest – Rancho Cañada del Oro Stock Pond Restoration Project

Ms. Dorsa:

This letter responds to the bid protest that Brannon Corporation submitted on April 3, 2025 (“Protest”) for the Rancho Cañada del Oro Stock Pond Restoration Project (“Project”). The Santa Clara Valley Open Space Authority (“Authority”) publicly opened bids for the Project on March 28, 2025 and received two responsive bids in the following amounts:

<i>Contractor</i>	<i>Base Bid</i>
Brannon Corporation (“Brannon”)	\$639,554.00
Triangle Land Restoration (“Triangle”)	\$612,150.72

The public works nature of the Project obligates the Authority to award the Contract to the bidder with the lowest responsible base bid.

The Protest

The Protest contends that Triangle’s bid is non-responsive, and that Triangle is not a responsible bidder for the Project, for various reasons. Brannon’s alleged basis for protest is summarized below:

1. Triangle’s Department of Industrial Relations (“DIR”) registration is invalid because:
 - a. It does not specify “Triangle Land Restoration” as a DBA (“Doing Business As”) of Triangle Properties, Inc. and
 - b. The registration lists the address of associated company Teichert Construction rather than the address listed on the submitted bid forms.
2. Triangle’s listed subcontractors are not registered with the Department of Consumer Affairs.
3. Triangle’s listed subcontractors do not have sufficient history/experience that would allow them to perform work related to the Project.

4. Triangle failed to disclose Michael Peterson as an officer on the Disclosures section of the Bid Bond Form.
5. Triangle's listed reference projects do not comprehensively demonstrate the required experience to be awarded the Project:
 - a. Two of Triangle's listed reference projects are not financially consequential enough to demonstrate the experience necessary to perform work related to the Project.
 - b. The third project listed (South Pajaro River Agricultural Preserve) presents a conflict of interest, as part of the project was funded by the Authority, and
 - c. The third project listed is not relevant experience because it was a riparian restoration project, rather than a pond restoration project.
6. Triangle failed to disclose recent litigation against Teichert Construction on the bid forms, per the "Cal Trans guidelines."

Pursuant to Authority Request for Bids ("RFB") Procedures, the Authority notified Triangle of the Protest and provided them the opportunity to submit a response. Triangle submitted a response letter to the Authority on April 11, 2025.

Governing Law

It is well established that "a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential." *Valley Crest Landscape, Inc. v. City of Davis*, 41 Cal. App. 4th 1432, 1440–1441 (3d Dist. 1996) (internal citations omitted); see also *Ghilotti Construction Co. v. City of Richmond*, 45 Cal. App. 4th 897 (1st Dist. 1996); *MCM Constr., Inc. v. City and County of San Francisco*, 66 Cal. App. 4th 359, 377 (1st Dist. 1998). "[T]he real issue in determining the validity of a bid is whether the bidder would be liable on its bond if it attempted to back out after the bid was accepted." *Valley Crest*, 41 Cal. App. 4th at 1441–1442 (internal citations omitted); see also Public Contract Code § 5103 (relief from bid due to mistake only allowed if mistake made the bid materially different than bidder intended). "It must be remembered that competitive bidding statutes, and those requiring licenses for bidding on public work, are for the benefit of the public and not for the benefit of bidders or licensees. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy." *Judson Pacific–Murphy Corp. v. Durkee*, 144 Cal. App. 2d 377, 383 (1st Dist. 1956).

Authority Analysis

DIR registration

Triangle Properties is registered with the DIR, and Triangle Land Restoration is clearly a DBA of Triangle Properties. The lack of a DBA or trade name in the DIR registration has no impact on the validity of the DIR registration. A DBA does not change the status of the registration since Triangle Properties is indeed registered. *This is not a basis for deeming the bidder non-responsive.*

Subcontractor registration with Department of Consumer Affairs

The Authority verified that both subcontractors (JTS Underground and Skyline Fence) are registered with the Contractors State License Board, which is part of the Department of Consumer Affairs. *This claim is invalid.*

Subcontractor experience

Both subcontractors listed are licensed, and there are no requirements about how long they must be licensed to be qualified for participation in the Project. There are no specific requirements related to subcontractor experience in the RFB. *This is not a basis for deeming the bidder not responsible for the Project.*

Disclosure of Michael Peterson as officer

It is clear that all officers and shareholders are listed on the bid form. An officer, Paula James, is also listed on the Bid Bond. Michael Peterson filled in his title on the Bid Bond. *This type of minor irregularity, if any, is not a basis for non-responsiveness.*

Relevance of reference projects

All three projects listed are relevant in nature and there was no minimum project value requirement in the RFB. Moreover, the Authority reached out to each reference listed, and Triangle received exceptionally positive reviews from all three. *This is not a basis for deeming the bidder not responsible for the Project.*

Conflict of interest

Authority staff have discussed the South Pajaro River Agricultural Preserve ("South PRAP") restoration project with its Legal Counsel, who has determined *there is no conflict of interest* with the Rancho Cañada Project. Firstly, the South PRAP project is taking place on Authority-owned land, but Triangle's contract was/is procured and paid for by the Valley Habitat Agency. The Authority has no contractual relations with Triangle on that project, although the Authority has provided in-kind support (staff/volunteer time, materials, and property upgrades) as assistance to the project. Secondly, Phases I and II of the South PRAP project are already complete, and Phase III permit applications will not be prepared for the oversight agencies until Fall 2025, after the Rancho Cañada Project is complete. Lastly

and most importantly, participation in one Authority-managed or associated project does not preclude a company from contracting with the Authority on another unrelated project. *This is not a basis for deeming the bidder not responsible for the Project.*

Litigation disclosure

The Authority is not obligated to follow CalTrans guidelines related to litigation disclosure. The litigation listed by Brannon was filed against Teichert Construction, an allegedly related company, but not against the actual bidder, Triangle Properties Inc/Triangle Land Restoration. Teichert Construction is a separate legal entity from Triangle. *Failure to disclose litigation against Teichert is not a basis for non-responsiveness.*

Conclusion and Determination

Based on the Authority's review of the Protest and response letters, governing law, and consultation with Legal Counsel, the Authority has concluded that Triangle's bid for the Project is responsive, that Triangle is qualified to perform work related to the Project, and that Triangle is the lowest responsible bidder. Therefore, the Protest is denied.

Sincerely,

Rachel Clemons
Watershed Restoration Specialist
Santa Clara Valley Open Space Authority
rclemons@openspaceauthority.org

CC: Michael Peterson and Barry Baba, Triangle Land Restoration

CC: Scott D. McElhern, Downey Brand LLP

CC: William P. Parkin, Wittwer Parkin