

County Administrator

County Administration Building
1025 Escobar Street, 4th Floor
Martinez, California 94553-1229
(925) 655-2075
(925) 655-2066 FAX

Monica Nino
County Administrator

Contra Costa County



Board of Supervisors

John M. Gioia
District 1

Candace Andersen
District 2

Diane Burgis
District 3

Ken Carlson
District 4

Shanelle Scales-Preston
District 5

January 23, 2026

Via U.S. Mail and electronic mail [davet@dlfalk.com]

D.L. Falk Construction Inc.
Attention: David T. Falk, Vice President/Managing Partner
3526 Investment Blvd.
Hayward, CA 94545

**Re: Your Firm's Bid Protest Letter
Brookside Mental Health Rehabilitation Center, Richmond
Project No. 135-2401**

Dear Mr. Falk:

This letter responds to your firm's bid protests on the above project. As explained below, your firm's bid protests must be rejected and/or returned because they did not comply with the basic requirements in the project specifications. Even if your firm's bid protests could somehow be considered, the objections stated are all invalid.

Background

By letter dated 12/23/25, your firm protested the low bid submitted by Buhler Commercial ("Buhler"), which was \$481,699 lower than your firm's bid. Your letter also protested the second-place bid submitted by W.E. Lyons Construction Co. ("Lyons"), which bid was \$282,858 lower than your firm's bid. Your letter was accompanied by a \$1,000 fee paid by your firm.

In your bid protest letter, your firm made the following objections:

- (1) Buhler and Lyons failed to submit a sufficient (complete) listing of subcontractors, as required by Public Contract Code Sect. 4104.
- (2) Buhler and Lyons failed to list a subcontractor for the Poured-in Place Walking Track, as required by Section 4104. In addition, they themselves lack ample experience installing that product and they are not certified by Ross Recreation, the specified material supplier.
- (3) Buhler failed to list a subcontractor for Landscaping, Buhler itself is not a company that performs or has experience performing landscaping on the required scale, and Buhler cannot

meet the experience criteria noted in the contract documents.

Analysis and Determination

Our office, with assistance from the Public Works Department, has thoroughly reviewed your bid protests. The following is our analysis and determination.

A. Compliance with Bid Protest Requirements

Your firm's bid protests were not signed and submitted under penalty of perjury, as required by the project specifications. This defect prevents us from considering your bid protests, requires that they be rejected, and constitutes a waiver of your firm's right to further pursue the bid protests (see Instructions to Bidders, Document 00 21 13, Sect. 27.b, f and g).

Per the project specifications, your firm was required to file a separate protest as to each bid being protested and to submit a \$1,000 fee for each protest. Protests filed without the corresponding fee will not be considered by the County and will be returned. The fee requirement is mandatory and failure to fully comply with it constitutes a waiver of any right to further pursue the bid protests (see Instructions to Bidders, Sect. 27.a, c and f).

In this case, your bid protest letter was a combined protest against two bids (Buhler and Lyons) rather than two separate protests, as required by the project specifications. Moreover, your firm paid only one \$1,000 fee instead of the two fees (\$2,000) required by the project specifications. These defects alone prevent your protests from being considered by the County, require that your protests be returned and/or rejected, and constitute a waiver of your firm's right to further pursue the bid protests. At the very least, your failure to pay one fee means that your firm is entitled to review of only one protest (i.e., Buhler's low bid) and has waived the right to protest the second-place bid (Lyons) in front of your firm's bid.

The project specifications also required that a copy of your bid protests be transmitted to Buhler and Lyons and that your firm provide confirmation of receipt. In this case, your bid protest letter does not indicate that it was transmitted to Buhler and Lyons and your firm has otherwise not provided any confirmation of transmittal or receipt. This failure to comply with the required procedures is yet another reason why your bid protests are defective, are subject to rejection by the County, and constitute a waiver of your firm's right to further pursue the bid protests (see Instructions to Bidders, Sect. 27.d, f and g).

B. Analysis of Bid Protests

Even if your bid protests had complied with the project specifications and could somehow be considered, the following objections in your bid protests have no merit and would still be rejected:

- (1) In stating that Buhler and Lyons failed to submit a sufficient (complete) listing of subcontractors, as required by Public Contract Code Sect. 4104, your firm has not specified how their lists of subcontractors were inadequate, other than stating that two subcontractors (Poured-in-Place Walking Track and Landscaping) should have been listed but were not.

Contrary to the claim in your bid protest letter, the lists of subcontractors submitted by both Buhler and Lyons included the information for each subcontractor required by statute (name, location, contractor license number, and DIR registration number).

As for Buhler and/or Lyons not listing subcontractors for Poured-in-Place Walking Track and Landscaping, your firm has provided no specific evidence that Buhler or Lyons is going to use a subcontractor at a cost above the listing threshold. Your claim also ignores that Buhler and Lyons would be legally able to self-perform those work items, in which case no subcontractor listing would be required (see Public Contract Code Sect. 4106; Business & Professions Code Sect. 7057). Thus, your claim for those work items is speculative, does not show a statutory violation, and lacks factual support (see Instructions to Bidders, Sect. 27.b).

- (2) In stating that Buhler and Lyons lack ample experience installing Poured-in-Place Walking Track, your firm has provided no evidence supporting that claim. Thus, your claim is speculative and lacks the factual support required by the project specifications (see Instructions to Bidders, Sect. 27.b).

Contrary to the claim in your bid protest letter, the reference to Ross Recreation, the manufacturer/supplier listed in Keynote P2 of the Paving Legend, does not include any requirement that the general contractor or the subcontractor for the Poured-in-Place Walking Track possess a certification from Ross Recreation. Your firm has otherwise not cited any language in the project specifications that specifically requires such a certification. Here again your claim is speculative, lacks the factual support required by the project specifications, and fails to cite a specific provision or statute that has been violated (see Instructions to Bidders, Sect. 27.b).

- (3) In stating that Buhler is not a company that performs or has experience performing landscaping on the required scale, your firm has not cited any project specification requiring such experience and has provided no factual evidence to back up that claim. Thus, your claim is speculative and unspecific and it lacks the factual support required by the project specifications (see Instructions to Bidders, Sect. 27.b).

In stating that Buhler cannot meet the experience criteria noted in the contract documents, your firm has cited language in Section 1.3 Quality Assurance that requires the landscape contractor or maintenance subcontractor to have a full-time employee assigned as foreman, which employee has a minimum of four years' experience in landscape maintenance supervision. However, you have provided no factual evidence that Buhler or its subcontractor will not have a person with the required supervisory experience assigned to this project. Here again, your claim is speculative, lacks the factual support required by the project specifications, and fails to cite a specific provision or statute that has been violated (see Instructions to Bidders, Sect. 27.b).

- (4) For the sake of argument, even if the bids from Buhler and/or Lyons had any of the irregularities alleged by your firm, those would at most be considered minor irregularities that did not affect bid prices, that gave no actual competitive advantage to Buhler and/or Lyons, that could be cured by the bidders or waived by the County, and that do not require rejection

of their bids (see Notice to Bidders, Document 00 11 16, Sect. 18; Instructions to Bidders, Sect. 30).

- (5) The County is required by statute to award to the lowest responsible bidder, which in this case is \$481,699 less than your firm's second-place bid (see Public Contract Code Sects. 22032(c) & 22038(b).) We cannot ignore that statutory requirement and that your bid protests would result in the County and its taxpayers paying at least \$481,699 more for this project.

Conclusion

Based on the above, our office has determined that your firm's bid protests must be rejected and/or returned for failure to comply with basic requirements of the project specifications and that, even if your bid protests could be considered, they are without merit, speculative, and factually unsupported. This is our final determination of your bid protests pursuant to the project specifications (see Instructions to Bidders, Sect. 27.g).

Having thoroughly reviewed and evaluated the bids submitted, we have also determined that Buhler is the lowest responsible bidder, having fully complied with all project requirements, including the Outreach Program (GFE) requirements. It is anticipated that the contract will be awarded by the Board of Supervisors to Buhler, the lowest responsible bidder, at the Board meeting on **February 10, 2026**, which begins at 9:00 a.m. If your firm disagrees with this determination of your bid protests, you may appear at the Board meeting to comment on this matter. Any comments to the Board will be limited to the facts and arguments set forth in your firm's bid protests.

Best regards,



ERIC ANGSTADT

Chief Assistant County Administrator
Contra Costa County, CA

cc: *Warren Lai, Public Works Director*
Sarah Price, Deputy Director, Public Works Dept.
Paul Hundal, Div. Mgr., Public Works Dept., Capital Projects Div.
Diane Strassmaier, Public Works Dept., Capital Projects Div.
David F. Schmidt, County Counsel's Office
Michael L. George, County Counsel's Office
Buhler Commercial [steve@buhlercommercial.com]
W.E. Lyons Construction Co. [bdissman@welyons.com]