

April 8, 2016

[pgonda@sunnyvale.ca.gov](mailto:pgonda@sunnyvale.ca.gov)

Pete Gonda  
Purchasing Division  
City Hall Annex  
650 West Olive Avenue  
Sunnyvale, CA 94086

Re: City of Sunnyvale - Primary Treatment Facility Package 1  
Anderson Pacific Engineering Construction Inc.'s  
Reply to Bid Protest

Dear Mr. Gonda:

Three weeks after the bid opening, the De Silva Gates / Mountain Cascade joint venture (JV) submits a protest of Anderson Pacific's bid. The JV protests on the grounds that the experience submitted by Anderson Pacific "might" not satisfy the City's requirements and there "might" be a listing law violation. Both assumptions are false. Anderson Pacific is the lowest responsible and responsive bidder and should be awarded the contract.

1. Anderson Pacific's Bid Included the Required Experience Information

The JV argues that the projects listed by Anderson Pacific did not satisfy the City's "earthwork" experience requirements. The JV's protest is based on the erroneous assumption that Anderson Pacific needs to repeat some exact phrase or quote ("fill placement"), as opposed to listing actual projects that meet the City's experience requirement. The City's Invitation for Bid (IFB) only required Anderson Pacific describe earthwork projects that involved 60,000 cubic yards of fill replacement and "include CY of fill placement". Anderson Pacific listed 3 such projects and included the cubic yards of fill involved.

The 2 South Bay Pumping Plant projects both had over 60,000 cubic yards of fill placement and Anderson Pacific so indicated on its bid form. The City's contract documents allow the City to verify the nature and scope of the work listed.<sup>1</sup> Section 00460-3 States:

"The owner reserves the right to exclude any projects listed below that do not demonstrate the Contractor's ability to perform the work associated with this Project. Further, the Owner reserves the right to accept a Bidder's qualifications that do not meet the experience requirements listed above."

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<sup>1</sup> A bid is responsive if it promises to do what the bidding instructions require. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal.App. 4th, 359.

While not required, but in an effort to move this process forward – attached is a letter from Paul Strusinski of the DWR, confirming the volume of earthwork on the two projects. The South Bay Pumping Plant project did involve over 60,000 cubic yards of fill.

The same is true of Project 3, the Salinas River Diversion. The JV, again incorrectly assumes the project did not have the required earthwork volume because of its proximity to the Salinas River. But, again, the JV position is based on an erroneous assumption, not fact. Anderson Pacific's bid form fully complies with the City's IFB. I have also attached a letter from Monterey County's representative confirming the volume of earthwork for the Salinas River Diversion project.

The JV's protest does not dispute Anderson Pacific's bid is responsive, but instead argues that it "might" not have the experience. The JV urges the City to "drill down on the specifics". Such an argument goes to "responsibility", not "responsiveness" and would require a hearing. Anderson Pacific welcomes such inquiry but offers the attached letters to avoid that unnecessary process.

Next, the JV complains that one of the projects might have involved a subcontractor performing the earthwork. Again, irrelevant to the City's IFB. Nowhere does the City state or require the subject earthwork be performed solely by the bidder.

## 2. Anderson Pacific Complied With the Public Contract Code and the City's Requirements

The JV also throws out that Anderson Pacific violated the Public Contract Code section 4104 (listing law) because it did not list its pipe supplier, Maskell. First, Public Contract Code section 4104 only requires a bidder to list "subcontractors" not "suppliers". Suppliers (or vendors) are also not required to be listed on the City's "Designation of Subcontractors" form. Second, the JV tacitly acknowledges that the issue does not impact the "responsiveness" of Anderson Pacific's bid. The JV only states that Anderson Pacific must perform the "pipe work." That is the plan, but the pipe will be purchased from Maskell.

Then the JV jumps to the illogical conclusion that Maskell cannot supply pipe so no MBE/DBE credit can be given. The JV ignores credit is given to Maskell for the supply of the pipe.

The JV also argues that the good faith effort documentation was not submitted by Anderson Pacific prior to the bid. This is false. Anderson Pacific submitted the exact good faith effort forms required by the City. Addendum No. 1 sets forth exactly what forms are required to be submitted. Paragraph 5 states:

"The following three (3) forms must be completed and included with your bid package under this section:

- a. Appendix A to the SRF Supplementary Conditions (Page 150)
- b. EPA Form 6100-3 (Page 157-158)

c. EPA Form 6100-4 (Page 159-160)

The City did not require other good faith effort documentation to be submitted with the bid or after. Again, Anderson Pacific's bid was responsive.

The JV's protest is meritless and must be rejected.

Very truly yours,



Timothy L. McInerney

TLM:sjf

Cc: Anderson Pacific  
John Busby – Busby & Zappala, LLP (email)

**DEPARTMENT OF WATER RESOURCES**

DIVISION OF ENGINEERING  
SACRAMENTO PROJECT HEADQUARTERS  
3500 INDUSTRIAL BOULEVARD  
WEST SACRAMENTO, CA 95691



DATE: APR 05 2016

Anderson Pacific Engineering Construction, Inc.  
1390 Norman Avenue  
Santa Clara, California 95054

To Whom It May Concern,

The Department had the privilege of working on two projects with Anderson Pacific Engineering Construction at our South Bay Pumping Plant in Byron California. There was a significant amount of earthwork on these projects. Anderson Pacific was responsible for hauling, and placing over 60,000 cubic yards of material on both projects.

If you have any questions, please contact John Berringer at (916) 376-9902.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Strusinski", with a long horizontal line extending to the right.

Paul Strusinski, Chief  
Sacramento Project Headquarters  
Construction Branch  
Division of Engineering



E2 Consulting Engineers, Inc.  
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Fax: (510) 652-5604  
www.e2.com

Date: April 6, 2016

Anderson Pacific Engineering Construction, Inc.  
1390 Norman Avenue  
Santa Clara, CA 95054

To Whom It May Concern,

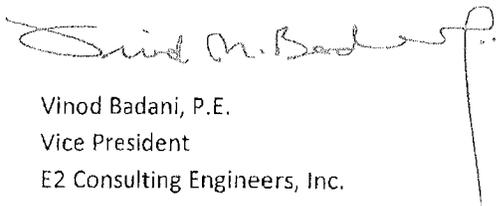
Anderson Pacific Engineering, Inc. (API) was the construction contractor for the Monterey County Water Resources Agency's (MCWRA) Salinas River Diversion Facility (SRDF) Project. E2 Consulting Engineers, Inc. was retained by MCWRA to provide Construction Management Services as well as to provide Engineering Support Services during the construction phase of this project.

There was a significant amount of earthwork required for this project. It included, excavating and replacing large areas with engineered controlled fill on both sides of the Salinas River banks; removal of more than 20 feet of existing soil within the Salinas River bed and replacing it with engineered controlled fill; deep excavation for intake facilities including a pump station; deep excavation for installation of approximately 5,300 feet of 30-inch force main; and placing the excavated material on the adjacent road and levees.

API was responsible for excavation, placing engineered fill and hauling/disposing of the excavated unusable material for this project. The total amount of earthwork performed for this project was in excess of 60,000 cubic yard.

If you have any questions, please contact Vinod Badani at 510-754-6560.

Sincerely,



Vinod Badani, P.E.  
Vice President  
E2 Consulting Engineers, Inc.