



December 21, 2023

**Re: Sewer System Rehabilitation Plan Phase 1
Sewer Main Replacement Project No. 4
Project No. CP 1329000
BID PROTEST BY EVERLEVEL HOLDINGS LLC**

Dear City Engineer of Public Works (Garden Grove):

Please accept this correspondence as EverLevel Holdings LLC's ("EverLevel") formal protest of the apparent low bid submitted by Ramona Inc. ("Ramona") on the City of Garden Grove's ("City") Sewer System Rehabilitation Plan Phase 1, Sewer Main Replacement Project No. 4, Project No. CP 1329000 (the "Project"). As a brief summary of the facts involved, bids for the Project were received by the City on December 19, 2023. Ramona was the apparent low bidder with a bid of \$2,687,569, and EverLevel was the second lowest bidder with a bid of \$2,864,610. Upon a review of Ramona's bid submission, EverLevel identified a significant deficiency with Ramona's bid which renders the Ramona bid non-responsive. This deficiency is discussed below in detail and serves as the basis for EverLevel's bid protest.

1. Summary of California Law

Under California's competitive bidding statutes, a contract must be awarded to the lowest "responsive and responsible" bidder. To be responsive, a bid must conform to the material terms of the bid package. (*City of Inglewood v. Los Angeles County Civic Center Authority* (1972) 7 Cal.3d 861; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175; *Konica Business Machines USA, Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 456-457; *Associated Builders & Contractors, Inc. v. Metropolitan Water Dist.* (1997) 59 Cal.App.4th 1503, 1507.)

A bid that differs materially from the bid specifications must be rejected. (*Stimson v. Hanley* (1907) 151 Cal. 379.) Typically, the material terms of a bid are those that affect price, quantity, quality, or delivery and those terms that the bid package clearly identifies as mandatory. (*Pozar v. Department of Transp.* (1983) 145 Cal.App.3d 269.) A bid also fails to comply materially with the bid package if it gives the bidder an unfair competitive advantage over other bidders. (*Ghilotti Construction Company v. City of Richmond*, (1996) 45 Cal.App.4th 897, 900.)



2. Ramona's Bid Is Non-Responsive Because It Failed To Provide The Mandatory Jurat Certificate For the Non-Collusion Affidavit

The two most common notarizations requested are acknowledgments and Jurat certificates. The purpose of an acknowledgment is for a signer, whose identity has been verified, to declare to a Notary that he or she has willingly signed a document. (*United States v. Jaramillo* (9th Cir. 1995) 69 F.3d 388, 392 ("Under California law, a notarial acknowledgement certifies only the *identity* of the signer.")) In contrast, the purpose of a Jurat certificate is for a signer to *swear to or affirm the truthfulness of the contents of a document*. Because acknowledgements and Jurats are different notarizations with different purposes, each requires its own certificate wording. Specifically, California Civil Code section 1189 prescribes the required form of a notarized acknowledgement and Civil Code section 8202 prescribes the required form of a Jurat certificate. For reference, samples of each are provided below.

Civil Code § 1189: Acknowledgement

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



EVERLEVEL

Civil Code § 8202: Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____

Subscribed and sworn to (or affirmed) before me on this _____
day of _____, 20____, by _____

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.

(Seal)

Signature _____

In light of the foregoing and given the different purposes for each, it is not proper to use a Jurat certificate for an acknowledgment, or vice versa.

With regards to the Project, the Instruction to Bidders explicitly requires the bidder's completion and submission of the Non-Collusion Affidavit that is *in compliance with the relevant forms provided the in the Contractor's Proposal section 4 of the Contract Documents*. Importantly, the relevant form requires notarization, and specifically that a Notary Public confirm that the affiant "subscribed" and "swore to" the contents of the affidavit. The form language in the required form in the Bid Proposal section of the Contract Documents is provided below.

Subscribed and sworn to before me

This _____ day of _____, 20____.

Notary Public in and for the County of _____, State of _____

Signature: _____



EVERLEVEL

Based on the language required, the Non-Collusion Affidavit required a notarized Jurat certificate, not a notarized acknowledgement form. Despite this requirement, in its bid submission, RAMONA provided only a notarized acknowledgment with the Non-Collusion Affidavit, not the required Jurat certificate.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


State of California
County of Los Angeles)

On December 19, 2023 before me, Debora Elizabeth Echeverria
(insert name and title of the officer)

personally appeared Michael Grbavac
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

DEBORA ELIZABETH ECHEVERRIA
Notary Public - California
Los Angeles County
Commission # 2421242
My Comm. Expires Apr 19, 2025

Ramona correctly assessed the need to submit an additional certificate with legal California Notary Law language however they failed to execute the correct certificate.

In other words, RAMONA objectively failed to *swear to or affirm the truthfulness of the contents* of the Non-Collusion Affidavit, as is legally required. Given RAMONA's failure to comply with the legal requirements for the Contractor's Proposal, RAMONA's Project proposal was incomplete and must be considered non-responsive.

In April of 2022, on the City of Santa Ana Project No.: 22-1341, First Street Slope Stabilization Project; Doja Inc. failed to submit a Jurate certificate and instead submitted an acknowledgement with their non-collusion Affidavit. The City of Santa Ana found Doja Inc non-responsive on this project.



EVERLEVEL

3. The City Cannot Waive RAMONA's Bid Violations

RAMONA's violations of the City's mandatory bid requirements, and its failure to submit a bid that conformed to the material terms and requirements of the City's bid package represent material defects that cannot be waived by the City. (*Menefee v. County of Fresno, supra*; *Stimson v. Hanley, supra*.) Under California law, if a bid irregularity gives a bidder a competitive advantage over other bidders, or **fails to include mandatory information**, the irregularity cannot be waived by the public entity, and the bid must be rejected. (*Valley Crest Landscape, Inc. v. Authority Council of the Authority of Davis* (1996) 41 Cal.App.4th 1432.)

4. Conclusion

The intent of any bid protest process is to keep the public bidding process free of favoritism and corruption by creating a fair and even playing field for all bidders. As quoted in one case, "overall, the bid protest process is a critical tool in ensuring public contracting is done in a fair and reasonable manner, as the agency has to keep in mind that contractors are keeping a close eye on the process and will not tolerate behavior that does not ensure all bidders are treated fairly and in strict accordance with the rules that apply to each specific acquisition." (*Advanced Real Estate Servs. Inc. v. Superior Court*, (2011) 196 Cal. App. 4th 338, 353-54.)

The above noted discrepancies have been identified with the information currently available. We did not receive a copy of Ramona's bid bond with the scanned/emailed proposal documents received on 12/20/23. Through this correspondence EverLevel formally requests copies of all hard copy documents submitted by RAMONA in connection with its bid on the Project to determine whether additional discrepancies and errors exist.

For all of the above reasons, EverLevel respectfully requests that the City reject RAMONA's bid as non-responsive, and award the contract to EverLevel, the lowest responsive and responsible bidder. Should you require any additional information to assist you in making this determination, please do not hesitate to call me.

Sincerely,

Craig Roth
President/COO

5877 Pine Ave. Ste 240, Chino Hills, CA 91709
craig@everlevelcorp.com
951-966-9153 cell

EXHIBIT 'A'

SECTION 4 – AFFIDAVIT TO ACCOMPANY PROPOSAL

USE THIS FORM WHEN BIDDER IS AN INDIVIDUAL

State of California)
) ss.
County of Orange)

(Name) _____, Affiant,
being first duly sworn, deposes and says:

That it is the bidder who makes the accompanying proposal; that such proposal is genuine, and
not sham or collusive, nor made in the interest or in behalf of any person not herein named, and
that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham
bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in
any manner sought by collusion to secure for itself an advantage over any other bidder.

Subscribed and sworn to before me _____

This _____ day of _____, 20____.

Signature: _____

Notary Public in and for the County of _____, State of _____

USE THIS FORM WHEN BIDDER IS A CORPORATION

State of California)
Los Angeles) ss.
County of Orange)

Michael Grbavac affiant, the Vice President
Pres., Sec., or Mgr. Ofcr
of Ramona, Inc.
Name of Corporation

Not a legal notary
form, missing
required California
language. See Notary
Handbook sheets
included in protest.

The corporation who makes the accompanying proposal, having first been duly sworn, deposes
and says: That such proposal is genuine and not sham or collusive, nor made in the interest or
in behalf of any person not herein named, and that the bidder has not directly or indirectly
induced or solicited any other bidder to put in a sham bid, or any other person, firm or
corporation to refrain from bidding, and that the bidder has not in any manner sought by
collusion to secure for itself an advantage over any other bidder.

[Handwritten Signature]

Signature

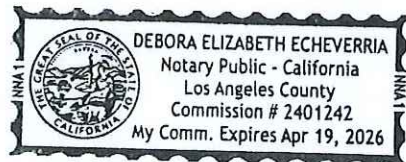
President, Secretary or Managing Officer

Subscribed and sworn to before me

This 19 day of December, 2023.

Notary Public in and for the County of Los Angeles, State of California

Signature: [Handwritten Signature]



Incorrect form used.
Missing required
subscribed and sworn
language found on
Jurat certificates.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

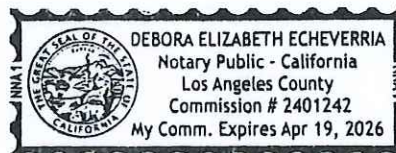
On December 19, 2023 before me, Debora Elizabeth Echeverria
(insert name and title of the officer)

personally appeared Michael Grbavac,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Language required in California.

State of California
County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this 18th
day of December, 2023, by ----- Craig Roth -----

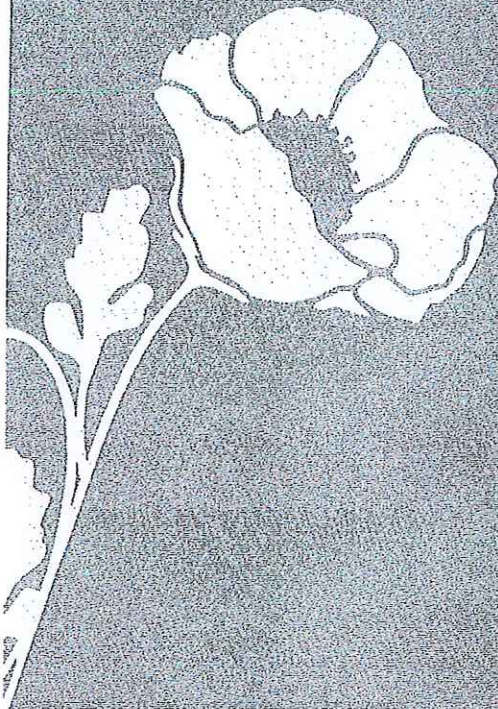
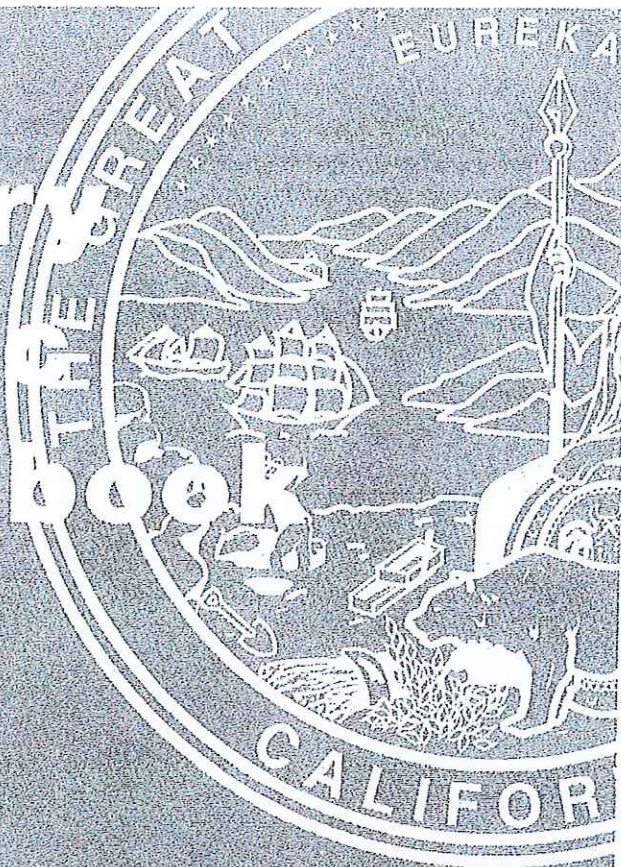
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Maria Elda Flores

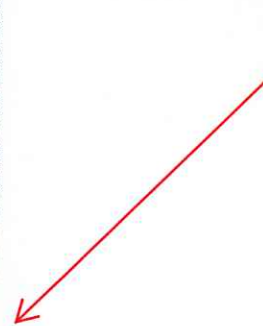
Notary Public Handbook



Published by
Dr. Shirley N. Weber
Secretary of State
Notary Public Section
2023

EXHIBIT 'C'

2023 State of
California Notary
Public Handbook



Note: California notarial law does not provide a provision requiring a California notary public to cross out, or not cross out, pronouns such as he/she/they, on a notarial certificate. An acknowledgment cannot be affixed to a document mailed or otherwise delivered to a notary public whereby the signer did not personally appear before the notary public, even if the signer is known by the notary public. Also, a notary public seal and signature cannot be affixed to a document without the correct notarial wording.

Jurat

The second form most frequently completed by a notary public is the jurat (Government Code section 8202). The jurat is identified by the wording "Subscribed and sworn to (or affirmed)" contained in the form. In the jurat, the notary public certifies:

- That the signer personally appeared before the notary public on the date indicated and in the county indicated;
- That the signer signed the document in the presence of the notary public;
- That the notary public administered the oath or affirmation*; and
- To the identity of the signer.

Jurat certificate language legally required in California

Any jurat taken within this state shall be in the following form:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of _____

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature Notary Public Seal

Note: A jurat cannot be affixed to a document mailed or otherwise delivered to a notary public whereby the signer did not personally appear, take an oath, and sign in the presence of the notary public, even if the signer is known by the notary public. Also, a notary public seal and signature cannot be affixed to a document without the correct notarial wording.

*There is no prescribed wording for the oath, but an acceptable oath would be "Do you swear or affirm that the statements in this document are true?" When administering the oath, the signer and notary public traditionally each raise their right hand but this is not a legal requirement.

Proof of Execution by a Subscribing Witness

If a person, called the principal, has signed a document but does not personally appear before a notary public, another person can appear on the principal's behalf to prove the principal signed (or "executed") the document. That person is called a subscribing witness. (Code of Civil Procedure section 1935)

A proof of execution by a subscribing witness cannot be used in conjunction with any power of attorney, quitclaim deed, grant deed (other than a trustee's deed resulting from a decree of foreclosure, or a nonjudicial foreclosure pursuant to Civil Code section 2924, or to a deed of reconveyance), mortgage, deed of trust, security agreement, any instrument affecting real property, or any instrument requiring a notary public to obtain a thumbprint from the party