

FORESTHILL PUBLIC UTILITY DISTRICT

AGENDA

Special Meeting of the FORESTHILL PUBLIC UTILITY DISTRICT BOARD OF DIRECTORS

Wednesday	July 6, 2022	3:00 P.M.
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This meeting is being held via teleconference pursuant to Government Code section 54953(e)(1)(B) and Resolution 2022-02 and in compliance with the Brown Act. On May 11, 2022, the Foresthill Public Utility District Board of Directors determined pursuant to Government Code section 54953(e)(1)(B) that emergency conditions caused by the COVID-19 virus pose a threat to meeting attendees' health and safety and elected to meet via teleconference. The District is required (1) to post notice and agendas as otherwise provided by the Brown Act and applicable law, (2) allow members of the public to access the meeting via call-in line or internet-based service line, (3) provide details on the agenda on how to access the meeting and give public comment, (4) provide an opportunity to comment pursuant to Government Code section 54954.3 and allow a reasonable amount of time during public comment for a person to register, login, and comment, and (5) monitor the call-in line and/or internet-based service line to ensure no disruption hinders access or ability to comment, if there is, take no action until public access is restored. The District is not required to provide a location to attend in-person.

The Governor proclaimed a state of emergency due to the COVID-19 virus pandemic on March 4, 2020. The proclamation remains active and applies statewide. The District is complying with other public access and participation obligations, as required and to ensure that any member of the public may attend, participate, and watch the District's Board of Directors conduct its business.

Any person may access and comment during the meeting by doing the following:

Join Zoom Meeting: <https://us06web.zoom.us/j/82837681166> Meeting ID: 828 3768 1166

Dial by your location: 669 900 6833 or 408 638 0968

Find your local number: <https://us06web.zoom.us/u/kcy3Vjg2hB>

A. CALL TO ORDER / ROLL CALL: 3:00 PM

_____ President Robert Palmeri
_____ Treasurer Jane Stahler
_____ Director Mark Bell
_____ Director Patty Wade
_____ Director Tyler Hunter

B. PUBLIC COMMENT: (20 Minutes)

- The public may provide comments to the Board. We welcome and encourage your comments as the Board takes them into consideration in our deliberations.
- Speakers are limited to a maximum of three minutes.

- The Board may not respond to, discuss, or engage in any type of dialog regarding any public comment, however the President may direct questions to staff for a later response or future consideration by the Board.
- Appropriate and respectful language and behavior is vital to the functioning of a public meeting. We ask Board, staff, and members of the public to speak courteously and respectfully. Therefore, the Board prohibits disruptive behavior.

C. ACTION ITEMS:

1. Make findings pursuant to Government Code section 54953(e) that a state of emergency remains active and continues to directly impact the ability of attendees to meet safely in person, such that the Board hereby renews its findings contained in Resolution No. 2022-02 – A resolution of the Board of Directors of the Foresthill Public Utility District ratifying the proclamation of a state of emergency by Governor Gavin Newsom (March 4, 2020) as applicable in the district’s jurisdiction and authorizing teleconference meetings of legislative bodies of the district pursuant to the Ralph M. Brown Act and will continue utilizing teleconference meetings pursuant to Government Code section 54953 (e).

Recommended Action: Make findings contained in Resolution No. 2022-02 and authorize teleconference meetings of legislative bodies of the district.

D. CLOSED SESSION: (2 hours)

1. Conference with Legal Counsel – Existing Litigation Subdivision (a) of Government Code Section 54956.9. Name of Case: Miner’s Camp vs. Foresthill Public Utility District
2. Conference with legal counsel – Anticipated litigation – pursuant to subdivision (b) of Section 54956.9 of the Government Code. Potential cases: One

E. ANNOUNCEMENT FROM CLOSED SESSION

F. ACTION ITEMS:

1. Reject bid protest received for the Foresthill Road Pipeline Replacement Project (Mosquito Ridge Road to Thomas Street) and authorize the execution of a contract with the lowest responsive bidder, direct staff to issue a Notice to Proceed and authorize the use of Repair and Replacement Funds for the project.

Recommended Action: Authorize the execution of a contract with the lowest responsive bidder, direct staff to issue an Notice to Proceed and authorize the use of Repair and Replacement Funds for the project.

Public Comment:

2. Discuss options associated with the Miner’s Camp litigation

Recommended Action: discuss issue and direct staff accordingly

Public Comment:

G. ADJOURNMENT

In accordance with Government Code Section 54954.2(a) this notice and agenda were posted at 24540 Main Street, Foresthill, CA 95631 on or before 4:30 PM., June 30, 2022.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the General Manager at (530)367-2511. Notification 48 hours prior to the meeting will enable the district to make reasonable arrangements to ensure accessibility to this meeting.

Henry N. White, Board Clerk & Ex-Officio Secretary

RESOLUTION NO. 2022-02

RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORESTHILL PUBLIC UTILITY DISTRICT RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR GAVIN NEWSOM (MARCH 4, 2020) AS APPLICABLE IN THE DISTRICT'S JURISDICTION AND AUTHORIZING TELECONFERENCE MEETINGS OF LEGISLATIVE BODIES OF THE DISTRICT PURSUANT TO THE RALPH M. BROWN ACT

WHEREAS, the Foresthill Public Utility District ("the District") is committed to preserving and nurturing public access and participation at meetings of its Board of Directors other legislative bodies; and

WHEREAS, all meetings of the District's legislative bodies are open and public, as required by the Ralph M. Brown Act, Government Code section 54950 et seq. ("Brown Act"), so that any member of the public may attend, participate, and watch the District's legislative bodies conduct their business; and

WHEREAS, long-established Brown Act provisions, Government Code section 54953(b)(3), provides a legislative body may meet via teleconference if each teleconference location is listed on the agenda, open to the public with an opportunity to participate and comment, and notice is given at the location, plus a quorum of the legislative body is present in the jurisdiction; and

WHEREAS, on September 16, 2021, Governor Gavin Newsom signed Assembly Bill 361, which, effective immediately, added Government Code section 54953(e) to the Brown Act, providing a legislative body may meet via teleconference without complying with Section 54953(b)(3) if certain conditions exist and specified procedures are followed; and

WHEREAS, Section 54953(e)(1) provides a legislative body may meet via teleconference if the Governor has proclaimed a state of emergency pursuant to Government Code section 8625 and either (i) state or local officials have imposed or recommended measures to promote social distancing, (ii) the legislative body meets to determine by majority vote that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or (iii) the legislative body has voted as such and is meeting pursuant to that vote; and

WHEREAS, a legislative body's decision to meet pursuant to Section 54953(e) must be reevaluated and renewed at least every thirty (30) days, or else the body will be required to adopt new initial findings; and

WHEREAS, while a legislative body meets via teleconference pursuant to Section 54953(e), it must take actions to preserve public access and public participation and give notice of the meeting and post agendas as otherwise required, allow members of the public to access the meeting via call-in line or internet-based service line, provide details on the agenda on how to

access the meeting and give public comment, give an opportunity to comment pursuant to Government Code section 54954.3 and allow a reasonable amount of time during public comment for a person to register, login, and comment, and monitor the call-in line and internet-based service line to ensure no disruption hinders access or ability to comment, if there is, take no action until public access is restored; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency pertaining to the threat to human health and safety posed by the COVID-19 virus pandemic and that proclamation remains in effect to this day in Placer County and statewide; and

WHEREAS, individuals infected with the virus may experience short- and long-term effects – fever and chills, cough, shortness of breath and difficulty breathing, fatigue, headache, nausea, vomiting, gastrointestinal issues, loss of taste and smell, death – and the spread of the virus is impacting the health care system, affecting care for COVID-19 symptoms and other ailments; and

WHEREAS, while being vaccinated may decrease the likelihood of contracting or dying from the virus, vaccinated and unvaccinated people alike can carry, transmit, and be affected by the virus; and

WHEREAS, the COVID-19 virus, and its variants, is spread through the air when a person who is carrying the virus, whether he or she is showing symptoms or not, is in close proximity to another person; and

WHEREAS, while the COVID-19 virus remains present in the community, allowing members of the District legislative bodies and members of the public to meet in-person would present an imminent risk to attendee health and safety beyond the control of District services, personnel, equipment, and facilities; and

WHEREAS, the District desires to ratify the Governor's March 4, 2020, proclamation of state of emergency related to the COVID-19 virus pandemic as it applies to the jurisdiction of the District and authorize teleconference meetings of District legislative bodies pursuant to Section 54953(e) so long as all provisions of that section are followed to provide public access and opportunity for public comment; and

WHEREAS, the District has taken and will continue to take measures to ensure access for the public, including by providing the public a call-in option and/or internet-based service option for all meetings of District legislative bodies.

WHEREAS, pursuant to Government Code section 8635 et seq., the Board of Directors has the authority during a state of emergency to take all actions necessary to perform its functions in the preservation of law and order, preservation of the furnishing of local services, and protection of life and property, which includes the authority to direct meetings of all District legislative bodies to be held via teleconference pursuant to this Resolution; and

NOW, THE BOARD OF DIRECTORS OF THE FORESTHILL PUBLIC UTILITY DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

1. The recitals set forth above are true and correct and are incorporated herein by reference as if set forth in full.
2. The Governor's March 4, 2020, proclamation of state of emergency related to the COVID-19 virus pandemic applies to the jurisdiction of the District and is ratified by the District Board of Directors.
3. All meetings of District legislative bodies shall be conducted in accordance with Government Code section 54953(e) and staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Section 54953(e) and other applicable provisions of the Brown Act.
4. This Resolution shall take effect immediately upon its adoption and be effective for thirty (30) days, unless the Board of Directors takes action to rescind the Resolution. On or before the 30th day since adoption, the Board of Directors may take action to extend the Resolution's permissions pursuant to Government Code section 54953(e)(3).

APPROVED, PASSED AND ADOPTED by the Board of Directors of the Foresthill Public Utility District on May 11, 2022 by the following vote:

AYES	5
NOES	0
ABSENT	0
ABSTAIN	0



Robert Palmeri, President,
Foresthill Public Utility District

ATTEST:



Henry N. White, Clerk
Foresthill Public Utility District

ERIC N. ROBINSON
erobinson@kmtg.com

Item F 1

June 28, 2022

Foresthill response to bid protest

VIA E-MAIL

Ben Borba, CEO
Flowline Contractors, Inc.
6560 Asher Lane
Sacramento, CA 95828
E-Mail: bborba@flowlineinc.com
spencer@flowlineinc.com

Re: Foresthill Road Pipeline Replacement Project Bid Protest

Dear Mr. Borba:

My firm serves as general counsel to the Foresthill Public Utility District (“FPUD”). This letter responds to your bid protest, dated June 15, 2022, sent to FPUD regarding the Foresthill Road Pipeline Replacement Project (“Project”). In your letter, Flowline Contractors Inc. (“Flowline”) protests the bid submitted by Lund Construction Co. (“Lund”). Following review and analysis of the protest, we have determined that your protest lacks merit for the reasons stated below. Therefore, we will recommend that the FPUD Board of Directors reject Flowline’s bid protest and award the Project contract to Lund as the lowest responsible, responsive bidder.

I. LEGAL STANDARD

California Public Contract Code section 20201 governs FPUD’s award of the contract for this Project and requires that the contract be awarded, if at all, to the lowest responsible bidder. To the extent there were any irregularities in the lowest responsible bid, such errors may be waived by FPUD, so long as they were immaterial. (*Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1194 (“*Bay Cities*”) [immaterial irregularities may be waived if they do not give the bidder a competitive advantage].) To the extent there were any such informalities or irregularities in Lund’s bid, FPUD found they were immaterial and decided to waive them.

FPUD’s discretion to waive inconsequential informalities or irregularities is well established under California law: “[I]t is further well-established that 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 the bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.” (*Bay Cities, supra*, 223 Cal.App.4th at p. 1188.)

In general, issues of responsiveness are determined by looking exclusively at the face of the bid. (*Great West Contractors, Inc. v. Irvine Unif. Sch. Dist.* (2010) 187 Cal.App.4th 1425, 1453.) Therefore, allegations that go beyond the face of the bid are generally not relevant for determining responsiveness.

In addition, allegations of non-responsiveness must be evaluated from a practical, rather than speculative or hypertechnical perspective, and based on the public interest: “They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal...of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.” (*Bay Cities, supra*, 223 Cal.App.4th at p. 1189; internal quotation marks omitted.)

From that legal framework, we consider Flowline’s allegations.

II. ANALYSIS

The basis of your bid protest is that Lund did not purchase a set of construction specifications from ARC Document Solutions (“ARC”) in accordance with the Bid Documents.

Your bid protest correctly cites Section 00020, paragraph 5 of the Bid Documents, which provides:

Each Bidder must purchase a set of specifications and drawings from ARC Document Solutions to be added to the plan holder’s list for the Project, receive addenda, and be eligible to bid the Project.

However, the bid protest fails to cite to the provisions in the same Section 00020 that preserve FPU’s discretion to waive irregularities. In particular, the final paragraph states:

The Owner reserves the right to award the Contract, reject any and all Bids, to waive irregularities, and to reject nonconforming, nonresponsive or conditional Bids.

Lund’s receipt of the Contract Documents for the Project from a source other than ARC is an immaterial irregularity that FPU is entitled to waive at its discretion. Most importantly, Lund did receive a complete set of specifications and subsequent addenda (Contract Documents), which Lund used to prepare its bid. It is correct that Lund received the complete set of Contract Documents from the engineering firm Peterson Brudstad, Inc., instead of from the ARC platform; nevertheless, the intent of Section 00020 was satisfied because Lund ultimately received the same complete set of Contract Documents that all other bidders received, attested to Lund’s receipt of those documents, and used that information to prepare a bid for the Project.

Further, Lund neither gained a cost advantage nor a competitive advantage by receiving the Contract Documents from Peterson Brudstad, Inc. To the extent there was a cost savings, Lund avoided paying \$117. Such a nominal amount could not materially affect the amount of its bid, which was approximately \$43,000 less than Flowline’s bid. The \$117 fee only accounts for a fraction of any cost savings. The fact that Lund did not have to pay for the Contract Documents did not benefit its bid by even 1%.

Lund did not receive a competitive advantage by receiving the Contract Documents from Peterson Brudstad, Inc., because they were only provided the same information made available to the other bidders, including Flowline. The email exchange between the Peterson Brudstad, Inc. representatives and Lund is attached and incorporated herein as **Exhibit A**. The request explained the technical difficulty

Ben Borba, CEO

June 28, 2022

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Lund was having related to its physical access to ARC, and they were provided the project specifications without any explanation, context, background, or advice. Lund did not receive additional information or insight that the other bidders did not receive, and thus could not have been put in a more competitive position by obtaining the documents from Peterson Brudstad, Inc. instead of ARC.

Finally, it has come to the attention of FPUD staff that Flowline has failed to submit the financial information required by Section 00420, subsection D of the Bid Documents. This failure to submit the required information undermines Flowline's own protest, and FPUD may deem Flowline's bid unresponsive.

III. CONCLUSION

Based upon the foregoing, and based upon FPUD staff's determinations that Lund is the lowest responsible bidder and that Lund's bid is responsive on its face, we will recommend that FPUD reject Flowline's bid protest in its entirety as lacking merit. FPUD staff intends to execute the contract for the Project with Lund as previously approved by the Board at its Special Meeting, which was open to the public and held on June 14, 2022. Please advise at your earliest convenience if you will be withdrawing your bid protest. FPUD appreciates your interest in this Project and wishes you success with your next project.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



ERIC N. ROBINSON

Attachment: Exhibit A

cc w/attach.: Hank White, FPUD General Manager (via e-mail)
Kevin Lund, CEO Lund Construction Co. (via e-mail)

EXHIBIT A

From: [Morgan Lane](#)
To: [Carol Lorang](#)
Cc: ["Michael Vitello"](#); ["Mike Lorang"](#); [Tim Hasler](#)
Subject: RE: Foresthill PUD Foresthill Road Pipeline Replacement Project
Attachments: [FPUD Foresthill Pipeline Bid Set Specifications.pdf](#)

Carol,

Great, thanks for the follow up! Attached are the specifications for the project.

Thanks,

Morgan Lane, EIT

Peterson Brustad Inc.

80 Blue Ravine Road, Suite 280

Folsom, CA 95630

Office: 916.461.1751

Cell: 916.990.3664

From: Carol Lorang <carol@lorangbrothers.com>
Sent: Tuesday, May 10, 2022 4:26 PM
To: Morgan Lane <mlane@pbieng.com>
Cc: 'Michael Vitello' <michael.vitello@yahoo.com>; 'Mike Lorang' <mike@lorangbrothers.com>
Subject: RE: Foresthill PUD Foresthill Road Pipeline Replacement Project

Morgan,

Thank you for the Foresthill Pipeline Project information, with attached Plans.

We will be sending Mike Vitello, from our Company to the Mandatory Pre-Bid tomorrow at 11:00am.

Can you please also send me the Specs for this project?? I tried to login to the ARC site to purchase the Plans and Specs, and I was not successful because I can't remember our login info.

Thank you again and have a great night.

Carol Lorang-Davis

LORANG BROTHERS CONSTRUCTION, INC.

1175 South Auburn St.

Colfax, CA 95713

530-346-8150 office

530-346-6120 fax

From: Morgan Lane <mlane@pbieng.com>
Sent: Tuesday, May 10, 2022 3:04 PM

To: carol@lorangbrothers.com

Cc: Tim Hasler <thasler@pbieng.com>

Subject: Foresthill PUD Foresthill Road Pipeline Replacement Project

Hi Carol,

Attached are the plans for the pipeline replacement project with Foresthill PUD. The full set of bid docs will need to be obtained from the plan room at ARC Document Solutions- 801 Broadway, Sacramento.

Bid opening is 5/26 at 2 pm, and a mandatory pre-bid meeting is **tomorrow 5/11 at 11 am** at the District's office- 24540 Main Street, Foresthill, CA.

The project is for replacement of existing water main along Foresthill Rd, including: 4,595 LF of 10" PVC, 475 LF of 10" DI, and 700 LF of 6" DI. The job includes 10 tie-ins, new hydrants and connections to a couple existing hydrants, ARVs, blowoffs, approximately 40 connections to existing meters (some service lines with multiple meters), pavement restoration, etc.

Please let me know if you have any questions!

Thanks,

Morgan Lane, EIT

Peterson Brustad Inc.

80 Blue Ravine Road, Suite 280

Folsom, CA 95630

Office: 916.461.1751

Cell: 916.990.3664



5302 Roseville Road,
North Highlands, CA 95660
www.LundConst.com

LUND
CONSTRUCTION CO.

Phone: 916-344-5800
Fax: 916-338-2725
License #: 342677

June 20, 2022

Hank White, General Manager
Foresthill Public Utility District
24540 Main Street
Foresthill, CA 95631

Item F 1

Lund Construction response to protest

Sub: Rebuttal to Protest

Re: Foresthill Road Pipeline Replacement Project
(Mosquito Ridge Road to Thomas Street)

Dear Mr. White,

This letter is in response to the protest filed by Flowline Contractors to Foresthill Public Utility District’s intent to award the above referenced project to Lund Construction. The basis of Flowline’s protest is that Lund did not purchase a set of specifications and drawings from ARC Document Solutions. Flowline goes on to state that “*there were some technical issues that even Flowline Contractors, Inc. had stumbled upon when purchasing the appropriate documents*”. We agree that there were apparently technical issues because when we went to ARC’s website to purchase the documents, we were given these documents without being charged. It seems many entities are constantly changing procedures for things these days, so we assumed we were going to be charged later. In any case we were not charged when downloading the documents. If this was part of the “*Technical issues*” Flowline mentioned, we will be happy to pay for the documents now if that will help clear up the matter.

Flowline also mentions that they had been advised that (the purchase issue) had “*no effect on the low bidder’s price or no competitive advantage to the low bidder*”. We totally agree with this statement. Whether the documents are purchased or obtained by other means has no effect on a bidder’s price if all documents are obtained. All Addendums were acknowledged as well as the revised pricing sheets and all other required information was submitted with the bid so clearly Lund obtained all the necessary documentation.

In conclusion, we strongly believe this protest to be based on nothing more than an irregularity which is listed on page 00020-3 of the Notice Inviting Bids (Exhibit A) “*the Owner has the right to waive irregularities*” and therefore should thus be waived. Additionally, if the protester decides to move forward legally as they have so inappropriately threatened then Lund will respond accordingly.

If you have any questions or would like to discuss this matter, please call me directly at (916) 825-0611.

Respectfully,


Harjivan Chatha
Estimating Manager

cc:
Kevin Lund – Lund Construction Co. – via email klund@lundconst.com
Spencer Roberts – Flowline Contractors, Inc. – via email spencer@flowlineinc.com
Ben Borba – Flowline Contractors, Inc. – via E-mail bborba@flowlineinc.com
Tim Hassler – Peterson Brustad Inc. – via email – thassler@pbieng.com

Exhibit A

SECTION 00020

**FORESTHILL PUBLIC UTILITY DISTRICT
24540 MAIN STREET
FORESTHILL, CA 95631**

NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that Foresthill Public Utility District, hereafter referred to as "Owner" or "District", will receive SEALED BIDS at the **District's office at 24540 Main Street, Foresthill, California 95631 until 2:00 p.m. local time, on Thursday, May 26th, 2022** for construction of:

Foresthill Road Pipeline Replacement Project

At said place and time, and promptly thereafter, all Bids that have been duly received in accordance with the Contract Documents, will be publicly opened and read aloud.

Project Description: In accordance with plans and specifications prepared by Peterson Brustad Inc., the Work includes the furnishing of all labor, materials, tax, equipment and services for the construction and completion of approximately 5,070 linear feet of 10" pipeline and reconnection of water service connections from Mosquito Ridge Road to Thomas Street, and 700 linear feet of 6" pipeline down Sierra View Lane, in addition to the installation of new services, meters, hydrants, valves, and associated appurtenances.

The total Contract Time to achieve Final Completion is **120** calendar days.

At the time the Contract is bid, awarded and for the duration of the contract, the Owner has determined that the General Contractor shall possess a valid State of California Class A-General Engineering Contractor's License. Failure to possess the specified license shall render the bid as non-responsive. Bidders must comply with the provisions of the Business and Professions Code Section 7028.15 by setting forth their license number and expiration date on their bid.

A full set of Contract Documents and all information available to Bidders, as further defined in Section 00200, **INFORMATION AVAILABLE TO BIDDERS**, may be examined at the Owner's Engineering Division during regular business hours. Bidders are encouraged to examine qualification requirements contained within the Contract Documents. Copies of the Contract Documents and related information from the Owner will be available starting Thursday 4/28/22 at 2:00 P.M. at ARC Document Solutions, 801 Broadway, Sacramento, CA 95818. For further information regarding contract documents, specifications and drawings, please contact ARC Document Solutions at (916) 443-1322 or visit their website at <http://www.e-arc.com/ca/sacramento>. Each Bidder must purchase a set of specifications and drawings from ARC Document Solutions to be added to the plan holder's list for the Project, receive addenda, and be eligible to bid the Project.

Complete sets of Contract Documents must be used in preparing Bids. The Owner does not assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

Exhibit A

The Owner, in making copies of the Contract Documents available on the above terms, does so only for the purpose of obtaining Bids for the Work and does not confer license or grant for any other use. The Bidder shall purchase the Contract Documents and become a listed holder of these documents in accordance with these procedures to be eligible to bid the Project. Bids received from Bidders not following these procedures may, in the discretion of the Owner, be deemed non-responsive.

A mandatory pre-bid walk-through meeting will be held on Wednesday 5/11/2022 at 11:00 a.m. at the District's office at 24540 Main Street Foresthill, CA 95631. At this meeting, representatives of Owner and the Design Engineer will discuss the bid documents, site constraints, order of work and other items specific to this project. A project walk-through will follow. A sign-in sheet will be available up until 11:10 a.m. only. Attendance at the entire pre-bid meeting and walk-through is **mandatory for bidding**. Bids received from Bidders who did not sign the sign-in sheet and attend the meeting and walk-through will be returned to the Bidder unopened. Attendance by subcontractors is not mandatory, but all interested prospective subcontractors are encouraged to attend. The Owner will transmit to all recipients of complete sets of Contract Documents such Addenda as Owner considers necessary in response to questions raised at the meeting and walk-through. Oral statements not confirmed by Addenda may not be relied upon and are not binding or legally effective. Except for mandatory walk-through, no other access to the project site will be granted pre-bid without the Owner's approval. During all site visits the Bidder must be accompanied full time by an authorized representative of the Owner. No exceptions to this requirement.

Written questions regarding the Contract Documents and/or the proposed Work should be directed to Tim Hasler at Peterson Brustad Inc. by e-mail at (thasler@pbieng.com) no later than date for last day to submit questions.

Bidding procedures are prescribed in the Contract Documents. Bids shall be executed upon the Bid Forms bound and made a part of the Bid Documents. All prescribed Bid Forms may be removed from the Contract Documents for submission in a sealed envelope.

A Bid Guaranty in an amount not less than ten percent (10%) of the total aggregate of the bid. This Bid Guaranty is to be forfeited should the Bidder, if awarded the contract, fail to enter into the same, or fails to furnish the bonds and/or proof of insurance as stipulated in the Contract Documents. The checks or bond shall be made payable to the Owner.

The successful Bidder will be required to furnish both a Faithful Performance Bond in the amount of one hundred percent (100%) and a Payment Bond in the amount of one hundred percent (100%) of the Contract price.

Pursuant to the provisions of California Labor Code Section 6707, each bid submitted in response to this Invitation to Bid shall contain, as a separate bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb in trenches and open excavation, exceeding five feet, which shall conform to applicable safety orders. Neither this requirement, nor any payment by Owner for this separate bid item, shall be construed to impose tort liability on Owner, or its employees or agents, for any injury or damage caused by failure of any excavation or protective equipment or methods.

Pursuant to Sections 1770, *et seq.*, of the California Labor Code, the successful Bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor

Exhibit A

Code Section 1773.2, the Contractor is hereby advised that copies of the prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the Owner's office. These rate determinations may also be found on the State of California Department of Industrial Relations' website at <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>. This project is subject to compliance monitoring and enforcement by the State Department of Industrial Relations (DIR).

All contractors and subcontractors shall be registered with DIR pursuant to Labor Code Section 1725.5 to be qualified to bid on this project or to be listed as a subcontractor for this project pursuant to Public Contract Code Section 4104. Bidders will be required to submit proof of registration for themselves and all listed subcontractors prior to award of the contract.

The successful contractor and its subcontractors shall employ the appropriate number of apprentices, in each apprenticeable craft, on the project site as stipulated in California Labor Code, 1777.5.

The successful Bidder must insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, sex, age, religion, ancestry, citizenship, national origin, handicap, mental condition, veteran or marital status. The successful Bidder must comply with the Americans with Disabilities Act.

No bid received and read aloud may be withdrawn for a period of thirty (30) days after the bid opening date, except pursuant to Public Contract Code Section 5101 *et seq.*

Telephones will not be available to Bidders at the Owner's offices for the preparation of bids or for communicating bid results. Bid forms received after the designated time will not be opened and will be returned to the Bidder unopened.

Bidders shall develop and submit bids at their own expense. The Owner will not reimburse any costs associated with the development and submittal of any and all bids.

The Owner reserves the right to award the Contract, to reject any and all Bids, to waive irregularities, and to reject nonconforming, nonresponsive or conditional Bids.

DATED: _____, 2022

Henry White
General Manager

Item F 1

June 15, 2022

Flowline Contractors bid protest

Hank White, General Manager
Foresthill Public Utility District
24540 Main Street
Foresthill, CA 95631

Re: Foresthill Road Pipeline Replacement Project – Protest of Intent to award Lund Construction Co.

Dear Mr. White,

Flowline Contractors, Inc. hereby formally protests Foresthill Public Utility District's intent to award Lund Construction Co. for the referenced project.

On June 9, 2022, FPUD had determined that Lund Construction Co. was the lowest responsive bidder. Upon review, Flowline Contractors, Inc. and Teichert Construction were the only TWO bidders who purchased the set of specifications and drawings from ARC Document Solutions. Page 00020-1 (ATTACHMENT A) clearly states that "Each bidder must purchase a set of specifications and drawings from ARC Document Solutions to be added to the plan holder's list for the Project, receive addenda, and be eligible to bid the project."

An email from Don Rader (ATTACHMENT B and ATTACHMENT C) goes on to confirm that Lund Construction Co. was not on the list of plan holders. The words "must purchase" to be "eligible to bid the Project" are non-negotiable. This information was clearly listed on the first page of the Notice Inviting Bids, not hidden deep within the specs. Therefore, Lund Construction Co. should be considered non-responsive.

Understandably, there were some technical issues that even Flowline Contractors, Inc. had stumbled upon when purchasing the appropriate documents. However, both Flowline Contractors, Inc. and Teichert Construction were able to obtain this purchase to ensure our eligibility to bid this project. This situation should be no different than having missed a mandatory pre-bid walk-through meeting. Flowline Contractors has been advised that there was no effect on "the low bidder's bid price" or "no competitive advantage to the low bidder" but we disagree with both statements. There are multiple aspects taken into account when bidding projects and paying attention your competition is one of them. Furthermore, the simplicity of following bid instructions set forth by the project owner, should be taken seriously as we are all bidding competitively. Considering that this bid was postponed twice, the additional amount of time should have been more than enough for Lund Construction Co. to get on the plan holder's list.

Conclusion

Given the time of year and the low availability of most parts, we are on a tight schedule. The distributors that are working with Flowline Contractors, Inc. have notified us that if the pipe is not ordered within the next few days, it could be months before we get the opportunity to obtain the material. With that, we have crews readily available.

Please be advised that we are prepared to move forward legally and seek an injunction against the award of the Foresthill Pipeline Replacement Project to Lund Construction Co., who is neither a responsible nor a responsive bidder.

If you have any questions, please contact me directly at (916) 383-7525.

Respectfully,



Ben Borba
C.E.O.
Flowline Contractors, Inc.

Cc: Kevin Lund – Lund Construction Co. – via email klund@lundconst.com
Spencer Roberts – Flowline Contractors, Inc. – via email spencer@flowlineinc.com
Ben Borba – Flowline Contractors, Inc. – via email bborba@flowlineinc.com
Tim Hassler – Peterson Brustad Inc. – via email thassler@pbieng.com

ATTACHMENT A

SECTION 00020

FORESTHILL PUBLIC UTILITY DISTRICT
24540 MAIN STREET
FORESTHILL, CA 95631

NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that Foresthill Public Utility District, hereafter referred to as "Owner" or "District", will receive SEALED BIDS at the District's office at **24540 Main Street, Foresthill, California 95631 until 2:00 p.m. local time, on Thursday, May 26th, 2022** for construction of:

Foresthill Road Pipeline Replacement Project

At said place and time, and promptly thereafter, all Bids that have been duly received in accordance with the Contract Documents, will be publicly opened and read aloud.

Project Description: In accordance with plans and specifications prepared by Peterson Brustad Inc., the Work includes the furnishing of all labor, materials, tax, equipment and services for the construction and completion of approximately 5,070 linear feet of 10" pipeline and reconnection of water service connections from Mosquito Ridge Road to Thomas Street, and 700 linear feet of 6" pipeline down Sierra View Lane, in addition to the installation of new services, meters, hydrants, valves, and associated appurtenances.

The total Contract Time to achieve Final Completion is **120** calendar days.

At the time the Contract is bid, awarded and for the duration of the contract, the Owner has determined that the General Contractor shall possess a valid State of California Class A-General Engineering Contractor's License. Failure to possess the specified license shall render the bid as non-responsive. Bidders must comply with the provisions of the Business and Professions Code Section 7028.15 by setting forth their license number and expiration date on their bid.

A full set of Contract Documents and all information available to Bidders, as further defined in Section 00200, **INFORMATION AVAILABLE TO BIDDERS**, may be examined at the Owner's Engineering Division during regular business hours. Bidders are encouraged to examine qualification requirements contained within the Contract Documents. Copies of the Contract Documents and related information from the Owner will be available starting **Thursday 4/28/22 at 2:00 P.M. at ARC Document Solutions**, 801 Broadway, Sacramento, CA 95818. For further information regarding contract documents, specifications and drawings, please contact ARC Document Solutions at (916) 443-1322 or visit their website at <http://www.e-arc.com/ca/sacramento>. Each Bidder must purchase a set of specifications and drawings from ARC Document Solutions to be added to the plan holder's list for the Project, receive addenda, and be eligible to bid the Project.

Complete sets of Contract Documents must be used in preparing Bids. The Owner does not assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

ATTACHMENT B

From: Don Rader <don.rader@e-arc.com>
Sent: Friday, June 10, 2022 8:36 AM
To: Ben Borba
Subject: Foresthill Pipeline Project

Good morning Ben,

In regards to your inquiry, there are 2 plan holders that are currently on the list of bidders, for this Foresthill Projects. The 2 companies listed are, Flowline Contractors and Teichert. Let me know if you have any other questions. Thank you

We value your business!

If you like the work we've done for you or if you have any recommendations on how we can improve, please leave us a review at this [link](#). Your feedback is greatly appreciated!

Don Rader
Stockton Service Center Manager

ARC
440 N El Dorado
Stockton, CA 95202
O (209) 464-8724
Monday - Friday 8am – 5pm
stk.branch@e-arc.com
www.e-arc.com/location/stockton

ARC has everything you need for Safe Social Distancing as we return to work!

Not sure what graphics will help? Check out our video here: <https://www.youtube.com/watch?v=kYaZ-zuTV3w&feature=youtu.be>

This email was scanned by Bitdefender

ATTACHMENT C

Thursday, June 09, 2022 2:12:15PM (Pacific Time)

FPUD Foresthill Pipeline Planholders List

Project Information

Project Name : FPUD Foresthill Pipeline
 Project : ARC/CNC_FPUD Foresthill Pipeline
 Project Type : Public

Project Hosted By :

Bid Services Admin
 1322 V St
 Sacramento California USA 95818
916-443-1322

Recipient	Address	City	State	Zip	Phone (W)	Fax	Email
Company Name Flowline Contractors							
Ben Barba	6560 Asher Lane	Sacramento	California	95828	916-383-7525	916-383-7737	bbarba@flowline.com
Company Name Teichert							
Steven Doooley	400 SquiriseSuite 300	Roseville	California	95661	916-757-6434		SDoooley@teichert.com

End of Report