

# COPELAND LAW FIRM, APC

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## Via Email & US Mail

July 3, 2018

Brian Heinzelman, PE  
[bheinzelman@srcity.org](mailto:bheinzelman@srcity.org)  
City of Santa Rosa  
Transportation and Public Works Dept.  
69 Stony Circle  
Santa Rosa, CA 95401

**RE: Protest of Michael O Shaughnessy Construction Inc.'s Bid for City of Santa Rosa Project Alvarado Ave. and Vallejo Street Water and Sewer Improvements**

Dear Mr. Heinzelman,

This office generally represents Argonaut Constructors, the second low bidder for the above contract. Please accept this letter as formal protest by Argonaut Constructors ("Argonaut") of Michael O Shaughnessy Construction Inc.'s ("MOS") bid for the City of Santa Rosa ("City") project known as Alvarado Ave. and Vallejo Street Water and Sewer Improvements ("Contract").

MOS's bid is non-responsive in that: 1) it fails to include the entire bid package submission by the bid submission deadline – namely the unit price schedule provisions on pages 125 and 129 were not submitted, and the conditions thereon would thus not be part of MOS's bid as opposed to each and every other bidding contractor; and 2) the bid bond guarantee submitted by MOS improperly does not contain the seal and signature of the bidder, contrary to the language on the AIA form A310 bid bond form and is thus not a binding bid bond.

The bidding instructions clearly provide:

**2-1.33A Bid Forms:** All bids shall be made on bid forms obtained from PlanetBids at [www.srcity.org/bids](http://www.srcity.org/bids). The bidder shall submit its bid on the original bid forms furnished by the City. Bids submitted on forms other than the forms furnished to the bidder by the City will not be considered.

The bid forms to be submitted at the time of and with the bid are:

1. Unit Price Schedule
2. List of Subcontractors
3. List of Previous Similar Jobs
4. Noncollusion Declaration
5. Bid Guaranty Information and Bidder's Information and Signature
6. Bid Guaranty (Bid Bond or alternate security)

All bids shall give the proposed prices and must bear the original signature of the bidder. Bidders shall fill in all blanks on the bid forms where required. A bid will not be accepted unless the bidder registers as a vendor through PlanetBids at [www.srcity.org/bids](http://www.srcity.org/bids), downloads documents/attachments, and is added to the prospective bidders list for this project. If there is an addendum, bidders must log into PlanetBids and acknowledge the addendum to be eligible for bidding.

Under California law, a bid is non-responsive when one of the following is present:

1. The irregularity in a bid gives that bidder an unfair advantage over other bids OR if it gives that bidder a last look at the other bids after the bid closing date in deciding whether to honor the bid; or
2. Waiving the irregularity would constitute favoritism to the non-responsive bidder. See, Valley Crest Landscape, Inc. v. City Council, (1996) 41 Cal.App.4<sup>th</sup> 1432; MCM Constr. v. City & County of San Francisco, (1998) 66 Cal.App.4<sup>th</sup> 359; Ghilotti Constr. Co. v. City of Richmond, (1996) 45 Cal.App.4<sup>th</sup> 897; Monterey Mechanical Co. v. Sacramento Reg'l County Sanitation Dist., (1996) 44 Cal.App.4<sup>th</sup> 1391.

In this case, the provisions on pages 125 and 129 of the bid documents were not contained in MOS's bid nor attested to by that bidder, effectively carving out those bid provisions from only MOS' bid – whether intentional or not, the failure to include those provisions effectively grant MOS an advantage over all other bidders who had to include those provisions in their contract bid proposals. Moreover, had MOS chosen to do so, it could have used that failure as a bid mistake to withdraw its bid after having a last look at all the other bids. Both such advantages are prohibited by well-established law.

Moreover, the failure to provide a binding bid bond – one with the seal and signature of MOS – makes the bid non-responsive. California has long recognized that the mere failure to have a valid officer's signature on a bid makes a bid non-responsive, much less the absence of any signature or a seal in the first place. *Williams v. Bergin*, (1900) 129 Cal. 461, 62 P. 59 (the bidder failed to provide an approved signature on its bid, which made it non-responsive).

Based upon the above information, MOS's bid is **non-responsive and should be disqualified**. Argonaut is willing, able and prepared to complete the work included in the Contract as the lowest **responsive** bidder.

Best regards,

COPELAND LAW FIRM, APC

By: 

Steven B. Copeland, Esq.