

# Pima County Clerk of the Board

Robin Brigode

Mary Jo Furphy  
Deputy Clerk

Administration Division  
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Tucson, AZ 85701  
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Tucson, Arizona 85714  
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September 18, 2013

Mr. Steve Shepherd, Executive Vice President  
Borderland Construction Company Inc.  
P.O. Box 27406  
Tucson, AZ 85726

RE: Appeal of the Pima County Procurement Director's decision regarding Solicitation  
No. 103853, Magee Road Improvements - La Cañada to AZ77

Dear Mr. Shepherd:

In accordance with Pima County Code 11.20.010(J), please be advised that we are in receipt of your request to appeal the decision of the Procurement Director in the aforementioned matter. A hearing has been scheduled before the Pima County Board of Supervisors on Tuesday, October 1, 2013, at 9:00 a.m. or thereafter, at the following location:

Pima County Administration Building  
Board of Supervisors Hearing Room  
130 West Congress, 1st Floor  
Tucson, AZ 85701

If you have any questions concerning this hearing, please contact this office at 724-8449.

Sincerely,

A handwritten signature in cursive script that reads "Robin Brigode".

Robin Brigode  
Clerk of the Board

c: George Widugiris, Procurement Director

# Borderland

HEAVY ENGINEERING CONTRACTORS • CONSTRUCTION MANAGEMENT • CMAR

September 17, 2013

Pima County Board of Supervisors  
Attn.: Clerk of the Board, Robin Driggoe  
130 W. Congress Street, 5<sup>th</sup> Floor  
Tucson, AZ 85701

**RE: Appeal of Bid Protest Decision Solicitation No. 103853  
Magee Road Improvements - La Cañada to AZ77 (4MRLCO)**

Dear Pima County Supervisors:

I am writing this letter as Borderland Construction Company Incorporated's formal appeal of Pima County's bid protest dismissal dated September 11, 2013 (see attachment "A") for the above mentioned project.

Borderland Construction sent a letter to Pima County Procurement on September 4 protesting Select Developments bid proposal on the basis of an incomplete subcontractors list per the advertised bid documents which state: "The contractor shall submit with its bid a list of Subcontractors...it intends to use in the performance of the work." (See Attachment "B")

This language or similar language is in all Pima County bid documents for construction projects, as, according to the bid documents "Pima County does not support post-bid price competition among subcontractors (i.e., bid shopping).

Pima County Procurements dismissal of the protest letter was based on the following statements from the referenced dismissal letter:

1. Deferral to ADOT - "this contract is funded by a federal grant to the County through the Arizona Department of Transportation (ADOT)" and that "Associated with the grant, there is an overlay of federal requirements to which we must defer and which, in some respects, restrict the County's ability to reject the bid. See e.g. 23 C.F.R. 635.114. ADOT has already approved Select's proposed Disadvantaged Business Enterprise utilization"
2. Licensed to do the work - "Select, for their part has advised us that they are, in fact licensed to perform all remaining"(unlisted)"categories of work not covered by their subcontractors list"

Our contention of the two responses are as follows:

Note #1 on previous page – (Deferral to ADOT) According to Pima County's response letter, ADOT's approval was only on the Disadvantaged Business Enterprise Utilization.

The bid documents state "it is **necessary**...for respondents to complete, execute and return the following bid documents at the time of bid opening: Bid for construction, Bid Schedule, **Subcontractors list**, SBE compliance materials, and Arizona Statutory Bid Bond"; Meaning that any bid turned in without these items is **non-responsive**.

The above referred to 23 CFR Paragraph "A" states: Federal aid contracts shall be awarded only on the basis of the lowest **responsive** bid submitted by a bidder meeting the criteria of responsibility as may have been established by the STD", (State Transportation Department.)

Without knowledge of what is in the agreement between ADOT and Pima County we have to assume that the Pima County's necessary bid documents, as advertised, are what defines a responsive bid. If it were based on ADOT's rules Select would have to be prequalified by ADOT, which they are not.

Our impression of statement one on previous page (Deferral to ADOT), by Pima County is that it was a convenient way for Pima County to address the protest and not a responsible way to deal with potential bid shopping and what we believe to be a non-responsive bid.

Note # 2 on previous page - (License to do the work), we believe it should require more than a General Contractor simply stating they are licensed to do the work for the County to accept that they actually will perform the work as verbally asserted.

If indeed Pima County decides to award this project to Select, and the County's stance is to not support bid shopping, then Select should be required to self-perform all the work not listed on their submitted Subcontractor list and the County should police the project to ensure this happens.

I have attended numerous meetings with Pima County Procurement, Tucson Utility Contractors Association, and The Alliance of Construction Trades. Procurement has stressed at almost every meeting that they do not support bid shopping, which is why the subcontractor list is required with all bid submittals. I believe they are sincere in these statements, but can't understand why when it comes time to act on it, they have simply deferred to ADOT or taken a contractors unsubstantiated word for it.

Appeal of Bid Protest Decision Solicitation No. 103853  
Magee Road Improvements - La Cañada to AZ77 (4MRLCO)  
September 17, 2013  
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We are asking that the Pima County Board of Supervisors do what is right and make a stand for Procurement to let the contracting community see that, not only what is written in the bid documents, but stated to our associations regarding bid shopping is something the Board does not take lightly.

Respectfully,

**BORDERLAND CONSTRUCTION**

A handwritten signature in black ink, appearing to read "Steve Shepherd". The signature is fluid and cursive, with the first name "Steve" being more prominent than the last name "Shepherd".

Steve Shepherd  
Executive Vice President

Enclosures: Attachment "A" and Attachment "B".

Cc: Ally Miller, District 1  
Ramon Valadez, District 2  
Sharon Bronson, District 3  
Ray Carroll, District 4  
Richard Elias, District 5  
Chuck Huckleberry, Pima County Administrator  
George Widugiris, Procurement Director  
Jim Kuliesh, Alliance of Construction Trades  
Ramon Gaanderse, Tucson Utility Contractors Association

ATTACHMENT "A"



**PIMA COUNTY PROCUREMENT DEPARTMENT**

130 West Congress, 3<sup>rd</sup> Floor - Tucson, AZ 85701-1215  
Phone (520) 740-8161 Fax (520) 798-1484

September 11, 2013

Mr. Steve Shepherd  
Executive Vice-President  
Borderland Construction Company, Inc.  
400 East 38<sup>th</sup> Street  
Tucson, Arizona 85713

RE: Bid Protest of Solicitation No. 103853  
Magee Road Improvements – La Canada to AZ77  
(4MRLCO)

Dear Mr. Shepherd

I have received your letter of September 4<sup>th</sup>, 2013, challenging the low bid submitted by Select Development and Construction, Inc. (Select), in response to the captioned solicitation. You contend that the County should reject Select's bid for failure to include what you consider to be a complete list of subcontractors and award the contract to Borderland Construction Company, Inc., which was the second low bidder. You infer that Borderland submitted a complete subcontractor list.

As I'm sure you are aware, this contract is funded by a federal grant to the County through the Arizona Department of Transportation (ADOT). Associated with the grant, there is an overlay of federal requirements to which we must defer and which, in some respects, restrict the County's ability to reject a bid. See, e.g., 23 C.F.R. § 635.114 ADOT has already approved Select's proposed Disadvantaged Business Enterprise utilization.

You assert that the County would have to believe that Select was going to self-perform striping, milling, traffic control, brick pavers and several other categories of work for Select's subcontractor list to be acceptable. Select, for their part, has advised us that they are, in fact, licensed to perform all remaining categories of work not covered by their subcontractor list. Neither party has given us any basis upon which we might resolve their opposing positions without improper resort to conjecture.

For the foregoing reasons, I have determined that you have not raised a valid basis for protest. Your protest is dismissed.

I am persuaded, however, that you have raised a significant issue that merits exploration. I would appreciate the opportunity in the near future to discuss this with you further.

You may appeal this decision to the Board of Supervisors by filing an appeal with the Clerk of the Board within five business days of the date of this written decision pursuant to Pima County Procurement Code Section 11.20.010 H. If you file an appeal with the Board of Supervisors, the Board will consider the protest at a regularly scheduled meeting within 30 days of this decision. The Board may, with or without a hearing, either accept this decision or determine an appropriate remedy.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. George Widugiris".

L. George Widugiris, C.P.M.  
Procurement Director

cc: John Carter, Manager, Design and Construction  
Mark Koskiniemi, CCO Design and Construction  
Interested Parties

§635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA in accordance with §635.110. Award shall be within the time established by the SHA and subject to the prior concurrence of the Division Administrator.

(b) The SHA shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the SHA shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the SHA's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a SHA decision not to award the contract. If, however, the SHA decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the SHA determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the SHA rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

# Borderland

HEAVY ENGINEERING CONTRACTORS • CONSTRUCTION MANAGEMENT • CMAR

## ATTACHMENT "B"

September 4, 2013

George Widugiris  
Procurement Director  
Pima County Procurement  
Design and Construction Division  
130 W. Congress Street, 3<sup>rd</sup> Floor  
Tucson, Arizona 85701

Reference: Bid Protest of Solicitation No. 103853  
Magee Road Improvements La Cañada Road (AZ77) (4MRLCO)

Dear Mr. Widugiris:

Per the Project Bid Documents, page 8 section 11, under the heading of Subcontractors, paragraph 1 states the following:

"The contractor shall submit with its bid, a list of Subcontractors...it intends to use in the performance of the work."

This language or similar language is in all bid documents sent out by Pima County, as, according to the documents, "Pima County does not support post bid-price competition among subcontractors (i.e., "bid shopping").

Select Development & Construction, Inc. only listed three subcontractors; electrical, landscape, and concrete. Based on this list, Select Development & Construction, Inc. would have to expect the County to believe they are self-performing striping, signage, milling, traffic control, brick pavers, installation of temporary concrete barriers, barricade railing, tack coat, etc., to have their submitted list accepted. (Borderland had 14 subcontractors listed, please see both lists attached).

Based on the above, please accept this letter as Borderland Construction Company's formal protest of Select Development & Construction's bid submittal based on an incomplete subcontractor list submittal with a recommendation that the project be awarded to the second bidder, Borderland Construction Company, Inc.



George Widugiris  
Procurement Director  
Pima County Procurement  
September 4, 2013  
Page 2

Reference: Bid Protest of Solicitation No. 103853  
Magee Road Improvements La Cañada Road (AZ77) (4MRLCO)

As Pima County clearly does not support bid shopping, we believe it to be prudent for the County to do the right thing and stand behind what they state in their bid documents.

We, along with others, will be watching Pima County's decision closely as it will affect how the industry proceeds with their Subcontractor List Submittals on future bids.

I look forward to your response.

Respectfully,

A handwritten signature in black ink, appearing to read "Steve Shepherd". The signature is fluid and cursive, with the first name "Steve" being more prominent than the last name "Shepherd".

Steve Shepherd  
Executive Vice President  
Borderland Construction Company, Inc.  
400 East 38<sup>th</sup> Street  
Tucson, Arizona 85713  
Office number (520) 623-0900

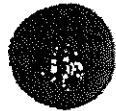
SS:lom

# Attachment

Pima County Procurement Department

Solicitation No. 103853

Magee Road Improvements: La Cañada Dr. to Oracle Rd. (AZ77) (4MRLCO)



## SUBCONTRACTORS LIST

SOLICITATION NO. 103853: Magee Road Improvements: La Cañada Dr. to Oracle Rd. (AZ77) (4MRLCO)

COMPANY NAME	TRADE	DOLLAR AMOUNT
Electrical Concepts	Electrical	350,000.00
Blue Diamond	concrete	275,000.00
Foothill Grounds	Landscape	250,000.00

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above for this project. The information shown above is a true reflection of the proposed subcontracts.

SIGNATURE: [Signature] DATE: 8/22/13

PRINTED NAME & TITLE: Brandon Neal - Vice President

FIRM NAME: Select Development and Construction Inc.

Pima County Procurement Department  
Solicitation No. 103853  
Magee Road Improvements: La Cañada Dr. to Oracle Rd. (AZ77) (4MRLCO)



### SUBCONTRACTORS LIST

SOLICITATION NO. 103853: Magee Road Improvements: La Cañada Dr. to Oracle Rd. (AZ77) (4MRLCO)

COMPANY NAME	TRADE	DOLLAR AMOUNT
ACTION PIPELINE CONTRACTORS	WATER	\$592,031.00
CONSOLIDATED REBAR	REBAR	\$93,667.00
CUSTOM SAW CUTS	SAWCUT	\$3,660.00
DESERT BARRICADES	TRAFFIC CONTROL	\$209,925.00
ELECTRICAL CONCEPTS	ELECTRICAL	\$413,783.90
EUROPEAN PAVERS	CONCRETE PAVERS	\$58,660.00
FOOTHILL GROUNDS, INC	LANDSCAPING	\$282,590.60
FOOTHILL GROUNDS, INC	NOXIOUS PLANT SURVEY	\$1,500.00
FOOTHILL GROUNDS, INC	SEEDING	\$10,500.00
HARVEY TRUCKING	IMPORT	\$76,445.86
HOWE PRECAST CONCRETE BARRIER	CONCRETE BARRIERS	\$85,000 <del>\$110,500.00</del>
LIBERTY FENCE & SUPPLY	BARRICADE RAILING	\$13,274.10
PROFESSIONAL POLICE SERVICES, INC	POLICE	\$31,200.00
ROADSAFE TRAFFIC SYSTEMS (NES)	SIGNAGE	\$34,175.50

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above for this project. The information shown above is a true reflection of the proposed subcontracts.

SIGNATURE: Steve Shepherd DATE: 8/22/2013

PRINTED NAME & TITLE: Steve Shepherd, Executive Vice President

FIRM NAME: Borderland Construction Company

**SOLICITATION NO. 103853: Magee Road Improvements: La Cañada Dr. to Oracle Rd. (AZ77) (4MRLCO)**

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