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1999-4807

INTRODUCED BY: CHRIS A. TREGRE, PARISH PRESIDENT
(DEPARTMENT OF WATERWORKS)

ORDINANCE NO. 99-8-16

An ordinance to approve and authorize the execution of a contract with Picciola Construction Company, Inc. for the Generator Building and Foundation - Luling Water Plant in the amount of \$200,300.00.

WHEREAS, sealed bids were received by the Parish on July 9, 1999, for the Generator Foundation - Luling Water Plant.

WHEREAS, Shread-Kuyrkendall & Associates, Inc., Consulting Engineers for the Project, have reviewed the bids and recommend that the Contract be awarded to the low bidder, Picciola Construction Company, Inc. in the amount of \$200,300.00.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the bid of Picciola Construction Company, for the Generator Foundation - Luling Water Plant be hereby accepted in the amount of \$200,300.00.

SECTION II. That the Parish President is hereby authorized to execute the attached contract documents.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: RAMCHANDRAN, MINNICH, CHAMPAGNE, ABADIE, AUTHEMENT, JOHNSON,
DUHE, SIMON
NAYS: ALEXANDER
ABSENT: NONE

And the ordinance was declared adopted this 16th day of August, 1999,
to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: [Signature]

SECRETARY: [Signature]

DLVD/PARISH PRESIDENT: 8-18-99

APPROVED: [Signature]

DISAPPROVED: _____

PARISH PRESIDENT: [Signature]

RETD/SECRETARY: 8-18-99

AT: 2:30 PM

RECD BY: [Signature]

RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE

ON September 21, 1999
AS ENTRY NO. 236794
IN MORTGAGE/CONVEYANCE BOOK
NO. 78 FOLIO 685

SECTION 00500

AGREEMENT

CONTRACT NAME: Generator Building and Foundation, Luling Water Plant

THIS AGREEMENT is dated as of the 20th day of September in the year 1999 by and between St. Charles Parish, hereinafter called the OWNER, and, Picciola Construction Co., Inc., hereinafter called the CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents for the above Contract. Generator Building and Foundation, Luling Water Plant

ARTICLE 2. ENGINEER

The Project has been designed by Shread-Kuyrkendall & Associates, Inc. who is hereinafter called ENGINEER and who will assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

- 3.1 The CONTRACTOR shall commence work under this Contract on a date to be specified by written order of the Engineer. Time of performance is of the essence of the Contract and the work shall be complete, as certified by the Engineer, within 180 calendar days, from the date of commencement of the work.
- 3.2 Liquidated Damages - OWNER and CONTRACTOR recognize that the OWNER will suffer direct financial loss if Work is not completed within the Contract times specified in paragraph 3.1 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, and therefore, time is of the essence. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, CONTRACTOR agrees to forfeit and pay OWNER as liquidated damages for delay (but not as a penalty) the amount of Two Hundred Dollars (\$200.00) for each calendar day that expires after the time specified in paragraph 3.1 for final completion and ready for final acceptance until the Work is completed.

ARTICLE 4. CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the lump sum or unit prices presented in the Schedule of Prices. The Contractor agrees

to perform all of the work described in these documents for the sum of \$ 200,300.00.

- 4.2 The parties expressly agree that the Contract Price is a stipulated sum except with regard to the items in the Bid which are subject to unit prices.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER, on or about the thirtieth (30th) day following receipt by the OWNER.

Progress payments will be based upon estimated quantities of completed Contract unit price items or upon estimated percentages of completion of the schedule of lump sum values of labor and materials incorporated into the Work on the last day of each month or other mutually agreed regular monthly date ending the progress payment period. No allowance will be made for materials received which have not been incorporated into the Work except where the Contract price is based on a lump sum bid and is not computed on the basis of unit price items.

- 5.2 Retainage. Retainage shall be withheld and payments will be made by the OWNER in the payment amount of ninety percent (90%) of the approved Payment Applications on a Contract amount of less than five hundred thousand dollars (\$500,000) and in the payment amount of ninety-five percent (95%) of the approved Payment Applications on a Contract amount of five hundred thousand dollars (\$500,000) or more.

- 5.3 Final Acceptance and Final Payment. Upon the final completion of all Work and upon completion of the lists of items identified in the punch list prepared by the Engineer, the CONTRACTOR may request a final inspection and may make a final Application for Payment as provided by paragraph 14.12 of the General Conditions, upon the OWNER's Certificate of Completion.

The Certificate of Completion is filed by the Contractor with the Recorder of Mortgages of the Parish in which the work was done. This begins the not-less-than-forty-five (45) day lien period as prescribed for public works by Louisiana Revised Statutes 38:2248.

At the expiration of the lien period it is the CONTRACTOR's responsibility to obtain a certificate from the Recorder of Mortgages that the Contract is clear of any liens or privileges, and said certificate shall be presented to the ENGINEER for final payment and release of retainage, less any such sums as may be lawfully withheld under the Contract.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or finishing of the Work.
- 6.2 In exercising its responsibility with respect to subsurface conditions and physical conditions at the site, Contractor has or will obtain or perform at no additional cost to the Owner such additional examinations, investigations, explorations, tests, reports, studies, or similar information or data as may be required by Contractor for such purposes.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 7.1 This Agreement.
- 7.2 Construction Performance and Payment Bonds and Insurance Certificates.
- 7.3 Notice of Award and Notice to Proceed, Change Order and Certificate of Completion.
- 7.4 General Conditions.
- 7.5 Duties, responsibilities and limitations of authority of resident project representative.
- 7.6 Technical Specifications.
- 7.7 Drawings.
- 7.8 Addenda No. 1
- 7.9 Contractor's Bid.
- 7.10 Documentation submitted by Contractor prior to Notice of Award, if any required.
- 7.11 Non-collusive and Non-solicitation Affidavit and authority to execute contract.
- 7.12 All applicable provisions of State and Federal law and any Modification, including all Change Orders, duly delivered after execution of Agreement.

ARTICLE 8. MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions, as modified in the Supplementary Conditions. Section 00700, General Condition, pages 00700-1 through 00700-31 and Section 00800, Supplementary Conditions, pages 00800-1 through 00800-25, and Second Supplementary Conditions have been adopted by the St. Charles Parish Council as a Standard General Conditions and Supplementary Conditions for Construction Contracts. Those General Conditions and Supplementary Conditions are to be referred to in the agreement and contract as "GEN.COND, CONST - 7/98 filed in MOB 682, Golio 230 filed with the St. Charles Parish Clerk of Court," and, a copy is attached for bidding purposes.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, the OWNER may assign this contract to the State of Louisiana or any political subdivision, municipality, special district or authority thereof without CONTRACTOR's consent and without recourse.
- 8.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 CONTRACTOR shall pay promptly, before final payment, any and all claims or liens incurred in and about this Work and shall execute a final receipt form.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on September 20 1999.

OWNER: St. Charles Parish

CONTRACTOR: Picciola Construction Co., Inc.

By Chris A. Tregre

By MAZZO J. PICCIOLA II

Title PARISH PRESIDENT

Title PRESIDENT

Signature [Signature]

Signature [Signature]

Attest [Signature]

Attest [Signature]

(SEAL)

(SEAL)

Louisiana State Contractor

License No. 34630

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)



SHREAD - KUYRKENDALL & ASSOCIATES, INC.

ENGINEERS • SURVEYORS • PLANNERS

13000 Justice Avenue, Suite 16 • Baton Rouge, Louisiana 70816 • (225) 296-1335

July 27, 1999

Mr. Charlie Toth, Director
Department of Waterworks
P.O. Box 108
Luling, LA 70070

RE: GENERATOR BUILDING AND FOUNDATION
LULING WATER PLANT
ST. CHARLES PARISH, LOUISIANA
SKA PROJECT NO. 89132A

Dear Mr. Toth,

We have received a legal opinion from Mr. Randy O. Lewis concerning the bids submitted for the referenced project (see attached letter dated July 21, 1999). Mr. Lewis recommends that the Parish reject the low bid submitted by Acadiane' Renovations and award the contract to the next lowest bidder, Picciola Construction Company, Inc. for the amount of \$200,300.00

We have enclosed the letter of opinion from Mr. Lewis, all bidding documents as submitted by Picciola Construction Company, Inc., and an agreement to be introduced at the next Parish Council meeting to authorize execution of this document.

In addition, we have included all correspondence as submitted to Mr. Lewis to obtain his legal opinion.

Respectfully,

R. Gary McClure, P E

cc: Picciola Construction Company, Inc.
Acadiane' Renovations

attachments



PARISH OF ST. CHARLES

DEPARTMENT OF LEGAL SERVICES

116 Lakewood Drive • Luling, Louisiana 70070
(504) 783-5013 • FAX: (504) 785-6056

July 21, 1999

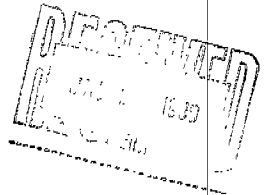
CHRIS A. TREGRE
PARISH PRESIDENT

RANDY O. LEWIS
PARISH ATTORNEY

TO: CHARLES TOTH, DIRECTOR
DEPARTMENT OF WATERWORKS

FROM: R. O. LEWIS, DIRECTOR
DEPARTMENT OF LEGAL SERVICES *R.O. Lewis*

RE: LEGAL OPINION NO. L99-7-8
BID BOND - ERROR ON
GENERATOR BUILDING & FOUNDATION
SKA #89132A



I have reviewed the bid problem concerning the Generator Building and Foundation, SKA Project No. 89132A outlined in the letter from R. Gary McClure, P.E. to you dated July 14, 1999. It is my opinion that the low bid should be rejected and the second low bid accepted because of the failure of the low bid to substantially comply with providing the necessary bid bond. I have based this opinion on the Public Bid Law and the cases interpreting it, more particularly Boh Bros. Construction Co., L.L.C. vs. Department of Transportation and Development, et al, 698 So.2d 675 (La.App. 1 Cir. 1997) writ denied 703 So.2d 1309 (La. 1309). In Boh Bros, supra, the advertisement for bid called for a \$107,000.00 bid bond. An addendum raised the amount to \$108,000.00. The low bidder submitted a bid bond of \$107,000.00, which was off by exactly \$1,000.00. Since this bond was still approximately 5% of the project amount the Court ruled that it was not a substantive deviation in the bid proposal. I cannot reach the same conclusion in the instant case. In this case the low bidder submitted a bid bond that read "...Five PERCENT (5) OF THE BID AMOUNT, BUT IN NO EVENT TO EXCEED One Thousand Dollars and no/100 Dollars (\$1,000.00)...". This amounted to a \$9,000.00 error in the bid bond (i.e. the bid bond should have read not to exceed \$10,000.00). Considering the total amount of the required bond; this seems to me to be a substantial deviation in the bid bond, which does not even come close to being 5% of the bid amount. Therefore, it is my opinion that the low bid must be rejected and the second low bid accepted.

ROL:dhh

cc Chris A. Tregre
R. Gary McClure, P.E.

Dictated but not read

BOH BROS. CONSTRUCTION CO., L.L.C.
v.
**DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT, Frank Denton and Roddy
Dillon.**

No. 97 CA 0168.

Court of Appeal of Louisiana,
First Circuit.

July 14, 1997.

Unsuccessful bidder on highway projects brought suit, alleging that Department of Transportation and Development (DOTD) violated Public Bid Law in awarding three contracts to lowest numerical bidder, despite deficiencies in its bid. The Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, No. 432,077, A. Foster Sanders, III, J., ruled for DOTD, and plaintiff appealed. The Court of Appeal, Foil, J., held that: (1) appeal was not rendered moot by substantial completion of the project; (2) successful bidder's mistake in filling out Equal Employment Opportunity (EEOC) Form was not an irregularity requiring rejection of bid; and (3) irregularity in bid, which contained proposal guaranty of \$107,000, whereas advertisement called for \$108,000 bid bond, was minor discrepancy and could be waived.

Affirmed.

Lottinger, C.J., concurred in part and dissented in part and assigned reasons.

Chiasson, J., concurred and dissented for reasons assigned by Chief Judge Lottinger.

[1] HIGHWAYS ⇨113(1)
200k113(1)

Even though unsuccessful bidder had not specifically asked for damages in its petition against Department of Transportation and Development (DOTD), and projects had been substantially completed, bidder's remedy would convert to cause of action for damages against DOTD, where bidder had timely sought injunctive relief.

[2] PUBLIC CONTRACTS ⇨8
316Ak8

Amendment to Public Bid Law stating the "[T]he

provisions and requirements of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be considered as informalities and shall not be waived by any public entity" preclude public entity from waiving substantive provisions and requirements of Public Bid Law, advertisement for bids and bid forms; public entity may waive deviations that are not substantive in nature, but it may not treat substantive requirements of Bid Law, advertisement for bids and bid forms as mere informalities in order to justify its decision to waive deviation in bid. LSA-R.S. 38:2212, subd. A(1)(b).

[3] PUBLIC CONTRACTS ⇨8
316Ak8

Whether public entity permissibly waived bid requirement is reviewable by courts, recognizing that errors of form do not require bid's rejection, but that errors of substance do. LSA-R.S. 38:2212, subd. A(1)(b).

[4] PUBLIC CONTRACTS ⇨8
316Ak8

Bidder's simple mistake in filling out Equal Employment Opportunity (EEOC) Form, putting X in incorrect box, marking space after proposed subcontractor rather than space certifying that it had participated in previous contract subject to equal opportunity clause, was not an irregularity requiring rejection of bid; bidder certified that it did in fact file required reports with respective agencies. LSA-R.S. 38:2212, subd. A(1)(b).

[5] HIGHWAYS ⇨113(1)
200k113(1)

Irregularity in bid submitted to Department of Transportation and Development (DOTD), which contained proposal guaranty of \$107,000, whereas advertisement called for \$108,000 bid bond, was minor discrepancy which had no bearing on substance of bid and could be waived by DOTD. LSA-R.S. 38:2212, subd. A(1)(b); LSA-R.S. 48:253.

****675** W.P. Wray, Jr., Baton Rouge, for Plaintiff-Appellant Boh Bros. Construction.

****676** Lawrence A. Durant, Baton Rouge, for Defendant-Appellee Dept. of Transportation and Development, et al.

H. Bruce Shreves and Denise C. Puente, New

Orleans, for Intervenor-Appellee Barriere Construction Co., Inc.

Before LOTTINGER, C.J., and SHORTESS, FOIL, FOGG and CHIASSON, [FN*] JJ.

FN* Judge Remy Chiasson, retired, is sitting by special assignment of the Louisiana Supreme Court.

*2 FOIL, Judge.

This appeal challenges a trial court's determination that the Louisiana Department of Transportation and Development did not violate the Public Bid Law in awarding three contracts to the lowest numerical bidder. After a thorough review of the record, we affirm.

BACKGROUND

On July 31, 1996, the State of Louisiana, Department of Transportation and Development (DOTD) advertised for bids on numerous public works contracts involving major highway overlay projects. The three contracts at dispute in this litigation are State Project Nos. 283-09-0099, 046-04-0038 and 283-05-0012. The bid advertisement stated that bids must be submitted on the proposal forms provided by DOTD, must be prepared in accordance with Section 102 of the 1992 Louisiana Standard Specifications for Roads and Bridges and must include all information required by the proposal. It stated further that the bid shall include a proposal guaranty in an amount not less than specified in the advertisement.

On August 28, 1996, DOTD received bids on all three of the projects from Boh Brothers Construction Co., L.L.C. and Barriere Construction Company. Barriere's bids of \$2,349,234.20 on SP-0099, \$2,705,937.96 on SP-0038 and \$138,039.05 on SP-0012 were the lowest bids submitted to DOTD. Boh Bros. bid \$2,462,701.38 on SP-0099; \$3,047,987.96 on SP-0038 and \$145,661.44 on SP-0012.

All three of Barriere's bids were initially stamped "irregular" by DOTD. On SP-0099, two irregularities were cited in the proposal check list: (1) the bond was not for the amount specified in the proposal and (2) the Equal Employment Opportunity Certification Statement (EEO Statement) was

incorrectly filled out. The advertisement for bids originally called for a \$107,000.00 proposal guaranty, but by virtue of an addendum which increased the estimated cost on the project, this amount was changed to \$108,000.00. Barriere's bid on this project contained a \$107,000.00 proposal guaranty. The *3 other two bids were stamped irregular for not having a correctly filled out EEO Statement; the proposal guaranty in these two bids matched the bond amount specified in the advertisements.

In a low bid analysis, Robert Pierce, Chairman of the DOTD Bid Review Committee, recommended that the contracts be awarded to Boh Bros. The recommendation was endorsed by Chief Engineer Roddy Dillon, and later approved by Secretary Frank Denton.

Barriere challenged DOTD's irregularity determination, charging that it simply made a mistake in filling out the EEO Statement, and pointed out that as part of the same bid letting, it submitted a bid on another state project which contained a correctly filled out EEO Statement. Barriere stressed that since 1984, it completed at least 12 federal aid projects for DOTD and filed the requisite EEO Statements therein. Therefore, Barriere urged, since DOTD had the properly filled out certifications on file, the error in filling out the forms on the three projects should have no bearing on the validity of its bids.

Thereafter, DOTD determined that its initial ruling that Barriere's bids were irregular was made in error, and it recognized Barriere as the lowest responsible bidder on the three contracts. DOTD found that the error in filling out the EEO Statement did not go to the substance of the bid, and concluded that the fact that Barriere's bid on SP-0099 contained a \$1,000.00 less bid bond than required was not a substantive deviation from the bid because the bid advertisement initially **677 contained a proposal guaranty of \$107,000.00, the precise amount of Barriere's proposal guaranty on the SP-0099 bid.

On October 7, 1996, Boh Bros. filed this lawsuit, seeking injunctive relief in the trial court to prevent DOTD from awarding the contracts to Barriere. It also sought a mandamus ordering DOTD to award the contracts to it as the lowest responsible bidder.

(Cite as: 97 0168 (La.App. 1 Cir. 7/14/97), *3, 698 So.2d 675, **677)

The trial court denied the request for a preliminary injunction, finding that the irregularities in the EEO Statement were errors of form which DOTD could legally waive. The court also ruled that the \$1,000.00 discrepancy in the bid bond on SP-0099 was insubstantial and this deficiency could be waived by *4 DOTD. Noting that the deficiencies in Barriere's bids were insignificant coupled with the fact that Boh Bros.' bid was over half a million dollars higher than Barriere's, the court believed that DOTD did not act arbitrarily or otherwise favorably in accepting Barriere's bid as the lowest responsive bid despite its insignificant irregularities.

Boh Bros. appealed, challenging as a matter of law the power of DOTD to waive insignificant irregularities in bids on public works projects.

MOTION TO DISMISS THE APPEAL AS MOOT

[1] During the course of this appeal, DOTD filed a motion to dismiss Boh Bros.' appeal, offering proof that all three disputed projects have been substantially completed. DOTD contends that the injunctive relief prayed for by Boh Bros. is no longer available as a remedy due to the completion of the projects. It also points out that Boh Bros. did not specifically ask for damages in its petition, and because the only relief sought is no longer available, this court should dismiss the appeal as moot.

It is true that Boh Bros. did not request damages in its petition. It did, however, request a declaration that DOTD violated the Public Bid Law and sought the relief available to it at that time: to enjoin DOTD from entering into the contract with Barriere. In public bid cases, our courts have recognized the dilemma created when an unsuccessful bidder files a timely application for injunctive relief which is denied by the trial court, and during the appeal delays, the project is substantially completed, resulting in the unavailability of injunctive relief. See *Airline Construction Company, Inc. v. Ascension Parish School Board*, 568 So.2d 1029 (La.1990).

In *Stafford Construction Company, Inc. v. Terrebonne Parish School Board*, 612 So.2d 847 (La.App. 1st Cir.1992), writ denied, 614 So.2d 82 (La.1993), this court held that an aggrieved bidder on a public works project who has timely filed a suit for injunctive relief may recover damages against a

public entity. Thus, even though Boh Bros. may not be entitled to injunctive relief at this time due to the substantial completion of the project, because it timely sought injunctive relief, its remedy would convert to a cause of action for *5 damages against the public entity. Therefore, the underlying legal issue in this case, that is, whether DOTD violated the Public Bid Law in awarding the contract to Barriere, is not mooted by the unavailability of injunctive relief. Accordingly, DOTD's motion to dismiss the appeal is denied.

POWER OF DOTD TO WAIVE IRREGULARITIES IN BIDS

We now turn to the merits of the challenged action, namely, whether the trial court erred in finding that DOTD did not violate the Public Bid Law in determining that Barriere was the lowest responsible bidder on the three contracts in dispute. Boh Bros. takes issue with the trial court's determination that the alleged irregularities Boh Bros. cited in the Barriere bids were insignificant errors that could be waived by DOTD. It urges that a public entity is statutorily prohibited from waiving any deviation in a bid proposal, no matter how insignificant or trivial that deviation is.

In support of this position, Boh Bros. points to a 1987 amendment to a provision of the Public Bid Law, La.R.S. 38:2212A(1)(b), which it argues was intended to preclude a public entity from waiving any deviations in a bid proposal. As it was originally enacted in 1984, La.R.S. 38:2212A(1)(b) provided that **678 "[t]he provisions and requirements of this Section shall not be waived by any public entity." In 1986, the provision was amended to add that the provisions and requirements of the Public Bid Law and those stated in the advertisement for bids shall not be considered as informalities and shall not be waived by any public entity. In 1987, the statute was amended again by Act 398 of 1987, and states:

The provisions and requirements of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be considered as informalities and shall not be waived by any public entity.

Boh Bros. argues that by adding the language "required on the bid form" the legislature intended to preclude a public entity from waiving deviations that are properly characterized as a matter of the

(Cite as: 97 0168 (La.App. 1 Cir. 7/14/97), *5, 698 So.2d 675, **678)

form of the bid, or a mere formality, rather than a substantive requirement of the bid.

*6 Prior to the 1987 amendment to La.R.S. 38:2212A(1)(b), in addressing a claim that a public entity should have rejected a particular bid, our courts have recognized the distinction between errors of substance in a bid on a public works project and errors of form in the bid. In *Pittman Construction Company, Inc. v. Parish of East Baton Rouge*, 493 So.2d 178 (La.App. 1st Cir.), writ denied, 493 So.2d 1206 (La.1986), this court distinguished between errors of form which do not require a bid's rejection under the Public Bid Law, and errors of substance, which do require the public entity to reject the bid.

Even after the cited changes to La.R.S. 38:2212, this court has continued to apply the substance/form dichotomy to claims that a public entity should or should not have rejected a bid. See *Stafford Construction Company v. Terrebonne Parish School Board*, 560 So.2d 558 (La.App. 1st Cir.1990). The substance/form distinction is premised on the fact that where there is only an insignificant or insubstantial deviation from the bidding requirements, there has been competitive bidding as contemplated by the Public Bid Law.

The Public Bid Law was enacted in the interest of the tax paying citizens of the state, and its purpose is to ensure that tax dollars for public works are spent wisely, that the lowest responsible bidder is awarded the contract, and that favoritism does not enter into the decision making process. *C.R. Kirby Contractors, Inc. v. City of Baton Rouge*, 612 So.2d 132, 135 (La.App. 1st Cir.1992); *J.W. Rombach, Inc. v. Parish of Jefferson*, 95-829 (La.App. 5 Cir. 2/14/96); 670 So.2d 1305, 1310. To deny a public entity the power to waive insignificant deviations in order to select a low bid on every public works project is contrary to the interests of the taxpaying citizens of this state.

[2][3] Therefore, we construe La.R.S. 38:2212A(1)(b) to preclude a public entity from waiving substantive provisions and requirements of the Public Bid Law, the advertisement for bids and the bid forms. The public entity may waive deviations that are not substantive in nature. However, it may not treat substantive requirements of the Bid Law, the advertisement for bids and the

bid forms as mere informalities in order to justify its decision to waive a *7 deviation in a bid. Whether a public entity permissibly waived a bid requirement is reviewable by the courts, and the issue should be determined by using the substance/form analysis.

Thus, the question in this case is whether Boh Bros. has established that there were substantive defects in the Barriere bids which precluded DOTD from awarding the contracts to Barriere. Boh Bros. insists that Barriere's submission of an allegedly incomplete EEO Statement on each of the three disputed projects required DOTD to declare Barriere's bids irregular and reject those bids. In support of its argument, Boh Bros. points to the language of the Equal Employment Opportunity Certification Form itself which states: "This form must be completed in the proposal submitted for bidding purposes. Failure to complete this form will result in rejection of the bid." Barriere also relies on a provision of the Louisiana Standard Specifications for Roads and Bridges, applicable to the contracts under review, § 102.08(10) which provides:

102.08 IRREGULAR PROPOSALS. Proposals will be considered irregular and **679 will be rejected for any of the following conditions:

(10) On Federal-Aid Projects, if the ... Equal Employment Opportunity Certification forms in the proposal are not properly executed and submitted with the bid.

The pertinent language of the EEO Statement and Barriere's responses to it is as follows:

Certification with regard to the Performance of Previous Contracts subject to the Equal Opportunity Clause and the filing of the Required Reports Federal-Aid Contracts:

The bidder X or proposed subcontractor X certifies that he has ____, has not ____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Order 10925, 1114 or 11246, and that he has X, has not ____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former president's committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

* * * * *

Contractors and subcontractors who have

(Cite as: 97 0168 (La.App. 1 Cir. 7/14/97), *7, 698 So.2d 675, **679)

participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports shall submit a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

*8 The form is signed by Barriere's president, George Wilson Jr.

[4] It is obvious that Barriere did in fact submit a completed, signed EEO Statement. It certified therein that it filed all reports with the federal agencies under the applicable filing requirements. It is also clear that when filling out the form, Barriere's agent simply put the X in the incorrect box, marking the space after proposed subcontractor rather than the space certifying that it has participated in a previous contract subject to the equal opportunity clause. It is axiomatic that a bidder cannot be both a contractor and a subcontractor. Furthermore, the certification that the reporting requirements had been met necessarily implied that the contractor had participated in a prior contract subject to the equal opportunity clause. Indeed, the record reflects that on the same day Barriere submitted bids on the projects under review, it submitted a bid on State Project No. 047-03-0013 which contained a correctly filled out EEO Statement certifying that it had participated in previous contracts subject to the equal opportunity clause and had filed all reports due under the applicable filing requirements.

Barriere's simple mistake in filling out the forms does not, in our opinion, rise to the level of an "irregularity." The EEO form is designed to ensure that contractors working on contracts involving the federal government have filed appropriate documents regarding equal employment concerns with the pertinent federal agencies. Barriere certified that it did in fact file the required reports with the respective agencies and the EEO forms submitted by Barriere in the bid proposals thus were fully responsive. DOTD acted within its power in determining that the mistake did not require rejection of the Barriere bids.

[5] The only other alleged irregularity is that Barriere's bid on SP-0099 contained a proposal guaranty of \$107,000.00, whereas the advertisement called for a \$108,000.00 bid bond. Boh Bros.

contends that the \$1,000.00 discrepancy mandated rejection of Barriere's bid.

La.R.S. 48:253, which governs bid bonds in proposals submitted to DOTD, provides, in pertinent part, that "[t]he ... bid bond submitted shall be for *9 an amount fixed by the Department and shall be approximately five percent of the cost estimate of the contract that has been prepared by the department's engineer."

When SP-0099 was originally advertised, DOTD estimated the cost of the project to be \$2,134,000.00. The proposal guaranty in the original notice to contractors was set at \$107,000.00. DOTD later increased the estimated cost of the project to \$2,222,000.00. **680 The estimated cost increase raised the proposal guaranty to \$108,000.00. In the record there appears a revision sheet wherein the errors regarding the date for submission of the bids, the estimated cost and the proposal guaranty were corrected. On the section dealing with the \$107,000.00 proposal guaranty, there appears the note "OK as is."

An addendum to the notice to contractors was issued by DOTD in which DOTD set forth that among other things, the estimated cost and the proposal guaranty were revised. The bid was advertised with a \$108,000.00 proposal guaranty.

In accepting Barriere's bid containing a \$107,000.00 proposal guaranty instead of a \$108,000.00 bid bond, DOTD noted that the original advertisement called for a \$107,000.00 bond. Furthermore, DOTD believed that the discrepancy in the proposal guaranty and Barriere's bid bond was not legally significant because Barriere's bond fell within La.R.S. 48:253's requirement that the bid bond be "approximately five percent" of the estimated cost of the project.

Due to DOTD's original advertisement calling for a \$107,000.00 bid bond, and the fact that the \$107,000.00 was within the approximately five percent of the estimated cost on the project, we agree with DOTD's position that the \$1,000.00 discrepancy is a minor one which had no bearing on the substance of the bid, and therefore the deviation in the bid proposal on SP-0099 could legally be waived by DOTD.

(Cite as: 97 0168 (La.App. 1 Cir. 7/14/97), *9, 698 So.2d 675, **680)

Because Boh Bros. has failed to demonstrate any substantive deviations in Barriere's bid proposal precluding the award of the contracts to Barriere, the trial court acted correctly in denying Boh Bros. request for injunctive relief.

*10 CONCLUSION

Based on the foregoing, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Boh Bros. Construction Co., L.L.C.

AFFIRMED.

LOTTINGER, C.J., concurs in part and dissents in part and assigns written reasons.

CHIASSON, J., concurs and dissents for reasons assigned by LOTTINGER, C.J.

*1 LOTTINGER, Chief Judge, concurring and dissenting.

I respectfully concur in part and dissent in part.

The majority concludes:

Therefore, we construe La.R.S. 38:2212A(1)(b) to preclude a public entity from waiving substantive provisions and requirements of the Public Bid Law, the advertisement for bids and the bids forms. The public entity may waive deviations that are not substantive in nature. However, it may not treat substantive requirements of the Bid Law, the advertisement for bids and the bid forms as mere informalities in order to justify its decision to waive a deviation in a bid. Whether a public entity permissibly waived a bid requirement is reviewable by the courts, and the issue should be determined by using the substance/form analysis.

The majority has reverted back to or at least continued the approach initially taken by this court in *Sullivan v. City of Baton Rouge*, 345 So.2d 912 (La.App. 1st Cir.1976) and continued in *Pittman Construction Company, Inc. v. Parish of East Baton Rouge*, 493 So.2d 178 (La.App. 1st Cir.), writ denied, 493 So.2d 1206 (La.1986).

In determining whether a public entity has the discretion to waive bidding formalities, it is necessary to review the history of La.R.S.

38:2212A(1)(b).

LA R.S. 38:2212A(1)(b)

Prior to the initial enactment of La.R.S. 38:2212A(1)(b), this court in *Sullivan v. City of Baton Rouge* decreed that the Public Bid Law forbids the rejection of bids for matters of form and held that a variation of substance must exist in the bid as a predicate for rejection of the bid. Sullivan established the rule that a governing body had the discretion to "waive informalities" in matters of form but could not waive requirements in matters of substance when *2 Considering bids made with less than complete compliance with bid requirements. In following the rule **681 of Sullivan, courts focused on whether the deficiency in the bid was one of substance or form. If the deficiency was one of form, it could be waived; if it was one of substance, it could not be waived. See *Lorenz v. Plaquemines Parish Commission Council*, 365 So.2d 27 (La.App. 4th Cir.), writ denied, 365 So.2d 1374 (La.1978); *Gibbs Construction Co., Inc. v. Board of Supervisors of Louisiana State University*, 447 So.2d 90 (La.App. 4th Cir.1984).

The legislature first attempted to curtail a public entity's discretion to waive informalities in 1984 when it enacted La.R.S. 38:2212A(1)(b) which then provided that "[t]he provisions and requirements of this Section shall not be waived by any public entity." Subsequent to this enactment, we decided *Pittman Construction Company, Inc. v. Parish of East Baton Rouge*. In *Pittman*, the apparent low bidder deviated from the bidding instructions by failing to write the price for a certain item in words and numbers. Instead the price was written as a lump sum in numerals. We determined that the deviation was not a matter of substance, but a matter of form, and therefore, the bid could not be rejected based on the deviation. *Pittman*, 493 So.2d at 183.

Just prior to our decision in *Pittman*, the governor approved Act 195 of the 1986 Regular Session which amended La.R.S. 38:2212A(1)(b) and added the following emphasized language, "[t]he provisions and requirements of this Section and those stated in the advertisement for bids shall not be considered as informalities and shall not be waived by any public entity." However, this amendment did not become effective until August 30, 1986, nearly two months after our decision in

Pittman.

During the next legislative session the rule of Sullivan and Pittman was legislatively overruled when La.R.S. 38:2212A(1)(b) was again amended by Act 398 of 1987. The statute now provides that, "[t]he provisions and requirements of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be considered as informalities and shall not be waived by any public entity." (Emphasis Added.) [FN1]

FN1. The attorney general has also concluded that the rule of Sullivan and Pittman was legislatively overruled by Acts 195 of 1986 and 398 of 1987. La. Atty. Gen. Op. No. 93-633, p. 2 (1993).

In examining the chronology of Sullivan, Pittman and the amendments to La.R.S. 38:2212A(1)(b), it is clear that the legislature sought to overrule the jurisprudence by removing any discretion that a public entity had to waive irregularities as to form, otherwise, there would *3 be no meaning to the legislative enactments. [FN2] The majority does not explain how after legislative amendments to La.R.S. 38:2212A(1)(b) it ends up with the same result as prior to the amendments.

FN2. In interpreting the present version of La.R.S. 38:2212A(1)(b), the attorney general has also noted a change in the law which removes a public entity's discretion in dealing with irregularities of form. La. Atty. Gen. Op. No. 90-421, p. 3 (1990).

JURISPRUDENCE

Since the amendments, few courts have specifically addressed the issue of whether a public entity may continue to waive irregularities as to form. In many of the cases cited by the parties herein, the courts determined that the bids in question failed to comply with the substance of the bid requirements and therefore were properly rejected. Because the courts determined that the irregularities involved matters of substance rather than matters of form, the courts never reached the issue of whether a public entity still has discretion to waive irregularities of form. I briefly discuss these cases.

Systems Plus, Inc. v. East Jefferson General Hospital, 94-83 (La.App. 5 Cir. 5/31/94); 638 So.2d 404, involved a solicitation for bids for a contract to supply hospital gloves over a three year

period. The bid specifications called for a flat price for each of the three years. The "Instructions to Bidders" also provided that, "[b]idders shall not attach any conditions or provisions to their proposal." Id. at 406. Systems Plus, the low numerical bidder, conditioned its bid on a minimum 25 case order. The bid further provided for price increases tied to the inflation rate in years two and three of the contract period. Id. The fifth circuit affirmed the trial court's **682 findings that the conditions placed on and attached to the bid were substantial enough to render the bid unresponsive to the bid specifications. Id. at 409.

C.R. Kirby Contractors, Inc. v. City of Lake Charles, 606 So.2d 952 (La.App. 3rd Cir.1992), involved a suit by the rejected bidder to enjoin an award to the next lowest bidder. Kirby failed to include in its bid a list of subcontractors to be used on the project. This was required by the bid specifications pursuant to a local ordinance. Id. at 954. The third circuit concluded that the city council properly rejected Kirby's bid for non-compliance with bid specifications. Id. at 955.

In Triad Resources and Systems Holdings, Inc. v. Parish of Lafourche, 577 So.2d 86 (La.App. 1st Cir.1990), writ denied, 578 So.2d 914 (La.1991), the bid specifications *4 required all bidders to submit a statement of the bidder's financial resources, including latest financial statement, and equipment available for the work contemplated. Triad did not submit in its bid either a financial statement or a list of equipment available. Id. at 89. In concluding that Triad's bid was properly rejected, this court noted that, "Triad's bid was not responsive to the advertised specifications in substantive matters, thus, Triad had no protected interest in being awarded the contract." Id. at 90.

In Thigpen Construction Company, Inc. v. Parish of Jefferson, 560 So.2d 947 (La.App. 5th Cir.1990), the bidder failed to include a signature page in its bid. The bid forms required that all bids be properly signed by the bidder. Id. at 950. The fifth circuit found that "the failure to sign the bid was a substantial failure to comply with the terms of the contract proposal and, therefore, the Parish properly rejected it." Id. at 951. The court further noted that "bids which deviate from the specifications amount to no bids." Id. Because failure to sign the bid was non-fulfillment of a formal requirement

specified in the bid proposal, the parish could not waive the irregularity. Id.

Stafford Construction Co. v. Terrebonne Parish School Board, cited by the majority in support of its conclusion, also involved a substantial variance. Plaintiff argued that the school board and trial court erred in awarding a contract to a bidder who failed to attach a corporate resolution to their bid. Id. at 559. We held that the bid lacked a necessary and substantial part, the corporate resolution. Id. at 560. Because the bid package varied substantially from that required, we held that the trial court was clearly wrong in reasoning that the lack of a corporate resolution was a "minor, insignificant formality." Id. at 561. What the majority failed to note is that the clear legislative intent as expressed by statutory amendments was never made an issue in Stafford. Regardless, as noted above, the defect was one of substance rather than one of form, which even prior to the legislative amendments could not be waived.

In each of the foregoing cases, the bid at issue varied substantially from the bid specifications. Thus, the appellate courts were not called upon to consider whether the current version of La.R.S. 38:2212A(1)(b) allows a public entity to waive errors of form. However, this issue has been discussed in Donald M. Clement Contractor, Inc. v. St. Charles Parish, 524 So.2d 86 (La.App. 5th Cir.1988) and V.C. Nora, Jr. Building & Remodeling, Inc. v. State, Through Department of Transportation and Development, 93-1469 (La.App. 3 Cir. 3/30/94); 635 So.2d 466.

*5 In Clement the fifth circuit pointed out that La.R.S. 38:2212A(1)(b) no longer allows a public entity to waive irregularities of form. Clement, 524 So.2d at 89. The parish advertised for bids for the construction of an overextended sewerage system. The bid specifications mandated that the bid bond be issued by a bonding company with an "A" or better rating from A.M. Best. Id. at 87. The bond submitted by Clement was furnished by a company which was not listed or rated by A.M. Best. Id. Clement argued that the lack of an "A" bond was a mere formality which could be waived by the Parish. In rejecting this argument, the appellate court stated, "the provisions of L.S.A. 38:2212A(1)(b), supra, do not support this

position." Id. at 89. After indicating that public entities can no longer waive errors of form, the court went on to hold that the bid **683 was properly rejected because Clement failed to follow the bid plans and specifications. Id.

The most recent appellate decision to discuss La.R.S. 38:2212A(1)(b) was V.C. Nora, wherein the third circuit, through Judge Knoll, now Justice Knoll, noted that, "the legislature has ... admonished us to consider no public contract provision as a mere formality." V.C. Nora, 635 So.2d at 470. There, it was the DOTD which implored the court to apply the Public Bid Law stricti juris.

In V.C. Nora, the bidder submitted a total bid price for each bid item rather than a unit price as required by the general bidding requirements. Id. at 470-71. The court acknowledged that under the facts, it was "apparent" that the bidder intended to bid \$239,358.00 and not \$41 million dollars. Yet, the court stated that such a conclusion did indeed require an interpretation outside the four corners of the bid. Id. at 471.

The court accepted DOTD's assertions that La.R.S. 38:2212A(1)(b) admonishes DOTD not to disregard contract requirements as mere formalities. DOTD argued that it was allowed no discretion to deviate from the requirements of unit prices. Id. at 472. The court reasoned: Even though DOTD's rigid specifications as to the bid form may have seemingly harsh results, any interpretation but the most literal would contravene the stricti juris nature of the public contract laws.

Id. at 472 (Emphasis Added). Accordingly, the court concluded that Nora's bid was fatally defective for failure to provide unit prices as required. Id. at 473.

*6 I would reject, as did the third circuit in V.C. Nora, the argument that Barber Brothers Contracting Co., Inc. v. Department of Transportation and Development, 529 So.2d 442 (La.App. 1st Cir.), rev'd, 533 So.2d 1226 (La.1988) demonstrates that a public entity retains the discretion to accept bids which are irregular in form. In Barber Brothers, H & S Construction Co. (H & S) submitted a bid with certain irregularities as shown below.

| | | | | |
|--------------|----|---------------|-----------------------|---------|
| | | | SIDE DRAIN PIPE (18") | |
| 701 (22) (G) | 48 | LINEAR FOOT | THIRTEEN SEVENTY FIVE | DOLLARS |
| | | | ----- | |
| | | | NO | CENTS |
| | | | ----- | |
| | | | MOBILIZATION | |
| 727 (01) | | LUMP LUMP SUM | FIFTEEN | DOLLARS |
| | | | ----- | |
| | | | THOUSAND | CENTS |
| | | | ----- | |

After seeking clarification from H & S, DOTD awarded the contract to H & S. Barber Brothers, the next lowest bidder, brought suit to annul the contract. The trial court affirmed the award to H & S. Id. at 444.

On appeal, we found that the bid was ambiguous and that under Section 102.08 of the 1982 edition of the Louisiana Standard Specifications for Roads and Bridges (the Gold Book), DOTD was required to reject the bid. Id. at 443-44. Section 102.08 of the Gold Book provided in pertinent part:

IRREGULAR PROPOSALS. Proposals will be considered irregular and will be rejected for any of the following reasons:

....

(2) If there are unauthorized additions, conditional or alternate bids or irregularities which make the proposal incomplete, indefinite or ambiguous as to its meaning. We reversed the trial court and ordered DOTD to accept the bid of Barber Brothers. Id. at 445.

Our decision in Barber Brothers was clearly based on a finding that H & S's bid was ambiguous. The issue of whether the DOTD had discretion to waive irregularities as to form under La.R.S. 38:2212A(1)(b) was never raised. The supreme court granted writs, and without explanation, reversed our opinion and reinstated the trial court's judgment. **684 Barber Brothers, 533 So.2d at 1226. The only guidance given by the court was a brief concurrence by Justice Calogero:

*7 CALOGERO, J., concurs, although preferring to bring the case up for full treatment. There is no ambiguity in the relevant bid language for there is no reasonable interpretation other than the

construction given the bid by the district court. (Emphasis Added.)

Clearly Justice Calogero concurred on the grounds that there was no ambiguity in the bid. In reversing our decision, the supreme court did not determine whether a public entity still has discretion to waive irregularities of form under La.R.S. 38:2212A(1)(b). As pointed out by the third circuit in Nora, "even if the H & S bid in the Barber Bros. case was read literally in its unclarified form, the total bid was still less than the next lowest bidder." Nora, 635 So.2d at 472.

Further, the majority's decision in L & M Demolition, Inc. v. City of New Orleans, 534 So.2d 27 (La.App. 4th Cir.1988), writ denied, 537 So.2d 1173 (La.1989) is not applicable to the present situation. In L & M Demolition, the issue was whether the city had the discretion to waive certain form requirements in a bid bond. Id. at 27. The majority discussed the legal distinction between bid bonds and performance bonds. The majority first noted that under La.R.S. 38:2216, the requirements for performance bonds are mandatory, and any deviation from the requirements would render a contract null and void. Id. at 28. The majority then noted that the statutory requirements of bid bonds as set forth in La.R.S. 38:2218, are permissive in nature and as such, susceptible of waiver. Id. at 28-29. The majority reasoned that because the legislature gave the public entity the discretion to eliminate entirely the requirement of a bid bond, then it follows that the entity has the discretion to waive informalities and irregularities in a bid bond. Id. at 29.

The majority's decision in L & M Demolition

(Cite as: 97 0168 (La.App. 1 Cir. 7/14/97), *7, 698 So.2d 675, **684)

focused only on the permissive language of La.R.S. 38:2218. There was no discussion of the applicability of La.R.S. 38:2212A(1)(b). However, in a well reasoned dissent, Judge Barry, pointed out that, "once the City chose to require a bid bond when it advertised for bids, it was bound to those formal requirements contained in Section 2218(B) by Section 2212(A)(1)(b) and by 2218(B) itself." Id. at 30. Accordingly, the city had no right to waive the requirements. Id.

INTERPRETATION OF AMENDED LA.R.S.

38:2212(A)(1)(b)

There is no ambiguity in the statute at issue. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written without further interpretation in search of the intent of the legislature. La.Civ.Code art. 9; New Orleans Rosenbush Claims Service, Inc. v. City of New Orleans, 94-2223, p. 11 (La. *8 4/10/95); 653 So.2d 538, 544. The legislature is presumed to have enacted a statute in light of the preceding statutes involving the same subject matter and court decisions construing those statutes, and where the new statute is worded differently from the preceding statute, the legislature is presumed to have intended to change the law. New Orleans Rosenbush Claims Service, Inc., 653 So.2d at 544.

In 1987, the legislature amended La.R.S. 38:2212A(1)(b) to require that the provisions and requirements "required on the bid form" shall not be considered as informalities and shall not be waived. Clearly, the legislature intended to change the discretion previously given to public entities which allowed them to waive irregularities as to form. The fifth and third circuits, as well as the attorney general, have acknowledged that a change was made by the amendment. Furthermore, I find no jurisprudence which specifically holds that a public entity retains the discretion to waive errors of form.

The Public Bid Law was enacted in the interest of the taxpaying public to prevent public officials from awarding contracts on the basis of favoritism or at possibly exorbitant and extortionate prices. New Orleans Rosenbush Claims Service, Inc., 653 So.2d

at 545; Airline Construction v. Ascension Parish School Board, 568 So.2d 1029, 1032 (La.1990). Requiring strict adherence to all statutory and administrative requirements of the bidding process under La.R.S. 38:2212A(1)(b) is in keeping with this purpose.

**685 The majority herein finds that "[t]o deny a public entity the power to waive insignificant deviations in order to select a low bid on every public works project is contrary to the interests of the taxpaying citizens of this state." Certainly there is truth in that statement. However, by amending La.R.S. 38:2212A(1)(b) to remove any and all discretion from public entities to waive "insignificant deviations," the legislature has determined what is in the best interests of the taxpaying citizens of this state.

In the present case, the district court concluded that "the irregularities on the EEO form are mistakes of form, not substance.... A variation of substance must exist in the bid, whether by specification, bid procedure or otherwise, as a predicate for the rejection of the bid. Sullivan v. City of Baton Rouge, 345 So.2d 912 (La.App. 1st Cir.1976). Failing to find the improperly executed EEO form a variation of substance, DOTD was reasonable and justified in determine (sic) the bid was acceptable."

*9 Finding that the legislature intended to overrule Sullivan and remove a public entity's discretion to waive irregularities of form, I would find that the district court erred in determining that Barriere's bids were acceptable. La.R.S. 38:2212A(1)(b) is clear and unambiguous. The statute prohibits any public entity from waiving requirements contained in the bid form. Accordingly, Barriere's bids were irregular for failure to properly execute the EEOC:

CONCURRENCE

I concur in the majority's handling of DOTD's motion to dismiss the appeal.

Therefore, for the above reasons, I respectfully concur in part and dissent in part.

END OF DOCUMENT

SECTION 00300

BID FORM

BID SUBMITTAL DATE: July 9, 1988NAME OF BIDDER: PICCIOLA CONSTRUCTION CO. INC.PROJECT NAME: Generator Building and Foundation

THIS BID IS SUBMITTED TO:

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid Form and the Agreement, and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Bidding Documents, including without limitation those dealing with the disposition of Bid Security.
3. In submitting this Bid, Bidder makes all representations required by the Instructions to Bidders and further warrants and represents that:
 - (a) Bidder has examined copies of all the Bidding Documents, the Advertisement for Bids, the Instructions to Bidders, and of the following Addenda (receipt of all which is hereby acknowledged):

| | | | |
|--------------|---------------------|-----------|-------------|
| No. <u>1</u> | Dated <u>6/6/88</u> | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
 - (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
 - (c) Bidder has given Engineer written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
 - (d) This bid is genuine and not made in the interest or behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or a corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
4. Bidder agrees to complete the Work for the prices indicated in the Schedule of Prices which follows:

SCHEDULE OF PRICES

Generator Building and Foundation

| <u>ITEM</u> | <u>DESCRIPTION</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|--|-----------------|--------------|-------------------------------|-------------------------------|
| 1 | Demolition and debris removal of existing concrete slab and pedestals | LUMP | LUMP | <u>\$8,200⁰⁰</u> | <u>\$8,200⁰⁰</u> |
| 2 | Generator Building Slab and Foundation, Generator Pad, Tank Slab and all miscellaneous concrete work (including all required excavation, fill, formwork, materials, labor and equipment) | LUMP | LUMP | <u>\$14,500⁰⁰</u> | <u>\$14,500⁰⁰</u> |
| 3 | Personnel Door, Frame and Hardware (material, labor and equipment) | LUMP | LUMP | <u>\$2,000⁰⁰</u> | <u>\$2,000⁰⁰</u> |
| 4 | Aluminum Louvers (material, labor and equipment to install two intake and one exhaust louver) | LUMP | LUMP | <u>\$9,300⁰⁰</u> | <u>\$9,300⁰⁰</u> |
| 5 | Fire Extingisher | 1 | EA | <u>\$300⁰⁰</u> | <u>\$300⁰⁰</u> |
| 6 | Metal Building System (including labor, material and equipment for complete erection) | LUMP | LUMP | <u>\$21,000⁰⁰</u> | <u>\$21,000⁰⁰</u> |
| 7 | 900kW Generator Package (including all components listed in specifications, fuel tank, delivery, installation and start-up) | LUMP | LUMP | <u>\$143,000⁰⁰</u> | <u>\$143,000⁰⁰</u> |
| 8 | Painting | LUMP | LUMP | <u>2,000⁰⁰</u> | <u>\$2,000⁰⁰</u> |
| | | | | | <u>\$200,300⁰⁰</u> |
| | | | TOTAL | | |

5. The Bidder agrees that the Work shall be substantially completed within the prescribed number of calendar days as stipulated in paragraph 3.1 of the Agreement, and paragraph 14.8 of the General Conditions. Contract Time commences to run as provided in paragraph 2.2 of the General Conditions, and the Work shall be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions and Agreement.
6. The following documents are attached to and made a condition of this Bid:
 - (a) Bid security (surety bond, cashiers check, or certified check).
 - (b) Power of attorney (for surety bond only).
 - (c) Noncollusive and nonsolicitation affidavit.
 - (d) Authority to Execute Bid (any corporate employee other than president or vice-president).
7. Communications with the Bidder concerning this Bid shall be addressed to:

PICCIOLA CONSTRUCTION CO. INC.

P.O. Box 749

103 PICCIOLA PARKWAY

COT OFF, LA. 70345

8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

Submitted on July 8, _____, 1999.

BY: 

TITLE: PRESIDENT

Bidder is:

An Individual

By _____ (SEAL)
(Individual's Name and Signature)

Doing business as: _____

Business address: _____

Telephone No.: _____

A Partnership

By _____ (SEAL)
(Firm Name)

(General Partner's Name and Signature)

Business address: _____

Telephone No.: _____

A Corporation

By PICCIOLA CONSTRUCTION COMPANY, INC. (SEAL)
(Corporation Name)

LOUISIANA

(State of incorporation)

By MARCO PICCIOLA II _____
(Name of person authorized to sign and Signature)

PRESIDENT

(Title)

Business address: 103 PICCIOLA PARKWAY

CUT OFF, LA. 70345

Telephone No.: (504) 632-5950

A Joint Venture

By _____
(Member's Name and Signature)

(Address)

By _____
(Member's Name and Signature)

(Address)

Telephone No.: _____

Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION

00300-4

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned,

Picciola Construction Co., Inc.

As Principal, and Merchants Bonding Company (Mutual), a corporation of the State of Iowa as Surety, are held and firmly bound unto St. Charles Parish in the penal sum of 5% of amount bid for the payment of which, well and truly to be made we hereby jointly and severally bond ourselves, our heirs, executors, administrators, successors and assigns.

Signed, the 9th day of July, 19 99

The condition of the above obligation is such that whereas the Principal has submitted to

St. Charles Parish

a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for

Generator Building and Foundation

NOW, THEREFORE,

- (a) If said bid shall be rejected, or in the alternate
- (b) If said bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto, properly completed in accordance with said bid, and shall furnish a bond for the faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid;

THEN, THIS OBLIGATION SHALL BE VOID, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and is bond shall be in no way impaired or affected by any extension of time within which the said bid may be accepted; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereto set their hands and seals, and such of them as are corporations have caused their corporate seals, to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Signed, sealed and delivered in the presence of:

ATTEST: [Signature]

Picciola Construction Co., Inc.
By: [Signature]
Principal

ATTEST: [Signature]
[Signature]
Cathy Q. Turner, I/A Resident Agent

Merchants Bonding Company (Mutual)
By: [Signature]
Cathy C. Turner, Attorney-in-Fact

POWER OF ATTORNEY

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

Cathy C. Turner

of Baton Rouge and State of Louisiana its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

Four Million Dollars (\$4,000,000.00)

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all such acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on October 3, 1992.

ARTICLE II, SECTION 8. - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of Indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9. - The signature of any authorized officer and the Seal of the Company may be affixed by facsimile to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 1st day of January, 1998.

MERCHANTS BONDING COMPANY (MUTUAL)



By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 1st day of January, 1998, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.

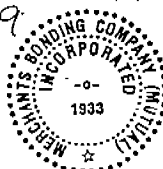


Ruth K. McClain
Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY, executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Company on this 9th day of January, 1999.



William Warner Jr.
Secretary

firm, association, or other organization for soliciting the Contract, other than the payment of their normal compensation to persons regularly employed by him whose services in connection with the construction of the public building or project were in the regular course of their duties for him;

7. This affidavit is executed in compliance with the provisions of Louisiana Revised Statutes 38:2219.

Bidder PICCOLA CONSTRUCTION CO. INC.

By [Signature]

Title PRESIDENT

Subscribed and sworn to before me

this 8th day of July, 1999 at Cat Off, Louisiana

[Signature]

My commission expires at my death

END OF SECTION

SECTION 00485

AUTHORITY TO EXECUTE CONTRACT

If the Bidder is a Corporation, attach to this page a certified copy of corporate resolutions of the Board of Directors of the Corporation authorizing an officer of the Corporation to execute the Agreement contained within this document on behalf of the Corporation.

END OF SECTION

AUTHORITY TO EXECUTE CONTRACT

CORPORATE RESOLUTION

A meeting of the Board of Directors of PICCIOLA CONSTRUCTION CO. INC.
 a corporation organized under the laws of the State of LOUISIANA and
 domiciled in LOT OFF was held this 8th day of JULY
1999 and was attended by a quorum of the members of the Board of Directors.

The following resolution was offered, duly seconded and after discussion was unanimously adopted by said quorum:

BE IT RESOLVED, that MARCO J. PICCIOLA
 is hereby authorized to submit proposals and execute agreements on behalf of this corporation with
 the Parish of St Charles.

BE IT FURTHER RESOLVED, that said authorization and appointment shall remain in full force
 and effect, unless revoked by resolution of this Board of Directors and that said revocation will not
 take effect until the Purchasing Director of the Parish of St. Charles, shall have been furnished a
 copy of said resolution, duly certified.

I, Carolyn B. Picciola, hereby certify that I am the Secretary of
Picciola Construction Co. Inc. a corporation created under the laws of the State of LA domiciled
 in LOT OFF P.W.C.; that the foregoing is a true and exact copy of a resolution adopted
 by a quorum of the Board of Directors of said corporation at a meeting legally called and
 held on the 08 day of JULY, 1999, as said resolution
 appears of record in the Official Minutes of the Board of Directors in my possession.

This 8th day of JULY, 1999.

Carolyn B. Picciola
 SECRETARY

END OF SECTION



SHREAD - KUYRKEN HALL & ASSOCIATES, INC.

ENGINEERS • SURVEYORS • PLANNERS

13000 Justice Avenue, Suite 16 • Baton Rouge, Louisiana 70816 • (225) 296-1335

July 14, 1999

Mr. Charlie Toth, Director
Department of Waterworks
P.O. Box 108
Luling, LA 70070

RE: GENERATOR BUILDING AND FOUNDATION
ST. CHARLES PARISH, LOUISIANA
SKA PROJECT NO. 89132A

Dear Mr. Toth,

Enclosed are bid tabulations for the referenced project. We have reviewed these bids and find the low bidder to be Acadiane' Renovations, Ltd. with a bid of \$192,740.00. However, when reviewing their bid bond, we noticed their bonding capacity appeared to be in error.

Acadiane' Renovations' bid bond had a "Not to Exceed" amount of \$1,000.00 which is less than the required 5% of the bid amount. We contacted the bonding company, Amwest, and the contractor and were informed that the amount indicated was a typographical error. We have since received a "Surety Rider" correcting the error therefore satisfying the requirements of the bidding documents. Please have Mr. Randy Lewis, the Parish Attorney, review this letter with the attached documents and offer his opinion concerning the bid bond.

Should Mr. Lewis have no objections, it is our recommendation that this project be awarded to the low bidder, Acadiane' Renovations, Ltd. for the amount of \$192,740.00. We have enclosed an agreement to be introduced at the next Parish Council Meeting to authorize the execution of this document.

If you have any questions, please advise.

Respectfully,

R. Gary McClure, P.E.

attachments

SECTION 00500

AGREEMENT

CONTRACT NAME: Generator Building and Foundation, Luling Water Plant

THIS AGREEMENT is dated as of the _____ day of _____ in the year 1999 by and between St. Charles Parish, hereinafter called the OWNER, and, Acadiane Renovations, Ltd., hereinafter called the CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents for the above Contract. Generator Building and Foundation, Luling Water Plant

ARTICLE 2. ENGINEER

The Project has been designed by Shread-Kuyrkendall & Associates, Inc. who is hereinafter called ENGINEER and who will assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

- 3.1 The CONTRACTOR shall commence work under this Contract on a date to be specified by written order of the Engineer. Time of performance is of the essence of the Contract and the work shall be complete, as certified by the Engineer, within 180 calendar days, from the date of commencement of the work.
- 3.2 Liquidated Damages - OWNER and CONTRACTOR recognize that the OWNER will suffer direct financial loss if Work is not completed within the Contract times specified in paragraph 3.1 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, and therefore, time is of the essence. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, CONTRACTOR agrees to forfeit and pay OWNER as liquidated damages for delay (but not as a penalty) the amount of Two Hundred Dollars (\$200.00) for each calendar day that expires after the time specified in paragraph 3.1 for final completion and ready for final acceptance until the Work is completed.

ARTICLE 4. CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the lump sum or unit prices presented in the Schedule of Prices. The Contractor agrees

to perform all of the work described in these documents for the sum of \$ 192,740.00_____.

- 4.2 The parties expressly agree that the Contract Price is a stipulated sum except with regard to the items in the Bid which are subject to unit prices.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER, on or about the thirtieth (30th) day following receipt by the OWNER.

Progress payments will be based upon estimated quantities of completed Contract unit price items or upon estimated percentages of completion of the schedule of lump sum values of labor and materials incorporated into the Work on the last day of each month or other mutually agreed regular monthly date ending the progress payment period. No allowance will be made for materials received which have not been incorporated into the Work except where the Contract price is based on a lump sum bid and is not computed on the basis of unit price items.

- 5.2 Retainage. Retainage shall be withheld and payments will be made by the OWNER in the payment amount of ninety percent (90%) of the approved Payment Applications on a Contract amount of less than five hundred thousand dollars (\$500,000) and in the payment amount of ninety-five percent (95%) of the approved Payment Applications on a Contract amount of five hundred thousand dollars (\$500,000) or more.

- 5.3 Final Acceptance and Final Payment. Upon the final completion of all Work and upon completion of the lists of items identified in the punch list prepared by the Engineer, the CONTRACTOR may request a final inspection and may make a final Application for Payment as provided by paragraph 14.12 of the General Conditions, upon the OWNER's Certificate of Completion.

The Certificate of Completion is filed by the Contractor with the Recorder of Mortgages of the Parish in which the work was done. This begins the not-less-than-forty-five (45) day lien period as prescribed for public works by Louisiana Revised Statutes 38:2248.

At the expiration of the lien period it is the CONTRACTOR's responsibility to obtain a certificate from the Recorder of Mortgages that the Contract is clear of any liens or privileges, and said certificate shall be presented to the ENGINEER for final payment and release of retainage, less any such sums as may be lawfully withheld under the Contract.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or finishing of the Work.
- 6.2 In exercising its responsibility with respect to subsurface conditions and physical conditions at the site, Contractor has or will obtain or perform at no additional cost to the Owner such additional examinations, investigations, explorations, tests, reports, studies, or similar information or data as may be required by Contractor for such purposes.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 7.1 This Agreement.
- 7.2 Construction Performance and Payment Bonds and Insurance Certificates.
- 7.3 Notice of Award and Notice to Proceed, Change Order and Certificate of Completion.
- 7.4 General Conditions.
- 7.5 Duties, responsibilities and limitations of authority of resident project representative.
- 7.6 Technical Specifications.
- 7.7 Drawings.
- 7.8 Addenda No. 1
- 7.9 Contractor's Bid.
- 7.10 Documentation submitted by Contractor prior to Notice of Award, if any required.
- 7.11 Non-collusive and Non-solicitation Affidavit and authority to execute contract.
- 7.12 All applicable provisions of State and Federal law and any Modification, including all Change Orders, duly delivered after execution of Agreement.

ARTICLE 8. MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions, as modified in the Supplementary Conditions. Section 00700, General Condition, pages 00700-1 through 00700-31 and Section 00800, Supplementary Conditions, pages 00800-1 through 00800-25, and Second Supplementary Conditions have been adopted by the St. Charles Parish Council as a Standard General Conditions and Supplementary Conditions for Construction Contracts. Those General Conditions and Supplementary Conditions are to be referred to in the agreement and contract as "GEN.COND, CONST - 7/98 filed in MOB 682, Golio 230 filed with the St. Charles Parish Clerk of Court," and, a copy is attached for bidding purposes.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, the OWNER may assign this contract to the State of Louisiana or any political subdivision, municipality, special district or authority thereof without CONTRACTOR's consent and without recourse.
- 8.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 CONTRACTOR shall pay promptly, before final payment, any and all claims or liens incurred in and about this Work and shall execute a final receipt form.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 19__.

OWNER: St. Charles Parish

CONTRACTOR: Acadiane' Renovations, Ltd.

By _____

By _____

Title _____

Title _____

Signature _____

Signature _____

Attest _____

Attest _____

(SEAL)

(SEAL)

Louisiana State Contractor
License No. _____

(If CONTRACTOR is a corporation, attach evidence of
authority to sign.)

BAI ON ROUGE, LOUISIANA
TABULATION OF BIDS

Project: Generator Building and Foundation (Luling Water Plant)

Bid Date and Time:

July 9, 1999 @ 10:00 AM

| ITEM | DESCRIPTION | QTY. | UNIT | Professional Const. Serv. | | Active Construction Co. | | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT |
|------------------|--|------|------|---------------------------|----------------------|-------------------------|----------------------|------------|--------|------------|--------|
| | | | | UNIT PRICE | AMOUNT | UNIT PRICE | AMOUNT | | | | |
| 1 | Demolition and debris removal of existing concrete slab and pedestals | LUMP | LUMP | \$ 3,000.00 | \$ 3,000.00 | \$ 6,022.00 | \$ 6,022.00 | | | | |
| 2 | Generator Building Slab and Foundation, Generator Pad, Tank Slab and all misc. concrete work (including all required excavation, fill, formwork, materials, labor and equipment) | LUMP | LUMP | \$ 18,900.00 | \$ 18,900.00 | \$ 13,358.00 | \$ 13,358.00 | | | | |
| 3 | Personnel Door, Frame and Hardware (material, labor and equipment) | LUMP | LUMP | \$ 1,600.00 | \$ 1,600.00 | \$ 2,778.00 | \$ 2,778.00 | | | | |
| 4 | Aluminum Louvers (material, labor and equipment to install two intake and one exhaust louver) | LUMP | LUMP | \$ 7,200.00 | \$ 7,200.00 | \$ 6,986.00 | \$ 6,986.00 | | | | |
| 5 | Fire Extinguisher | 1 | EA. | \$ 150.00 | \$ 150.00 | \$ 263.00 | \$ 263.00 | | | | |
| 6 | Metal Building System (including labor, material and equipment for complete erection) | LUMP | LUMP | \$ 19,000.00 | \$ 19,000.00 | \$ 19,755.00 | \$ 19,755.00 | | | | |
| 7 | 900KW Generator Package (including all components listed in specifications, fuel tank, delivery, installation & start-up) | LUMP | LUMP | \$ 156,750.00 | \$ 156,750.00 | \$ 181,864.00 | \$ 181,864.00 | | | | |
| 8 | Painting | LUMP | LUMP | \$ 5,200.00 | \$ 5,200.00 | \$ 1,008.00 | \$ 1,008.00 | | | | |
| TOTAL BID | | | | | \$ 211,800.00 | | \$ 232,034.00 | | | | |

BATON ROUGE, LOUISIANA TABULATION OF BIDS

Project: Generator Building and Foundation (Luling Water Plant)

Bid Date and Time:

July 9, 1999 @ 10:00 AM

| ITEM | DESCRIPTION | QTY. | UNIT | Asiatic Renovations UNIT PRICE | AMOUNT | Piccola Construction Co. UNIT PRICE | AMOUNT | Civil Construction Co. UNIT PRICE | AMOUNT | Gen. Con. Inc. UNIT PRICE | AMOUNT |
|------------------|--|------|------|-----------------------------------|----------------------|--|----------------------|--------------------------------------|----------------------|------------------------------|----------------------|
| 1 | Demolition and debris removal of existing concrete slab and pedestals | LUMP | LUMP | \$ 6,500.00 | \$ 6,500.00 | \$ 8,200.00 | \$ 8,200.00 | \$ 4,289.00 | \$ 4,289.00 | \$ 9,970.00 | \$ 9,970.00 |
| 2 | Generator Building Slab and Foundation, Generator Pad, Tank Slab and all misc. concrete work (including all required excavation, fill, formwork, materials, labor and equipment) | LUMP | LUMP | \$ 15,075.00 | \$ 15,075.00 | \$ 14,500.00 | \$ 14,500.00 | \$ 14,882.00 | \$ 14,882.00 | \$ 16,603.00 | \$ 16,603.00 |
| 3 | Personnel Door, Frame and Hardware (material, labor and equipment) | LUMP | LUMP | \$ 2,300.00 | \$ 2,300.00 | \$ 2,000.00 | \$ 2,000.00 | \$ 2,023.00 | \$ 2,023.00 | \$ 2,095.00 | \$ 2,095.00 |
| 4 | Aluminum Louvers (material, labor and equipment to install two intake and one exhaust louver) | LUMP | LUMP | \$ 4,000.00 | \$ 4,000.00 | \$ 9,300.00 | \$ 9,300.00 | \$ 5,046.00 | \$ 5,046.00 | \$ 6,624.00 | \$ 6,624.00 |
| 5 | Fire Extinguisher | 1 | EA. | \$ 140.00 | \$ 140.00 | \$ 300.00 | \$ 300.00 | \$ 90.00 | \$ 90.00 | \$ 45.00 | \$ 45.00 |
| 6 | Metal Building System (including labor, material and equipment for complete erection) | LUMP | LUMP | \$ 21,725.00 | \$ 21,725.00 | \$ 21,000.00 | \$ 21,000.00 | \$ 17,311.00 | \$ 17,311.00 | \$ 15,222.00 | \$ 15,222.00 |
| 7 | 900KW Generator Package (including all components listed in specifications, fuel tank, delivery, installation & start-up) | LUMP | LUMP | \$ 141,500.00 | \$ 141,500.00 | \$ 143,000.00 | \$ 143,000.00 | \$ 160,935.00 | \$ 160,935.00 | \$ 155,487.00 | \$ 155,487.00 |
| 8 | Painting | LUMP | LUMP | \$ 1,500.00 | \$ 1,500.00 | \$ 2,000.00 | \$ 2,000.00 | \$ 977.00 | \$ 977.00 | \$ 3,260.00 | \$ 3,260.00 |
| TOTAL BID | | | | | \$ 192,740.00 | | \$ 200,300.00 | | \$ 205,533.00 | | \$ 209,306.00 |



Amwest Surety Insurance Company

PUBLIC WORKS BID BOND

Know all men by these presents:

That we, Acadiane Renovations, Ltd. 15223 Hwy 182 - Franklin, LA 70538

(hereinafter called Principal), as Principal, and AMWEST SURETY INSURANCE COMPANY, a corporation (hereinafter called Surety), organized and existing under the laws of the State of Nebraska and authorized to transact a general surety business in the State of Louisiana, as Surety, are held and firmly bound unto

St. Charles Parish, 301 Third St., Luling, La 70070

(hereinafter called Obligee) in the penal sum of Five PERCENT (5 %) OF THE BID AMOUNT, BUT IN NO EVENT TO EXCEED One Thousand Dollars and no/100 Dollars (\$ 1,000.00) for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, whereas the Principal has submitted or is about to submit a proposal to the Obligee on a contract for: Construct Metal Generator Building & Concrete Foundation, 301 Third St., Luling, La 70070

NOW, THEREFORE, if the contract is awarded to the Principal and the Principal has within such time as may be specified, entered into the contract in writing, and provided a bond, with surety acceptable to the Obligee for the faithful performance of the contract; or if the Principal shall fail to do so, pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in the bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the bid, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED THIS 9th DAY OF July, 1999, ~~1998~~



Acadiane Renovations, Ltd.

Principal Name

By: [Signature]

Signature of Principal

AMWEST SURETY INSURANCE COMPANY

By: [Signature]


Attorney-in-Fact & Agent Donelson P. Stiel

LIMITED POWER OF ATTORNEY

Amwest Surety Insurance Company

Expiration Date: 01/20/01

POWER NUMBER 0000969566

This document is printed on white paper containing the artificial watermarked logo () of Amwest Surety Insurance Company on the front and brown security paper on the back. Only unaltered originals of the Limited Power of Attorney ("POA") are valid. This POA may not be used in conjunction with any other POA. No representations or warranties regarding this POA may be made by any person. This POA is governed by the laws of the State of Nebraska and is only valid until the expiration date. Amwest Surety Insurance Company (the "Company") shall not be liable on any limited POA which is fraudulently produced, forged or otherwise distributed without the permission of the Company. Any party concerned about the validity of this POA or an accompanying Company bond should call your local Amwest branch office at (504) 927-2208

KNOW ALL BY THESE PRESENT, that Amwest Surety Insurance Company, a Nebraska corporation, does hereby make, constitute and appoint:

David H. Stiel, Jr.
David H. Stiel, III
Donelson P. Stiel
As Employees of David H. Stiel, Jr., Agency


its true and lawful Attorney-in-fact, with limited power and authority for and on behalf of the Company as surety to execute, deliver and affix the seal of the company thereon if a seal is required on bonds, undertakings, recognizances, reinsurance agreement for a Miller Act or other performance bond or other written obligations in the nature thereof as follows:

Bid Bonds up to \$1,000,000.00
Contract, Court & Subdivision Bonds up to \$1,000,000.00
License and Permit Bonds up to \$50,000.00
Miscellaneous Bonds Up To \$50,000.00

and to bind the company thereby. This appointment is made under and by authority of the By-Laws of the Company, which are now in full force and effect.

I, the undersigned secretary of Amwest Surety Insurance Company, a Nebraska corporation, DO HEREBY CERTIFY that this Power of Attorney remains in full force and effect and has not been revoked and furthermore, that the resolutions of the Board of Directors of Amwest Surety Insurance Company set forth on this Power of Attorney, and that the relevant provisions of the By-Laws of each company, are now in full force and effect.

Bond No. _____ Signed & sealed this 9th day of July 1999


Karen G. Cohen, Secretary

***** RESOLUTIONS OF THE BOARD OF DIRECTORS *****
This POA is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the Board of Directors of Amwest Surety Insurance Company at a meeting duly held on December 15, 1975:

RESOLVED, that the President or any Vice President, in conjunction with the Secretary or any Assistant Secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the Company, to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any POA previously granted to such person.

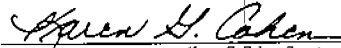
RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and bind upon the Company:

- (i) when signed by the President or any Vice President and attested and sealed (if a seal be required) by any Secretary or Assistant Secretary; or
- (ii) when signed by the President or any Vice President or Secretary or Assistant Secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the Company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any POA or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, Amwest Surety Insurance Company has caused these present to be signed by its proper officers, and its corporate seals to be hereunto affixed this 25th day of September, 1998.

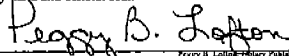

John E. Savage, President


Karen G. Cohen, Secretary

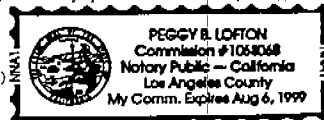
State of California
County of Los Angeles

On September 25, 1998 before me, Peggy B. Lofton Notary Public, personally appeared John E. Savage and Karen G. Cohen, personally known to me (or 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.

WITNESS my hand and official seal.


Signature _____

(Seal)



5230 Las Virgenes Road Calabasas, CA 91302 TEL 818 871-2000

SECTION 00480

NON-COLLUSION AND NON-SOLICITATION AFFIDAVIT

CONTRACT NAME: Generator Building and Foundation

Dan J. Hidalgo being first duly sworn,
(Name of Authorized Representative of Bidder)
first duly sworn, deposes and says that:

1. He is the President of
(Owner, Partner, Officer, Representative or, Agent)
Bidder, Acadiane' Renovations, Ltd. the
(Name of Bidder)
and that the Bidder has submitted the accompanying Bid for the
construction of the above Contract;
2. He is fully informed respecting the preparation and contents of the Bid and
of all pertinent circumstances respecting the Bid;
3. The Bid is genuine and is not a collusive or sham Bid;
4. Neither the said Bidder nor any of its officers, partners, owners, agents,
representatives, employees, or parties in interest, including this affidavit,
have in any way colluded, conspired, connived, or agreed, directly or
indirectly, with any other Bidder, firm, or person to submit a collusive or
sham Bid in connection with the Contract or Work for which the attached
Bid has been submitted; or to refrain from bidding in connection with such
Work; or have in any manner, directly or indirectly, sought by agreement,
collusion, communication, or conference with any Bidder, firm, or person
to fix the price or prices in the Bid or the Bid of any other Bidder; or to fix
any overhead, profit, or cost elements of the Bid price or the Bid price of
any other Bidder; or to secure through any collusion, conspiracy,
connivance, or unlawful agreement any advantage against the Owner, or
any person interested in the proposed Work;
5. The price or prices quoted in the attached Bid are fair and proper and are
not tainted by any collusion, conspiracy, connivance, or unlawful
agreement on the part of the Bidder or any other of its agents,
representatives, owners, employees, or parties in interest, including this
affidavit;
6. That he has employed no one person, corporation, firm, association, or
other organization, either directly or indirectly, to secure the public
contract under which he is to receive payment, other than persons regularly
employed by him whose services in connection with the construction of the
public building or project or in securing the public contract were in the
regular course of their duties for him; and that no part of the Contract Price
to be received by him was paid or will be paid to any person, corporation,

firm, association, or other organization for soliciting the Contract, other than the payment of their normal compensation to persons regularly employed by him whose services in connection with the construction of the public building or project were in the regular course of their duties for him;

7. This affidavit is executed in compliance with the provisions of Louisiana Revised Statutes 38:2219.

Bidder Acadiana Renovations, Ltd.

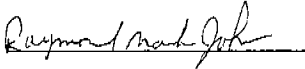
By 

Dan J. Hidalgo

Title President

Subscribed and sworn to before me

this 8th day of July, 1999 at 320 Maple St, Frankl, La, Louisiana



My commission expires 6/30/2000.

END OF SECTION

ACORD

CERTIFICATE OF LIABILITY INSURANCE

CSR RP ACADI-2

DATE (MM/DD/YY) 07/08/99

PRODUCER

David H. Stiel, Jr. Agency
P.O. Drawer 602 618 Main
Franklin LA 70538

David H. Stiel, Jr. Agency
Phone No 318-828-5867 Fax No.

INSURED

Acadiane Renovations, Ltd
15223 Hwy 182 West
Franklin LA 70538-9721

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

Table with 2 columns: COMPANY (A, B, C, D) and Insurance Company Name (Unionamerica Insurance, United National Ins. Co., Louisiana Workers Comp Corp).

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Main table with columns: CO LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFFECTIVE DATE, POLICY EXPIRATION DATE, LIMITS. Includes sections for General Liability, Automobile Liability, Garage Liability, Excess Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER

STCHA-1

St. Charles Parish
301 Third Street
Luling LA 70070

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE (Signature)

SECTION 00300

BID FORM

BID SUBMITTAL DATE: July 9, 1999

NAME OF BIDDER: Acadiane' Renovations, Ltd.

PROJECT NAME: Generator Building and Foundation

THIS BID IS SUBMITTED TO:

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid Form and the Agreement, and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Bidding Documents, including without limitation those dealing with the disposition of Bid Security.
3. In submitting this Bid, Bidder makes all representations required by the Instructions to Bidders and further warrants and represents that:
 - (a) Bidder has examined copies of all the Bidding Documents, the Advertisement for Bids, the Instructions to Bidders, and of the following Addenda (receipt of all which is hereby acknowledged):

| | | | |
|--------------|---------------------|-----------|-------------|
| No. <u>1</u> | Dated <u>7/6/99</u> | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
| No. _____ | Dated _____ | No. _____ | Dated _____ |
 - (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
 - (c) Bidder has given Engineer written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
 - (d) This bid is genuine and not made in the interest or behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or a corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
4. Bidder agrees to complete the Work for the prices indicated in the Schedule of Prices which follows:

SCHEDULE OF PRICES
Generator Building and Foundation

| <u>ITEM</u> | <u>DESCRIPTION</u> | <u>QUANTITY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|--|-----------------|-------------|-------------------|---------------|
| 1 | Demolition and debris removal of existing concrete slab and pedestals | LUMP | LUMP | \$ 6500.00 | \$6500.00 |
| 2 | Generator Building Slab and Foundation, Generator Pad, Tank Slab and all miscellaneous concrete work (including all required excavation, fill, formwork, materials, labor and equipment) | LUMP | LUMP | \$ 15,075.00 | \$ 15,075.00 |
| 3 | Personnel Door, Frame and Hardware (material, labor and equipment) | LUMP | LUMP | \$ 2,300.00 | \$ 2,300.00 |
| 4 | Aluminum Louvers (material, labor and equipment to install two intake and one exhaust louver) | LUMP | LUMP | \$ 4,000.00 | \$ 4,000.00 |
| 5 | Fire Extingisher | 1 | EA | \$ 140.00 | \$ 140.00 |
| 6 | Metal Building System (including labor, material and equipment for complete erection) | LUMP | LUMP | \$ 21,725.00 | \$ 21,725.00 |
| 7 | 900kW Generator Package (including all components listed in specifications, fuel tank, delivery, installation and start-up) | LUMP | LUMP | \$141,500.00 | \$141,500.00 |
| 8 | Painting | LUMP | LUMP | \$ 1,500.00 | \$ 1,500.00 |
| | | TOTAL | | | \$192,740.00 |

5. The Bidder agrees that the Work shall be substantially completed within the prescribed number of calendar days as stipulated in paragraph 3.1 of the Agreement, and paragraph 14.8 of the General Conditions. Contract Time commences to run as provided in paragraph 2.2 of the General Conditions, and the Work shall be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions and Agreement.
6. The following documents are attached to and made a condition of this Bid:
- (a) Bid security (surety bond, cashiers check, or certified check).
 - (b) Power of attorney (for surety bond only).
 - (c) Noncollusive and nonsolicitation affidavit.
 - (d) Authority to Execute Bid (any corporate employee other than president or vice-president).
7. Communications with the Bidder concerning this Bid shall be addressed to:

Tom Luscia - Project Coordinator

Acadiane' Renovations, Ltd.

15223 Hwy 182 West

Franklin, Louisiana 70538

8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

Submitted on July 9, 1999, 19 99

Bidder is:

An Individual

By _____ (SEAL)

(Individual's Name and Signature)

Doing business as: _____

Business address: _____

Telephone No.: _____

A Partnership

By _____ (SEAL)

(Firm Name)

(General Partner's Name and Signature)

Business address: _____

Telephone No.: _____

A Corporation

By Acadiane Renovations, Ltd. (SEAL)

(Corporation Name)

Louisiana

(State of incorporation)

By Dan J. Hidalgo _____

(Name of person authorized to sign and Signature)

President

(Title)

Business address: 15223 Hwy 182 West

Franklin, Louisiana, 70538

Telephone No.: 318-828-7504

A Joint Venture

By _____

(Member's Name and Signature)

(Address)

By _____

(Member's Name and Signature)

(Address)

Telephone No.: _____

Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION

00300-4

**MEMO**

Date: 7/13/99

To: Mr. Gary McClure

Extension

From: Stephanie Chauvin

Extension

Re: Acadiane Renovations, LTD

Dear Mr. McClure,

Per our conversation attached please find the rider for the above. Should you need additional information please don't hesitate to call.

Sincerely,

AMWEST SURETY INSURANCE COMPANY

A handwritten signature in cursive script that reads 'Stephanie Chauvin'.

Stephanie Chauvin
Underwriter

/sc



SURETY RIDER

To be attached to and form a part of Bond No. BID BOND in the amount of \$200,000.00 on behalf of ACADIANE RENOVATIONS, LTD., as principal and executed by AMWEST SURETY INSURANCE COMPANY, as Surety in favor of ST. CHARLES PARISH, 301 THIRD ST., LULING, LA 70070, as obligee.

Effective date of change: JULY, 13 1999

In consideration of the mutual agreement herein contained the Principal and the Surety hereby consent to the following changes:

FIVE PERCENT OF THE BID AMOUNT, BUT IN NO EVENT TO EXCEED

From: ONE THOUSAND DOLLARS AND NO/100 -- \$1,000.00

To: TEN THOUSAND AND NO/100 -- \$10,000.00

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

SIGNED, SEALED AND DATED THIS July 13th, 1999



AMWEST SURETY INSURANCE COMPANY

By:

Randolph A. Brunson
RANDOLPH A. BRUNSON

Attorney-in-Fact