



# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Contract Award for Emerson Park and Lawrence Park Restroom Facilities (\$97,352)

**MEETING DATE:** September 15, 1994

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** That the City Council adopt the attached resolution awarding the contract for the above project to Restroom Facilities, Inc. of Reno, Nevada, in the amount of \$97,352.00, and transfer \$7,056.00 from completed Community Development Block Grant projects and \$4,000.00 from the Parks and Recreation Department's Capital Improvement Project Fund to complete this project.

**BACKGROUND INFORMATION:** Community Development Block Grant Funds have been appropriated to replace the existing restrooms at Emerson Park and Lawrence Park.

The Emerson Park restroom will be placed in the same location as the existing restroom; at Lawrence Park, the new restroom will be located closer to Calaveras Street. The Parks and Recreation Department will demolish the existing restrooms at both locations. The new restroom at Emerson Park will be equipped with a toilet and a urinal on the men's side and two toilets on the women's side of the restroom. Lawrence Park's restroom will be built with one toilet for the men and one toilet for the women.

The specifications for this project require pre-engineered and pre-manufactured buildings. This will allow the new restrooms to be installed more quickly and decrease the amount of material stockpiled in the parks during the construction period.

Plans and specifications for this project were originally approved on June 1, 1994. On July 20, 1994, Council rejected all bids received and authorized rebidding the project. The City received the following five bids for this project on August 24, 1994:

<u>Bidder</u>	<u>Location</u>	<u>Bid</u>
Engineer's Estimate		\$ 94,600.00
Brad Clark Construction	Lodi	\$ 73,428.00
DJ Construction	San Jose	\$ 92,550.00
Restroom Facilities	Reno, Nevada	\$ 96,892.00
Diede Construction	Woodbridge	\$ 119,902.00
EFGC	Stockton	\$ 120,000.50

APPROVED \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



Contract Award for Emerson Park and Lawrence Park Restroom Facilities (97,352)  
September 15, 1994  
Page 2

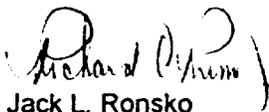
The first two bids on this project did not meet the requirements of the specifications and are unacceptable. The third bidder, Restroom Facilities, Inc., is being recommended for the contract award.

Insufficient money has been appropriated to cover all the costs for this project. Based on discussions with the Community Development Department and the Parks and Recreation Department, it is recommended that \$11,056.00 be transferred from the following accounts:

Blakely Park Restroom Remodel (45.5-760.52)	\$ 3,686.00
Eastside Lighting Program (45.7-503.11)	\$ 3,368.00
Parks and Recreation Department Capital Improvement Project Fund	\$ 4,000.00

The Blakely Park Restroom Remodel and the Eastside Lighting Program projects are completed Community Development Block Grant projects. The money remaining in the Parks and Recreation Department's Capital Improvement Project Fund is sufficient to cover the costs for these projects.

FUNDING: Originally Budgeted: 1993/94  
Budgeted Fund: Community Development Block Grant Fund  
Current Appropriation: \$100,266.00  
Total Project Estimate: \$111,322.00  
Bid Opening Date: August 24, 1994

  
for Jack L. Ronsko  
Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer

JLR/WKF/lm

Attachment

cc: City Attorney  
Purchasing Officer  
Parks and Recreation Director  
Community Development Block Grant Coordinator  
D. J. Construction

RESOLUTION NO. 94-108

\*\*\*\*\*

A RESOLUTION OF THE LODI CITY COUNCIL  
AWARDING THE BID FOR EMERSON PARK AND LAWRENCE PARK  
RESTROOM FACILITIES

\*\*\*\*\*

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on August 24, 1994 at 11:00 a.m. for the bid for Emerson Park and Lawrence Park Restroom Facilities, described in the specifications therefor approved by the City Council on June 1, 1994; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

<u>Bidder</u>	<u>Location</u>	<u>Bid</u>
Engineer's Estimate		\$ 94,600.00
Brad Clark Construction	Lodi	\$ 73,428.00
DJ Construction	San Jose	\$ 92,550.00
Restroom Facilities	Reno, Nevada	\$ 96,892.00
Diede Construction	Woodbridge	\$119,902.00
EFGC	Stockton	\$120,000.50

WHEREAS, the City Manager recommends that award of the bid for Emerson Park and Lawrence Park Restroom Facilities be made to the lowest responsible bidder, Restroom Facilities, Inc. of Reno, Nevada;

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that award of bid for Emerson Park and Lawrence Park Restroom Facilities be and the same is hereby awarded to Restroom Facilities, Inc. of Reno, Nevada, the lowest responsible bidder, in the amount of \$97,352.00; and

BE IT FURTHER RESOLVED that \$7,056.00 be transferred from completed Community Development Block Grant projects and \$4,000.00 from the Parks & Recreation Department's Capital Improvement Project Fund to complete this project.

Dated: September 15, 1994

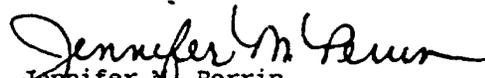
\*\*\*\*\*

I hereby certify that Resolution No. 94-108 was passed and adopted by the City Council of the City of Lodi in a special meeting held September 15, 1994 by the following vote:

Ayes: Council Members - Mann, Pennino, Snider and  
Sieglock (Mayor)

Noes: Council Members - Davenport

Absent: Council Members - None

  
Jennifer M. Ferrin  
City Clerk

94-108

SPECIAL ALLOCATION REQUEST

#19

TO: FINANCE DIRECTOR  
CITY MANAGER

DATE: September 15, 1994

FROM: CITY CLERK

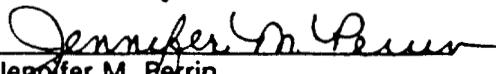
ACCOUNT NUMBER: 45.8-760.64-500 \$7,056.73  
121.0-760.64-500 \$4,000.00

Request is made for funds to accomplish the following project which was not included in the current budget.

Description of Project	Estimated Cost
<u>Emerson Park &amp; Lawrence Park Restroom Facilities</u>	\$11,056.73

This special allocation, which was approved by the City Council at its meeting of September 15, 1994, transfers funds from completed Community Development Block Grant projects and appropriates \$4,000 from the Parks and Recreation Department's Capital Improvement Project Fund. The funds to be transferred are from the following completed projects:

Blakely Park Restrooms (45.5-760.52)	\$3,688.43
Eastside Street Lighting (45.7-503.11)	3,368.30

  
Jennifer M. Ferrin  
City Clerk

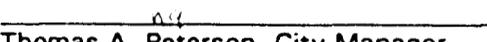
(If you need more space, use additional sheet and attach to this form.)

Date of Approval \_\_\_\_\_ Amount Approved \_\_\_\_\_  
Council \_\_\_\_\_ City Manager \_\_\_\_\_

FUND OR ACCOUNT TO BE CHARGED

Current Budget	\$ _____	Prior Year Reserve	\$ _____
Contingent Fund	\$ _____	General Fund Surplus	\$ _____
Capital Outlay Reserve	\$ _____	Reimbursable Account	\$ _____
Utility Outlay Reserve	\$ _____	Other: (Specify)	
45.5-760.52	\$3,688.43	121.2 Fund	\$4,000
45.7-503.11	\$3,368.30	Account Number	

  
Dixon Flynn, Finance Director

  
Thomas A. Peterson, City Manager

Submit this form in duplicate to the Finance Director. Distribution after approval will be as follows:  
1) Originating Department 2) Finance Department

CITY COUNCIL

JACK A. SIEGLOCK, Mayor  
STEPHEN J. MANN  
Mayor Pro Tempore  
RAY G. DAVENPORT  
PHILLIP A. PENNINO  
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
FAX (209) 333-6793

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

September 9, 1994

D J Construction  
1330 S. Bascom Ave., #A  
San Jose, CA 95128

**SUBJECT: Contract Award for Emerson Park and Lawrence Park Restroom Facilities**

Enclosed is a copy of background information on an item that is on the City Council agenda for the special meeting of Thursday, September 15, 1994, at 7 a.m. The meeting will be held in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Jennifer Perrin, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Wes Fujitani, Senior Civil Engineer, at (209) 333-6706.

*Richard Ronsko*  
for Jack L. Ronsko  
Public Works Director

JLR/lm

Enclosure

cc: City Clerk

CITY COUNCIL

JACK A. SIEGLOCK Mayor  
STEPHEN J. MANN  
Mayor Pro Tempore  
RAY G. DAVENPORT  
PHILLIP A. PENNING  
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P O BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
FAX (209) 333-6795

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

September 9, 1994

**Restroom Facilities**  
120 Woodland Ave., Unit E  
Reno, NV 89523

**SUBJECT: Contract Award for Emerson Park and Lawrence Park Restroom Facilities**

Enclosed is a copy of background information on an item that is on the City Council agenda for the special meeting of Thursday, September 15, 1994, at 7 a.m. The meeting will be held in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Jennifer Perrin, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Wes Fujitani, Senior Civil Engineer, at (209) 333-6706.



Jack L. Ronsko  
Public Works Director

JLR/lm

Enclosure

cc: City Clerk

CITY COUNCIL

JACK A. SIECLOCK, Mayor  
STEPHEN J. MANN  
Mayor Pro Tempore  
RAY G. DAVENPORT  
PHILLIP A. PENNINO  
JOHN R. (Randy) SNIDER

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 334-5634  
FAX (209) 333-6795

THOMAS A. PETERSON  
City Manager  
JENNIFER M. PERRIN  
City Clerk  
BOB McNATT  
City Attorney

August 26, 1994

Mr. Brad Clark  
Brad Clark Construction  
1771 LeBec Court  
Lodi CA 95240

Re: City of Lodi Bid: Emerson & Lawrence Parks Restroom Facilities

Dear Mr. Clark:

Regarding the bid you submitted for the Emerson and Lawrence Parks Restroom Facilities, and your request for relief, our options insofar as immediate return of bid security are extremely limited.

State law indicates that "A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court...in the county in which the bids were opened..." (California Public Contracts Code Section 5101)

However, staff will be recommending to the City Council (the City's awarding authority) that your bid be rejected because of failure to include required drawings with your proposal. Upon formal rejection by the City Council at their next meeting, Wednesday, September 7, we can return your bid deposit. It is possible (but not likely) that the Council will override staff's recommendation and award the contract to you. In that event, the bid deposit would be retained until the contract was signed.

In order to protect your rights to recover your bid deposit where a mistake was made in preparing your bid, you must write to the City (you may address your letter to me) no later than Monday, August 29, 1994. In the letter, you should specify in detail how the mistake occurred, that the mistake made the bid materially different than you intended it to be, and that the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

Consequently, we're not able to return your bid deposit until after the City Council has taken formal action, that is, formally rejected your bid, or formally awarded the contract to you, and the contract has been signed.

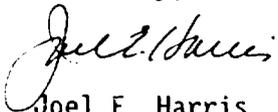
August 26, 1994  
Mr. Brad Clark  
Page 2

An option you may wish to consider, should immediate cash flow become a serious concern for you, is to obtain a Bid Bond (the cost is typically 1% to 3% of the bid amount). We would then return your bid deposit in exchange for the bond, and bid security requirements would still be met.

I'm also sending copies of the California Public Contract Code sections which apply to this matter, for your review.

If you have questions, you may call me at 333-6777 (I will be out of the office on Monday, August 29, but will return on Tuesday), or the City Attorney, at 333-6701.

Sincerely,



Joel E. Harris  
Purchasing Officer  
City of Lodi  
(209) 333-6777  
FAX (209) 333-6791

cc: City Attorney  
City Engineer

encl: Sections 5100- 5106, State Public Contracts Code

**RELIEF OF BIDDERS**

**§ 5101**

**Pt. 1**

**Section**

- 5102. Complaint; summons.
- 5103. Grounds for relief.
- 5104. No claim, other than notice, required to be filed.
- 5105. Prohibition against further bidding on project.
- 5106. Award of contract to second or third lowest bidder.
- 5107. Preference to actions under this chapter.
- 5108. Applicability of chapter.

*Chapter 5 was added by Stats.1982, c. 435, p. 1803, § 2.*

**Cross References**

State Contract Act, relief of bidders, see § 10200.

**§ 5100. Definitions**

(a) "Public entity" means the state, Regents of the University of California, a county, city and county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

(b) "Bid" means any proposal submitted to a public entity in competitive bidding for the construction, alteration, repair, or improvement of any structure, building, road or other improvement of any kind.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

**Historical Note**

Derivation: Gov.C. former § 4200, added by Stats.1971, c. 1584, p. 3195, § 2.

**Cross References**

Public entity defined, see § 1100.

**Library References**

Words and Phrases (Perm. Ed.)

**§ 5101. Consent to relief by awarding authority; action for recovery of amount forfeited; costs and attorneys' fees upon failure of plaintiff to recover judgment; report documenting grounds for relief because of mistake**

*Text of section effective Jan. 1, 1986.*

(a) A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were

## § 5101

## ADMINISTRATIVE PROVISIONS

Div. 2

opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court.

(b) If an awarding authority for the state consents to relieve a bidder of a bid because of mistake, the authority shall prepare a report in writing to document the facts establishing the existence of each element required by Section 5103. The report shall be available for inspection as a public record and shall be filed with the State Board of Control; except that in the case of the University of California or a California State University, the report shall be filed with the regents and the trustees, respectively.

(Added by Stats.1982, c. 435, p. 1803, § 2. Amended by Stats.1983, c. 18, § 29, eff. April 21, 1983; Stats.1985, c. 262, § 1, eff. Jan. 1, 1986.)

*For text of section effective until Jan. 1, 1986, see Historical Note, post.*

### Law Revision Commission Comment 1983 Amendment

Section 5101 is amended to delete the cost bond provision. This provision did not meet the constitutional standards enunciated in *Beaudreau v. Superior Court*, 14 Cal.3d 448, 535 P.2d 713, 121 Cal.Rptr. 585 (1975), which held unconstitutional Government Code Sections 947 and 951, the cost bond provisions of the California Tort Claims Act. See Recommendation Relating to Security for Costs, 14 Cal.L. Revision Comm'n Reports 319 (1978). The other changes in Section 5101 are technical. [16 Cal.L.Rev.Comm. Reports 2239 (1982)].

### Historical Note

Section 5101, added by Stats.1982, c. 435, p. 1803, § 2, amended by Stats.1983, c. 18, § 29, effective until Jan. 1, 1986, provides:

"A bidder shall not be relieved of the bid unless by consent of the awarding authority nor shall any change be made in the bid because of mistake, but the bidder may bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If the plaintiff fails to recover judgment, the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court."

The 1983 amendment substituted "the bid" for "his or her bid" twice in the first sentence of what is now subd. (a); changed

"he or she" to "the bidder" in the first sentence of what is now subd. (a); added the second sentence of what is now subd. (a); and deleted a paragraph, which read:

"The bond of an admitted surety insurer shall be filed with the complaint, in such sum as the court may fix, but not less than five hundred dollars (\$500), conditioned that, if the plaintiff fails to recover judgment, he or she shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court."

The 1985 amendment, effective Jan. 1, 1986, designated the first paragraph as subd. (a); and added subd. (b).

**Derivation:** Gov.C. former § 4201, added by Stats.1971, c. 1584, p. 3195, § 2.

**RELIEF OF BIDDERS**  
**Pt. 1**

**§ 5103**

**Cross References**

Forfeiture of security, State Contract Act, failure of successful bidder to execute contract,  
see §§ 10181, 10182.  
Similar provision, State Contract Act, see § 10200.

**Library References**

Counties ⇐127.	C.J.S. Counties § 198.
Municipal Corporations ⇐335(3).	C.J.S. Municipal Corporations § 1003.
States ⇐354.	C.J.S. States § 164.

**§ 5102. Complaint; summons**

The complaint shall be filed, and summons served on the director of the department or the chief of the division or other head of the public entity under which the work is to be performed or an appearance made, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

**Historical Note**

Derivation: Gov.C. former § 4202, added  
by Stats.1971, c. 1584, p. 3196, § 2.

**Cross References**

Commencing civil actions, see Code of Civil Procedure § 411.10 et seq.  
Service of summons, see Code of Civil Procedure § 413.10 et seq.  
Similar provision, State Contract Act, see § 10201.

**§ 5103. Grounds for relief**

The bidder shall establish to the satisfaction of the court that:

(a) A mistake was made.

(b) He or she gave the public entity written notice within five days after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.

(c) The mistake made the bid materially different than he or she intended it to be.

(d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

**Historical Note**

Derivation: Gov.C. former § 4203, added  
by Stats.1971, c. 1584, p. 3196, § 2.

§ 5103

ADMINISTRATIVE PROVISIONS  
Div. 2

Cross References

Similar provision, State Contract Act, see § 10202.

Library References

Counties ⇄115, 116, 118.	C.J.S. Municipal Corporations §§ 1000, 1003.
Municipal Corporations ⇄234, 235, 238.	C.J.S. Public Contracts § 14.
Public Contracts ⇄18.	C.J.S. States § 164.
States ⇄98.	
C.J.S. Counties § 186.	

Notes of Decisions

In general 1  
Estoppel 3  
Evidence 4  
Purpose 2

City of King (1976) 126 Cal.Rptr. 585, 54 C.A.3d 457.

3. Estoppel

Where contractor indicated at trial that estoppel was not an issue in its action to recover bid bond from city, court of appeal could not consider whether city attorney's comments to contractor misled contractor into filing late claim and thus estopped city from challenging lateness of claim. A & A Elec., Inc. v. City of King (1976) 126 Cal. Rptr. 585, 54 C.A.3d 457.

4. Evidence

Evidence that contractor notified city at time bids were opened of error in its bid, but that contractor did not give city written notice of specific detail of mistake within five days, did not support trial court's finding that contractor had supplied "notice in detail" of mistake in bid within meaning of Gov. C. § 4203 (repealed; see, now, this section) providing procedure for rectifying mistake in public bid. A & A Elec., Inc. v. City of King (1976) 126 Cal.Rptr. 585, 54 C.A.3d 457.

1. In general

Gov.C. § 4200 et seq. (repealed; see, now, § 5100 et seq.) governing public contracts by public entities established exclusive procedure for relieving bidder from mistake in bid submitted to public entity. A & A Elec., Inc. v. City of King (1976) 126 Cal.Rptr. 585, 54 C.A.3d 457.

2. Purpose

Purpose of Gov. C. § 4203 (repealed; see, now, this section) for relieving bidder from its mistake in bid submitted to public entity was to provide public entity with definite and specific information about nature of mistake, so that public entity could make informed decision on whether to grant bidder relief from bid. A & A Elec., Inc. v.

§ 5104. No claim, other than notice, required to be filed

Other than the notice to the public entity, no claim is required to be filed before bringing the action.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

Historical Note

Derivation: Gov.C. former § 4204, added by Stats.1971, c. 1584, p. 3196, § 2.

Cross References

Similar provision, State Contract Act, see § 10203.

**RELIEF OF BIDDERS**  
Pt. 1

**§ 5106**

**§ 5105. Prohibition against further bidding on project**

A bidder who claims a mistake or who forfeits his or her bid security shall be prohibited from participating in further bidding on the project on which the mistake was claimed or security forfeited.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

**Historical Note**

Derivation: Gov.C. former § 4205, added by Stats.1971, c. 1584, p. 3196, § 2.

**Cross References**

Forfeiture of security, State Contract Act, failure of successful bidder to execute contract, see §§ 10181, 10182.  
Similar provision, State Contract Act, see § 10204.

**Library References**

Counties ↔116.  
Municipal Corporations ↔337.  
States ↔98.

C.J.S. Counties § 198.  
C.J.S. Municipal Corporations § 1003.  
C.J.S. States § 164.

**Notes of Decisions**

**1. In general**

Evidence in declaratory judgment action brought by contractor seeking determination that Gov.C. § 4205 (repealed: see, now, this section) did not bar his rebid, including evidence that only major structural change in buildings to be constructed was flooring on relocatable classrooms, with difference

in price of less than four percent of total cost of bid, was sufficient to support finding that second bid was in fact on same project so that bar of section applied to prevent contractor from submitting bid. Colombo Const. Co., Inc. v. Panama Union School Dist. (1982) 186 Cal.Rptr. 463, 136 C.A.3d 868.

**§ 5106. Award of contract to second or third lowest bidder**

If the public entity deems it is for its best interest, it may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest bidder.

If the second lowest bidder fails or refuses to execute the contract, the public entity may likewise award it to the third lowest bidder.

On the failure or refusal of the second or third lowest bidder to whom a contract is so awarded to execute it, his or her bidder's security shall be likewise forfeited.

(Added by Stats.1982, c. 435, p. 1803, § 2.)

**Historical Note**

Derivation: Gov.C. former § 4206, added by Stats.1971, c. 1584, p. 3196, § 2.