

Attachment C

Response to Protest (Western State Builders Inc.)

September 26, 2025

WESTERN STATE BUILDERS INC.

2141 ORANGE AVE ESCONDIDO CA

LICENSE: 1069677

City of Newport Beach
Public Works Department
Attn: Ellis Petersen
100 Civic Center Drive
Newport Beach, CA 92660

Re: Response to Bid Protest – 2024–2025 Playground Improvements Project, Contract No. C-9753-1

Dear Ellis Petersen,

Western State Builders, Inc. (“WSB”) respectfully submits this response to the bid protest filed in connection with the above-referenced project by R. E. Schultz Construction.

I. Background

The Special Provisions for this project originally stated that a D-34 licensed playground equipment installer at the time of bid must hold:

- a. CPSI Certification
- b. Playcraft Systems certification
- c. LSI installer certification

Recognizing that this requirement was unduly restrictive, WSB submitted a **formal Bid Request for Information (RFI)** on September 10, 2025, requesting that the City lift the manufacturer-certified installer requirement and allow qualified, licensed, and industry-certified playground installers to bid (see **Exhibit A**)

WSB Bid RFI for Bid NO. 2024-2025 Playground Improvement Project (Attached)

II. City Clarifications

The city responded to WSB’s RFI and others with similar questions on four separate occasions. In both instances, the City issued the same clarification:

- The installer must hold a valid **D-34 license**.
- The installer must be **CPSI certified**.
- **No Playcraft Systems credentials are required.**

- The holder of the D-34 license must **demonstrate experience installing LSI equipment for public entities.**

(See **Exhibit B**, City Clarifications).

Question

Section 2 - Scope and Control of the Work. 2-1 Award and Execution of Work states that a D-34 licensed Playground Equipment Installer at the time of the bid must have the following a. CPSI Certification. b. proof the contractor is a Certified Installer from Playcraft, c. Proof that the contractor is a Certified LSI installed. Please confirm this?

Answer

The equipment installer must hold a "D-34" license and be CPSI certified. No Playcraft Systems credentials are required. The holder of the "D-34" license must demonstrate experience installing LSI equipment for public entities.

Question

We ask that the city of Newport Beach to Lift the Manufacture Certified Installer Preference from the bid specs. We ask the city to allow other higher requirement standards for playground installers to be allowed and excepted.

Answer

The equipment installer must hold a "D-34" license and be CPSI certified. No Playcraft Systems credentials are required. The holder of the "D-34" license must demonstrate experience installing LSI equipment for public entities.

Question

In the upcoming bid there is a note requiring all installers to be manufacturer certified. We are not currently factory certified by Landscape Structures (LSI). It has become apparent that these manufacturers keep an "exclusive club" of installers and do not allow anyone else this privilege. This has been a volatile issue for many of us installers over the last several years, so much that several major manufacturers have acknowledged that apparent conflict it presents to bidding agencies, and opted to use the California title 22, division 4, article 1, para 65730 Assembly & Installation wherein the installing contractor may be manufacturer certified OR a NPSI auditor. We respectfully request the City of Newport Beach delete the 'manufacturer certified' verbiage from there documents and replace it with language more open to competitive bidding. We meet the 30+ years' experience in playground/public works and are more than qualified to perform this scope of work. Thank you

Answer

The equipment installer must hold a "D-34" license and be CPSI certified. No Playcraft Systems credentials are required. The holder of the "D-34" license must demonstrate experience installing LSI equipment for public entities.

These written clarifications supersede the original bid specification language and establish the operative requirements for all bidders as put forth from the City of Newport Beach prior to bid time.

III. Protest Is Without Merit

The pending protest appears to rely on the **original bid language** rather than the City's official bid clarifications. Because the City confirmed in writing four separate times that manufacturer certifications are not required, the protestor's position is inconsistent with the actual, controlling bid requirements.

WSB meets and exceeds the clarified requirements:

- We hold an active **D-34 license**.
- Our management and field staff maintain **CPSI certifications**.
- Our Management has physically been through the LSI Certification process with another company however he was the physical person from that company that attended the LSI training and Certification process in 2017
- WSB has successfully completed numerous public works projects involving the installation of **Landscape Structures Inc. (LSI) equipment** for public entities throughout Southern California. We enclosed a list of at least 10 City parks of like kind throughout southern California where LSI Equipment was installed. We have more references of other parks with LSI equipment we can share if necessary (see project references in Exhibit A)

Accordingly, WSB's bid is both **responsive responsible and apparently low bidder**.

IV. Conclusion

For the foregoing reasons, WSB respectfully requests that the city deny the pending protest. WSB's bid complies fully with the clarified bid requirements, and we have the proven experience, certifications, and licenses to perform this project successfully in accordance with all applicable plans and specifications.

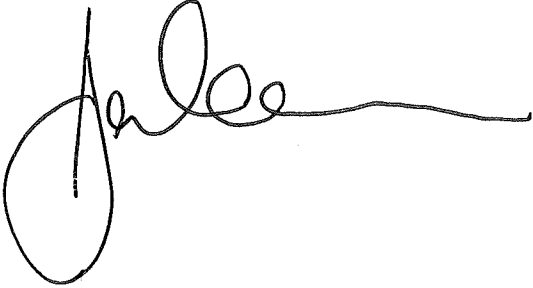
We appreciate the City's careful review and look forward to delivering this important public works project for the community.

Respectfully submitted,

Julian Moen

Vice President

Western State Builders, Inc.

A handwritten signature in black ink, appearing to read 'Julian Moen', with a long horizontal flourish extending to the right.

WESTERN STATE BUILDERS

2141 ORANGE AVE ESCONDIDO, CA 92029

LICENSE: 1069677

Western State Builders has installed multiple Landscape Structures Inc play structures for cities throughout Southern California. Please see below list of references:

City of Moreno Valley: Towngate Park

Contact: Allen Yun, 951-413-3704, alleny@moval.org

City of Moreno Valley: JFK Memorial Park

Contact: Allen Yun, 951-413-3704, alleny@moval.org

City of Westminster: Bolsa Chica Park, Westminster Village Park, Bowling Green Park, College Park, Russell C Paris Park

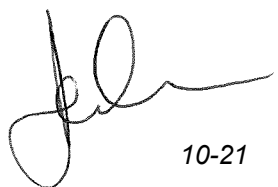
Contact: Cindy Huynh, 714-548-3497, chuynh@westminster-ca.gov

City of San Diego: JFK Park

Contact: Amy Crandall, 619-449-4272, acrandall@fordyceconstruction.com

City of San Diego, Jerabek Park

Contact: Steve Scheidle, 619-579-0700, steve@whillockcontracting.com

A handwritten signature in black ink, appearing to be 'J. L. ...', located in the bottom right corner of the page.

WESTERN STATE BUILDERS INC.

2141 ORANGE AVE ESCONDIDO CA

September 10, 2025

City of Newport Beach
Purchasing Department
James M. Houlihan

To Whom this may Concern

Re: Bid NO. 2024-2025 Playground improvements Contract No: C-9753-1

Please accept this letter from Western State Builders Inc. as a bid RFI for the project referenced above.

Question — We ask that the city of Newport Beach to lift the Manufacture Certified Installer preference from bid Specs. We ask the city to allow other higher requirement standards for playground installers to be allowed and excepted.

- 8+ years in the industry installing playground equipment.
- NPSI Certification
- CPSI Certification
- C61-D34 License
- A License

Reasoning —

Item No.1 — Western State Builders Inc carries multiple certification companywide; these certificates include NPSI, better known as the National Playground Safety Institute. Several members of our organization are also certified as CPSI's, better known as Certified Playground Safety Inspectors. These members in our organization that hold these Certificates are not only our upper management but our field installation members, "Boots on the ground" also hold these certificates among other Certificates.

Per ASTM f1487-21 being certified by a manufacturer is not addressed to be lawfully allowed and required to construct playground equipment for public use. Please see excerpt from the U.S. Consumer Product Safety Commission for Public Playground Safety.

2.6 Assembly and Installation • Strictly follow all instructions from the manufacturer when assembling and installing equipment. • After assembly and before its first use, equipment should be thoroughly inspected by a person qualified to inspect playgrounds for safety. • The manufacturer's assembly and installation instructions, and all other materials collected concerning the equipment, should be kept in a permanent file. • Secure anchoring is a key factor to stable installation, and the anchoring process should be completed in strict accordance with the manufacturer's specifications.

Per California Health and Safety Code Section 115725; being certified by a manufacturer is not addressed to be lawfully allowed and able to construct playground equipment for public use. Please see excerpt.

- (a) All new playgrounds open to the public built by a public agency, or any other entity shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.

Per California Contractors State License Board, Installation of Publicly used playground equipment shall be installed by a licensed C61-D34 Licensed contractor which Western State Builders Inc holds and has held for many years.

California Code of Regulations

Title 16, Division 8, Article 3. Classifications

A prefabricated products/equipment contractor performs installations of prefabricated products/equipment, including but not limited to the following:

- (a) Theater Stage equipment, school classroom equipment, playground equipment, bleacher bench/seat component parts (no installation or renovation of any supporting or structural member); store fixtures, and display cases (either prefabricated or modular form); all forms and types of toilet/shower room partitions/accessories; and prefabricated closet systems.
- (b) Laboratory and medical equipment, dust collecting systems; factory-built fireplaces and accessories (no masonry facing); major appliance installations and ventilating hoods in connection with existing fuel and energy lines which are installed by others.
 - (c) Bus stop shelters, prefabricated phone booths; prefabricated soundproof environmental clean rooms; panelized refrigerated walk-in boxes (not to include the work of refrigeration contractor); all types of modular office, institutional or home improvement systems including, but not limited to all types of pre-finished and/or UL listed pre-wired wall panels.

Western State Builders Inc. is properly licensed A, B, C-61 D-34, We are NPSI and CPSI certified and possess direct related experience of this scope of work and project scope as a whole for many years. The requirement to be specifically certified with a manufacture for a scope of work we believe is a preference of the city and should not constitute De-qualification per Spec Section 11 68 13, 1.03 Part B:

My understanding is that being manufacturer certified is not a request from specific manufacturers, however a preference from an agency. I do understand the reservations of an agency to have competent and qualified workmanship be used, I believe Federal and State Certifications should bear the same if not more weighted value, than a specific Manufacture Certification. Not being manufacture certified also should have limited or no effect on product warranties in our opinion per excerpt below, pulled from the manufacturer's website Specified for this project.

100-year warranty on post, 3-year limited warranty on swings

The environment near a saltwater coast can be extremely corrosive. Some corrosion and/or deterioration is considered "normal wear" in this environment. Product installed within 500 yards (457 meters) of a saltwater shoreline will only be covered for half the period of the standard product warranty, up to a maximum of five year⁵, for defects caused by corrosion. Products installed in direct contact with saltwater or that are subjected to salt spray are not covered by the standard warranty for any defects caused by corrosion.

This warranty does not include any cosmetic issues or wear and tear from normal use of the product, or misuse or abuse of the product. It is valid only if the play structure⁵ and/or equipment are erected to conform with Landscape Structures' installation instructions and maintained according to the maintenance procedures furnished by Landscape Structures Inc

There appears to have been no connection or discussion regarding warranty affected by manufacturer certified installation.

We urge the city to review the preference for the contractor to be Manufacture Certified and allow Industry Certified and Verified contractors to perform the Scope of work. We feel Western State Builders Inc. is certainly qualified to perform the work as outlined in the plans and specs. Western State Builders Possess all the legal licenses and certificates to execute this project lawfully and skillfully from a local, state, and federal level.

Item No. 2— Western State Builders Inc. has in the past installed the same specified manufactures equipment for the City and County of San Diego with great success. A few projects to reference would be:

Gamma Street Park/41st St Mini Park - 4105 Gamma St, San Diego, CA 92113

Paradise Creek Park Expansion — 1243 National City Blvd National City, Ca91950

Santa Clara Park — 1008 Santa Clara Place San Diego, Ca 92109

Island Avenue Mini Park - 3020 Island Ave, San Diego, CA 921029

City of Moreno Valley – Towngate Park 13051 Elsworth St, Moreno Valley, CA 92553

City of Moreno Valley –JFK Park 15111 Indian St, Moreno Valley, CA 92551

City of Westminster – 5 parks Multiple Parks addresses available if requested
City of San Diego – Jerabek Park 10150 Avenida Magnifica, San Diego, CA 92131
City of San Diego – JFK Park 4825 Ocean View Blvd, San Diego, CA 92111

In summary, Western State Builders Inc. complies with all the legalities addressed by many different state and federal organizations for similar projects to install playground equipment for public use. Western State Builders Inc. has a demonstrated history of completing similar like public works projects throughout Southern California and for many years and possess the skill, training, licenses, certifications as well to complete this project. Western State Builders Inc. looks forward to your review.

Julian Moen Vice President
Western State Builders Inc.

City of San Diego



Small Local Business Enterprise (SLBE) Program Certification

Western State Builders, Inc.

Emerging Local Business Enterprise (ELBE)

Specialty Construction

(NAICS: 238990)

Certification Number: 1yWSlJJ6

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Christian Silva
Program Manager
Equal Opportunity Contracting

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Let it be known that

JAMES MOEN

has met the requirements of the standards set forth by the

National Certification Board

and is hgrsby grant0cl cgrtification aS a

C ertified Playground Safety Inspector



CHAIRPERSON



NRPA PRESI DE NT IN D CEO



Certified
Playground
Safety Inspector

April 25, 2022

DATE CERTIFIED

54622-525

CERTS FICAT ION NUMBER

May 01, 2025

EXPIRATION DATE

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Let it be known that

JESUS PEREDA

has met the requirements of the standards set forth by the

National Certification Board

and is hgrsby grant0cl cgrtification aS a

C ertified Playground Safety Inspector



CHAIRPERSON



NRPA PRESI DE NT IN D CEO



Certified
Playground

Safety IMsector

March 07, 2022

DATE CERTIFIED

53660-425

CERTS FICAT ION NUMBER

EXPIRATION DATE

April 01, 2025

EXPIRATION DATE

by the National Park Service
Special Order 50.1, 11

Let it be known that

DOUG LEWIS

has met the requirements of the standards set forth by the

National Certification Board

and is hereby granted official certification as a

Certified Playground Safety Inspector



CHAIRPERSON



NRPA PRESIDENT/CEO



April 21, 2021

DATE CERTIFIED

51139-0524

CERTIFICATION NUMBER

May 01, 2024

EXPIRATION DATE

WESTERN STATE BUILDERS

2141 ORANGE AVE ESCONDIDO, CA 92029

LICENSE: 1069677

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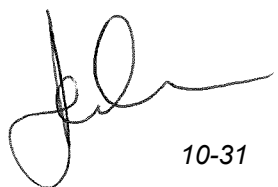
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National Recreation and Park Association

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National Certification Board
and is hereby granted certification as a

Certified Playground Safety Inspector



CHAIRPERSON



NRPA PRESIDENT AND CEO



Certified
Playground
Safety Inspector

June 11, 2025

DATE CERTIFIED

64585-0630

CERTIFICATION NUMBER

June 30, 2028

EXPIRATION DATE



NATIONAL RECREATION
AND PARK ASSOCIATION

National Recreation and Park Association

Let it be known that

JAMES MOEN

has met the requirements of the standards set forth by the
National Certification Board
and is hereby granted certification as a

Certified Playground Safety Inspector



CHAIRPERSON



NRPA PRESIDENT AND CEO



Certified
Playground
Safety Inspector

June 11, 2025

DATE CERTIFIED

64584-0630

CERTIFICATION NUMBER

June 30, 2028

EXPIRATION DATE



NATIONAL RECREATION
AND PARK ASSOCIATION