

February 9, 2011

Via Email and U.S.P.S.

Gregory R. Teifert, Executive Director
Water & Sewer Department
741 Colonel Ledyard Highway
Ledyard, CT 06339

Re: Construction Contract Documents for Aljen Heights, Phase 1-A
Contract 2010-05

Dear Mr. Teifert:

As requested, I have reviewed the above-referenced contract documents as prepared by Amory Engineers, P.C. (“Amory”).

In our discussions, you have indicated that it is your goal to have this contract ready for bidding prior to all funding being in place. Your goal and that of the Ledyard WPCA (“WPCA”) and the Town, is to be in a position to avail itself of any funding that may emanate from the Federal Government, including the “shovel-ready” funds. In this connection, then, it is important to have the bid documents state clearly that the award would be subject to Ledyard receiving appropriate funding and further, it would be helpful if the contract documents required the bidder to keep its bid open for longer than the standard thirty days or so.

What follows are my comments and observations regarding the documents as prepared by Amory:

1. On page 00105-1, the invitation to bid, it is specifically referenced in paragraph 5 that:

Any contract or contracts awarded under this invitation for bids are expected to be funded by a loan from the State of Connecticut Drinking Water State-Revolving Fund.

Also in paragraph 6 on this page, it is indicated that:

The Town does not currently have funding available for this project.

This is the first indication to the prospective bidders that funding is not yet in place.

2. Section 2.04 on page 00200-2 provides that the contractor must complete the Work within 210 consecutive calendar days after the date of formal execution of the Agreement. Ledyard has the option of starting the time for performance at the execution of the Agreement or upon a formal "Notice to Proceed." Since the Notice to Proceed will occur subsequent to the award or the execution of the Agreement, beginning the 210 calendar days at the time of the execution shortens the time period within which the contractor will have to perform the work.
3. Section 6.02 on page 00200-6, subparagraph A, provides that bids improperly prepared signed or containing other irregularities, shall be "declared unacceptable." Since language elsewhere in the document refers to the award being made to the lowest "responsible and responsive" bidder, perhaps the word "non-responsive" could be inserted here in lieu of the term "unacceptable" for consistency purposes.
4. Importantly, in Section 7.06A., page 00200-7, it is stated that:

The Owner will make award of the Contract to the lowest, responsible, responsive qualified bidder based on available funding for the project.

To further indicate that the funding will not yet be in place at the time of the bid, it would not hurt to remind the bidders of that fact. To the end of this sentence could be added the phrase:

...which funding is not yet fully in place.

5. Section 8.02A., page 00200-8 references the time period for which bidders will be required to hold their bid. This time period is set forth as 30 days. As we have discussed, it would give the Town of Ledyard more flexibility if this time period were enlarged, perhaps to 180 days from the opening of bids. This would give the Town that much more time to line up funding. Of course, a possible downside to extending this duration of offer time period, is that bidders will be inclined to increase their bid to cover contingencies such as inflation of their costs.

6. Paragraph 2 of the actual Bid Form, page 00411-6, provides once again that the contractor's bid shall be open to acceptance and irrevocable for 30 days from the bid closing date. If you choose to change the time period, it will have to be changed in this paragraph as well.
7. Paragraph A25 of the Agreement, page 00500-12, provides that the Town of Ledyard shall have the right to materials "installed, incorporated, attached or affixed," to the project. I believe Connecticut Law would provide that the materials delivered to the site would also be considered the property of the Owner. Therefore, I would add the word "delivered" after the word "been" in the second line and after the word "so" in the fourth line of this section. This gives Ledyard more rights rather than less, which is not a bad thing, particularly if there is a problem down the road with the contractor. Indeed, this ties in with the rights given to Ledyard in paragraph A31, page 00500-14, where the contract states that the owner may take possession of materials at the site if the contractor is in default.
8. Section SC9 of the Special Conditions, page 00700-3, sets forth the contractor's insurance requirements and limits. Here, under Section A(1), the workers' compensation limit is set at \$500,000.00. Subsequently, in the Supplemental Special Conditions, page 00710-9, it is provided that the workers' compensation limit shall be \$1 million for each claim. Normally, the Supplemental Special Conditions would take precedence over the Special Conditions, but, perhaps for clarity purposes, the limit set forth on page 00700-3 could be made consistent. Also, in connection with priority of contract documents, paragraph A2 of the Agreement, page 00500-4 sets forth the priority of the contract documents in the event of a conflict. The Supplemental Special Conditions are not mentioned there and perhaps it ought to be indicated in that paragraph that the Supplemental Special Conditions shall prevail in the event of a conflict between such Special Conditions and the Supplemental Special Conditions.
9. Paragraph SSC9 of the Supplemental Special Conditions, page 00710-6, provides for time of completion and for liquidated damages. This provision is worded adequately under Connecticut Law inasmuch as it provides that the liquidated damages are fixed and agreed to inasmuch as it is impracticable and difficult if not impossible of ascertaining actual damages that the Owner would sustain in the event the contractor does not complete the project on time. It further provides that "time is of the essence." These recitations will help to make the liquidated damages provisions enforceable under Connecticut Law.

I have purposely not commented on the technical specifications inasmuch as those are generally beyond my expertise. Also, I have not commented on the contract documents for Phase II, contract 2010-06, inasmuch as I believe the substantive

provisions discussed hereinabove are identical to the Phase 1A documents and therefore my comments and observations should apply equally to both.

Should this engender further questions or comments on your part, please do not hesitate to contact me.

Best regards.

Sincerely,

Richard L. Barger

RLB/mlo