

Attachment B

100X Construction Bid Protest Letter



June 23rd, 2026

City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

Attention: City Clerk

RE: FORMAL BID PROTEST
TRASH ENCLOSURE MODIFICATIONS
CONTRACT NO. C-10030-1
PROJECT NO. 27F13

Dear Mr. Kyle Aube:

100X Construction hereby submits this formal bid protest concerning the bids submitted by Vandert Construction, Inc. ("Vandert") and Golden Coast Construction ("Golden Coast") for the above-referenced project.

According to the City's published bid results:

- Vandert Construction – \$244,000.00
- Golden Coast Construction – \$249,922.47
- 100X Construction – \$276,300.00

For the reasons set forth herein, 100X Construction respectfully requests that the City reject the bids submitted by Vandert and Golden Coast as non-responsive.

I.

THE CONTRACT DOCUMENTS EXPRESSLY INCORPORATE THE SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT

The Contract Documents expressly incorporate Public Contract Code section 4100 et seq., commonly known as the Subletting and Subcontracting Fair Practices Act.

The California Supreme Court has recognized that the purpose of the Act is to prevent bid shopping, bid peddling, post-bid manipulation of subcontractor relationships, and unfair competitive advantages after bid opening.

Southern California Acoustics Co. v. C.V. Holder, Inc. (1969) 71 Cal.2d 719.



Public Contract Code section 4104 requires bidders to identify each subcontractor performing work in excess of one-half of one percent (0.5%) of the bidder's total bid.

For Vandert:

$$\$244,000.00 \times 0.5\% = \$1,220.00$$

For Golden Coast:

$$\$249,922.47 \times 0.5\% = \$1,249.61$$

Any subcontractor performing work above those amounts was required to be identified at the time bids were submitted.

II.

THE PROJECT CONTAINS EXTENSIVE SPECIALTY TRADE WORK THAT NECESSARILY EXCEEDS THE STATUTORY SUBCONTRACTOR LISTING THRESHOLD

This project is not a simple CMU enclosure replacement project.

The Contract Documents contain multiple specialty trade divisions. The Specifications include dedicated Division 05 sections for:

-]Section 05 12 00 – Structural Steel Framing
- Section 05 31 00 – Steel Decking

The plans further require fabricated steel members, steel framing systems, steel gates, galvanized steel components, steel connections, miscellaneous metals, and associated fabrication and installation work.

The value of this work necessarily exceeds the subcontractor listing thresholds established by Public Contract Code section 4104.

No reasonable interpretation of the Contract Documents supports a conclusion that the Division 05 scope falls below \$1,220 or \$1,249.

III.

VANDERT FAILED TO IDENTIFY REQUIRED SUBCONTRACTORS

Despite the extensive specialty trade scope described above, Vandert submitted a Designation of Subcontractors form identifying no subcontractors whatsoever.

The subcontractor designation form itself states:



“If a subcontractor is not listed, the Contractor represents that he/she is fully qualified to and will be responsible for performing that portion of the work.”

Accordingly, Vandert has affirmatively represented to the City that it is fully qualified to perform every omitted specialty trade scope with its own forces.

The Contract Documents contain structural steel framing, steel decking, masonry, concrete, demolition, paving, striping, painting, roofing, and related specialty work.

Therefore, one of two conclusions must necessarily be true:

1. Vandert intends to self-perform all such specialty trades with its own workforce; or
2. Vandert failed to identify subcontractors required by Public Contract Code section 4104.

If the latter is true, the bid is non-responsive.

If the former is true, the City must conduct a meaningful responsibility review before award.

IV.

GOLDEN COAST FAILED TO IDENTIFY REQUIRED SUBCONTRACTORS

Golden Coast likewise submitted a Designation of Subcontractors form identifying no subcontractors whatsoever.

The same statutory analysis applies.

Golden Coast submitted a bid of \$249,922.47, establishing a subcontractor listing threshold of approximately \$1,249.61.

The specialty trade work identified in the Contract Documents necessarily exceeds that amount.

As with Vandert, either:

1. Golden Coast intends to self-perform all structural steel, masonry, concrete, paving, demolition, painting, roofing, and related specialty work; or
2. Golden Coast failed to identify subcontractors required by Public Contract Code section 4104.

Either circumstance requires investigation before award.

V.

THE CITY’S SPECIAL PROVISIONS DELETED THE SELF-PERFORMANCE PROVISION



The City's Special Provisions expressly deleted Section 2-3.2 Self Performance.

This deletion is significant.

The City intentionally removed the standard self-performance provision while simultaneously requiring bidders to comply with the Subletting and Subcontracting Fair Practices Act.

Yet both apparent low bidders submitted completely blank subcontractor designation forms despite extensive specialty trade requirements.

The City should therefore determine how either bidder intends to perform substantial structural steel, masonry, concrete, demolition, paving, striping, roofing, and related specialty work without listed subcontractors and without reliance upon a self-performance provision that the City specifically deleted.

This issue directly affects responsiveness, responsibility, and the integrity of the competitive bidding process.

VI.

THE CITY MUST CONDUCT A RESPONSIBILITY REVIEW

The City cannot simply assume that either bidder possesses the capability to self-perform all omitted specialty trade scopes.

The subcontractor designation forms submitted by Vandert and Golden Coast effectively represent that each bidder possesses the labor force, equipment, expertise, supervision, licensing authority, and operational capacity necessary to perform all omitted specialty work.

Before award, the City should require evidence demonstrating:

- Structural steel fabrication capability;
- Structural steel installation capability;
- Masonry capability;
- Concrete capability;
- Adequate manpower and equipment resources.

Absent such evidence, the City lacks a reasonable basis to conclude that either bidder is responsible.

VII.

GOLDEN COAST'S EXPERIENCE SUBMISSION RAISES ADDITIONAL RESPONSIBILITY CONCERNS



In addition to the issues above, Golden Coast's Technical Ability and Experience submission contains incomplete project reference information and multiple blank sections.

While 100X Construction acknowledges that responsibility determinations are generally committed to the City's discretion, incomplete experience information further supports the need for a comprehensive responsibility review before award.

VIII.

THE IDENTIFIED DEFECTS ARE MATERIAL AND MAY NOT BE WAIVED

California courts consistently hold that a public agency may waive only those irregularities that are inconsequential and do not affect competition.

A defect may only be waived where:

1. The defect does not affect the amount of the bid;
2. The defect does not provide a competitive advantage; and
3. The defect does not afford the bidder an opportunity unavailable to competing bidders.

Ghilotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897.

Likewise:

- Southern California Acoustics Co. v. C.V. Holder, Inc. (1969) 71 Cal.2d 719
- Valley Crest Landscape Development, Inc. v. City of Davis (1996) 41 Cal.App.4th 1432
- Taylor Bus Service, Inc. v. San Diego Board of Education (1987) 195 Cal.App.3d 1331
- D.H. Williams Construction, Inc. v. Clovis Unified School District (2007) 146 Cal.App.4th 757
- MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal.App.4th 359
- Menefee v. County of Fresno (1985) 163 Cal.App.3d 1175

all recognize that material defects affecting responsiveness and competitive fairness may not be waived.

Allowing bidders to leave subcontractor disclosures blank despite extensive specialty trade work would undermine the protections embodied in Public Contract Code sections 4100 through 4114 and provide a competitive advantage unavailable to compliant bidders.



REQUEST FOR RELIEF

For the foregoing reasons, 100X Construction respectfully requests that the City:

1. Sustain this protest;
2. Determine whether Vandert Construction violated Public Contract Code section 4104;
3. Determine whether Golden Coast Construction violated Public Contract Code section 4104;
4. Conduct a formal responsibility review of both bidders regarding their claimed ability to self-perform all omitted specialty trade work;
5. Determine whether the bids submitted by Vandert and Golden Coast are responsive to the Contract Documents;
6. Reject the bids of Vandert and Golden Coast if the City determines that required subcontractors were omitted or that the bidders lack the capability to perform the work represented in their bids; and
7. Award the contract to the lowest responsive and responsible bidder, that being 100X Construction, Inc.

Respectfully submitted,

100X CONSTRUCTION

Siavash Mehrshahi
President