



Attachment 10

April 25, 2016

SENT VIA EMAIL AND FEDEX DELIVERY

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

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

Dear Mr. Gates:

The City has received the additional information dated April 4, 2016, for the Primary Treatment Facility Package 1 from the Joint Venture ("JV") consisting of two companies: DeSilva Gates Construction, LP and Mountain Cascade, Inc. The City has reviewed the original bid and your additional information and we have 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 Joint Venture participant in the format below."

City Conclusion

On its face, the initial bid did not meet the requirement that each participant in the JV submit the prior project experience. The supplemental letter from John Busby II on behalf

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

of the JV dated March 21, 2016, 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. The most recent letter dated April 4, 2016, attached some experience for MCI and argued that MCI's relevant job history "would have been included with the bid had the bid specs been clear." However, the City believes that the IFB is clear in that the language expressly states that "each participant in the Joint Venture shall meet this prior project experience requirement and provide project information for each Joint Venture participant in the format below."

As previously stated in the City's initial determination letter, the IFB contains language that allows the City "the right to accept a Bidder's qualifications that do not meet the experience requirements," however this is solely within the City's discretion. Furthermore, there is a distinction between waiving a minor irregularity and waiving the requirement altogether for one of the JV participants.

2. IFB #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 DeSilva met two of the three minimum safety standards (DeSilva's 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 .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 averaged minimum safety standards ratings for the JV. It wasn't until the subsequent letter from Mr. Busby on March 21, 2106, that the City received averaged ratings for each of the safety standards for the JV. Mr. Busby's letter dated April 4, 2016, reiterates the belief that the City should average the safety ratings of the two JV participants, which would meet two of the three safety standards.

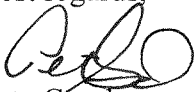
However, the IFB does not contemplate any type of averaged safety rating for a JV and if the City had allowed for that methodology then it would have specified that in the IFB

language. Moreover, the JV did not pose any questions to the City asking how the safety rating would be calculated for a joint venture submission. Accordingly, as with the project experience component of the IFB, each member of the Joint Venture must separately meet the listed criteria. Because the bid form indicates that Mountain Cascade did not meet two of the three minimum listed criteria, the bid is not responsive.

I'd like to underscore that we have spent considerable time reviewing the bids and the underlying issues. 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 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

cc: Manuel Pineda, Director of Public Works
John Stufflebean, Director of Environmental Services
Office of the City Attorney
Anderson Pacific Engineering Construction Inc.