

April 11, 2017

VIA HAND DELIVERY  
AND ELECTRONIC MAIL

Mr. Pete Gonda, MPA, CPPO  
Purchasing Officer  
City Hall Annex  
City of Sunnyvale  
650 West Olive Avenue  
Sunnyvale, California 94086  
pgonda@sunnyvale.ca.gov

Re: Bid Protest Of Flatiron West, Inc.  
Project: Primary Treatment Facility Package 2 (#PW16-28)  
Bid Date: March 1, 2017

Dear Mr. Gonda:

1. Introduction

We represent Flatiron West, Inc. (“Flatiron”), and this is Flatiron’s protest of the potential award of the City of Sunnyvale Project No. UY-16/01-20 (the “Project”) to C. Overaa & Co. (“Overaa”). Public Contract Code section 20162 requires the City award the Project “be contracted for and let to the lowest responsible bidder after notice.” Flatiron is the only bidder that qualifies under that standard.

The contemplated award to Overaa is based on experience provisions in the City’s bid documents that are void under California law. The City’s initial bid documents published a clear experience requirement: \$250 million construction volume of specific work in the past five years. Prior to bid, the City changed that requirement from clear, measureable number to simply the City’s discretion—bidders were not informed what experience would qualify and what experience would not qualify. The City essentially gave itself the discretion to award to whatever bidder it wanted.

This amendment to the bid documents was contrary to California law. The City was required to provide a clear, understandable, transparent and fair award process that resulted in award to the lowest responsible bidder under Public Contract Code section 20162. The vague “City discretion” bid requirement falls short of the *Baldwin-Lima* standard established by California courts and detailed below. For these reasons, Flatiron requests the City award to Flatiron, or reject all bids and re-bid the Project.

2. The Bidding Documents And Bids Received

The City published its invitation for bids, which included Section 00460 Certification of Bidder’s Experience and Qualifications. (Copy at Tab 1.) The first two paragraphs of Section 00460 included representations by each bidder that they were licensed and skilled to perform the type of work comprising the project.

In Section 00460-2, the City restrictively required each bidder to certify not only that it had completed at least \$250 million in construction volume over the last five years but also list “at least \$250 million in construction volume on no more than five (5) and not less than three (3) projects completed within the last five (5) years of the following types of projects: 1. Water/ Wastewater Treatment Plant Facility where the electrical, mechanical and instrumentation systems were part of the Contractor’s contract.” (Tab 1, page 00460-2 and 3, item 8/4(b).)

The City issued Addendum 2 on January 25, 2017, prior to bid, changing the above requirements to give the City discretion as to the amount of experience bidders needed. The City stated: “[t]he City will consider deviations from the number of projects and/ or construction volume requirements, provided that the Bidder’s qualifications substantially meet the experience requirements as indicated in Specification Sections 00460 and 00461.” (Copy at Tab 2.)

On March 1, 2017, the City received three bids as follows:

<b>Bid Rank</b>	<b>Contractor</b>	<b>Bid Amount</b>	<b>% Low Bidder</b>
<b>1</b>	<b>Flatiron West, Inc.</b>	<b>\$99,056,900</b>	
2	C. Overaa & Co.	\$99,438,000	0.38%
3	Kiewit Construction Co.	\$104,493,000	5.49%

Notably, the City’s Engineer’s estimate for construction cost was \$93 million, with the project being completed in 1,152 calendar days, or approximately 3.15 years at \$29 million per year. (See Addendum 4, Section 00800, 1.1, Time Allowed for Completion, and the City’s Project Estimated Budget, copies of which are at Tabs 3 and 4, respectively.) This volume of work is substantially less than the City’s request for contract history for \$250 million in work completed in the past five years, i.e., \$50 million per year, evidencing that the qualification standard used by the City is not rationally related to the project size and scope and further explaining why the City relaxed the history requirement in Addendum 2.

3. The City’s Unqualified Right To Reject All Bids

In the Instructions to Bidders, the City expressly reserved its right to reject all bids and rebid the project. (Tab 5.) The City is unconditionally insulated from litigation arising out of the award if it exercises this absolute right. (*Kajima/Ray Wilson v. Los Angeles Cnty. Metro. Transp. Auth.* (2000) 23 Cal.4th 305, 311-312.) As detailed below, the City can exercise this option.

4. The City May Not Award Itself The Discretion Afforded By Addendum 2

It is a well-settled principle of competitive bidding that a public agency must provide a level playing field for all bidders, or it cannot make an award. (*Baldwin-Lima-Hamilton Corp. v. Superior Court*, (1962) 208 Cal.App.2d 803, 821 [court held the award of a public contract could not be based on undisclosed standards that contradicted the bid documents] (“*Baldwin*”). Specifically, the *Baldwin* court explained:

It is a long and well-established rule that where municipal contracts are required to be let upon public bidding, the proposals and specifications inviting such bids must be sufficiently detailed, definite and precise so as to provide a basis for full and fair competitive bidding upon a common standard and must be free of any restrictions tending to stifle competition. (43 Am.Jur., Public Works and Contracts, § 36, p. 777; 63 C.J.S. Municipal Corporations § 998, p. 573; 10 McQuillin, Municipal Corporations, § 29.30, p. 268.) [...]

(*Baldwin*, *supra*, 208 Cal.App.2d at pp. 821-822.) Further, “[t]he purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition.” (*Konica Bus. Machines U.S.A. Inc. v. Regents of Univ. of California* (1988) 206 Cal.App.3d 449, 456 [to permit owner to consider deviations from precise specifications in its public call for bids leaves bidders in unfair position of having to guess what will satisfy owners needs].)

In *Baldwin*, project bid documents were insufficient to provide the required level playing field, rendering the award illegal. Specifically, bidders could not reasonably determine what is required prior to bid. The bid documents were not sufficiently definite or precise, such that bidders would be subject to unbounded and unpredictable discretion of the awarding public entity. In rejecting the bid documents, the Court in *Baldwin* stated:

Properly conducted competitive bidding should not compel a bidder to question the clear language of the proposal and to search out, examine and construe various public documents upon the contingency that they may in some way affect it. This would require the bidder to become to a great extent a lawyer, in some degree a judge and, perhaps, in no small way a clairvoyant.

(*Baldwin*, *supra*, 208 Cal.App.2d at p. 823.)

Here, Addendum 2 required bidders to become clairvoyant about how much experience the City would decide—post-bid—was necessary. Addendum 2 eliminated the level playing because nobody knew the rules—perhaps not even the City. Whether a bidder met the experience minimums depended entirely on a post-bid exercise of City discretion. There is no statute affording the City this type of discretion or relief from the award-to-the-lowest-responsible-bidder mandate of Public Contract Code section 20162.

The broad discretion provided by Addendum 2—“we will tell you the bid minimums after we see the bid”—far exceeds the limited awarding body discretion allowed under California law. Specifically, California law affords public entities discretion to waive only those bid requirements both: (1) could have no impact on price; and (2) could not afford one bidder an advantage over another bidder. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1440–41.) The Project experience requirements run afoul of both elements, as experience is costly and time-consuming to obtain.

The facts of this case highlight how the City’s “\$250 million or whatever the City decides” requirement was arbitrary, capricious and contrary to California law. First, the City’s Addendum 2 created a vague and post-bid discretion standard that is contrary to California law. With no objective standard, the City is not awarding to the lowest bidder, but instead reserving “choice” and “discretion” as to whom it will award contrary to the bright line rule requirements set forth in the *Baldwin* and *Konica* case law. As such, the City cannot rely on its experience requirement.

Further, as set forth above, the Project is less than \$100 million with less than \$30 million being completed each year. (See Tabs 3 and 4.) This is much smaller than the request for experience for completions of \$250 million of work in the last five years and bears no rational relationship to the requirements of the Project. This requirement has no rational basis and none has been provided by the City. Why require more experience than the Project requires? The City has failed to answer this basic question. The requirement effectively restricted and stifled fair competition in violation of California law, as contractors with the actual requisite experience for the Project were deterred from participating in the bidding process.

Summarily, the City rendered its bid documents defective by issuing Addendum 2 and reserving to itself the "discretion" to decide to whom it would award. Second, the City's initial standard was arbitrary and capricious and not rationally related to the requirement of the Project. Thus, for that additional reason the City's only choice is to ignore its arbitrary and capricious, over-reaching qualification requirement and either award to Flatiron or reject all bids and re-bid the Project.

5. Flatiron's Bid Is Responsive

As set forth in our letter to you dated March 22, 2017, Flatiron is imminently qualified to perform the Project.

6. Conclusion

As set forth above, the inconsistent bidder experience requirements created an uneven and unfair playing field for Flatiron and eliminated any common standard upon which bids could be based. Thus, the City cannot rely on its experience requirement or reserve discretion. For these reasons, the City must either award to Flatiron or reject all bids and re-bid the Project. Please contact our office with any questions. Please notify us when the City council will hear this matter. Thank you.

Very truly yours,



P. Randolph Finch Jr.,  
Partner

Enclosures

PRF:kam/3B50873

# TAB 1

**SECTION 00460**

**CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS**

(To Accompany Bid)

**BIDDER'S INFORMATION**

The undersigned Bidder certifies that it is, at the time of bidding, and shall be, throughout the period of the Contract, licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California, to do the type of work contemplated in the Contract Documents. Bidder further certifies that it is skilled and regularly engaged in the general class and type of work called for in the Contract Documents.

The Bidder represents that it is competent, knowledgeable, and has special skills concerning the nature, extent, and inherent conditions concerning the work to be performed. Bidder further acknowledges that there are certain inherent conditions existent in the construction of the particular facilities which may create, during the construction program, unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

If the Bidder is a Joint Venture of two or more companies, each Principal in the Joint Venture shall meet the experience, qualification, and safety requirements, and complete the required forms, included herein as part of the bid.

The Bidder shall furnish the following information. Additional sheets shall be attached as required.

1. BIDDER'S name and street address:

Name:

Address:

2. BIDDER'S telephone No.: ( ) \_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_

3. BIDDER'S Sunnyvale Business License No.: \_\_\_\_\_ BIDDER'S Tax ID No.: \_\_\_\_\_

4. TYPE OF BUSINESS

If you are an individual or partnership, so state. If you are a partnership, list the names of all general partners composing the partnership. If a corporation, list the names of president, secretary, treasurer, and manager.

Individual \_\_\_\_\_ Name(s): \_\_\_\_\_

Partnership \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS

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Corporation _____	Names of Corporate Officers
State of Incorporation _____	President _____
	Secretary _____
	Treasurer _____
	Manager _____
Joint Venture _____	
Other _____	
(Describe)	

5. CONTRACTOR'S license: Primary Classification \_\_\_\_\_  
State License No.: \_\_\_\_\_ Expiration Date: / \_\_\_\_ / \_\_\_\_  
Supplemental license classifications: \_\_\_\_\_
6. NAME of person who inspected the site of the proposed Work for the Bidder:  
Name: \_\_\_\_\_ Date of inspection: \_\_\_\_\_
7. CONTRACTOR'S Department of Industrial Relations (DIR) Registration No. \_\_\_\_\_  
and email address \_\_\_\_\_
8. BIDDER'S EXPERIENCE
1. Bidder has been doing business under its present name for years.
  2. Bidder has experience in work comparable in type and complexity with that required under the proposed contract which extends over a period of years as a General Contractor (Bidder must show at least five (5) years of related experience).
  3. The Bidder, as a Contractor, has never failed to satisfactorily complete a contract awarded to it, except as follows:  
\_\_\_\_\_  
\_\_\_\_\_
  4. Bidder must meet both criteria "a" and "b" below.
    - a. For the Owner to consider the Bidder to possess the proper capacity to perform work of similar nature to this project, the bidder must have completed at least \$250 million in construction volume over the past 5 years. Does the bidder meet this criteria: \_\_\_\_ yes; \_\_\_\_ no?
    - b. For the Owner to consider the Bidder properly experienced in work of similar nature to this project, the Bidder must list at least \$250 million in construction volume on no more than five (5) and not less than three (3) projects completed within the last five (5) years of the following types of projects:

CERTIFICATION OF BIDDER'S  
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1. Water / Wastewater Treatment Plant Facility where the electrical, mechanical and instrumentation systems were part of the Contractor's contract.

The Bidder can include project(s) currently under construction, but only the total amount paid by the Owner(s) as of three (3) months prior to the bid date on uncompleted project(s) can be included in the construction volume for purposes of this certification.

Bidder also certifies that Bidder self-performed at least fifty percent (50%) of the Work on each of the projects listed below.

If the Bidder is a Joint Venture of two or more companies, each Principal in the Joint Venture must list the experience and qualification requirements, and complete the required forms, included herein as part of the bid.

However, 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 substantially meet the experience requirements listed above.

1. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Date of Substantial Completion: \_\_\_\_\_

Name, Address, and Telephone Number of Owner's Representative:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of Project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

CERTIFICATION OF BIDDER'S  
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Date of Substantial Completion: \_\_\_\_\_

Name, Address, and Telephone Number of Owner's Representative:

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Description of Project:

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3. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Date of Substantial Completion: \_\_\_\_\_

Name, Address, and Telephone Number of Owner's Representative:

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Description of Project:

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4. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Date of Substantial Completion: \_\_\_\_\_

CERTIFICATION OF BIDDER'S  
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Name, Address, and Telephone Number of Owner's Representative:

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Description of Project:

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5. Project Name: \_\_\_\_\_

Owner: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Construction Time: \_\_\_\_\_ Calendar Days

Date of Substantial Completion: \_\_\_\_\_

Name, Address, and Telephone Number of Owner's Representative:

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Description of Project:

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**Bidder shall sign under penalty of perjury that all the information  
provided in this information sheet is true and correct.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

CERTIFICATION OF BIDDER'S  
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## STATEMENT OF QUALIFICATIONS

Bidder shall complete this entire Statement of Qualifications questionnaire and submit it to City at the time of bid, in accordance with Section 00100, **INSTRUCTION TO BIDDERS**. Failure to complete the questionnaire or inclusion of any false statement is grounds for immediate disqualification. The City reserves the right to waive minor irregularities, inconsequential deviations and to make all final determinations. The City will evaluate the information contained in each applicant's questionnaire and responses received in reference checks. The sole and discretionary judgment of the City will determine if the Contractor is deemed qualified.

### 1. CONTACT INFORMATION

Company Name: \_\_\_\_\_

Form of Company:    \_\_\_\_\_ Sole Proprietor    \_\_\_\_\_ Partnership    \_\_\_\_\_ Non-Profit 501 C3  
                                 \_\_\_\_\_ Corporation    \_\_\_\_\_ other (please attach explanation)

Owner of Company: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Federal Tax I.D. No. \_\_\_\_\_

### PART A: GENERAL INFORMATION

Complete Part A before proceeding to Part B.

1. Contractor possesses a valid and current California Contractor's "A" license for the work proposed.    Yes No \_
2. Contractor will comply with and provide all insurance as defined in Section 00800-2.0, Liability and Insurance.    Yes No \_
3. Contractor's license has been revoked at any time in the last five (5) years.    Yes No \_
4. Contractor has been "default terminated" by an owner (not for convenience), or a Surety has completed a contract for Contractor within the last five (5) years.    Yes No \_

CERTIFICATION OF BIDDER'S  
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5. Contractor has been cited more than twice for failure to pay prevailing wages in the last five (5) years. Yes No \_
6. Contractor has current Workers' Compensation insurance coverage as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq. Yes No \_
7. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7? Yes No \_
8. At any time during the last five (5) years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract? Yes No \_

**Contractor will be immediately disqualified if any answer to questions 1, 2, or 6 is No. Contractor will be immediately disqualified if any answer to question 3, 7, or 8 is Yes. Contractor may be immediately disqualified if the answer to questions 4 or 5 is Yes. At a minimum to avoid such disqualification, Contractor must include with this Questionnaire a full description of the applicable circumstance and sufficient information to permit City to evaluate Contractor's overall qualifications to perform the work. City retains sole discretion to disqualify any Contractor who answers yes to either question 4 or 5.**

## **PART B: SAFETY, PREVAILING WAGE, DISPUTES AND BONDS**

### **(Safety)**

1. Has CAL OSHA, Federal OSHA, the EPA or any Air Quality Management District cited your firm in the past five (5) years? Yes\_\_\_\_\_No\_\_\_\_\_ If yes, attach description of each citation.

### **(Prevailing Wage Provisions)**

2. Has your firm been fined, penalized or otherwise found to have violated any prevailing wage or \_\_\_\_\_ labor code provision? If yes, attach description of each fine/penalty. Yes\_\_\_\_\_ No\_\_\_\_\_

### **(License Provisions)**

3. Has your company changed names or license numbers in the past 10 years? If so, please state reason for change. Yes\_\_\_\_\_ No\_\_\_\_\_ Reason \_\_\_\_\_

CERTIFICATION OF BIDDER'S  
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**(Disputes)**

4. Has your firm had any claims, litigation, or disputes ending in mediation or arbitration, or termination for cause associated with any project in the past five (5) years? If yes, attach description of each such instance including details of total claim amount, settlement amount, and owner's name and phone number.

Yes \_\_\_\_\_ No \_\_\_\_\_

**PART C: FINANCIAL AND OTHER INFORMATION**

**To be submitted by the low bidder within five (5) working days following the bid opening date.**

1. Has your firm ever reorganized under the protection of the bankruptcy laws?  
Yes \_\_\_\_\_ No \_\_\_\_\_

2. Have you ever had insurance terminated by a carrier? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, explain on separate signed sheet.

Contractor shall sign under penalty of perjury that all the information provided in this questionnaire is true and correct. Contractor's signature authorizes the City and its agents and representatives, to obtain a credit report and/or verify any of the above information

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Provide evidence that the Bidder has sufficient financial resources to provide all work necessary to complete the project including construction, start-up, and warranty services.

A. Bidder must provide one or more of the following to assist the Owner in determining the Bidder's financial condition:

1. Copy of a reviewed or audited financial statement with accompanying notes and supplemental information. A financial statement that is not either reviewed or audited is not acceptable.
2. A certified Credit Report, current within 30 days of the date proposals are due. This credit report shall show a Dun & Bradstreet, or equal, credit risk category rating.
3. A letter from the Bidder's bank certifying their opinion of the Bidder's credit risk category rating and Bidder's current available line of credit.

B. Bidder must provide a letter from its Surety or Surety Broker which certifies that Bidder's current bonding capacity is sufficient for the bonding requirements for this Project.

CERTIFICATION OF BIDDER'S  
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C. Bidder shall identify any claims filed in court or arbitration against Bidder in the past five years which concerned Bidder's work on a construction project. For each claim, if any, the Bidder shall provide the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution). Are there any pending claims against your company that should you lose the claim(s), would adversely affect your financial position or your ability to meet your obligations if awarded the contract for this project? If so, please explain.

**Claims Filed Against Bidder**

Project Name: \_\_\_\_\_

Date of Claim: \_\_\_\_\_

Claimant Name: \_\_\_\_\_

Court: \_\_\_\_\_

Status of Claim: \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Bidder shall also identify any claims filed in court or arbitration by Bidder against a project owner in the past five years concerning work on a project or payment for a contract. For each claim, if any, the Bidder shall provide the project name, date of the claim, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution). Are there any pending claims filed by your company against a project owner that should you lose the claim(s), would adversely affect your financial position or your ability to meet your obligations if awarded the contract for this project? If so, please explain.

**Claims Filed By Bidder**

Project Name: \_\_\_\_\_

Date of Claim: \_\_\_\_\_

Claimant Name: \_\_\_\_\_

Court: \_\_\_\_\_

Status of Claim: \_\_\_\_\_

Explanation: \_\_\_\_\_

CERTIFICATION OF BIDDER'S  
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All financial information provided by Bidder that is marked "Confidential" or "Proprietary" shall be handled by the Owner in accordance with Section 00700- 4.5.10, Public Records Act.

**The undersigned hereby states under penalty of perjury that all representations regarding the Bidder's Company Experience, and Safety Qualification Information are correct and true.**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Bidder's Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Signatory

#### **PART D: CONTRACTOR SAFETY RECORD**

The City of Sunnyvale (Owner) Water Pollution Control Plant (WPCP) has a gas chlorine disinfection process, which is classified as a covered process regulated by CCR Title 19 Section 2745.1, "California Accidental Release Prevention (CalARP) Program and 40 CFR Part 68.150 "Risk Management Programs for Chemical Accidental Release Prevention". As such, part of the determination of bidder's responsiveness will be based on its safety record, using three methods. For the Bidder's bid to be considered, the Bidder shall meet at least two of the three minimum safety standards as specified herein. If the Bidder is a Joint Venture of two or more companies, each Principal in the Joint Venture shall meet the safety requirements, and complete the required forms, included herein as part of the bid.

**1. Experience Modification (EMR)**

- a. Experience modification rates are calculated by the insurance industry as a way to determine equitable workers' compensation insurance premiums. It is calculated as a three-year moving average.
- b. Due to the particular safety hazards inherent in working in a wastewater collection, handling, treatment and/or disposal environment, the Owner has deemed it necessary that a Bidder shall have a current three-year average EMR of 1 or lower to be considered a responsive Bidder.

**CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS**

**00460-10**

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2. Recordable Incident Rate (RIR)

- a. The RIR is a measure of the frequency of injuries and is a measure of all occupational injuries and illnesses that occur within an organization. It is calculated from the OSHA Log 300 form.
- b. Due to the particular safety hazards inherent in working in a wastewater collection, handling, treatment and/or disposal environment, the Owner has deemed it necessary that a Bidder shall have a current three-year average RIR of 3.4 or lower to be considered a responsive Bidder. This value is based on the most recent State of California RIR value for Heavy and Civil Engineering Construction, Utility System Construction.

3. Lost Time Incident Rate (LTIR)

- a. The LTIR is an indicator of the severity of a company's occupational injuries.
- b. The LTIR deals only with incidents that result in lost work time. Like the RIR, the information needed to calculate the LTIR is derived from the OSHA Log 300 form.
- c. Due to the particular safety hazards inherent in working in a wastewater collection, handling, treatment and/or disposal environment, the Owner has deemed it necessary that a Bidder shall have a current three-year average LTIR of 0.9 or lower to be considered a responsive Bidder. This value is based on the most recent State of California LTIR value for Heavy and Civil Engineering Construction, Utility System Construction.

Bidder shall submit the appropriate EMR, RIR, and LTIR proposal forms included following this section as part of the bid to demonstrate the Bidder's safety qualifications.

**\*\*\*END OF SECTION\*\*\***



**Experience Modification Rate**

The following information will be used to determine if you meet the minimum safety requirements for this project. To qualify, you must not have a three-year average Workers' Compensation Experience Modification Rate less than or equal to the value specified.

Enter your Experience Modification Rate for the last three complete years (available from your insurance carrier).

20 \_\_\_\_\_ EMR= \_\_\_\_\_

20 \_\_\_\_\_ EMR= \_\_\_\_\_

20 \_\_\_\_\_ EMR= \_\_\_\_\_

a) Three-Year Average = \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

To verify the above information, we will contact your workers' compensation insurance carrier. Please authorize your carrier to release this information. Failure to do so will result in automatic disqualification.

Workers' Compensation Insurance Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Do not write in this space

Qualified [ ]

Not Qualified [ ]

EMR Information Verified [ ]

CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS

pw://Carollo/Documents/Cilent/CA/Sunnyvale/9265A10/Specifications/Package 02/Package 02 Front End/00460 (FS)

00460-12

### Recordable Incident Rate

The following information will be used to determine if you meet the minimum safety requirements for this project. To qualify, you must have a three-year average Recordable Incident Rate less than or equal to the value specified.

Please calculate the RIR for the last three complete years as follows. Incident rate information is on your Cal OSHA Log 300.

$$\frac{\text{Total number of recordable incidents} \times 200,000}{\text{Total employees hours worked}} = \text{RIR}$$

Recordable Incidents		Total Employee Hours Worked	
Year	Number	Year	Hours
20	_____	20	_____
20	_____	20	_____
20	_____	20	_____

  

Enter your Total Recordable Incident Rate for each of the last three complete years.

20 \_\_\_\_\_ RIR= \_\_\_\_\_

20 \_\_\_\_\_ RIR= \_\_\_\_\_

20 \_\_\_\_\_ RIR= \_\_\_\_\_

Three-Year Average =  
\_\_\_\_\_

  

Company Name: \_\_\_\_\_

  

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

  

Do not write in this space

Qualified [ ]      Not Qualified [ ]      RIR Information Verified [ ]

CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS

pw://Carollo/Documents/Client/CA/Sunnyvale/9265A10/Specifications/Package 02/Package 02 Front End/00460 (FS)

00460-13

### Lost Time Incident Rate

The following information will be used to determine if you meet the minimum safety requirements for this project. To qualify, you must not have a three-year average Lost Time Incident Rate less than or equal to the value specified.

Incident rate information is on your OSHA Log 300. Please calculate the LTIR for the last three complete years as follows.

Total number of lost-time incidents X

<table border="1" style="width: 100%; border-collapse: collapse;"><tr><th colspan="2">Lost-time Incidents</th></tr><tr><th style="text-align: center;">Year</th><th style="text-align: center;">Number</th></tr><tr><td>20__</td><td>_____</td></tr><tr><td>20__</td><td>_____</td></tr><tr><td>20__</td><td>_____</td></tr></table>	Lost-time Incidents		Year	Number	20__	_____	20__	_____	20__	_____	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><th colspan="2">Total Employee Hours Worked</th></tr><tr><th style="text-align: center;">Year</th><th style="text-align: center;">Hours</th></tr><tr><td>20__</td><td>_____</td></tr><tr><td>20__</td><td>_____</td></tr><tr><td>20__</td><td>_____</td></tr></table>	Total Employee Hours Worked		Year	Hours	20__	_____	20__	_____	20__	_____
Lost-time Incidents																					
Year	Number																				
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20__	_____																				
20__	_____																				
Total Employee Hours Worked																					
Year	Hours																				
20__	_____																				
20__	_____																				
20__	_____																				
<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 80%;">Enter your Lost Time Incident Rate for each of the last three complete years. 20__ LTIR= _____ 20__ LTIR= _____ 20__ LTIR= _____ <u>Three-Year Average =</u> _____</div>																					
Company Name: _____																					
Contact Name: _____ Telephone: _____																					
Do not write in this space																					
Qualified [   ]	Not Qualified [   ]																				
LTIR Information Verified [   ]																					

CERTIFICATION OF BIDDER'S  
EXPERIENCE AND QUALIFICATIONS

pw://Carollo/Documents/Client/CA/Sunnyvale/9265A10/Specifications/Package 02/Package 02 Front End/00460 (FS)

00460-14

# TAB 2



## **CITY OF SUNNYVALE**

### **Addendum No. 2**

**DATE ISSUED ON January 25, 2017**

**Invitation for Bids No. PW 16-28**

**Project Name: Primary Treatment Facility Package 2**

**Public Works Project No. UY-16/01-20**

The above-referenced bid invitation is modified, as follows:

#### **1. Answers to Contractors Questions**

The City has received multiple requests to list additional manufacturers in the technical specifications. General contractors may propose alternate, "or-equal" manufacturers in accordance with Section 00450 **SCHEDULE OF MAJOR EQUIPMENT AND MATERIAL SUPPLIERS, PRODUCTS IDENTIFIED BY NAME AND SUBSTITUTION** and Section 01340 **SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**. The technical specifications will not be altered to add additional manufacturers.

The City has received a number of requests to modify the experience requirements for the Contractor and Electrical Subcontractor contained in **Specification Section 00460, CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS**, and **Specification Section 00461, CERTIFICATION OF ELECTRICAL SUBCONTRACTOR'S EXPERIENCE AND QUALIFICATIONS**.

The City prefers Contractors and Electrical Subcontractors whose experience meets the requirements as established in the bid specifications. However, the City will consider deviations from the number of projects and/or construction volume requirements, provided that the Bidder's qualifications *substantially meet the experience requirements as indicated in Specification Sections 00460 and 00461*. With regard to the number of projects completed within the stated timeframe of five (5) years, the City will consider dates of "substantial" and/or "final" completion.

# TAB 3

## SECTION 00800

### SUPPLEMENTARY GENERAL CONDITIONS

#### 1.0 MODIFICATIONS TO THE GENERAL CONDITIONS

##### 1.1 Time Allowed for Completion

In accordance with the provisions of Section 00700-6.12, **Commencement of Work**, Notice to Proceed for preliminary work will be issued. With the issuance of this Notice to Proceed, the Contractor shall commence with the administrative requirements of the Contract and may commence with the implementation of SWPPP measures specified in Section 01060-3.0, **STORM WATER CONTROLS**, the installation of temporary construction fencing, and the work detailed in Section 02910, **HABITAT MITIGATION SITE DESIGN, INSTALLATION AND MAINTENANCE**. No other construction work may commence until the Notice to Proceed with Construction and Mobilization detailed below is issued. The following milestone shall be substantially completed within the time period defined below. ~~Contract Time, Substantial Completion of this Project shall be completed within one thousand two hundred forty (1,240) consecutive calendar days from the date established in the Notice to Proceed for the commencement of Contract Time. In addition, the following milestones shall be substantially completed within the time period defined below. Early occupancy of these milestones shall be as provided in Section 01010-3.0, **EARLY OCCUPANCY OF PORTIONS OF WORK**.~~<sup>AD4</sup>

#### Substantial Completion

Milestone A: Habitat Mitigation

No later than December 31, 2017

Milestone B: ~~Process Operational Testing~~ 1,045 Days<sup>AD4</sup>

The Construction Manager will issue a second Notice to Proceed titled a "Notice to Proceed with Construction and Mobilization" after the site preconsolidation has been achieved as detailed in Section 01010-2.4.1.4, Site Preconsolidation. The Contractor may then proceed to mobilize on-site and commence all other construction activities required by the Contract. ~~The only field construction work allowed to occur prior to the issuance of this Notice to Proceed is the implementation of SWPPP measures specified in Section 01060-3.0, **STORM WATER CONTROLS**, the installation of temporary construction fencing, and the work detailed in Section 02910, **HABITAT MITIGATION SITE DESIGN, INSTALLATION AND MAINTENANCE**.~~<sup>AD4</sup>

Substantial Completion of the Project shall be completed within one thousand one hundred and fifty-two (1,152) consecutive calendar days from the date established in the Notice to Proceed with Construction and Mobilization. The following milestone shall be substantially completed within the time period defined below from the Notice to Proceed with Construction and Mobilization.<sup>AD4</sup>

#### Substantial Completion

Milestone B: Process Operational Testing

958 Calendar Days<sup>AD4</sup>

The Contract requirements to achieve Substantial Completion for the Project Substantial Completion and the Milestones are defined in Section 00800-5.0, **SUBSTANTIAL**

SUPPLEMENTARY GENERAL CONDITIONS

00800-1

pw://Carollo/Documents/Client/CA/Sunnyvale/9265A10/Specifications/Package 02/Package 02 Front End/00800 (AD4)

# TAB 4





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Buyers

**Suppliers**

Account Info

FAQs

## Bid Details

### Bid Information

<b>Agency</b>	City of Sunnyvale
<b>Bid Type</b>	Invitation for Bids
<b>Bid Number</b>	IFB-PW16-28-0-2017/PG
<b>Fiscal Year</b>	2017
<b>Bid Writer</b>	Peter Gonda, CPPO
<b>Bid Name</b>	PRIMARY TREATMENT FACILITY PACKAGE 2
<b>Bid Status</b>	Under Evaluation
<b>Bid Status Text</b>	None
<b>Award To</b>	
<b>Due Date/Time</b>	3/1/2017 3:00 PM Pacific
<b>Broadcast Date</b>	12/21/2016
<b>Bid Bond</b>	10% of the total bid dollar amount
<b>Project Estimated Budget</b>	\$93,869,000.00
<b>Plan (blueprint) Distribution Options</b>	Electronic plan documents
<b>Distribution Method</b>	Download and Mail
<b>Distributed By</b>	Onvia DemandStar
<b>Distribution Notes</b>	None
<b>Scope of Work</b>	<p>SEALED BIDS will be received by the City of Sunnyvale at the Purchasing Division, 650 West Olive Avenue, Sunnyvale, California 94086, until 3:00 p.m., Wednesday, February 8, 2017 at which time they will be publicly opened in the City Hall Annex, 650 West Olive Avenue, Sunnyvale, California, and read for performing work as follows:</p> <p>Furnishing all labor, materials, and equipment and performing all work necessary and incidental to the completion of the project known as "Primary Treatment Facility – Package 2, Project No. UY-16/01-20" consisting of site work, new building construction, existing facility modification/demolition, installation of major process equipment, electrical/instrumentation/ control system improvements, and related systems and facilities according to Plans and Specifications prepared by the City of Sunnyvale and according to the Contract Documents.</p> <p>Pursuant to the provisions of the California Labor Code Section 6707, if applicable to this job, each bid submitted in response to this Notice Inviting Bids shall contain, as a bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation, which shall conform to applicable safety orders.</p> <p>Pursuant to Public Contract Code Section 22300, for monies earned by the Contractor and withheld by the City of Sunnyvale to ensure the performance of the contract, the Contractor may, at his or her option, choose to substitute securities meeting the requirements of Section 22300.</p> <p>To be considered, bidders must meet the following requirements:</p> <ul style="list-style-type: none"> <li>• In accordance with the provisions of California Public Contract Code Section 3300, Contractor shall possess, as a minimum, a valid California Class "A" General Contractor license. In accordance with the provisions of California Business and Professions Code Section 7028.15, a bid submitted to the City by a Contractor who is not licensed in accordance with Chapter 9 of the California Business and Professions Code shall be considered non-responsive and shall be rejected by the City.</li> <li>• Perform with their own organizations work amounting to at least 50% of the contract price, except specialty items.</li> <li>• Have completed at least three (3) projects of similar type and complexity within the last five (5) years with at least \$250 million in construction volume.</li> <li>• Meet the experience requirements specified in Section 00460, CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS and Section 00461, CERTIFICATION OF ELECTRICAL SUBCONTRACTOR'S</li> </ul>

## EXPERIENCE AND QUALIFICATIONS.

- Other mandatory bid requirements set forth in the bid documents.

Bidders are hereby notified that if the project is financed by or with the assistance of agencies of the United States, the Contractor must comply with Federal prevailing wage requirements. A copy of the current prevailing rates under Federal law are included in Section 00900, STATE REVOLVING FUND PROGRAM SUPPLEMENTARY CONDITIONS, for this Project and are available on-line at [www.wdol.gov](http://www.wdol.gov).

E-Bidding No

## Legal Ad

[VIEW](#)

Please select either the View or Edit button to manage legal ad.

## Pre-Bid Conference

**MANDATORY PRE-BID CONFERENCE**

Thursday, January 19, 2017

10:00 AM

Water Pollution Control Plant Training Room

1444 Borregas Avenue, Sunnyvale, CA 94089

**OPTIONAL PRE-BID CONFERENCE**

Tuesday, January 24, 2017 at 10:00 AM and 11:00 AM

## Publications

The Sun 12/16/2016

## Documents

[VIEW](#)

**Bid Package** There are 40 Documents Associated with this Bid

**Award** Major Equipment Suppliers by Bidder (2 Pages, Complete)

## Commodity Codes

022-909-26 - Building Construction, Agricultural

022-909-30 - Building Construction, (Not Otherwise Classified)

022-909-77 - Special Construction: Observatory, Security, Special Rooms, etc.

022-913-16 - Construction, Communication Equipment, Including Antenna Towers

022-913-59 - Construction and Upgrades, Wastewater Treatment Plant

022-913-60 - Construction, Water System, Plants, Main and Service Line

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# TAB 5



**CITY OF SUNNYVALE, CALIFORNIA**

**INVITATION FOR BIDS No. PW16-28**

**PRIMARY TREATMENT FACILITY PACKAGE 2  
PUBLIC WORKS PROJECT NO. UY-16/01-20**

**BID SPECIFICATIONS  
DIVISION 0 – DIVISION 8  
VOLUME 1 OF 7**

**Date of Ad Publication**

**December 16, 2016**

**BIDS DUE:**

**Wednesday, February 8, 2017 BY 3:00 PM  
At the Office of the Purchasing Division  
Sunnyvale City Hall Annex  
650 West Olive Avenue  
Sunnyvale, CA 94086**

**Contact Person During Bidding Period:**

**Pete Gonda, Purchasing Officer  
pgonda@sunnyvale.ca.gov  
(408) 730-7418**

**MANDATORY PRE-BID CONFERENCE**

**Date and Time: Thursday, January 19, 2017 at 10AM  
Location: Water Pollution Control Plant Training Room  
1444 Borregas Avenue, Sunnyvale, CA 94089**

**OPTIONAL PRE-BID CONFERENCE**

**Date and Time: Tuesday, January 24, 2017 at 10AM and 11AM**

nature and amount of the bid security furnished with each bid will be read aloud at or shortly following the deadline for receipt of bids.

23. **Bid to Remain Open** - The bidder shall guarantee its bid for a period of ninety (90) calendar days from the date of bid opening.
24. **Bid Evaluation** – City's Purchasing Officer will evaluate all bids received to determine if the bidder is responsive and responsible. A Bidder will be deemed to be responsive if it has submitted a bid that conforms in all material respects to the requirements of the bid documents and demonstrates compliance with the mandatory experience as described in Section 2. A Bidder will be deemed to be responsible if the Bidder:
- a. Has the ability, capacity, experience, and skill to perform the work in accordance with the bid specifications.
  - b. Has the ability to perform the work promptly or within the time specified, without delay;
  - c. Has equipment, facilities and resources of such capacity and location to enable it to perform the work;
  - d. Has a record of satisfactory or better performance under prior contracts with the City or others; and
  - e. Has complied with laws, regulations, guidelines and orders governing prior or existing contracts.
25. **Mandatory Post Bid-opening Information** – In order to assist in the bid evaluation, the apparent low bidder will be required to complete and submit Part C, FINANCIAL AND OTHER INFORMATION, included in Section 00460, **CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS**, within five (5) days following the bid opening date and the qualifications statement package included in Section 02910, **HABITAT MITIGATION SITE DESIGN, INSTALLATION, AND MAINTENANCE**, within three (3) days following the bid opening date. Notice may be given orally, by telephone, or by facsimile sent to the number supplied by bidder. Failure to submit the information by 5:00 p.m. of the fifth or third day, as noted above, may result in the bid being deemed non-responsive and therefor rejected, and the City will then determine the next apparent low bidder.
26. **Discrepancies in Bid Forms** -  
The City may waive minor defects of irregularities in any bid, provided that the discrepancy does not materially affect the bid amount or give the bidder an advantage over others. For instance, if there are unit price bid items in a bid schedule, and the amount indicated for a unit price bid item does not equal the product of the unit price and quantity listed, the unit price shall govern. Likewise, if there is more than one bid item in a bid schedule, and the total of the schedule does not equal the sum of the bid items, the individual amounts of the bid items shall govern. If there is a difference between the bid price entered in words and the bid price entered in figures for the same quotation, the price in words shall prevail.
- The City may make any investigations deemed necessary to determine if a bidder is responsive and responsible.
27. **Rejection of Bids** - The City reserves the right to reject any and all bids; and further reserves the right to reject any bids that are found to be non-responsive or submitted by a bidder that is not responsible.