



Administrative Services Committee Meeting Commission Chamber- 1/25/2010- 12:40 PM

ADMINISTRATIVE SERVICES

1. Consider the 09-139 Henry Brigham Community Center – Ammar Construction Bid Appeal. (Referred from January 11 Administrative Services Committee) ☐ [Attachments](#)
2. Approve resolution authorizing the settlement of all Claims in a Personal Injury Claim of Aaron Easter. ☐ [Attachments](#)
3. Motion to approve transfer of portions of Augusta property located on Deans Bridge Road near the intersection of Wyevale Road and Windermere Drive to the Land Bank Authority for \$5,000.00 for the purpose of selling same for redevelopment purposes and to authorize the Mayor and Clerk of Commission to execute such documents as necessary to consummate the transaction, all in form as approved by the General Counsel. ☐ [Attachments](#)

www.augustaga.gov



Administrative Services Committee Meeting
1/25/2010 12:40 PM
Bid Protest

Department: Procurement

Caption: Consider the 09-139 Henry Brigham Community Center – Ammar Construction Bid Appeal. (Referred from January 11 Administrative Services Committee)

Background: John Garcia, Attorney at Law on behalf of Ammar Construction, has filed a formal protest and appeal regarding the 09-139 Henry Brigham Community Center bid by Ammar Construction and the letter rescinding his Notice of Award which was issued by the Housing and Community Development Department. Ammar Construction was deemed as non-compliant and was sent a letter on September 11, 2009. The submittal was non-compliant due to the Subcontractor's Affidavit was not completed properly. The vendor also received an award letter from the Housing and Community Development Department on September 15, 2009. On September 29, 2009, the Housing and Community Development Department issued a notice to rescinding the Notice of Award.

Analysis: On August 25, 2009, bid Item 09-139 was opened. Five (5) bid packages were received. At the bid opening three (3) bid amounts were read aloud with two (2) being deemed as non-compliant. Under future review by the Procurement Department, all bid packages were deemed as non-compliant. The non-compliant letter to Ammar was faxed and mailed on September 11, 2009 stating that the subcontractors Affidavit form was not properly dated and was therefore considered as non-compliant. On September 15, 2009, we received a protest from Ammar in reference to his non-compliance status. The Procurement Department responded on September 19, 2009 stating that a review of the files and stated that after a review of the submittal, the Procurement Department had no choice but to stand by the initial decision to deem his submittal as non-compliant. It was also noted in the letter that all submittals were deemed as non-compliant and that the item was be rebid by the Housing and Community Development Department at a later date and that his company would received notice of the rebid. He was also given the option to appeal to the Administrator. On October 1, 2009 Mr. Ammar submitted a request to pursue his protest further. On October 28, 2009 our office received a copy of a letter from John Garcia, legal representative for Ammar requesting an update on the protest status of Ammar. The Law Department responded to the letter on behalf of the Administrator. The Law Department stated that since none of the bidders on the project were deemed compliant and because it is often the best interest of Augusta-Richmond Count to readvertise bids where non or very few bidders are compliant, this project is being re-bid. It also stated that the Administrator agrees with the Procurement Department and finds that Ammar Constructions' bid was properly rejected and non-compliant. On December 1, 2009, our office

received a letter dated November 24, 2009, from John Garcia, Attorney at Law to submit a formal protest and appeal to the Augusta-Richmond County Board of Commissions on behalf of Ammar Construction.

Financial Impact: None

Alternatives: None

Recommendation: None

**Funds are Available in
the Following
Accounts:**

REVIEWED AND APPROVED BY:

Clerk of Commission

Bid Item #09-139

Henry Brigham Community Center for Housing & Community Development
for the City of Augusta - Housing and Community Development Department
Bid Opening Date: Tuesday, August 25, 2009 @ 3:00 p.m.

Vendors	Turner Mechanical, Inc 1347 Atomic Road Beech Island, SC 29842	Pinnacle USA DBA Artistic Concrete P. O. Box 7221 Athens, GA 30604	Sitec 217 Fairfield St N.E. Aiken, SC 29803	Jebb Boggus Const. 118 N Belair Rd Ste 1 Evans, GA 30809	Contract Management 1827 Killingsworth Rd. Augusta, GA 30904	L-J Inc. 220 Stoneridge Dr Columbia, SC 29210	Ammar Construct. P. O. Box 1877 Evans, GA 30809
Statement of Non-Discrimination				✓	✓		✓
Conflict of Interest				✓	✓		✓
Bid Form					✓		✓
Contractor Affidavit & Agreement				No ✓ Eligible	✓		✓
Subcontractor Affidavit				✓	✓		✓
Non-Collusion Affidavit of Bidder/Offeror				✓	✓		✓
Non-Collusion Affidavit of Subcontractor				✓	✓		✓
Local Small Business					✓		✓
Good Faith Effort							
Local Small Business							
Supplier Utilization Plan					✓		✓
Addendum 1				✓	✓		✓
Bid Bond				✓	✓		✓
Bid Price				MC	\$42,000.00		\$37,000.00

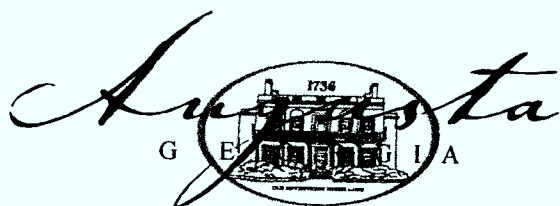
Bid Item #09-139 Henry Brigham Community Center for Housing & Community Development for the City of Augusta - Housing and Community Development Department Bid Opening Date: Tuesday, August 25, 2009 @ 3:00 p.m.									
Vendors	Horizon Construction P. O. Box 798 Evans, GA 30809	J & B Construction 3550 Gordon Highway Grovetown, GA 30813	Quality Storm Water 437 Cambridge Circle Martinez, GA 30907	Tran Construction 3855 Red Oak Court Martinez, GA 30907					
Statement of Non-Discrimination	✓			✓					
Conflict of Interest	✓			✓					
Bid Form	✓								
Contractor Affidavit & Agreement	✓			✓					
Subcontractor Affidavit	✓			✓					
Non-Collusion Affidavit of Bidder/Offeror	✓			✓					
Non-Collusion Affidavit of Subcontractor	✓			✓					
Local Small Business Good Faith Effort	✓			✓					
Local Small Business Subcontractor/Supplier Utilization Plan	✓			✓					
Addendum 1	✓			Did Not Acknowledge					
Bid Bond	✓			✓					
Bid Price	\$38,750.00								

Bid Item #09-139

**Henry Brigham Community Center for Housing & Community Development
for the City of Augusta - Housing and Community Development Department
Bid Opening Date: Tuesday, August 25, 2009 @ 3:00 p.m.**

Vendors	Turner Mechanical, Inc 1347 Atomic Road Beech Island, SC 29842	Pinnacle USA DBA Artistic Concrete P. O. Box 7221 Athens, GA 30604	Stec 217 Fairfield St N.E. Aiken, SC 29803	Jebb Bogus Const. 118 N Belair Rd Ste 1 Evans, GA 30809	Contract Management 1827 Killingsworth Rd. Augusta, GA 30904	L-J Inc. 220 Stoneridge Dr Columbia, SC 29210	Ammar Construct. P. O. Box 1877 Evans, GA 30809
Statement of Non-Discrimination				Yes	Yes		Yes
Conflict of Interest				Yes	Yes		Yes
Bid Form				Yes	Yes		Yes
Contractor Affidavit & Agreement				No E-Verify Number	Yes		Yes
Subcontractor Affidavit				Yes	Yes		Incomplete
Non-Collusion Affidavit of Bidder/Offeror				Yes	Yes		Yes
Non-Collusion Affidavit of Subcontractor				Yes	Yes		Yes
Local Small Business				Yes	Yes		Yes
Good Faith Effort				Yes	Yes		Yes
Local Small Business				Yes	Yes		Yes
Subcontractor/Supplier Utilization Plan				Yes	Yes		Yes
Addendum 1				Yes	Yes		Yes
Bid Bond				Yes	Yes		Yes
Bid Price				Non-Compliant	Non-Compliant		Non-Compliant

Bid Item #09-139 Henry Brigham Community Center for Housing & Community Development for the City of Augusta - Housing and Community Development Department Bid Opening Date: Tuesday, August 25, 2009 @ 3:00 p.m.									
Vendors	Horizon Construction P. O. Box 798 Evans, GA 30809	J & B Construction 3550 Gordon Highway Grove town, GA 30813	Quality Storm Water 437 Cambridge Circle Martinez, GA 30907	Tran Construction 3855 Red Oak Court Martinez, GA 30907					
Statement of Non-Discrimination	Yes			Yes					
Conflict of Interest	Yes			Yes					
Bid Form	Yes			Yes					
Contractor Affidavit & Agreement	Yes			Yes					
Subcontractor Affidavit	Yes			Yes					
Non-Collusion Affidavit of Bidder/Officer	Yes			Yes					
Non-Collusion Affidavit of Subcontractor	Yes			Yes					
Local Small Business Good Faith Effort	Yes			Yes					
Local Small Business Subcontractor/Supplier Utilization Plan	Yes			Yes					
Addendum 1	Yes			Did Not Acknowledge					
Bid Bond	Yes			Yes					
Bid Price	Non-Compliant			Non-Compliant					



Procurement Department

Mrs. Geri Sams, Director

September 11, 2009

FAXED/MAILED

Ammar Construction, Inc
Attn: Tony Ammar
P. O. Box 1877
Evans, GA 30809

Ref: Bid Item: 09-139 Henry Brigham Community Center
For the City of Augusta – Housing & Community Development
Department
Bid Opening Date: Tuesday, August 25, 2009 @ 3:00 p.m.

Dear Mr. Ammar:

Thank you for your submittal in response to the above referenced Bid Item. After reviewing your package, it was noted that you failed to properly execute the Subcontractor Affidavit form. Your submittal was not properly dated. The form states, "If there no subcontracting opportunities please fill out the form (write NA; sign, date and notarize)." We have included a copy of the form you returned in your submittal for your review.

In accordance to the Bid specifications and the Augusta-Richmond County Code, your company's submittal was deemed as non-compliant. I wish to call your attention to the following paragraph included in all invitations to bid which we have included below to address omissions of this nature.

"Bidders will please note that the number of copies requested; all supporting documents including financial statements and references and such other attachments that may be required by the bid invitation are material conditions of the bid. Any package found incomplete or submitted late shall be rejected by the Procurement Office. Any bidder allegedly contending that he/she has been improperly disqualified from bidding due to an incomplete bid submission shall have the right to appeal to the appropriate committee of the Augusta commission. Please mark BID number on the outside of the envelope."

I further wish to call your attention to ARTICLE 6, Sec. 1-10-43 (b) and ARTICLE 9, 1-10-67 (b) of our Augusta Richmond County Code as it relates to handling claims:

ARTICLE 6 PROCUREMENT SOURCE SELECTION METHODS AND CONTRACT AWARDS

Sec. 1-10-43. Sealed bids selection method.

(a) *Conditions for use.* All contracts of Augusta-Richmond County shall be awarded by competitive sealed bidding except as otherwise provided elsewhere in this article (see section 1-10-45-Sealed Proposals; 1-10-46-Professional Services; 1-10-47-Quotations; 1-10-49-Sole Source Procurement; and 1-10-50-Emergency Procurements, of this chapter).

Room 605 - 530 Greene Street, Augusta Georgia 30901
(706) 821-2422 - Fax (706) 821-2811

www.augustaga.gov

Register at www.demandstar.com/supplier for automatic bid notification

(b) Invitation for bids and specifications. An invitation for bids shall be issued by the Procurement Office and shall include specifications prepared in accordance with Article 4 (Product Specifications), and all contractual terms and conditions, applicable to the procurement. All specific requirements contained in the invitation to bid including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waiveable or modifiable by the Procurement Director. All requests to waive or modify any such material condition shall be submitted through the Procurement Director to the appropriate committee of the Augusta-Richmond County Commission for approval by the Augusta-Richmond County Commission.

ARTICLE 9 APPEALS AND REMEDIES Sec. 1-10-67. Procurement protests.

(a) Right to protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to Augusta-Richmond County. Protestors shall seek resolution of their complaints initially with the Procurement Director. All protests must be submitted in writing to the Procurement Director.

(b) Protests concerning invitations to bid. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals. If not done by that time, the complaint or protest is lost.

(c) Stay of procurement during protests. In the event of a timely protest under subsection (b) of this Section, the Procurement Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Augusta-Richmond County Administrator or Commission makes a determination on the record that the award of the contract without delay is necessary to protect the interests of Augusta-Richmond County. (Ord. No. 6939, § 16, 1-2-07)

We would like to thank you for your interest in doing business with the City of Augusta and look forward to your company participating in future bids. Please do not hesitate to contact us at (706) 821-2422 at any time when you have a concern and are preparing for a future bid submission.

Sincerely,



Geri A. Sams, Director
Procurement Department

GAS/dw

Attachments

cc: Tameka Allen, Interim Deputy Administrator
Chester Wheeler, Director, Augusta Housing & Community Development Department
Rose White, Augusta Housing & Community Development Department

Tony Ammar
4211 Smith Field Creek
Evans, GA 30809
September 15, 2009

Geri Sams
City of Augusta Procurement Department
530 Greene Street
Augusta, GA 30901

RE: Bid Item: 09-139 Henry Brigham Community Center

Dear Mr. Sams:

I am writing to you in response to your letter dated September 11, 2009, regarding the Henry Brigham bid.

The subcontractor Affidavit is as the title indicated for subcontractors. The subcontractor has to put his E-verify, company name, the authorized officer, the title of the authorized officer, the printed name of the authorized officer, etc. The information requested for subcontractors.

If there are no subcontracting opportunities, the company submitting the bid has to sign, date, and notarize the form since there is no instruction where to put N/A or where the bidding company has to sign or date. As an agent I put N/A at the top of the page. I signed it where the subcontractor had to sign and put the date above where the notary public signs it. Therefore, I accomplished the following – wrote N/A, signed, dated, and notarized the subcontractor affidavit. As you can clearly see the Affidavit is dated the 24th day of August 2009.

I would like to protest the fact that you wanted to declare my bid as noncompliant at the same time, I would like to ask you the following questions:

1. If there is no subcontracting, why do we have to notarize the affidavit? Do you think contractors time and notary public's time is not valuable? Their time can be wasted on pages and pages of material that does not apply to the job?
2. Do any of the procurement people have any experience in preparing bids? If you had any one with that kind of experience you would not include the subcontractor affidavit in the bid document. This is the reason why: All subcontractors will wait until ten minutes or less from the time of the bid to fax their numbers. This way the competition will not have time to change their numbers. Any person submitting a bid has to rely on his estimate because he or she has to leave the office about 30 minutes prior to the opening bid time. Therefore, you are asking for the impossible.
3. The opening of the bid was delayed for about 20 minutes while the architect, the owner, and the contractors waited. All in all about twelve people waited about one hour for the bid to be opened. Do you think that owners, contractors, and architects have the time to waste?
4. The opening bid was August 25, 2009 and your letter was dated September 11, 2009. Why did it take seventeen days to send me a letter? I provided the owner with the signed contract and proof of insurance, a performance and payment bond.

15 SEP 09 AM 9:01

As of today, I have invested money and time in this project (bid offer not included), are you going to reimburse me for my time and the price of the bond?

I have lined up the people who are going to work on the project. One of these people is a young man, Joe Deserto, who has a wife and two small children. He is behind on his rent and bills and desperately needs this job. Can you explain to him why he is not working on this job? Can you explain to his family why they have to go hungry because I don't think that I can explain this to him?

I still remember a bid that you accepted and the bidder did not put his price in the form provided by you. Yet, now, you want to exclude my bid! Are contractors treated differently or what?

5. At the opening of the bid about half the bids were rejected. So my questions are the following:
- Are contractors stupid?
 - Is the bid process getting more complicated for no reason?
 - Are you asking more than they can handle?
 - Is the owner going to benefit from a rejection of half the bid?
 - Is there a better and more efficient way to do business?

I have been in the contacting business for years and I would like to make the following statement; the bidding in Richmond County is getting more complicated and less caring about the contractor, the application, and the indifference to the contractor will invite the following:

- More aggravation to all parties involved
- More lawsuits
- Waste of money and energy
- Reduced competition
- Increase in the cost to the owner

Sincerely,



Tony Ammar

Cc: Chester Wheeler

Rose White

Ammar Construction Company

PO Box 1877 Evans, GA 30809

706-832-7878

706-863-5915

cammar@knology.net

FAX

Pages: 3

To: Geri Sams**Fax: 706-821-2811****Date: 9/16/2009****Re: Bid Item 09-239 Henry Brigham Community
Center****From: Tony****Fax: 706-863-5915****Phone: 706-832-7878****Cc:****Comments:**

- ☐ Urgent
- ☐ For Review
- ☐ Please Comment
- ☐ Please Reply
- ☐ Please Recycle



September 29, 2009

Procurement Department

Mrs. Geri Sams, Director

FAXED/MAILED

Ammar Construction, Inc,
Attn: Tony Ammar
4211 Smith Field Creek
Evans, GA 30809

Ref: Bid Item: 09-139 Henry Brigham Community Center
For the City of Augusta – Housing and Community Development
Bid Opening Date: Tuesday, August 25, 2009 at 2:00 p.m.

Dear Mr. Ammar:

This correspondence comes to you pursuant to AUGUSTA, GA CODE §1-10-67(b), and in response to your September 15, 2009 letter regarding the above referenced bid item 09-139. In your letter you wish to protest your company's submittal which was deemed non-compliant because you did not properly execute the Subcontractor Affidavit.

The Procurement Department has carefully reviewed your submittal and the requirements of the Augusta-Richmond County bidding process. The bid specifications clearly state that "All specific requirements contained in the invitation to bid including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waiveable or modifiable by the Procurement Director" Since Ammar Construction, Inc. submittal was "found incomplete", the Procurement Department has no choice but to stand by our initial decision to deem your submittal as non-compliant.

Please be advised that all vendors for this project were deemed as non-compliant and therefore, the Housing and Community Development Department has requested that this bid item be sent back out for re-bid. Once the re-bid documents are available, you will receive notification of the re-bid process.

If you would like to pursue your request further, AUGUSTA, GA. CODE §1-10-69 authorizes the Augusta-Richmond County Administrator "to settle any protest regarding the solicitation or award of a County contract..." If you would like the Administrator to review your request, please let me know and I will forward your request to the Administrator's Office.

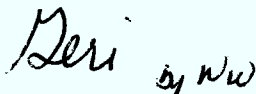
Room 605 - 530 Greene Street, Augusta Georgia 30901
(706) 821-2422 - Fax (706) 821-2811

www.augustaga.gov

Register at www.demandstar.com/supplier for automatic bid notification

Please do not hesitate to contact us at (706) 821-2422 at any time when you have a concern and are preparing for the re-bid or any future bid submission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Geri", followed by the initials "by nw" in a smaller, less legible script.

Geri A. Sams, Director
Procurement Department

GAS/nw

cc: Fred Russell, Administrator
Chiquita T. Johnson, General Counsel
Chester Wheeler, Director Housing and Community Development

Tony Ammar
4211 Smith Field Creek
Evans, GA 30809
October 1, 2009

Geri Sams
City of Augusta Procurement Department
530 Greene Street
Augusta, GA 30901
Ref: Bid Item: 09-139 Henry Brigham Community Center

Dear Mrs. Sams:

In response to your letter dated September 29, 2009, I wanted to pursue my protest further. Your procurement system is outdated and needs to be changed. Change that will accomplish the following:

- A. A simpler system
- B. A system that cares about the contractors
- C. A system that does not waste contractors, owners and tax payer's money

If you are willing to help, please let me know. If you are not willing to help or change the system, then every legal avenue will be used to reach this goal.

Help will be sought from the following institutions:

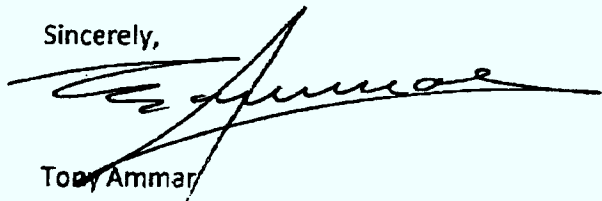
- 1. Court (starting Tuesday, October 4, 2009)
- 2. The Media (this week and next week)
- 3. The government and small business administration
- 4. Congress
- 5. Local contractors who will demonstrate in front of your office
- 6. Georgia Governor

Please remember that the tax payers of the State of Georgia are paying your salary. My advice to you is not to bite the hand that feeds you and don't underestimate the will of the people.

Our government is spending millions of dollars for studies to improve the quality of life. If you go to the Augusta Georgia Richmond County website <http://www.augustaga.gov/DocumentView.aspx?DiD=2072> you can view the study that highlights a few of the problems with the current system. You can also view some of the recommendations <http://www.augustaga.gov/DocumentView.aspx?DiD=2073>.

I have been asking for help regarding this matter for the past two years and I am asking again.

Sincerely,



Tony Ammar

Cc: Fred Russell, Administrator
Chester Wheeler, Director of Housing & Community Development
Local Contractors doing business in Richmond County

Ammar Construction Company
P.O. Box 1877
Evans, GA 30809

706-832-7878
Fax 706-863-5915
cammar@knology.net

TO: Geri Sams
FAX: 706-821-2811
PHONE:
RE:

FROM: Tony Ammar
PAGES: 2
DATE: 10/5/2009
CC: Fred Russell, Chester Wheeler

☐ URGENT

☐ FOR REVIEW

☐ PLEASE COMMENT

☐ PLEASE REPLY

☐ PLEASE RECYCLE

Comments:

Emailed To: Geri Sams 10/28/09sh

JOHN T. GARCIA

Attorney at Law
205B North Belair Road
Evans, Georgia 30809
(706) 650-7727

Fax (706) 364-5390
E-mail: garcia81@knology.net

Post Office Box 1984
Evans, Georgia 30809

October 28, 2009

Frederick L. Russell
Augusta-Richmond County Administrator
530 Greene Street, Room 801
Augusta, Georgia 30901

Re: 09-139 Henry Brigham Community Center-Ammar Construction Bid Appeal

Dear Mr. Russell:

I represent Ammar Construction, Inc. Could you please provide me an update of the status of the Ammar Construction Bid Appeal on the Henry Brigham Community Center? My client has appealed the Procurement Director's decision to your office, but has not heard anything since that time. My client would prefer to resolve this matter in the most efficient and amicable manner, but he intends to avail himself of all of his legal remedies, but must exhaust the administrative appeals first.

My client was the low bidder on this project, but received a September 11, 2009 letter from Ms. Geri A. Sams. In her September 11, 2009 letter, Ms. Sams deemed his bid to be non-compliant because the Subcontractor's Affidavit was allegedly not completed properly¹. The complaint is that both date blanks must be completed, rather than one date blank as was done in this instance.

Mr. Ammar protested by letter to Ms. Sams on September 15, 2009. On September 23, 2009, he received a notice from Chester A. Wheeler, III rescinding the "Notice of Award." Then on September 29, 2009, Ms. Sams again deemed Mr. Ammar's bid as non-compliant. She then offered to forward any protest to your office for further review. On October 1, 2009, Mr. Ammar again protested/appealed by sending such to Ms. Sams with you listed as a "cc:."

Since that time, my client has not received any additional information. Would you please provide a status update to me? Mr. Ammar is deeply concerned that the bidding process has gotten completely out of hand. This case is a perfect example. The form in question merely confirms that there are no subcontractors. It is signed by Mr. Ammar, dated, and notarized. It is beyond silly to

1
As an interesting aside, the Subcontractor Affidavit indicates that there will be no subcontractors.

Mr. Frederick L. Russell Letter
October 28, 2009
Page Two

require two dates on the same document when the notary is affirming that Mr. Ammar subscribed sworn to on a particular date. I note that the Augusta Code Section 1-10-43(g) specifically authorizes the correction of bids. This alleged defect does not affect the bid pricing of Mr. Ammar's bid in any manner, shape, or form.

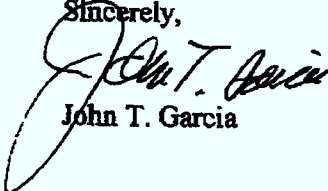
Mr. Ammar states this sort of placing "form over substance" is deterring contractors from bidding projects. Code Section 1-10-6 specifically encourages local bidders. However, the nit-picky method in which the process is handled is deterring local contractors from engaging in the bidding process. Ammar Construction, Inc. has performed admirably for the City on many other projects. As an example, he did an outstanding job on Brookfield Park. He has performed a number of other quality jobs for the City. However, he is exasperated at how he and the other contractors are treated.

He has two goals in this appeal. The first is the simpler task. He believes that he has been wrongfully denied this bid. To resolve this matter, he demands that he either be paid his profit from the project or he be awarded the project. His preference is that he simply is given his lost profit and not be required to deal with the issue.

The larger goal is to reform the bidding process. My client is a fair and reasonable man. He understands that the bidding process must of necessity have certain inviolate rules. However, when a strained interpretation of those rules leads to the silliness which has brought about this appeal, he believes that changes must be made to the process to make it fair and efficient. Every contractor, who submits bid, but is not awarded the contract loses income in the lost time and expenses for submitting the bid. When the bidding process becomes stymied by pedantic interpretations of the Code, then contractors stop bidding. This will lead to increased costs for Augusta-Richmond County. We should encourage more bids, not drive them away.

My client and I would welcome the opportunity to meet with you and others to develop a more coherent process. Please feel free to contact me at 706-650-7727.

Sincerely,



John T. Garcia

cc: Tony Ammar



AUGUSTA LAW DEPARTMENT

DAVID S. COPENHAVER
Mayor

ALVIN MASON
Mayor Pro Tem

CHIQUITA T. JOHNSON
General Counsel
Augusta Law Department

ANDREW G. MACKENZIE
WAYNE BROWN
KENNETH S. BRAY
Staff Attorneys
Augusta Law Department

Betty Beard
Corey Johnson
Joe Bowles
Alvin Mason
Calvin Holland, Sr.
Joe Jackson
Jerry Brigham
Jimmy Smith
J. R. Hatney
Don Grantham

Frederick L. Russell
Administrator

October 30, 2009

VIA US MAIL AND FAX
(706) 364-5390
John T. Garcia
Attorney at Law
205B North Belair Road
Evans, Georgia 30809

Ref: Bid Protest: ITB 09-139 Henry Brigham Community Center

Dear Mr. Garcia:

This letter is on behalf of Administrator, Fred Russell and is in response to your letter of October 27, 2009 regarding a bid protest by Ammar Construction, Inc. on ITB 09-139 Henry Brigham Community Center. AUGUSTA, GA. CODE § 1-10-69 authorizes the Administrator to "settle any protest regarding the solicitation or award of a County contract ... prior to an appeal to the Augusta-Richmond County Commission."

The Procurement Department has indicated that Ammar Construction's bid was incomplete because of a failure to properly execute the Subcontractor Affidavit form. It is my understanding that Ammar Construction does not dispute the fact that the certain parts of the form, like the date, were not completed by Ammar Construction, but rather claims that "form" should not be placed over "substance" and that Ammar Construction should be able to correct the form pursuant to AUGUSTA, GA. CODE § 1-10-43(g).

Since none of the bidders on this project were deemed compliant and because it is often in the best interest of Augusta-Richmond County to readvertise bids where none or very few bidders are compliant, this project is being re-bid.¹ Thus, Ammar Construction and the other bidders² on this project are able to correct any and all errors that were made during the initial bid

¹ AUGUSTA, GA. CODE § 1-10-52(a) provides:

An invitation for bids/ quotes, a request for proposals, or other solicitation may be canceled, or any or all bids may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of Augusta-Richmond County.

² After all the bids were opened and deemed non-compliant, a comparison of the bid amounts revealed that Ammar Construction was not the low bidder on this project

of this project. Since Ammar Construction still has the opportunity to participate in the re-bid of this project, this bid protest is now moot.

With regard to whether the Subcontractor Affidavit of Ammar Construction was compliant, the Administrator agrees with the Procurement Department and finds that Ammar Construction's bid was properly rejected as non-compliant. The AUGUSTA, GA. CODE §1-10-43(b) as well as ITB 09-139 states:

All specific requirements contained in the invitation to bid including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waiveable or modifiable by the Procurement Director.

The Subcontractor Affidavit has several specific requirements. It clearly states, in bold, **"please fill out the form"** and **"sign, date and notarize."** Ammar Construction did not comply with these requirements in a number of essential respects. There were nine (9) things to be completed on this form:

1. E-verify User Identification Number
2. Company Name
3. Contractor Signature
4. Title of Authorized Officer or Agent of Contractor
5. Printed Name of Authorized Officer or Agent
6. Date
7. A request to please check one of three categories for number of employees
8. Notarization
9. Write "N/A" on the form

Of the nine (9) things to be filled out or done, Ammar Construction only completed three (3) of these (3, 8 and 9). Thus, the Subcontractor Affidavit form was sixty-six percent (66%) incomplete. Failing to fill out the other six (6) required parts of the form renders it wholly deficient. Among the deficiencies, was no title or printed name for the purported signature, no indication of the number of employees, no E-Verify Identification Number³ and no date showing that the signatory signed it on the same date as the notarization. Moreover, if Ammar Construction had some concerns regarding how to fill out the form or what was required on the form, such concerns could have and should have been raised at numerous stages in the bidding process *before the bids were opened*. See AUGUSTA, GA. CODE §1-10-67(b).⁴ Such a protest is now lost and is also moot since the project is being re-bid and Ammar Construction has a chance to fix these deficiencies.

³ This is despite the fact that the Subcontractor Affidavit states that for all vendors "Georgia Law requires you to have an E-verify User Identification Number on or after July 1, 2009."

⁴ AUGUSTA, GA. CODE §1-10-67(b) states in its entirety:

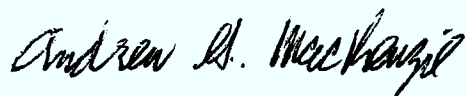
Protests concerning invitations to bid. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals. If not done by that time, the complaint or protest is lost.

Hope I have addressed the concerns of Ammar Construction and that it competes in the re-bid of ITB 09-139. However, the bid protest process does allow for "an appeal to the Augusta-Richmond County Commission." AUGUSTA, GA. CODE §1-10-69. The procedure to appeal to the Commission for this purpose is provided in AUGUSTA, GA. CODE §1-10-43(b):

All requests to waive or modify any such material condition shall be submitted through the Procurement Director to the appropriate committee of the Augusta-Richmond County Commission for approval by the Augusta-Richmond County Commission.

Thus, if Ammar Construction would like to appeal this protest to the Commission, please submit such a request directly to the Procurement Director. If you have any questions relating to this matter please let me know.

Sincerely,



Andrew G. MacKenzie, Staff Attorney

cc: Fred Russell, Administrator
Geri A. Sams, Procurement Department Director
Chester Wheeler, Director of Housing & Community Development

JOHN T. GARCIA
Attorney at Law
205B North Belair Road
Evans, Georgia 30809
(706) 650-7727

Fax (706) 364-5390
E-mail: garcia81@knology.net

Post Office Box 1984
Evans, Georgia 30809

November 24, 2009

Geri A. Sams
Procurement Director
530 Greene Street, Room 601
Augusta, Georgia 30911

Re: 09-139 Henry Brigham Community Center-Ammar Construction Bid
Appeal

Dear Director Sams:

On behalf of the Ammar Construction Company, Inc., I file a formal protest and appeal to the Augusta-Richmond County Board of Commissioners regarding the 09-139 Henry Brigham Community Center bid by Ammar Construction and the letter rescinding his Notice of Award.

My client was the low bidder on this project, but received a September 11, 2009-letter from your office¹. In this September 11, 2009-letter, his bid was deemed to be non-compliant because the Subcontractor's Affidavit was allegedly not completed properly. The allegation in that letter was that the form was not "properly dated²."

Mr. Ammar protested by letter to your office on September 15, 2009. On September 23, 2009, he received a notice from Chester A. Wheeler, III rescinding the "Notice of Award." Then in a September 29, 2009-letter, your office again deemed Mr. Ammar's bid as non-compliant. Your office offered to forward the protest/appeal to Mr. Russell's Office for review. On October 1, 2009, Mr. Ammar again protested/appealed. On October 28, 2009, I wrote Mr. Russell inquiring about the status of the review. On October 30, 2009, I received a letter from Mr. Andrew G. MacKenzie

1
Mr. Andrew G. McKenzie states in his letter that someone else was low bidder. My understanding was that there were five bidders, one of which failed to attached Addendum 1 and another who failed to include the Local Small Business Good Faith Effort and Local Small Business Subcontractor/Supplier Utilization Plan documents. Of the three who turned in all of the documents, my client was low bidder. My understanding is that this makes him the low bidder for these purposes.

2
Mr. MacKenzie expands this original reason to include a claim that the subcontractor portions of the forms should be completed by the general contractor.

Ms. Geri Sams Letter
November 24, 2009
Page Two

in which he set forth the position of your department and advised me to file yet another letter with your office if I desired to appeal to the Augusta-Richmond County Board of Commissioners.

Therefore, I hereby file this fourth letter detailing my client's desire to appeal and if necessary, exhaust his administrative remedies before pressing the matter further.

However, I feel the necessity to expand/respond to Mr. MacKenzie's letter so that my client is sure that Augusta-Richmond County is making its decision based on a full understanding of the situation. I do this so that neither you nor the Augusta-Richmond County Board of Commissioners acts based on an erroneous analysis of the situation. I have attached a copy of the "Subcontractor's Affidavit" which was attached to the Ammar Construction Bid. Please note the bold type at the bottom which reads as follows:

If there are no subcontracting opportunities, please fill out the form(write N/A: sign, date, and notarize)

The only requirements for "filling out" the form are "N/A" sign, date, and notarize. In this case, there were the notation "N/A," Mr. Ammar's signature, a date, and the notarization by the notary. This notarization has the exact date of notarization as required by statute. See O.C.G.A. § 45-17-8.1 for the requirement to state the "exact date of the notarial act."

To these four general contractor requirements, Mr. MacKenzie states that the form was "66%" incomplete. It is our position that for a general contractor the form was one hundred (100%) percent complete. Somehow, Mr. MacKenzie has confused this to require the completion of the information which applies to the *subcontractors* and with that which is required for the *general contractor*. I respectfully suggest that when the form states "fill out" and is followed by parenthetical instructions, then, the parenthetical instructions control. See "parenthetical" as defined in *The Oxford English Dictionary* 2nd Ed. 1989.

It would do well to recognize that there is no place for the general contractor to sign should there be no subcontractors. The form, which is designed for the subcontractor to complete, is devoid of a signature place for the contractor. The form contemplates its execution by a subcontractor, not by the general contractor. Thus, the form was properly completed.

In addition to the standard rules of construction in the English language, the form itself reflects that it is a form for subcontractors. First, the "Subcontractor's Affidavit" is by title and the actual terms employed is to be completed by the "subcontractor." Mr. MacKenzie seems to be under the belief that the General Contractor executes an affidavit which states in relevant part as follows:

By executing this affidavit, the **undersigned subcontractor** verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or

Ms. Geri Sams Letter
November 24, 2009
Page Three

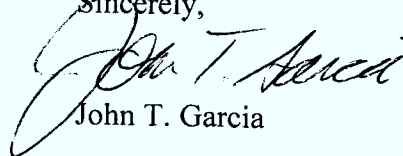
corporation which is engaged in the physical performance of services under a contract with _____ on behalf of Augusta Richmond County.....
(emphasis supplied).

It would make no sense for Mr. Ammar to execute a "Subcontractor Affidavit" where he is not a subcontractor and there are no subcontractors to be used in his bid. Presumably, the reason the form is required is to insure an express declaration from either the general or the subcontractor. There was such an express declaration in this situation.

If there had been subcontractors, then all of the information Mr. MacKenzie extols as necessary would have been supplied. However, since there are no subcontractors, my client followed the instructions, (write N/A: sign, date, and notarize³), and submitted the form along with the remainder of his bid package which contains many of the items that Mr. MacKenzie believes that the general contractor should put on the "Subcontractor's Affidavit."

If I may be of assistance to you, please do not hesitate to call me at 706-650-7727.

Sincerely,



John T. Garcia

w/enc.

cc: Andrew G. MacKenzie, Esquire
Ammar Construction Company, Inc.
Fred Russell
Chester Wheeler

I note that the instructions do not state for the signatory to place their title or printed name. It merely states to write: N/A, sign, date, and notarize.

Bid/RFP/RFQ # 09-139

SUBCONTRACTOR AFFIDAVIT

NA - No Subcontractors

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services under a contract with _____ on behalf of Augusta Richmond County Board of Commissioners has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O. C. G. A 13-10-91.

E-Verify * User Identification Number _____

Please Check One
500 or More _____ 100 or more _____ 100 or less _____
Number of Employees

Company Name _____

BY: *[Signature]*
Authorized Officer or Agent
(Contractor Signature)

Date: _____

Title of Authorized Officer or Agent of Contractor _____

Printed Name of Authorized Officer or Agent _____

- ✓ Vendor with 100 employees or more – must have an E-Verify * User Identification Number
- ✓ Vendor with less than 100 employees – check 100 or less box, fill out the form and return with your submittal. (Georgia Law requires you to have an E-Verify*User Identification Number on or after July 1, 2009.)

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

24TH DAY OF AUGUST, 2009

[Signature]
Notary Public

My Commission Expires:

12/8/09

NOTARY SEAL

TREG SZERLONG

Notary Public-Columbia County, Georgia
My Commission Expires December 8, 2009

MUST BE RETURNED WITH YOUR SUBMITTAL

If there are no subcontracting opportunities, please fill out the form (write N/A; sign, date and notarize).



**Administrative Services Committee Meeting
1/25/2010 12:40 PM
Resolution Authorizing the Settlement of Aaron Easter**

Department: Law

Caption: Approve resolution authorizing the settlement of all Claims in a Personal Injury Claim of Aaron Easter.

Background: See attached Resolution.

Analysis: Interim General Counsel considers it to be in the best interests of Augusta-Richmond County to resolve this matter and recommends that pay the Claimant to settle all claims of Claimant against Augusta-Richmond County arising out of the alleged facts.

Financial Impact:

Alternatives: Deny Resolution

Recommendation: Approve Resolution

Funds are Available in the Following Accounts: 611015213-5523506

REVIEWED AND APPROVED BY:

**Finance.
Law.
Administrator.
Clerk of Commission**

RESOLUTION

RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS BY AARON EASTER, IN THE AGGREGATE AMOUNT OF TWENTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$28,000.00); AUTHORIZING THE COUNTY ADMINISTRATOR TO DISBURSE THE AMOUNT OF TWENTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$28,000.00); WAIVING AUGUSTA-RICHMOND COUNTY CODE OF ORDINANCES SECTIONS IN CONFLICT FOR THIS INSTANCE ONLY; AND FOR OTHER PURPOSES.

WHEREAS, Aaron Easter, a citizen of Augusta-Richmond County, Georgia has a lawsuit now pending in the Superior Court of Richmond County, State of Georgia, Civil Action File No. 2008RCCV1036;

WHEREAS, all parties to said civil action desire to settle all claims; and

WHEREAS, Claimant has agreed to settle all claims against Jody Lynn Crabtree and Augusta-Richmond County for the sum of twenty eight thousand dollars and no cents (\$28,000.00);

WHEREAS, the Interim General Counsel considers it to be in the best interests of Augusta-Richmond County to resolve this matter and recommends that it pay the amount of twenty eight thousand dollars and no cents (\$28,000.00) to Claimant to settle all claims of Claimant against Jody Lynn Crabtree and Augusta-Richmond County arising out of the alleged facts;

WHEREAS, Augusta-Richmond County admits no liability on the part of itself or its current and former commissioners, employees, servants, agents, officials, insurers, or attorneys;

NOW, THEREFORE, BE IT RESOLVED by the Augusta-Richmond County Commission,

- Section 1: The Augusta-Richmond County Commission will settle the claims of Aaron Easter for the aggregate amount of twenty eight thousand dollars and no cents (\$28,000.00).
- Section 2: The County Administrator is authorized to pay a total sum of twenty eight thousand dollars and no cents (\$28,000.00) to Aaron Easter at the direction of the Commission and payment shall be in the form of a check payable to the Law Office of Kenneth S. Nugent, P.C., on behalf of Aaron Easter.
- Section 3: To the extent that any section of the AUGUSTA, GA. CODE is in conflict herewith, that subsection is waived for this instance only.

Settlement Resolution
Aaron Easter
Page 2 of 2

Adopted this ____ day of _____, 2010.

David S. Copenhaver
As its Mayor

Attest:

Lena J. Bonner, Clerk of Commission

Seal:

CERTIFICATION

The undersigned Clerk of Commission, Lena J. Bonner, hereby certifies that the foregoing Resolution was duly adopted by the Augusta-Richmond County Commission on _____, 2010 and that such Resolution has not been modified or rescinded as of the date hereof and the undersigned further certifies that attached hereto is a true copy of the Resolution which was approved and adopted in the foregoing meeting(s).

Lena J. Bonner, Clerk of Commission



**Administrative Services Committee Meeting
1/25/2010 12:40 PM
Transfer of Property to the Land Bank Authority**

Department: Administrator

Caption: Motion to approve transfer of portions of Augusta property located on Deans Bridge Road near the intersection of Wyevale Road and Windermere Drive to the Land Bank Authority for \$5,000.00 for the purpose of selling same for redevelopment purposes and to authorize the Mayor and Clerk of Commission to execute such documents as necessary to consummate the transaction, all in form as approved by the General Counsel.

Background: The Commission authorized the Administrator to perform such due diligence as necessary to determine if there was any reason not to sell portions of the property of Augusta located on Deans Bridge Road near the intersection of Wyevale Road and Windermere. Such due diligence having been completed and any restrictions deemed necessary by the various departments of the County having been determined, there is no objection by the Administrator to the transfer and sale of the portions of the parcels to the Land Bank Authority for redevelopment purposes. The Commission previously approved the sale of the property for \$10,000, but upon investigation of the property, the proposed purchaser determined that the property could be only used for the location of a sign due to road setback requirements and easements and has offered to purchase the property for \$5,000.00. The parcel was appraised for \$10,000, but the appraisal did not take into account the various limitations on the use of the property. The net proceeds from the sale would go to the general fund.

Analysis: N/A

Financial Impact: Any revenue would go to the general fund.

Alternatives: Deny the motion to approve the transfer of portions of the property.

Recommendation: Approve the transfer and sale of the portions of property to the Land Bank Authority for \$5000.00 per acre.

Funds are Available in the Following Accounts:

Cover Memo

REVIEWED AND APPROVED BY:

Finance.
Law.
Administrator.
Clerk of Commission
