



FORMAL BID PROTEST / OBJECTION

ITB No.: 26-PW-01

Project: Sanitary Sewer Rehabilitation (CDBG 23DB-N33)

Protesting Bidder: Cobra Environmental, Inc.

Mrs. Drosten,

Cobra Environmental, Inc. (“Cobra”) hereby submits this **formal written objection and bid protest** to the determination that its bid was deemed non-responsive based on the disclosure of a deductive alternate outside the OpenGov Total Pricing Form.

This protest is submitted in good faith, for inclusion in the official procurement record, and to preserve all rights and remedies available under Florida law, the solicitation, and applicable grant requirements.

I. Governing Solicitation Language

Bid evaluation is expressly governed by **Section 1.14 – Basis of Award** of the Specifications. Section **1.14(C)** provides:

“The lowest Bid will be determined by comparison of the ‘Lump Sum Price’ stipulated on the Bid Form, plus any combination of Additive or Deductive Alternate Bid Items of the Owner’s choosing.”

This language explicitly authorizes **deductive alternates** and establishes that alternates are evaluated **separately from the base lump sum price**.

II. Cobra’s Bid Fully Complied with Section 8.1

Section 8.1 requires that all costs associated with delivering the **requested services** be detailed in the format requested on the OpenGov Total Pricing Form.

Cobra complied fully with this requirement by:

- Submitting base pricing for the specified scope,
- Entering all required unit prices and totals in OpenGov,
- Pricing the specified manhole rehabilitation product exactly as required.

Section 8.1 does **not**:

- Address additive or deductive alternates,
- Prescribe a required format for alternate pricing,
- State that alternates must be priced on the Total Pricing Form, or
- Prohibit disclosure of alternates elsewhere in the bid package.

III. No Solicitation Basis for a Non-Responsiveness Determination

The determination of non-responsiveness is unsupported by the solicitation for several independent reasons:

1. **No Stated Requirement**

The ITB contains **no requirement** that deductive alternates be priced on the Total Pricing Form.

2. **No Available Pricing Mechanism**

The OpenGov pricing interface provides **no field or mechanism** to enter additive or deductive alternates.

3. **Responsiveness Section Not Used**

Section 1.15 – Responsiveness Requirements is expressly marked “**NOT USED.**”

As such, responsiveness determinations must be based solely on express solicitation requirements, not implied or post-hoc interpretations.

4. **Use of Required Form**

Cobra disclosed the alternate manufacturer on the **Major Manufacturers or Suppliers** form, a required submission under the ITB.

Under Florida procurement law, a bid may not be deemed non-responsive based on **unstated criteria** or requirements that were not clearly set forth in the solicitation.

IV. No Material Deviation or Competitive Advantage

Cobra’s bid:

- Did **not** alter the base bid price,
- Did **not** modify scope after bid opening,
- Did **not** confer an unfair competitive advantage,
- Did **not** prejudice other bidders.

The disclosure of a deductive alternate was transparent, pre-bid, and consistent with Section 1.14(C). Florida courts and administrative bodies consistently hold that **non-material deviations** that do not affect price, quantity, quality, or competition may not serve as grounds for rejection.

V. Arbitrary Application of Evaluation Criteria

By rejecting Cobra’s bid based on the location of alternate pricing—when:

- No required location existed,
- No pricing mechanism was provided, and
- No solicitation language prohibited the disclosure—

the City has effectively imposed a **new evaluation criterion after bid opening**, which is impermissible under competitive procurement standards.

VI. Requested Relief

Cobra Environmental respectfully requests that:

1. The determination of non-responsiveness be withdrawn;
2. Cobra's bid be deemed responsive and evaluated in accordance with **Section 1.14(C)**;
and
3. The bid be considered using the base price plus any deductive alternates the Owner elects to apply.

VII. Reservation of Rights

Cobra Environmental expressly reserves all rights, remedies, and causes of action available under Florida law, the solicitation, and applicable grant regulations. Nothing herein shall be deemed a waiver of any such rights.

Respectfully submitted,

Justin Lusk
President & CEO
Cobra Environmental, Inc.



GRANT COMPLIANCE CLARIFICATION & OBJECTION

HUD CDBG Project: Sanitary Sewer Rehabilitation (CDBG 23DB-N33)

ITB No.: 26-PW-01

Bidder: Cobra Environmental, Inc.

To Whom It May Concern:

Cobra Environmental, Inc. respectfully submits this clarification and objection for inclusion in the procurement record to ensure compliance with **HUD Community Development Block Grant (CDBG)** procurement standards, including **2 CFR Part 200** and HUD competitive procurement requirements.

This correspondence is intended to support the City's grant compliance efforts and to avoid any procurement determination that could later be construed as **arbitrary, inconsistent with the solicitation, or restrictive of full and open competition**.

I. Applicable Federal Procurement Standards

HUD CDBG-funded procurements must comply with, among other requirements:

- **2 CFR §200.319(a)** – Full and open competition
- **2 CFR §200.319(b)** – No unfair or arbitrary actions that restrict competition

- **2 CFR §200.320(b)(1)** – Sealed bidding must be evaluated solely on the criteria stated in the solicitation

Under these standards, bids may not be rejected based on **unstated evaluation criteria** or interpretations introduced after bid opening.

II. Solicitation Language Governing Bid Evaluation

The City's Specifications expressly govern bid evaluation in **Section 1.14 – Basis of Award**, which provides:

"The lowest Bid will be determined by comparison of the 'Lump Sum Price' stipulated on the Bid Form, plus any combination of Additive or Deductive Alternate Bid Items of the Owner's choosing."

This language:

- Explicitly authorizes **deductive alternates**
- Confirms alternates are evaluated **separately from the base bid**
- Places discretion with the Owner to apply alternates after bid opening

No section of the solicitation restricts how deductive alternates must be disclosed or priced.

III. Compliance with Pricing Submission Requirements

Cobra Environmental fully complied with **Section 8.1** of the solicitation by:

- Submitting all base pricing for the specified scope on the OpenGov Total Pricing Form
- Pricing the specified product exactly as required
- Providing complete and responsive unit pricing

Section 8.1 governs **base pricing format only**. It does not:

- Address alternates or approved equals
- Require alternates to be priced on the Total Pricing Form
- Prohibit alternate pricing disclosure on other required forms

IV. Lack of Alternate Pricing Mechanism

The OpenGov pricing interface provided by the City:

- Contains only fixed base bid line items
- Provides **no mechanism** to enter additive or deductive alternates
- Contains **no instructions** directing bidders where alternates must be priced

Under federal procurement principles, a bidder cannot be deemed non-responsive for failing to comply with a requirement **for which no mechanism or instruction was provided**.

V. Responsiveness Determination Lacks Solicitation Basis

Notably, the Specifications state:

“Section 1.15 – Responsiveness Requirements: NOT USED.”

As such:

- There is no stated responsiveness standard governing alternate pricing placement
- Any responsiveness determination must be based strictly on express solicitation requirements
- Introducing new interpretive requirements post-bid opening creates procurement risk under HUD standards

VI. No Impact on Competition or Fairness

Cobra Environmental's disclosure of an alternate manufacturer and associated deductive pricing:

- Did not modify the base bid
- Did not alter scope post-opening
- Did not provide a competitive advantage
- Did not prejudice other bidders

The bid remained directly comparable to other bids on the same base scope and pricing structure.

HUD guidance consistently emphasizes that **minor or non-material variances** that do not affect price, quantity, quality, or competition should not be used to disqualify bids in sealed bidding.

VII. Grant Compliance Concern

Rejecting a bid as non-responsive based on:

- An unstated requirement,
- The location (rather than substance) of disclosed pricing, and
- A condition not addressed in the solicitation,

creates potential exposure under **2 CFR §200.319**, as it may be viewed as:

- Arbitrary,
- Restrictive of competition, or
- Inconsistent application of evaluation criteria.

This clarification is submitted to ensure the procurement record clearly reflects adherence to HUD CDBG requirements and avoids post-award audit or monitoring issues.

VIII. Requested Consideration

Cobra Environmental respectfully requests that:

1. The bid be evaluated in accordance with **Section 1.14(C)** of the Specifications;
2. The determination of non-responsiveness be reconsidered in light of federal procurement standards; and
3. This clarification be retained in the official grant and procurement file.

This submission is made in good faith to support the City's compliance with HUD CDBG procurement requirements and to preserve all rights available under applicable law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin Lusk", is written over a solid black oval. A thin horizontal line extends from the right side of the oval across the page.

Justin Lusk

President & CEO

Cobra Environmental, Inc.

561-398-1122

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