



## Attachment 5

March 29, 2016

SENT VIA FAX TO 925-803-4263 AND FEDEX DELIVERY

Michael Gates  
DeSilva Gates-Mountain Joint Venture  
11555 Dublin Boulevard  
Dublin, CA 94568

**Subject: Initial Determination of Non-responsiveness for  
Primary Treatment Facility Package 1 (#PW16-19)**

Dear Mr. Gates:

The City has received your bid for the Primary Treatment Facility Package 1. Your bid submission lists a Joint Venture ("JV") consisting of two companies: DeSilva Gates Construction, LP and Mountain Cascade, Inc. The City has spent considerable time reviewing the bids in detail and we have initially determined that your bid is non-responsive on the following grounds:

1. INVITATION FOR BIDS ("IFB") #PW16-19, page 37

The Bidder is required to list "...at least \$50 million in construction volume on no more than seven (7) and not less than three (3) projects completed within the last five (5) years at industrial, commercial or public works facilities or transportation projects" of the following types:

1. Earthmoving and fill
2. Site preparation involving major earthmoving and fill
3. Highway involving earth moving

Additionally, the IFB goes on to state:

"If the Bidder is a Joint Venture of two or more companies, each participant in the Joint Venture shall meet this prior project experience requirement and provide project information for each Join Venture participant in the format below."

**ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707  
TDD (408) 730-7501**

### City Conclusion

On its face, the initial bid did not meet the requirement that each participant in the JV submit the prior project experience. Additionally, the supplemental information contained in the March 21, 2016, letter from John Busby II on behalf of the JV clarified that Mountain Cascade did not in fact submit any prior project experience even though the IFB requires each participant in a JV to do so. While the IFB does contain language that allows the City "the right to accept a Bidder's qualifications that do not meet the experience requirements," this is solely within the City's discretion and the City is not required to waive this requirement even if there is a plausible explanation as to why it is not met by one of the JV participants.

### 2. INVITATION FOR BIDS #PW16-19, page 45

Since the Water Pollution Control Plant has a gas chlorine disinfection process that is heavily regulated, the contractor safety record is a material component of the IFB. Accordingly, in order for the bid to be considered, under the IFB "the Bidder shall each meet at least two of the three minimum safety standards as specified herein." A synopsis of the three standards is listed below:

1. Experience Modification Rate ("EMR"): Bidder shall have a current three-year average EMR of 1 or lower to be considered a responsive bidder.
2. Recordable Incident Rate ("RIR"): Bidder shall have a current three year average RIR of 3.4 or lower to be considered a responsive bidder.
3. Lost Time Incident Rate ("LTIR"): Bidder shall have a current three-year average LTIR of 0.9 or lower to be considered a responsive bidder.

### City Conclusion

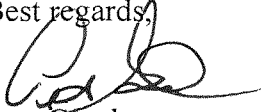
While the DeSilva Gates LP met two of the three minimum safety standards (the DeSilva submittal form incorrectly showed that all three ratings were met but the LTIR rating had rounding errors, which upon correction, increased the threshold rating to 0.94), Mountain Cascade only met one (viz. EMR) of the three minimum safety standards. Additionally, the JV did not provide evidence of any safety rating for joint projects performed by the JV. Moreover, the submitted bid on its face did not contain an average minimum safety standards rating for the JV. It wasn't until the follow up letter from Mr. Busby that the City received an average rating for the JV. However, the IFB does not contemplate any type of averaged safety rating for a JV.

We have not made our initial decision lightly. However, we feel that it is in the City's best interests to adhere to the bid requirements as written in order to be fair and equitable to all the potential bidders.

If you have any additional information pertaining to the issue of non-responsiveness, please submit the information either electronically or via overnight mail to my office by 5:00 p.m. Monday, April 4, 2016.

If you have any questions please do not hesitate to contact me at (408) 730-7418.

Best regards,

A handwritten signature in black ink, appearing to read 'Pete Gonda', with a stylized flourish at the end.

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

cc: Manuel Pineda, Director of Public Works  
John Stufflebean, Director of Environmental Services  
Office of the City Attorney