

## ATTACHMENT A

### Discussion of Bids Received:

Document 00200 Instructions to Bidders, Paragraph 20 Evaluation of Bidder Responsibility provides:

“...Owner will notify Apparent Low Bidder in writing of any deficiencies found and will provide Bidder the opportunity to respond in writing with reasonable clarifications but will not allow any changes in the nature of Bidder as a business entity.”

“If any Apparent Low Bidder is determined to be non-responsive or non-responsible, Owner may open the next Apparent Low Bidder’s Envelope “B” pursuant to any procedures determined in Owner’s reasonable discretion, and proceed for all purposes as if this Apparent Low Bidder were the original Apparent Low Bidder.”

### Non-responsive Bids:

The minimum experience requirements in order to submit a bid: “Within the past five years completed two construction projects of a similar nature and complexity with a contract dollar amount of at least \$100,000 each. For a project to be considered of similar nature and complexity for this subparagraph 20.C.2, it must include installation of an aboveground fuel tank (1,000 gallon capacity or larger), both underground and aboveground fuel piping and appurtenances, and fuel and fuel leak monitoring instrumentation...”

1. The lowest bid of Arnold Construction (Arnold) listed one project that met the minimum experience requirement, but the other project listed by Arnold did not qualify because it was under the required contract dollar amount. In response to the District’s letter requesting clarification, Arnold submitted a completely different project. This project was for construction of a caustic soda tank whose construction was completed nearly seven years ago. Arnold was notified that its bid was non-responsive and Envelope B for the second low Bidder was opened.
2. The second low bid of West Star Environmental, Inc. (West Star) contained the required Bid Attachment A “Letter of Assurance regarding Performance and Payment Bonds” from the Statement of Qualifications (Document 00450), but it was unsigned. The unsigned Attachment A had a hand written note “Certificate enclosed”. In response to the District’s letter requesting clarification, West Star provided a nonconforming letter from its Surety conditioning issuance of bonds. Document 00450-1 Statement of Qualifications for Construction Work states “... Modification of this form may result in rejection of the bid as non-responsive.”

West Star’s bid is also unbalanced. A zero dollar amount is assigned to Bid Items No. 8 (Mechanical Work) and No. 10. (Secondary Leak Detection System). Approximately one-third of the total project cost (\$98,455) was assigned to Bid Item No. 16 (All Other Work). West Star’s response to the request for clarification was to reassign \$60,000 of the \$98,455 to Bid Item No. 8, \$24,500 to Bid Item No. 10 and, the remaining \$13,955 to Bid Item 16. West Star was notified its bid was deemed non-responsive and Envelope B of the third Bidder was opened.

3. The third low bid of Bay Pacific Pipeline, Inc. (Bay Pacific) did not list any projects that met the minimum experience requirements. Both projects listed in Bay Pacific’s bid were under the required \$100,000 contract amount. Furthermore, no financial statements, resumes for key personnel, or job references were provided with Bay Pacific’s bid (See B1-2) and the bid had numerous other omissions. Due to the omission of any qualifying job experience for the Bidder or its key personnel, no clarifications were requested by the District and Envelope B of the fourth Bidder was opened.

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Document 00200, 21 provides that the “Owner reserves the right to reject any or all Bids and waive any informalities or minor irregularities in the Bids... Owner reserves the right to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids...”

### Lowest Responsive Bid

The fourth low Bid of Paradiso Mechanical, Inc. (Paradiso) has two omissions.

1. Document 00450-3, C.1 directs the Bidder to fill out the Major Products List found at the end of Document 01330 (Submittal Procedures). The Bidder is to list the name of the proposed tank and pipe manufacturers and a contact phone number for each.
2. Document 00450-1 (Statement Of Qualifications Checklist) is included in the bid package for the Bidder's convenience and lists some of the completed documents Bidder should ensure are submitted with Bidder's Statement of Qualifications. The last item on the checklist is the CalOSHA Form 300A for 2008. Paradiso's CalOSHA Form 300A was not included with its bid.

In response to the District's request for clarifications, Paradiso provided the omitted information.

### Materiality of the omissions by the first three Bidders:

Material Irregularity: A material discrepancy is one that cannot be waived because it is paramount to qualifying the bid. It cannot be waived without giving the bidder an unfair advantage over the other bidders. Also, its nature is such that its requirement may have kept potential bidders from submitting a bid on the project; therefore, waiving it would be unfair. The Public Contract Code bidding statutes were enacted to ensure an even playing field for the bidders in competitive bidding.

The first three bidders had material omissions in their bids.

- 1) Experience requirements: Both Arnold Construction (low bidder) and Bay Pacific Pipeline (third low bidder) failed to demonstrate that they possessed the requisite minimum experience required to bid the project. The minimum experience is a material requirement because without that restriction anyone with an A license would be eligible to submit a bid. The Project Manual states that the experience requirements are the “minimum” necessary to submit a bid; therefore, the District cannot accept any experience that falls below the minimum.
- 2) Bond Assurance Letter: West Star failed to provide the required Bond Assurance letter which is a material requirement because Performance and Payment Bonds are a statutory requirement. The Bidders were required to submit assurances from their surety that bonds would be executed if their client were deemed the successful bidder. Failure to provide that assurance makes its omission a material omission.

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Minor Irregularities:

The fourth lowest Bidder, Paradiso, had minor irregularities in its bid

1) Major Projects List:

- Omission of the Major Products List by Paradiso does not change the nature of the Bidder as a Business entity. The "Major Products List" is not included on the Document 00450 checklist or within Document 00450 (Statement of Qualifications). While listing the manufacturer that the Bidder intends to utilize for the tank and the pipe in the Bid does limit the successful Bidder to of use their listed manufacturer which is arguably material, Document 01600 (Product Requirements) provides a means for substitution of specified manufacturers after award, thus the requirement is not material because it can be changed.

2) CalOSHA Form 300A for 2008:

3)

- Omission of the CalOSHA Form 300A by Paradiso does not change the nature of the Bidder as a Business entity.
- Failure to include the CalOSHA Form 300A with the bid did not give Paradiso an advantage over any other Bidder as the information in the CalOSHA log is what it is. The information cannot be altered by delay of its submission to the District.

A Notice of Intent to Award was posted on May 26, 2009, and a copy was emailed to all of the bidders. The deadline for filing a bid protest was 3:30 pm on Tuesday, June 2, 2009. No bid protests were received.