



Office of the City Manager

CONSENT CALENDAR  
April 14, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Contract: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the Berkeley Tuolumne Camp Project, Specification No. 20-111361-C; and
2. Rejecting the bid protests of Walsh Construction, the second lowest bidder and F&H Construction, the third lowest bidder against Robert E. Boyer Construction;
3. Accepting the bid of Robert E. Boyer Construction, Inc. as the lowest responsive and responsible bidder for the amount of \$35,290,583; and
4. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the Project in accordance with the approved plans and specifications with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project in an amount not to exceed \$38,819,641 which includes the base bid and a 10% contingency.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the contract have been budgeted for in the adopted FY20-21 Budget.

The source of funding is as follows:

Insurance Proceeds.....	\$36,769,641
City of Berkeley.....	\$2,000,000
Friends of Berkeley Tuolumne Camp.....	\$50,000

No other funding is required, and no other Project will be delayed due to this expenditure. The Project budget will be included in the third amendment to FY20 Annual Appropriations Ordinance and budgeted in the Camps Fund budget code 125-52-543-583-0000-000-461-612990.

The City allocated \$3.3 Million of Catastrophic Reserve funds for this Project on April 4, 2017 (Resolution No. 67,889-N.S). City staff projects that the Project will be completed with a total of only \$2.7 Million of City funds, \$0.6 Million underbudget. The City is in the

process of pursuing cost recovery of up to \$2.1 Million of City funds through its FEMA Public Assistance Grant.

### CURRENT SITUATION AND ITS EFFECTS

In August 2013, the California Rim Fire destroyed the Berkeley Tuolumne Camp (BTC), a residential family camp located within the Stanislaus National Forest. The closure of BTC has significantly impacted the Department of Parks, Recreation and Waterfront 'Camps Fund', which historically depended on the successful programming at BTC to support the funding of camps programs within the City, as well as capital needs. Due to insurance coverage of business interruption losses and to successful re-organization of Camps programming, the Camps fund is projected to stay positive through FY22, however it has been unable to contribute to capital funding since the Rim Fire (historically \$250,000 per year).

Since the Rim Fire, the City has worked in partnership with the U.S. Forest Service to complete the design, environmental analyses and documentation and to secure permits for the reconstruction of Berkeley Tuolumne Camp. BTC was covered by the City's insurance policy and insurance is the primary source of funding for the reconstruction. The Project is also funded by a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) and by City funds allocated on April 4, 2017 (Resolution No. 67,889-N.S)

### BACKGROUND

Berkeley Tuolumne Camp, established in 1922, is a 30-acre property operated under a Special Use Permit with the US Forest Service (USFS). The camp has served primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August of 2013, the Rim Fire destroyed Berkeley Tuolumne Camp (BTC) and in December was declared a federal disaster. Most structures at BTC were destroyed by the fire. Since the fire, the City has been working closely with the USFS to complete an updated master plan in order to rebuild Camp. On June 11, 2019, USFS completed its environmental review and finding of no significant impact for the Berkeley Tuolumne Camp Project. On January 22, 2019, the City adopted the notice of determination of no significant impacts for the Project. On September 30, 2019, the USFS executed a Special Use Permit authorizing the City to reconstruct Berkeley Tuolumne Camp and to operate the Camp for a term of 30-years. The City has also received permits for the Project from the California Department of Fish and Wildlife, California Regional Water Quality Control Board, and the United States Army Corps of Engineers.

The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City has also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to partially fund reconstruction. City staff have been working closely with Insurance and FEMA/CalOES staff to determine Project funding and cost recovery. On February 25, 2020, FEMA approved the City's request for a consolidated improved Project and authorized a Public Assistance Grant amount of \$45 Million, less insurance proceeds. City staff anticipates that insurance proceeds will exceed \$45 Million and is in the process of requesting FEMA update the grant value to more accurately reflect actual Project costs.

The total cost estimate for the Berkeley Tuolumne Camp Rebuild Project is \$55 Million. This is a decrease of \$5 Million from previous cost estimates due to value-engineering. Of the total \$55 Million Project budget, a total of \$2.7 Million of City funds is required. The remainder of the Project budget is projected to be covered by insurance, FEMA and state grant funding. Of the \$2.0 Million of City funds authorized by this recommendation, up to \$1.9 Million may be recovered from FEMA funding.

On January 24, 2020 the City issued a request for bids for the reconstruction of Berkeley Tuolumne Camp (Spec No. 20-11362-C). The City received four bids. Protests was filed by Walsh Construction Company alleging non-responsiveness in the bid submitted by Robert E. Boyer and by F&H Construction alleging material defects in the bids both by Robert E. Boyer and by Walsh Construction Company. All parties in the protests were given the opportunity to respond to the protest filed against their bid, and to provide additional information regarding their allegations. After a careful evaluation of all material submitted in writing through the protest process, City staff recommends that all protest issues are denied, and Robert E. Boyer Construction, Inc. be determined to be the lowest responsible bidder. A copy of the protest evaluation and recommendation is attached as Attachment 2.

The City received a letter from the Foundation for Fair Contracting on March 19, 2020 alleging that Robert E. Boyer would be unable to fulfill its obligations to comply with rules and regulations governing the payment of prevailing wages. Consistent with California Labor Code, the payment of prevailing wages for this public work project is required, and all bidders including Robert E. Boyer were required to certify compliance with this requirement in bid forms. Per contract documents and state law, Robert E. Boyer shall be required to comply with California Labor Code for this Project, including but not limited to Section 1773 requiring the payment of prevailing wages on public projects.

The Living Wage Ordinance does not apply to this Project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. This Project is not subject to the Community Workforce Agreement due to its location on federal land (CWA 2.4.4) and because FEMA funding prohibits the use of local preferences for construction procurement (2 CFR§200.319).

ENVIRONMENTAL SUSTAINABILITY

The City approved the Project CEQA documents on January 22, 2019. The United States Forest Service issued its final NEPA documents on June 11, 2019.

This Project will implement Best Management Practices (BMPs) to encourage biodiversity, preserve resources, and maintain riparian and other natural habitats while mitigating hazardous conditions.

RATIONALE FOR RECOMMENDATION

Four bids were submitted for the project and Robert E. Boyer Construction, Inc. is the lowest responsible bidder for the Project.

ALTERNATIVE ACTIONS CONSIDERED

The City does not have the expertise required to complete the tasks covered by this contract. Therefore, no alternative actions were considered.

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700  
Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

- 1: Resolution
- 2: Bid Protest Evaluation

RESOLUTION NO. ##,###-N.S.

CONTRACT: ROBERT E. BOYER CONSTRUCTION, INC. FOR BERKELEY  
TUOLUMNE CAMP CONSTRUCTION PROJECT

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, on January 22, 2019 the City of Berkeley adopted the Mitigated Negative Declaration and Mitigation and Monitoring and Reporting Plan for the Berkeley Tuolumne Camp Permit (46690) Project; and

WHEREAS, on June 11, 2019, the U.S. Forest Service completed its environmental review and finding of no significant impact for the Berkeley Tuolumne Camp Project; and

WHEREAS, on September 30, 2019, the U.S. Forest Service executed a 30-year Special Use Permit for the reconstruction and operation of Berkeley Tuolumne Camp; and

WHEREAS, an invitation for bids was duly advertised and four bids were opened on March 12, 2020 and Robert E. Boyer Construction, Inc. was the apparent low bidder; and

WHEREAS, after careful consideration of the allegations raised through bid protests the City concludes that the bid Robert E. Boyer Construction Inc. is the lowest responsive and responsible bidder; and

WHEREAS, funds for the contract have been budgeted for in the adopted FY20-21 Budget and will be included in the third amendment to FY20 Annual Appropriations Ordinance and budgeted in the Camps Fund (budget code 125-52-543-583-0000-000-461-612990);

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 20-111361-C for the Berkeley Tuolumne Camp Cabin Repairs are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley rejects the bid protests of the Robert E. Boyer Construction Inc. bid by Walsh Construction and F&H Construction.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley accepts the bid of the lowest responsive and responsible bidder, Robert E. Boyer Construction Inc.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extension, and/or change orders until completion of the Project in accordance with the approved plans and

specifications with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project in an amount not to exceed \$38,819,641 which includes the base bid and a 10% contingency. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.





Parks, Recreation &  
Waterfront Department

DELIVERED VIA EMAIL

March 31, 2020

Re: Berkeley Tuolumne Camp Construction Project  
Specification No. 20-11361-C

Dear: Mr. Cramer, Walsh Construction,  
Mr. Seibly, F&H Construction, and  
Mr. Boyer, Robert E. Boyer Construction:

On January 24, 2020, the City released for bid the Berkeley Tuolumne Camp Construction project ("Project"). The Project involves the reconstruction of Berkeley Tuolumne Camp buildings, site infrastructure and utilities on United States Forest Service land in Tuolumne County, California. The Published Engineer's Estimate for the Project was \$30,000,000.

On March 12, 2020, bids were opened for the Project. There were a total of 4 bids received. The bidders in order were:

- |   |                 |
|---|-----------------|
| 1. Robert E. Boyer Construction Inc. ("Boyer")  | \$35,290,583.00 |
| 2. Walsh Construction ("Walsh")                 | \$41,816,965.00 |
| 3. F&H Construction ("F&H")                     | \$49,142,000.00 |
| 4. Roebbelen Quality Construction ("Roebbelen") | \$51,840,000.00 |

### The Bid Protests

On March 19, 2020, the City received a bid protest from Walsh which contended that the bid from Boyer was non-responsive because Boyer "failed to complete document 4314 Bidder Registration form identifying its All-Risk insurance carrier, failed to submit a Certificate of Insurance and Boyer's safety documents reflect apparent irregularities." Walsh alleges that the failure of Boyer to identify an "All-Risk carrier and provide either a certification of insurance or a letter evidencing coverage are material irregularities, and consequential defects in the bid involving price which cannot and should not be waived by the City."

By letter also dated March 19, 2020, the City received a bid protest from F&H which protested Boyer's bid by adopting "the points made by Walsh in its protest of the Boyer



bid.<sup>1</sup> F&H also protested Walsh's bid, contending that Walsh's bid was non-responsive due to violations of Public Contract code section 4101(b) and 4106 for, among other things, listing more than one subcontractor for the same portion of the work.

On March 23, 2020, Boyer provided a written response to Walsh's protest, contending that (1) it complied with the instructions to bidders and bid forms in that it did not leave the registration form blank, and that Document 00 4314 directs bidders to comply with Document 00 4513, which does not require insurance letters or documentation unless requested by the City after bid opening; and (2) its failure to properly complete the "Safety Experience" was an inconsequential defect. Boyer further contended that pursuant to Article 4.01(E) of the Bid Documents, Walsh is not eligible to submit a bid protest because Walsh is a non-responsive bidder.

On March 25, 2020, Walsh responded to Boyer's argument, contending that Document 2113 required proof of insurance be submitted on "the date on which the proposals were due" and since Boyer failed to do so, its bid was non-responsive.

I. REQUIREMENTS OF THE BID DOCUMENTS PERTINENT TO THE ISSUES RAISED IN THE PROTEST AGAINST BOYER

- a. Document 01 2000, Measurement and Payment, Item 1.05, A, defines the scope of the contract sum as follows: "The Contract Sum for performance of the Work under Contract Documents, or under any Bid Item, shall include full compensations for all work required under the contract documents, including without limitations all labor...and all terms, conditions requirements and limitations set forth in the Contract Documents."
- b. Document 00 2113, Instructions to Bidders, Article 5.01, Paragraph B, requires the Contractor to provide proof of insurance by 5:00 pm of the 10th calendar day following the notice of intent to award. Article 5.02, Paragraph E states that the insurance certificates and endorsement requirements are contained in Document 00 7316.
- c. Document 00 4113, Bid Form, requires the bidder to accept the terms and conditions of the Contract Documents, and state that they will provide proof of insurance within 10 days after receipt of City's Notice of Intent to Award.
- d. Document 00 4314, Bidder Registration Form, provides "In order to register to undertake work for City of Berkeley, Bidder must (1) Fill out this registration form completely; do not leave blanks and (2) Provide certificates of insurance or a letter

---

<sup>1</sup> Because F&H's protest against Boyer is based solely upon Walsh's protest, any findings made regarding Walsh's Boyer protest are equally applicable to the protest from F&H against Boyer.

- evidencing coverage complying with Document 00 4513 (Statement of Qualifications)”.
- e. Document 00 4315, Statement of Qualifications for Construction Projects, Section 2.03 and 2.03(D) provides, respectively: “Additional Submittals: After bid opening, Contractor will be required to supply the City with the following submittals upon request” and “Insurer Letter re: Capability to Provide the Required Insurance. Bidder shall provide a letter from an insurance underwriter, having a financial rating reasonably acceptable to City, confirming that the insurer will provide Bidder the required coverages and amounts specified in the Contract Documents.”
  - f. Document 00 7316, "Supplementary Conditions – Insurance".
    - i. Article 1.01 states: "At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance...".
    - ii. Article 1.07 states, "Contractor shall pay all insurance premiums, including any charges for waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sum due Contractor under Contract Documents."
  - g. Addendum No. 2 provided, among other things, that the deductible for All-Risk Course of Construction insurance was increased to \$250,000 from \$10,000. Addendum 2 further provided “Contractor will be required to provide financial documentation demonstrating sufficient liquid reserves to cover the amount between \$10,000 and actual deductible.”

## II. DISCUSSION

The central issue in this bid protest is whether the alleged failure by Boyer to identify an All-Risk Insurance carrier along with a Certificate of Insurance at the time the bids were opened is a material defect.<sup>2</sup> Walsh's argument that Boyer's bid is non-responsive relies on its conclusion that bidders must submit evidence at the time of bid opening that it had the requisite insurance. Walsh argues on page 2 of its March 25 letter that:

“Specifically, Document 7316, Section 1.01 clearly requires: At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City of Berkeley (“City”) satisfactory proof that Contractor has taken out for the

---

<sup>2</sup> This bid protest analysis will be focused exclusively on the protest against Boyer, the apparent lowest responsive and responsible bidder since the responsiveness of bids from other bidders are moot if the City determines that Boyer's bid is responsive. Accordingly, the City takes no position on the merits, or lack thereof, of F&H's protest against Walsh's bid nor does the City need to reach Boyer's procedural argument that Walsh, as a non-responsive bidder, lacks standing to protest.

entire period covered by the Contract the following classes of insurance.... The date specified in Document 2113 is the date on which proposals were due, which was amended to March 12, 2020.”

Walsh further argues that, Boyer's failure to submit proof of insurance at bid opening “gave Boyer significant price advantage as Boyer did presumably failed to include the cost of insurance...”

As explained in the next section, the bid documents did not require submission of proof of insurance until after a Notice of Intent to Award is issued or if requested by the City.

II.A Proof of Insurance must be Provided within 10 Days of Notice of Intent to Award or if Requested by the City

Below are excerpts from sections in the Bid Documents regarding insurance, with the pertinent sections underlined for emphasis:

- a. Document 00 2113, Instructions to Bidders, Article 5.01, Paragraph B, requires the Contractor to provide proof of insurance by 5:00 pm of the 10th calendar day following the notice of intent to award. Article 5.02, Paragraph E states that the insurance certificates and endorsement requirements are contained in Document 00 7316.
- b. Document 00 4113, Bid Form, requires the bidder to accept the terms and conditions of the Contract Documents, and state that they will provide proof of insurance within 10 days after receipt of City's Notice of Intent to Award.
- c. Document 00 4314, Bidder Registration Form, provides "In order to register to undertake work for City of Berkeley, Bidder must (1) Fill out this registration form completely; do not leave blanks. and (2) Provide certificates of insurance or a letter evidencing coverage complying with Document 00 4513 (Statement of Qualifications)".
- d. Document 00 4513, Statement of Qualifications for Construction Projects, Section 2.03 and 2.03(D) provides, respectively: “Additional Submittals: After bid opening, Contractor will be required to supply the City with the following submittals upon request” and “Insurer Letter re: Capability to Provide the Required Insurance. Bidder shall provide a letter from an insurance underwriter, having a financial rating reasonably acceptable to City, confirming that the insurer will provide Bidder the required coverages and amounts specified in the Contract Documents.”
- e. Document 00 7316, "Supplementary Conditions – Insurance".
  - i. Article 1.01 states: "At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance...".

- ii. Article 1.07 states, "Contractor shall pay all insurance premiums, including any charges for waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sum due Contractor under Contract Documents."
- f. Addendum No. 2 provided, among other things, that the deductible for All-Risk Course of Construction insurance was increased to \$250,000 from \$10,000. Addendum 2 further provided "Contractor will be required to provide financial documentation demonstrating sufficient liquid reserves to cover the amount between \$10,000 and actual deductible."

By reviewing the excerpts above in their totality, the indisputable conclusion is that proof of All-Risk Insurance was not required by the bid documents to be presented at bid opening. In short, virtually every single mention of insurance certificates or evidence of coverage in the bid documents call for insurance submittals either on the 10th day following notice of intent to award (see 2113, Article 5), or at the City's request after bid opening (see 4513, , 2.03-D). Accordingly, since the bid documents did not require submission of insurance at the time of bid opening, it follows that the failure of Boyer to do so does not render its bid non-responsive.

Next, the City will address the consequences of Boyer listing "TBD" in Document 4314.

#### II.B Boyer's Listing "TBD" in Document 00 4314, if Defective, is Immaterial

Document 00 4314 provided, in pertinent part:

"In order to register to undertake work for City of Berkeley, Bidder must:

- 1) Fill out this registration form completely; do not leave blanks.
- 2) Provide certificates of insurance or a letter evidencing coverage complying with Document 00 4513 (Statement of Qualifications)."

It is undisputed that Boyer did not leave any "blanks" although for the question regarding All-Risk insurance, Boyer stated "TBD". The issue is whether doing so is a defect and, if so, whether it is waiveable. As explained in section II.A, the bid documents expressly called for submission of proof of insurance either at the City's request or within 10 days of receiving a Notice of Award<sup>3</sup>. Indeed, even Document 00 4513, specifically cited in Document 00 4314, calls for submission of insurance documents *after bid opening at the request of the*

---

<sup>3</sup> The reason why the City requires a bidder to submit insurance after bid opening is because it would be patently unfair to require bidders to bind such insurance before they even have notice of whether the project would be awarded to them.

*City*. Thus, even the language in Document 00 4314 itself makes clear that any substantive submission of insurance documents is to be done after bid opening.

While caselaw provides the City with discretion to waive inconsequential defects in a bid, we cannot do so when the defect may affect the amount of the bid. (See Ghilotti Construction v. City of Richmond (1996) 45 Cal.App.4<sup>th</sup> 897, 904 (“... a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential”).) Here, the submission of insurance documents was not required until after bid opening. Regardless of whether bidders complete Document 4314 with the name of a specific carrier or “TBD”, doing either does not affect the amount of the bid. Walsh speculates, without any factual basis, that failure to list an All-Risk carrier provided Boyer with an unfair advantage in that the premium for such insurance was not included in Boyer's bid. Such concern is misplaced as Document 01 2000 makes clear that all bids must include all costs, which includes insurance. In pertinent part, Document 01 2000 provides:

"The Contract Sum for performance of the Work under Contract Documents, or under any Bid Item, shall include full compensations for all work required under the contract documents, including without limitations all labor...and all terms, conditions requirements and limitations set forth in the Contract Documents."

Moreover, nothing in Document 00 4314 requires that the bidder use the insurance providers identified in this form, or that insurance is in place *at the time of the bid*.

In cases where courts have determined that a defect was not waivable such as in MCM Construction, Inc. v. City and County of San Francisco (1998), 66 Cal.App.4<sup>th</sup> 359 and Valley Crest Landscape, Inc. v. City Council (1996) 4 Cal.App.4<sup>th</sup> 1432, those defects were in the nature of typographical or arithmetical errors that would have provided the respective low bidders the right to withdraw their bids pursuant to Public Contract Code section 5103. Here, stating “TBD” in Document 00 4314 does not impact in any manner the amount of Boyer's bid nor does doing so provide Boyer with the ability to withdraw its bid based on section 5103. Accordingly, if stating “TBD” is a defect, it is an inconsequential one which the City may waive because it did not provide Boyer with any competitive advantage. (See MCM Construction, Inc. v. City and County of San Francisco at 375 (“...waiver of an irregularity in a bid should only be allowed if it would not give the bidder an unfair advantage by allowing the bidder to withdraw its bid without forfeiting its bid bond.”)<sup>4</sup>.

---

<sup>4</sup> An additional concept that guides the City's decision to waive Boyer's inconsequential defect is that the City must act in the public interest rather than in the private interest of a disappointed bidder. “The provisions of

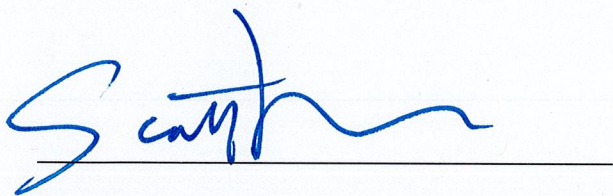
II.C Boyer's Clerical Error in its Safety Section is Immaterial

As explained in section II.B, if a variance could not have affected the price or provide the bidder with a competitive advantage, it is waivable. Here, since Boyer's clerical error regarding its safety experience was immaterial, it is waivable.

III. CONCLUSION

For the reasons explained above, the City deems the lowest responsive and responsible bidder for the Project to be Boyer. This determination is final. The award of this Project to Boyer by the City Council will be made on April 14, 2020. Please call Liza McNulty at (510) 981-6437 should you have any questions.

Very truly yours,



Scott Ferris

Director of Parks, Recreation and Waterfront

---

statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest." (Ghilotti, 45 Cal.App.4th 897, 909, citing Domar Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161, 176.) Waiver of Boyer's inconsequential defect is especially appropriate here where the defect goes to an item which did not affect the determination of the low bidder.