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October 28, 2009

Blayne D. Honeycutt, Esq.  
Parish Attorney  
Parish of Livingston  
c/o Fayard & Honeycutt  
519 Florida Avenue, SW  
Livingston, LA. 70726

Via Facsimile 225-664-2010

RE: Project: New Concessions and new Ballfields and Drainage and  
Pavement Improvements to: Live Oak Sports Complex,  
Watson, Louisiana  
Our Client: Richard Price Contracting Company, L.L.C.  
Our File No.: 39509-004

Dear Mr. Honeycutt:

Our firm has been retained to represent Richard Price Contracting Company, L.L.C. ("RPC"), the lowest responsible bidder in connection with the captioned project. As you are aware, bids for the Project were opened on October 22, 2009. The lowest numerical bidder was Charles Carter Construction ("Carter"). However, for the reasons discussed below, because the Carter bid is non-responsive, pursuant to the Louisiana Public Bid Law, the bid must be rejected and the contract awarded to RPC, as the lowest responsive bidder.

The Instructions to Bidder ("ITB") identified a Noncollusion statement as one of the bid documents. (Article 1.1) The Noncollusion form included with the bid documents states: "The original of the sworn or unsworn statement shall be submitted with the bid". (Emphasis added).

The ITB also required that the bidder be experienced in similar projects and have

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completed two such projects over the past five years. Article 2.3 provides in pertinent part:

**The Bidder shall include these projects and references with his bid. (Emphasis added).**

Carter's bid did not include either the Noncollusion statement or a list of previous projects. Therefore, its bid did not comply with the Bid documents.

Pursuant to the Louisiana Public Bid Law, R.S. 38:2212, "the provisions and requirement of the section, those stated in the Advertisement for Bids, and those required on the Bid Forms may not be waived by any public entity. R.S. 38:2212(A)(1)(b). The Advertisement for Bids has incorporated the statute as well. The law is clear that irregularities in bids cannot be waived by the public body and the statute must be applied as written. *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibit Exhibition Hall Authority*, 2004-0211, 2004-0212, (La. 3/18/04) 867 So.2d 651. *Hamps Construction Co., L.L.C. v. The City of New Orleans*, 2005-2489, (La. 2/22/06), 924 So.2d 104.

In *Broadmoor*, the Supreme Court held the public body does not have a discretion to waive any deficiencies in the bid, whether deficiencies be in the nature of defects of form or defects of substance. Likewise, as noted by the Supreme Court in *Hamps*, "when a public entity elects to place certain requirements in its Advertisement for Bid or on its Bid Forms, that entity is bound by those requirements and may not choose to waive them at a later date." *Id.* at 110.

In this case, the bid documents required the project listing and the non-collusion affidavit be included with the bid. These requirements cannot be disregarded or waived.

It is our understanding that Carter furnished a list of similar projects to the Owner's representative yesterday, more than a week after the bid opening. This does cure the problem or render the bid responsive. This action is in direct violation of both the Instruction to Bidders, as well as the Public Bid Law.

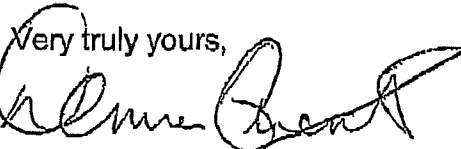
During our conversation yesterday afternoon, you advised that the decision has not yet been made by the Board as to whom the contract will be awarded, although that decision may be made today. Even if the decision is made today, you have advised that in fairness to all parties involved, the Board will hold off for one week from formally entering into any contract or taking any action in proceeding with the contract to allow the aggrieved party to take any legal action it deems necessary. We believe that this is a fair proposal and may alleviate the need to result to premature litigation on the part of any of the bidders. Accordingly, we will take no action at this time and await the Board's decision on this matter.

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We appreciate your review of this matter and would happy to answer any questions you may have.

With kind regards, I am

Very truly yours,  


Denise C. Puente

DCP/cbm

cc: Ms. Tracy Price  
H. Bruce Shreves, Esq.

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