



# Pima County Clerk of the Board

Robin Brigode

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Deputy Clerk

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June 30, 2014

Mr. Corey B. Larson,  
Waterfall, Economidis, Caldwell, Hanshaw and Villamana, P.C.  
5210 E. Williams Circle  
Tucson, AZ 85711

RE: Appeal of the Pima County Procurement Director's decision regarding Solicitation  
No. 128529, Landscape Maintenance

Dear Mr. Larson:

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 at their next regularly scheduled meeting on Tuesday, August 5, 2014, 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  
Santa Rita Landscaping, Inc., 755 W. Grant Rd., Tucson, AZ 85705



Waterfall Economidits Caldwell  
 Hanshaw Villamana  
 A PROFESSIONAL CORPORATION

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Writer - Corey B. Larson | Direct Line - (520)202-7814 | E-Mail - clarson@wecnv.com

June 27, 2014

Robin Brigode  
 Pima County Clerk of the Board  
 130 W. Congress, 5<sup>th</sup> Floor  
 Tucson, AZ 85701

Re: Protest – Solicitation No. 128529 Landscape Maintenance

Dear Ms. Brigode:

This law firm represents Santa Rita Landscaping, Inc. (“Santa Rita”) with regard to the above matter. My client and I are in receipt of the June 23, 2014 letter granting the protest of Arcadia Landscaping, Inc. advising that the initial Notice of Recommendation for Award will be re-issued to recommend the award of contract to Arcadia. Please accept this letter as an appeal of this matter pursuant to Pima County Procurement Code §11.20.010(H).

Santa Rita appeals this matter to the Board and requests that the Board reinstate the original award to Santa Rita as the most responsive bidder for the solicitation because, Santa Rita complies with the technical requirements of the solicitation, and because, even if the requirements are not technically met, it is in the best interest of the County to award the solicitation to Santa Rita.

***Background.***

Pima County issued a Notice of Request for Proposals for Landscape Maintenance with regard to various sites for the Facilities Management Department pursuant to Solicitation No. 128529. Santa Rita was awarded the bid and Arcadia issued a protest dated June 14, 2014. Arcadia’s protest asserted that Santa Rita was not a responsive bidder because §3.1 of the Solicitation provided that “Contractor’s licenses must be registered to the Contractor, and subcontracting for the purpose of applying chemicals using another vendor is not allowed.” The protest further asserted that Santa Rita is not licensed by the State Office of Pest Management for the application of weed abating chemicals. By letter dated June 23, 2014, Mr. Windugris agreed, granted the protest, and advised that the initial Notice of Recommendation for Award will be re-issued to recommend the award of contract to Arcadia.

***The Solicitation Refers to “Contractor’s License” Not A “Business License” Issued By the State Office of Pest Management.***

Mr. Windugris determined Santa Rita was not a responsive bidder because the provisions of §3.1 made Santa Rita ineligible. However, this provision merely provides that a “Contractor’s license” – a license issued by the Arizona Registrar of Contractor’s (“ROC”) – be registered in the name of the

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Contractor. The solicitation is actually silent with regard to the identity of the party that must have a license issued by the Arizona Office of Pest Management (“OPM”), which does not issue a “contractor’s license,” but instead licenses “commercial pest control businesses.”<sup>1</sup> That is, the solicitation requires the responsive bidder to be the party named on the ROC issued “contractor’s license” and actually contains no such provision as it regards the name on the OPM issued “commercial pest control business.”

Section 3.1 of the solicitation provides that the required licenses that must be held by a responsive bidder is either an “Arizona Commercial Landscape License A-21” or, in the alternative, requires an “L-26 and Office of Pest Management (OPM) Licenses, Class E weed control and Class F turf and ornamental.” This makes sense since A-21 is a commercial contractor’s license that would allow the holder of such license to subcontract performance of work and oversee all types or manner of work. On the other hand, a L-26 license is merely a “Specialty Commercial Contracting” license. See Arizona Administrative Code, R4-9-102. As such, the solicitation appears to have intentionally required that a L-26 licensed “specialty contractor” have its own OPM issued “commercial pest control business,” but would allow the A-21 commercial contractor to oversee another party apply weed abatement chemicals. Indeed, it is for this reason that Santa Rita sought clarification of the solicitation and made clear in its bid that Santa Rita held a A-21 contractor’s license (AROC#071777) and proposed to oversee Wildcat Exterminating pursuant to their OPM license (OPM Business License No. 0439).

Based upon the above, Santa Rita respectfully disagrees with Mr. Widugris’ conclusion in his June 23, 2014 that the “County clearly required, and intended that the contractor carry licenses for, and apply all chemicals without subcontracting.” Indeed, based upon the language of the solicitation and the County’s initial award to Santa Rita, it appears that the County’s actual intent was only to disallow parties with a specialty contractor’s license, not the more significant A-21 commercial contractor’s license, from subcontracting weed control spraying. As such, Santa Rita requests the Pima County Board of Supervisors overturn the decision of the Procurement Director and re-instate the original award to Santa Rita.

***In the Alternative, This Board Should Find That The Award To Santa Rita Is In The Best Interests Of the County Or Should Remove Any Subcontracting Restriction and Re-Let the Solicitation.***

In the alternative to reinstating the award to Santa Rita based upon the language of the solicitation, the Board should reinstate the award to Santa Rita because it is in the best interest of the County to do so. The solicitation specifically provides, pursuant to the Standard Terms and Conditions §2 Evaluation and §4 Award, that the County reserves the right to “waive irregularities and informalities if it is deemed in the best interest of the County.” Here, Santa Rita is a highly qualified contractor with an excellent performance record that was also the low-cost bidder by a substantial margin. Even if Santa Rita is deemed not to be responsive pursuant to the solicitation that is, at best,

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<sup>1</sup> According to the Office of Pest Management’s website, [www.opm.azda.gov](http://www.opm.azda.gov) in the “About Us” section, “[t]he OPM licenses commercial pest control businesses in Arizona and the pesticide applicators and inspectors employed by these companies.” (emphasis added) On the other hand, the Arizona Registrar of Contractors’ reports on its website [www.azroc.gov/history.html](http://www.azroc.gov/history.html) that “[t]he Legislature established the Registrar of Contractors (ROC) in 1931. The ROC licenses and regulates residential and commercial contractors.” (emphasis added)

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vague and ambiguous in §3.1 of Appendix A, this Board should nonetheless waive such irregularity and informality and reinstate the award because the cost savings realized by doing so are substantial and would be in the best interest of the County. The County may also elect to reinstate the award to Santa Rita based upon its qualifications and performance record with the County pursuant to §4 of the Standard Terms of Conditions, which specifically permit an award on "other factors" including "delivery time, quality, . . . suitability for the intended task, and bidder's ability to supply."

In the further alternative, the Board may cancel and re-solicit bids for the solicitation. In doing so, the Board should instruct the Procurement Department to clarify §3.1 to remove any potential interpretation that a responsive bidder with an A-21 contractor's license must also be licensed by the OPM. By allowing licensed A-21 commercial contractors to utilize the services of OPM licensed "commercial pest control businesses," the County may obtain the most responsive and most cost effective services are provided.

***Conclusion.***

For the above stated reasons, Santa Rita respectfully appeals the protest and requests this Board re-instate the initial award to Santa Rita. In the alternative, Santa Rita requests the Board cancel and reissue the solicitation after providing for the clarification sought above.

Sincerely,

WATERFALL, ECONOMIDIS, CALDWELL,  
HANSHAW & VILLAMANA, P.C.



Corey B. Larson

CBL/koa

cc: Hazel D. Houston, CPPB  
Pima County Procurement  
130 W. Congress St., 3<sup>rd</sup> Floor  
Tucson, AZ 85701-1317



## **PIMA COUNTY**

### **PROCUREMENT**

130 W. CONGRESS ST., 3rd FLOOR  
TUCSON, ARIZONA 85701-1317  
TELEPHONE (520) 740-8161, FAX (520) 798-1484

June 23, 2014

Janice L. Marshall, Vice President  
Arcadia Landscape, Inc.  
2002 E. Thirteenth Street  
Tucson, AZ 85719  
Via email: [janmarshall@arcadia-landscape.com](mailto:janmarshall@arcadia-landscape.com)

RE: Protest -Solicitation No. 128529, Landscape Maintenance

Dear Ms. Marshall,

On June 16, 2014 I received your letter dated June 14, 2014 protesting the recommendation of award for Request for Proposal, Solicitation #128529, Landscape Maintenance to Santa Rita Landscaping, which was scheduled for award on July 1, 2014.

Your stated basis for protest is as follows:

As per solicitation #128529, item 3.1 Licenses and permits, "Contractor's licenses must be registered to the Contractor, and subcontracting for the purpose of applying chemicals using another vendor is not allowed."

According to the State of Arizona Office of Pest Management, Santa Rita Landscaping, Inc. is not licensed to apply chemicals. Also, according to the attached information included in Santa Rita's bid packet they are, in fact, using a subcontractor for their weed control.

Your requested relief is to deem the Santa Rita bid as non-responsive and/or non-responsible as per the solicitation's Instructions to Offerors' item 4 Minimum qualifications and Exhibit B; Minimum Qualifications Verification Form and that Arcadia Landscape, Inc. be awarded the contract as the next qualified bidder.

After further review I agree that both Section 3.1 of Appendix A, and Section 4 of the Solicitation, "Offeror's Minimum Qualifications" require that Santa Rita submit licenses evidencing that it is qualified to do all the chemical application work contemplated by the RFP, which it failed to do by submitting licenses for Wildcat Exterminating for weed control work, instead of submitting licenses under its' own name, as required by the above cited sections of the RFP. The County clearly required, and intended that the contractor carry licenses for, and apply all chemicals without subcontracting. Failure to comply with the requirements of the solicitation renders their proposal as non-responsive and non-responsible.

Pursuant to Pima County Procurement Code Section 11.20.010.E(1), your protest is granted. The initial Notice of Recommendation for Award will be revised and re-issued to recommend the award of contract to Arcadia Landscape, Inc. The award action will be scheduled for the Pima County Board of Supervisors August 5, 2014 meeting.

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,



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

**Distribution:**

Interested Parties

T. Finefrock;  
H. Houston  
M. Natelsky  
L. Josker  
R. Brigode