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Contractor, irrigation district clash over pipe

Tumalo Irrigation District opts for more expensive pipes



A section of canal that is part of the Tumalo Irrigation District, which has an ongoing piping project to enclose the historic ditches to reduce water loss. (Joe Kline / Bulletin file photo)

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A company with an office in Redmond has cried foul after Tumalo Irrigation District denied its bid for a recent piping project, opting instead to go with a bid that's more than \$600,000 more expensive.

"I've been involved in public bids since 1989, and I've never seen anything like this," said Ken Thielbar, business leader for a division of Plasson USA, a Houston-based company that worked on the bid with Ferguson Waterworks, which operates an office in Redmond.

A representative from Tumalo Irrigation District referred comments about the project to Crew

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Thielbar added: "This is as close to bid-rigging as I've ever seen."

On Sept. 4, Tumalo Irrigation District sent out a request for companies that could supply piping for a 3,200-foot stretch of Tumalo Irrigation District's canal system, part of an ongoing effort to enclose the historic ditches to reduce water loss.

Two companies bid on the project, Ferguson Waterworks and Core & Main LP, a national piping company with a regional branch in Lake Oswego.

On Sept 12, the irrigation district awarded the contract to Core & Main, despite the fact that the company's bid was \$613,060.25 higher than Ferguson's bid across the project's three phases. Ferguson's bid was officially disqualified.

In a legal protest filed Sept. 19, Laurie Hagar, a Portland-based lawyer representing Ferguson Waterworks, argued that the irrigation district reached incorrect conclusions about the bid and abused its discretion in declining the less-expensive bid.

"The district's duty to properly evaluate Ferguson's bid is mandatory, not discretionary," the protest reads.

Thielbar added that he believed the irrigation district never truly intended to consider bids other than Core & Main's, which uses a type of pipe the irrigation district has worked with for years.

However, Kevin Crew, principal at Black Rock Consulting, said Ferguson had not followed the instructions from the bid packet by adding a company brochure and unsolicited handwritten notes about their product. Crew said it's generally not allowed for bidders to alter the bid documents and said that was the primary reason he and staff members from Tumalo Irrigation District declined to consider the bid.

If they had submitted a clean bid, it would not have been disqualified, Crew said.

He added that he showed the bid to several other engineers, who all agreed that they would have disqualified it, too.

On the other hand, Cory Langston, western sales manager for Plasson, said he attended the bid opening and looked over the bid itself. He said there were handwritten notes at the bottom of the document, but they weren't extensive and were written in response to questions that had been posed about the product.

“It was provided more as a courtesy,” Langston said.

Thielbar added that the initial request was written poorly, and the additional information was designed to ensure the company’s bid was compliant.

“Anything (Ferguson) added was to clarify the bid, not to take exception to it,” Thielbar said.

Crew said Ferguson’s addition of its brochure made it difficult to tell whether the product they chose met the project specifications. Additional clarifying information was made available after the bid had been considered.

He added that Ferguson’s piping product was newer and he was not as familiar with it.

“That’s going to be a challenge for us,” Crew said.

By contrast, Core & Main’s product has been around for decades, and Black Rock Consulting has worked with the producer on several projects.

Thielbar countered by saying that the consulting firm could have reached out to get more information and opted not to do so.

Tumalo Irrigation District received a \$1 million grant from the U.S. Bureau of Reclamation to convert its irrigation ditches to covered piping, according to the Deschutes Basin Board of Control’s website. The difference in the cost between the two bids alone was nearly two-thirds of the grant provided.

Thielbar said Ferguson opted not to pursue additional legal action, due to the cost and the risk of alienating other Oregon irrigation districts. Ferguson has worked with irrigation districts in Central Oregon on several projects, but Thielbar said he was “frustrated and disgusted” with the process.

“I don’t see us doing any work up there ever again,” Thielbar said.

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