



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 206 • San Luis Obispo, CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

January 16, 2014

**VIA FAX (909) 770-7021 AND
E-MAIL ddischner@bbius.com AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Crandall Bates
Balfour Beatty Infrastructure, Inc.
1050 Lakes Drive, Suite 200
West Covina, CA 91790

SUBJECT: Notice of "Final Decision on Bid Protest of Anderson Pacific Challenging the Bid of Balfour Beatty" for the Los Osos Wastewater Project, Los Osos Water Recycling Facility, Los Osos, CA, Contract No. 300448.08.02

Dear Mr. Bates:

Enclosed is the County's "Final Decision on Bid Protest of Anderson Pacific Challenging the Bid of Balfour Beatty" for the Los Osos Wastewater Project, Los Osos Water Recycling Facility, Los Osos, CA, Contract No. 300448.08.02. Pursuant to paragraph 1.6 of "Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts" that was included with the Bid Documents as Appendix N, this Final Decision of the Department head shall be the final decision of the County with no provision for reconsideration or appeal to the Board.

Sincerely,

A handwritten signature in cursive script that reads "Dave Flynn".

DAVE FLYNN
Deputy Public Works Director
County Public Works Department
Room 207
County Government Center
San Luis Obispo, CA 93408

Attachment: "Final Decision on Bid Protest of Anderson Pacific Challenging the Bid of Balfour Beatty" (dated January 16, 2014).

c: Paavo Ogren, Public Works Director
Jeff Werst, Design Division Manager, Public Works Dept.
John Waddell, Los Osos Wastewater Project Manager
Peter E. Anderson, Anderson Pacific Engineering Construction, Inc.
Andrew P. Granner, Auburn Constructors, Inc.

File: 300448.08.02

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252
Fax (805) 781-1229 email address: pwd@co.slo.ca.us

**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02

Bid opening Date: November 25, 2013

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

This document constitutes the County's final decision regarding the protest by Anderson Pacific of the bid by Balfour Beatty Infrastructure, Inc. for the Los Osos Wastewater Project, Los Osos Water Recycling Facility, Los Osos, CA, Contract No. 300448.08.02. A copy of the County's "Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts." ("Bid Protest Rules") was attached as Appendix N of the Contract Documents (and is attached as Exhibit F to this final decision). Pursuant to section 1.1.8. of the Bid Protest Rules, the Public Works Department Head has designated the undersigned to assume the role of the "Department Head" described in said Rules. This final decision of the undersigned Department Head's designee constitutes the County's final decision under Section 1.6 of said Rules.

BACKGROUND

The Board approved the above referenced project for advertisement for bids on October 8, 2013. The Department received five bids for the above referenced project which were opened on November 25, 2013.

On December 3, 2013, a bid protest was submitted by the second lowest bidder, Anderson Pacific Engineering Construction, Inc. ("Anderson"). (See attached Exhibit B) In their bid protest, Anderson contended that the bid of Balfour Beatty Infrastructure, Inc. ("Balfour Beatty") included a material error due to Balfour Beatty's bid price for Bid Item No. 8 being less than the required 2 percent of the Contract Bid, as instructed in the bid sheet, and that Balfour Beatty's bid must be rejected as nonresponsive. (A copy of Balfour Beatty's bid sheet [Section 00410 of the Contract Documents] is attached as Exhibit A.)

On December 10, 2013, Balfour Beatty submitted a response to the bid protest (see attached Exhibit C). The Department also received the following communications related to the bid protest:

1. Letter from Anderson (dated December 13, 2013) responding to Balfour Beatty's letter responding to Anderson's Bid Protest (see attached Exhibit D).
2. Letter from Balfour Beatty (dated December 17, 2013) responding to Anderson's letter of 12/13/13 (see attached Exhibit E).

The form, timing and distribution of the bid protest and subsequent response submittals appear to have followed the procedures identified in the Bid Protest Rules.

FINDINGS

The Department Head finds that the bid protest is valid as the Balfour Beatty bid had a material error based on the following:

The Bid Form (Section 00410) clearly states that the Total Price for "demobilization, commissioning, and training" shall be "not less than 2 percent of Total Bid Price". (See attached Exhibit A, Bid Item No. 8, which provides: "Perform demobilization, commissioning, and training (not less than 2 percent of the Total Bid Price)"). Balfour Beatty bid \$200,000 for this item, which is about 0.43% of their total bid of \$46,390,170.78

Balfour Beatty's Bid is nonresponsive because it failed to enter on bid sheet item 8 a sum "not less than 2% of the total bid price" for "demobilization, commissioning, and training". Instead of entering a sum of at least roughly \$930,000, Balfour Beatty only entered \$200,000. This variance by Balfour Beatty renders Balfour Beatty's bid nonresponsive, and unacceptable to the County.

The law provides that such a variance cannot be waived by the local agency if the variance "affected the amount of the bid" or "[gave] the bidder an advantage or benefit not allowed other bidders" (See *Konica Business Machines U.S.A., [***15] Inc. v. Regents of University of California* (1988) 206 Cal. App. 3d 449, 454, quoting 47 Ops.Cal.Atty.Gen. 129, 130-131 (1966); accord *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432; *National Identification Systems, Inc. v. State Bd. of Control* (1992) 11 Cal. App. 4th 1446, 1453.)

Here, the variance in Balfour Beatty's bid would appear to clearly "affect the amount of the bid". Without the variance, Balfour Beatty would have entered a sum "not less than 2% of the total bid price" on bid sheet item 8.

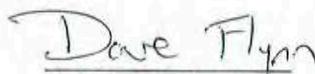
Balfour Beatty's error also provided it an unfair advantage over other bidders in several ways. First, it provided Balfour Beatty more flexibility in how it prepared its bid than was provided other bidders that properly followed the bidding instructions. Specifically, it allowed Balfour Beatty to try to collect a larger percentage of the contract price during earlier stages of the contract work than other bidders were allowed to do. It also allowed Balfour Beatty to submit a less balanced, or unbalanced bid, as compared to the other bidders.

Furthermore, Balfour Beatty could have identified its erroneous entry in Bid Item No. 8 as a bidder's mistake under Public Contract Code Section 5103, and sought to be relieved from its bid on the grounds that it was a mistake "made in filling out the bid" that made the bid materially different. (See *Valley Crest, supra*; *Menefee v. County of Fresno* (1985) 163 Cal. App. 3d 1175.) Whether this was intended or not, having the ability to seek relief from its bid without jeopardizing loss of its bid bond provides a bidder with an unfair advantage not enjoyed by other bidders. This makes Balfour Beatty's bidding error a material variance that cannot be waived by the County. (See *Valley Crest, supra*; *Menefee, supra*.)

For all of the reasons stated above, the County finds that Balfour Beatty's error constituted a material variance that could not be waived by the County. However, the County is not solely relying on the material nature of the variance to support this final decision. A local agency also has the discretion to not waive an immaterial variance of a bidder. (See *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359, 374.) Since Balfour Beatty's bidding mistake is clearly at variance to the bidding requirements, Balfour Beatty's bid is deemed nonresponsive and unacceptable by the County regardless of whether the variance is material or not. In addition to finding Balfour Beatty's error to be a material variance that could not be waived by the County, the County is also exercising its discretion to not waive Balfour Beatty's variance regardless of whether the variance is material or not.

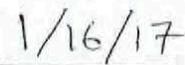
CONCLUSION

For all of the above reasons, the County hereby upholds the bid protest of Anderson Pacific, and finds the bid proposal of Balfour Beatty to be non-responsive. The County does not waive the variance in Balfour Beatty's bid, and concludes that the bid is nonresponsive and unacceptable to the County. Pursuant to section 1.6 of the Bid Protest Rules, this document constitutes the final decision of the County, with no provision for reconsideration or appeal to the County's Board of Supervisors.



DAVE FLYNN

Deputy Public Works Director



Date

Exhibits:

- A. Bid Sheet of Balfour Beatty Infrastructure, Inc.
- B. Bid Protest dated December 3, 2013 from Anderson Pacific
- C. Response Letter dated December 10, 2013 from Balfour Beatty
- D. Letter dated December 13, 2013 from Anderson Pacific
- E. Letter dated December 17, 2013 from Balfour Beatty
- F. "Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts."



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit A

**Bid Sheet of Balfour Beatty
Infrastructure, Inc.**

ARTICLE 5- BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the prices indicated in the Bid Schedule:

Bid Item	Description	Unit	Quantity	Total Price (in Figures)
1	Mobilization (Not in excess of 2 percent of the Total Bid Price)	Lump Sum	1	\$ 900,000
2	Provide adequate sheeting, shoring, and bracing, or equivalent method per Labor Code Section 6707.	Lump Sum	1	\$ 150,000
3	Provide diaphragm-type metering pumps as specified in Section 11242 (this bid item does not include the Work referenced in Section 11242 and on the Drawings)	Lump Sum	1	\$58,940.60 (Preset - Do Not Change)
4	Provide cloth media disk filter units as specified in Section 11366A (this bid item does not include the Work referenced in Section 11336A and on the Drawings)	Lump Sum	1	\$1,096,230.18 (Preset - Do Not Change)
5	Provide control system programming as specified in Section 17100/17101 and provide industrial instrumentation and control system as specified in Section 17050, including those required for the Los Osos Collection System facilities.	Lump Sum	1	\$ 1,400,000
6	Perform electrical system studies in accordance with Section 16305.	Lump Sum	1	\$ 35,000
7	Allowance: Provide assistance to Owner during Start-Up Phase for handling or treating plant influent flows as specified in Section 01210 and 01660.	Lump Sum	1	\$1,000,000.00 (Preset - Do Not Change)
8	Perform demobilization, commissioning, and training (Not less than 2 percent of the Total Bid Price).	Lump Sum	1	\$ 200,000
9	Los Osos Water Recycling Facility Project complete and in place in accordance with the Contract Drawings and Specifications exclusive of costs included for the bid items above.	Lump Sum	1	\$ 41,550,000
			Total Bid Price	\$46,390,171

ARTICLE 6- TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damage.



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit B

Bid Protest dated December 3, 2013
from Anderson Pacific

TIMOTHY L. MCINERNEY

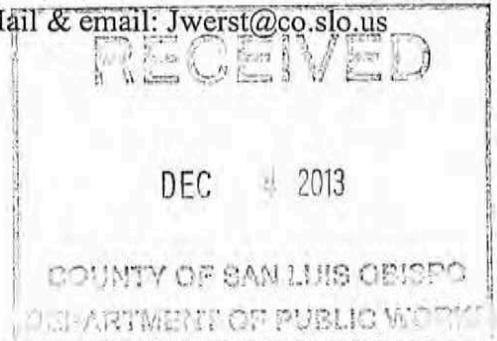
LAW OFFICES
McINERNEY & DILLON
PROFESSIONAL CORPORATION
1999 HARRISON STREET • SUITE 1700
OAKLAND, CALIFORNIA 94612-4700
TELEPHONE (510) 465-7100
FAX (510) 465-8556

tjm@mcinerney-dillon.com

December 3, 2013

Sent Via Overnight Mail & email: Jwerst@co.slo.us

Mr. Jeff Werst
Design Division Manager
Dept. of Public Works, Room 207
County Government Center
976 Osos Street
San Luis Obispo, CA 93408



RE: Los Osos Wastewater Project – Los Osos Water Recycling Facility
Contract No.: 300448.08.02

Dear Mr. Werst:

I represent Anderson Pacific Engineering Construction, Inc. (Anderson Pacific) regarding the award of the Los Osos Wastewater Project for the County of San Luis Obispo (County). Anderson Pacific protests the award of the contract to Balfour Beatty Infrastructures Inc., (Balfour). The County's Instruction to Bidders requires that each bidder complete the Bid Schedule as set forth in the contract documents. Balfour did not and its bid must be rejected as nonresponsive.

The County's Bid Form listed nine specific items which required each bidder to fill out according to the stated qualifications and limitations. Bid Item Nos. 1 and 8 for mobilization and demobilization contained limitations that prevented a bidder from front loading its bid. Specifically, Bid Item No. 8 stated:

Perform demobilization, commissioning, and training (Not less than 2 percent of the Total Bid Price).

Here, Balfour submitted a materially unbalanced bid in direct violation of the County's requirements and California law. Balfour's bid was approximately \$ 46.390 million, of which the County required "not less" than 2 percent or \$ 927,800 be included for "demobilization commissioning and training". Balfour's Bid Item No. 8 contained only \$ 200,000 – more than four times less than required by the contract. Exhibit 1. All other bidders complied with this requirement.

The County's Instructions to Bidders – Article 19.06 requires the County award the contract if the bid conforms to all material terms of the Invitation to Bid. Article 19.06 states:

"If the Contract is to be awarded, Owner will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is the lowest price."

In addition, California law holds that a “bid is responsive if it promises to do what the bidding instructions demand”. *Taylor Business Service v. San Diego* (1987) 195 Cal.App.2d, 1331. It is undisputed that Balfour’s bid is materially nonresponsive under the County’s requirements and California law. As a matter of law, it must be rejected to preserve the integrity of the bidding process.

Balfour will attempt to salvage its bid by asking the County to waive the violation. Balfour will claim that its substantially unbalanced bid is not material or is a “minor irregularity” and can be waived. However, again, both the County’s contract and California law clearly state that if the deviation is a material error it cannot be waived.

As specified in the Advertisement for Bids section 00100-4, the County’s contract states a material error cannot be waived. The County’s contract stated:

Owner reserves the right to reject any or all Bids, and to waive discrepancies, irregularities, informalities or any other errors in the bids or bidding, if to do so seems to best serve the public interest, so long as the error does not constitute a material error.

The County’s discretion to waive a material error is removed and is prohibited by its own contract.

California law is consistent with the County’s contract. The basic rule of competitive bidding is that bids must conform to the specifications. However, a minor variance in a bid can be waived if it does not affect the amount of the bid or give the bidder an unfair advantage or benefit not allowed other bidders. Valley Crest Landscaping, Inc., v. City Council (1996) 41 Cal. App. 4th 1432. Clearly, front loading a contract in violation of County requirements is a substantial benefit, not enjoyed by other bidders.

The law also rejects an owner’s attempt to deviate from strict and equal compliance for all bidders. If the attempt to waive errors in a bid could be a vehicle for favoritism or effect the ability to make bid comparisons, the law will not allow it. Ghilotti Construction Company v. City of Richmond (1996) 45 Cal. App. 4th 987. Here, Balfour’s failure to comply with the County’s limitations on “front-loading” its bid prevents bid comparisons.

California law will reject the award, based on the mere “appearance of favoritism”. If a court determines that by allowing Balfour to ignore contract requirements, there appears to be favoritism, the award will be rejected. The court in Schram Construction, Inc. v. The Regents of the University of California (2010) 187 Cal.App.4th 1040, specifically stated the “mere ability” to deviate from the requirements of public bidding would not be tolerated. The Schram court stated:

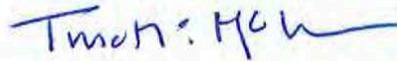
The *Schram Construction* court nevertheless concluded that even the mere *ability* to manipulate the process contravened the statute, if only by creating an “appearance of favoritism.” Said *Schram Construction*: “In requiring the University to adopt procedures that ‘ensure’ that the selection will be impartial, section

10506.4, subdivision (c) suggests it is not enough to simply refrain from favoritism; *the University must put affirmative safeguards in place to prevent bias and other arbitrary factors from influencing the bid selection.*”

Here, if the County waives its own rules for one bidder, but not others, the entire process will be guised in favoritism, despite a clear failure by Balfour to meet the requirements. The purpose of competitive bidding laws is to “guard against favoritism, improvidence, extravagance, fraud and corruption.” MCM Construction Inc. v. City and County of San Francisco (1998) 66 Cal.App.4th 359.

Balfour cannot dispute its bid is nonresponsive. It further cannot argue the substantial front loading of its bid is a material deviation that cannot be waived. Balfour’s bid must be rejected and Anderson Pacific must be awarded the contract.

Very truly yours,



Timothy L. McInerney

TLM/sjf

Cc: Anderson Pacific Engineering Construction, Inc.
c/o Timothy L. McInerney
McInerney & Dillon, P.C.
1999 Harrison Street, Suite 1700
Oakland, CA 94612
(510) 465-7100
tlm@mcinerney-dillon.com
Balfour Beatty Infrastructures



EXHIBIT 1

LOS OSOS WASTEWATER PROJECT
 LOS OSOS WATER RECYCLING FACILITY
 LOS OSOS, CA
 CONTRACT NO. 300448.08.02
 PROJECT MANAGER: JOHN WADDELL
 PROJECT ENGINEER: JEFF WERST
 Bid Opening Date: November 25, 2013
 ENGINEER'S ESTIMATE: \$46,579,000.00

BID 1	BID 2	BID 3	BID 4	BID 5
Balfour Beatty Infrastructure, Inc 1050 Lakes Drive, Suite 200 West Covina, CA 91790	Anderson Pacific Engineering Construction, Inc 1390 Norman Ave. Santa Clara, CA 95054	Auburn Constructors, Inc 730 West Stadium Lane Sacramento, CA 95834	Archer Western Construction LLC 9915 Mira Mesa Blvd, Suite 230 San Diego, CA 92131	2771

ITEM NO	DESCRIPTION OF ITEM	QTY	UNIT PRICE (IN FIGURES) DOLLARS. CENTS	TOTAL AMOUNT DOLLARS. CENTS													
1	Mobilization (Not in excess of 2 percent of the Total Bid Price)	1	LUMP SUM	\$ 900,000.00	LUMP SUM	\$ 800,000.00	LUMP SUM	\$ 900,000.00	LUMP SUM	\$ 1,000,000.00	LUMP						
2	Provide adequate sheeting, shoring, and bracing, or equivalent method per Labor Code Section 6707.	1	LUMP SUM	\$ 150,000.00	LUMP SUM	\$ 150,000.00	LUMP SUM	\$ 50,128.22	LUMP SUM	\$ 40,000.00	LUMP						
3	Provide diaphragm-type metering pumps as specified in Section 11242 (this bid item does not include the Work referenced in Section 11242 and on the Drawings)	1	LUMP SUM	\$ 58,940.60	LUMP												
4	Provide cloth media disk filter units as specified in Section 11366A (this bid item does not include the Work referenced in Section 11366A and on the Drawings)	1	LUMP SUM	\$ 1,096,230.18	LUMP												
5	Provide control system programming as specified in Section 17100/17101 and provide industrial instrumentation and control system as specified in Section 17050, including those required for the Los Osos Collection System facilities.	1	LUMP SUM	\$ 1,400,000.00	LUMP SUM	\$ 1,700,000.00	LUMP SUM	\$ 1,300,000.00	LUMP SUM	\$ 1,200,000.00	LUMP						
6	Perform electrical system studies in accordance with Section 16305.	1	LUMP SUM	\$ 35,000.00	LUMP SUM	\$ 35,000.00	LUMP SUM	\$ 50,000.00	LUMP SUM	\$ 32,000.00	LUMP						
7	Allowance: Provide assistance to Owner during Start-Up Phase for handling or treating plant influent flows as specified in Section 01210 and 01660.	1	LUMP SUM	\$ 1,000,000.00	LUMP												
8	Perform demobilization, commissioning, and training (Not less than 2 percent of the Total Bid Price).	1	LUMP SUM	\$ 200,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,060,000.00	LUMP						
9	Los Osos Water Recycling Facility Project complete and in place in accordance with the Contract Drawings and Specifications exclusive of costs included for the bid items above.	1	LUMP SUM	\$ 41,550,000.00	LUMP SUM	\$ 41,700,000.00	LUMP SUM	\$ 42,725,000.00	LUMP SUM	\$ 47,352,079.22	LUMP						
				\$ 46,390,170.78					\$ 47,540,170.78					\$ 48,180,299.00			\$ 52,839,250.00

Bid Check Date: November 25, 2013

LEGEND: highlighted = math error

Bid proposal rounded to \$46,390,171



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit C

Response Letter dated
December 10, 2013 from Balfour Beatty

MARKS, FINCH, THORNTON & BAIRD, LLP

ROBERT J. MARKS, APC *
P. RANDOLPH FINCH JR.
JASON R. THORNTON
JEFFREY B. BAIRD
CHAD T. WISHCHUK
LOUIS J. BLUM
DAVID S. DEMIAN
DANIELLE C. HUMPHRIES
DAVID W. SMILEY
NOWELL A. LANTZ
STEPHEN J. SCHULTZ +
MARK T. BENNETT +
JUSTIN M. STOGER
ALLISON N. LANTZ
ANDREA L. PETRAY

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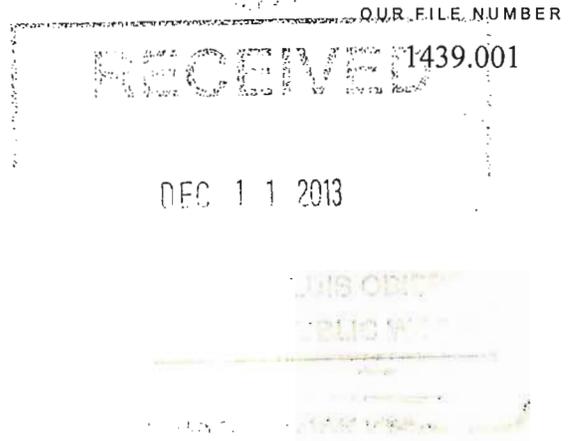
JON F. GAUTHIER, APC *
CHRISTOPHER R. SILLARI
DUSTIN R. JONES
LAURA B. MACNEEL
DANIEL P. SCHOLZ
ADAM C. WITT
BRETT T. WALKER
M. KATY ROSS
J. PATRICK HICKS
RICHARD J. PINTO II
KELLY A. FLOYD
WILLIAM S. WILSON
* OF COUNSEL

December 10, 2013

+ OF COUNSEL via MERRILL,
SCHULTZ & BENNETT, LTD.

**VIA NORCO OVERNITE
AND ELECTRONIC MAIL**

Mr. Jeff Werst
Design Division Manager
Department Of Public Works, Room 207
County Government Center
976 Osos Street
San Luis Obispo, California 93408
Jwerst@co.slo.ca.us



Re: *Bid Protest By Anderson Pacific Engineering Construction, Inc.*
Entity: County Of San Luis Obispo
Project: Los Osos Water Recycling Facility
Contract No.: 300448.08.02
Low Bidder: Balfour Beatty Infrastructure, Inc.
Bid Price: \$46,390,170.78
Bid Spread: \$1,150,000.00 To \$1,790,128.22
Engineer's Estimate: \$46,579,000.00

Dear Mr. Werst:

1. Introduction

We represent Balfour Beatty Infrastructure, Inc. ("Balfour Beatty"), the low bidder by at least \$1,150,000.00 on the above-referenced County of San Luis Obispo project. This responds to the bid protest by Anderson Pacific Engineering Construction, Inc. ("Anderson").

As detailed below, Balfour Beatty did include too low of an amount for the demobilization item in its bid. However, contrary to Anderson's contention, the County can waive that issue under California law—and should do so in order to avoid wasting at least \$1.1 million in taxpayer funds. Anderson's contention that the County cannot waive the issue is based on the flawed notion that Balfour Beatty enjoyed a competitive advantage by "frontloading" its bid. No such advantage existed because the contract for the project is lump sum—not unit price. Progress payments are determined via a County-approved Schedule of Values, not the bid-day lump sum bid breakdown on which Anderson relies. Moreover, even if the project had been let using unit prices and the

opportunity for frontloading existed, the bid breakdown submitted by Balfour Beatty values the work similarly—if not more conservatively—than the other bidders, so as to negate any notion of frontloading.

While Anderson applies hyper-scrutiny to Balfour Beatty's bid in an effort to obtain the job at a higher price, its own bid contains several non-waivable bid defects. As a result, even if the County elected not to waive Balfour Beatty's minor issue, it could not award to Anderson. The next eligible bidder would cost County taxpayers an additional \$1,790,128.22 over Balfour Beatty's acceptable bid. Accordingly, the County should reject Anderson's bid protest and proceed with award of the project to Balfour Beatty, the lowest responsible and responsive bidder.¹

2. Factual Background

A. The Project And Bid Documents

In October 2013, the County issued its Notice To Bidders and related bid documents ("Bid Documents") for the County's Los Osos Wastewater Recycling Facility ("Project"). The Project generally consists of construction of a wastewater recycling facility, including administration and maintenance buildings, headworks/septage receiving, an odor control facility, an effluent pump station, dewatering and electrical buildings, water storage tanks, recycling water storage ponds, a plant drain pump station and a storm water pump station. The County engineer's estimate for the Project is \$46,579,000.00.

The Bid Documents state the County is to award the Project to the "responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is the lowest price." (Tab 1, Art. 19.06, p. 00200-8.) The Bid Documents further state the County reserved the right to "waive discrepancies, irregularities, informalities, or any other error in the bids or bidding, if to do so seems to best serve the public interest." (Tab 1, Art. 19.01, p. 00200-8.)

¹ Anderson's protest should also be rejected because Anderson did not follow the County's protest requirements. Section 1.4.4 of the County's Rules Governing Bid Protests And Other Challenges To Awards Of Construction Projects states all protests must evidence that the protestor concurrently sent the protest to all interested parties in a manner that would provide those parties with a complete copy of the protest no later than one business day after being sent to the Design Division Manager. Page three of Anderson's December 3, 2013 protest to the County purports to concurrently provide a courtesy copy to Balfour Beatty. However, Balfour Beatty did not receive a copy of the protest until Anderson e-mailed it to Balfour Beatty two business days later, on December 5, 2013. Thus, Anderson's protest is procedurally defective and should not be considered by the County.

B. The Bid Breakdown

The Bid Documents required the bidders to submit bids on a lump-sum basis as set forth in the Bid Forms. (Tab 1, Art. 14.01(A), p. 00200-7.) The Bid Forms included a bid breakdown requiring bidders to separately price the Project's work items. (Tab 2, Art. 5.01, p. 00410-4 ("Bid Breakdown").)

C. Summary Of Bids Received By The County

The County received five bids for the Project on November 25, 2013. The bids are summarized below:

<u>Bidder</u>	<u>Bid Amount</u>	<u>Spread From Balfour Beatty</u>
Balfour Beatty	\$46,390,170.78	---
Anderson	\$47,540,170.78	\$1,150,000.00
Auburn Constructors, Inc.	\$48,180,299.00	\$1,790,128.22
Archer Western Construction LLC	\$52,839,250.00	\$6,449,079.22
PCL Construction, Inc.	\$55,519,806.78	\$9,129,636.00

(See Tab 3.)

D. Anderson's Protest

Anderson contends Balfour Beatty's bid is materially unbalanced because its Bid Breakdown indicated Bid Item No. 8, pertaining to demobilization work, is priced at \$200,000.00 and is less than two percent of Balfour Beatty's total bid price. Anderson alleges the County may not waive the irregularity because the low demobilization price allowed Balfour Beatty to "frontload" Project costs, i.e., obtain inflated payments for work that occurs early in the Project. With very little and wholly insufficient explanation, Anderson also argues Balfour Beatty's demobilization value is a vehicle for favoritism by the County.

Based on these arguments, Anderson contends the County has no discretion—and must give Anderson the Project at a \$1,150,000.00 premium (and nearly \$1 million more than the County engineer's estimate). As detailed below, Anderson's protest is without merit.

3. Summary Of California Public Bidding Law

California's public bidding laws were enacted "for the benefit of property holders and taxpayers" and are intended to "secure the best work or supplies at the lowest price practicable." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) California public entities have broad discretion to accept low bids from responsible

bidders even though those bids may not strictly conform to the bid specifications. (*Konica Business Machines, Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 454.)

As Anderson admits, the County has discretion to waive any bid irregularity unless the irregularity affected bid price or gave the bidder an advantage not afforded the other bidders. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1440-1441.) To cause bid rejection, an irregularity “must be capable of facilitating corruption or extravagance, or likely to affect the amount of bids or the response of potential bidders.” (*MCM Construction, Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359, 370.)

Waiver of bid irregularities is evaluated from a practical, real-world standpoint, not through the lens of a disappointed higher bidder, as stated by the Court of Appeal:

These considerations [regarding waiver of bid irregularities] must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, and cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.

(*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908-909.)

4. The County May And Should Accept Balfour Beatty’s Low Bid Because Balfour Beatty’s Bid Breakdown Cannot Result In Frontloading
 - A. Front-Loading Is Impossible On This Lump Sum Bid
 - i. Anderson’s Flawed Premise

Anderson’s protest is based on the faulty notion that this is a unit-price project, in which bidders submit separate “unit prices” for individual bid items on bid day, and progress payments by the owner are calculated by multiplying each unit price by the number of units supplied/performed that month. Under a unit-price contract, bidders might inappropriately frontload their bids by submitting inflated unit prices for early work (e.g., clearing and grubbing) and deflating unit prices for later work (e.g., finish planting). Anderson presumes the Bid Breakdown is a unit-price bid schedule—one that controls the amount of each progress payment to the contractor. It is not. None of the Bid Items in the Bid Breakdown is unit priced—they are all lump sums. (See Tab 2, p.

00410-4.) Rather than a unit-price bid schedule, the Bid Breakdown is simply a disclosure of how the bidder’s estimating team arrived at its Lump Sum Bid Price.

ii. The Actual Progress Payment Framework Is Based On The County-Approved Construction Schedule, And Has Nothing To Do With The Bid Breakdown

The Bid Breakdown does not impact or control the amount of progress payments paid by the County at any point in construction—beginning, middle or end—so as to facilitate frontloading. Rather, the Bid Documents impose a Schedule of Values framework, which is typical of lump sum contracts and is based on the owner-approved construction schedule.

The contract procedure for drafting and obtaining approval of the Schedule of Values is detailed below and confirms the contract payment system has nothing to do with the Bid Breakdown relied on by Anderson.

Step	Description
1	After award, the successful bidder must submit a cost-loaded construction schedule (“Construction Schedule”) showing proposed timeframe for individual scopes of work. (Tab 4, Art. 1.05(Q), p. 01324A-4; Art. 1.09(A), p. 01324A-6.) The Construction Schedule must “[g]roup activities related to the same physical areas of the Work” and “[i]nclude for each activity, the description, activity number, estimated duration in working days, total float, and all activity relationship lines.” (Tab 4, Art. 1.09(A)-(B), p. 01324A-6.) The Bid Documents set forth the 25 major items of work to be detailed in the Construction Schedule in Specification 01010, section 1.02, subdivision (A). ² The Construction Schedule specification requires demobilization be included in the schedule. (Tab 4, Art. 1.09(I)(29), p. 01324A-7.)
2	The County reviews and approves the proposed Construction Schedule after potential markup/modification by County engineers. (Tab 6, Art. 2.07(A), pp. 00700-9 and 00700-10.)
3	After drafting the Construction Schedule, the successful bidder submits a proposed Schedule of Values—the vehicle through which the County makes progress payments. (Tab 7, Art. 6.02, p. 00500-5; Tab 8, Art. 1.01, p. 00700-4.) The Schedule of Values “shall be a listing of all cost loaded, on-site construction activities <u>from the progress schedule</u> , listed in numerical order,

² The listed work areas are: (1) Administration Building; (2) Maintenance Building; (3) Headworks/Septage Receiving; (4) Odor Control Facility; (5) Oxidation Ditches; (6) Secondary Clarifiers; (7) Scum Pump Station; (8) Filter Influent Pump Station; (9) Tertiary Filters; (10) UV Facility; (11) Chemical Facility; (12) Effluent Pump Station; (13) Sludge Storage Tanks; (14) Dewatering Building; (15) Electrical Building; (16) Groundwater Wells and Pumps; (17) Water Storage Tank; (18) Recycled Water Storage Ponds; (19) Storm Water Retention Pond; (20) Plant Drain Pump Station; (21) Storm Water Pump Station; (22) All associated electrical, instrumentation, and control system work; (23) All associated yard work, including yard piping, paving, grading, and landscaping; (24) Plant Entrance Road from Los Osos Valley Road (LOVR) to the LOWRF site (approximately 1,500 linear feet long); (25) LOVR Improvements. (See Tab 5, Art. 1.02, p. 01010-1.)

	showing that the sum total of all cost loaded activities equals the value of the Contract.” (Tab 9, Art. 1.02(B), p. 01292-1, emphasis added.) In addition to listing each activity in the Construction Schedule, the proposed Schedule of Values must “provide[] a reasonable allocation of the Contract Price to component parts of the Work.” (Tab 6, Art. 2.07(A)(3), p. 00700-10, emphasis added.)
4	The County reviews and approves the Schedule of Values after markup/ modification by County engineers. (Tab 6, Art. 2.07(A), pp. 00700-9 and 00700-10.) The County may modify the values proposed by Balfour Beatty in order to reflect “a reasonable allocation of the Contract Price” to each component, including demobilization. (Tab 6, Art. 2.07(A)(3), p. 00700-10.) In other words, the County has the final say on how much Balfour Beatty is paid for each task under the “reasonable allocation” provision, and there is no tie to the bid day breakdown.
5	To calculate and receive a progress payment, Balfour Beatty must submit a current version of the Schedule of Values, with completion percentages approved by the County. (Tab 7, Art. 6.02(A)(1)(a), p. 00500-5.)

Step 4 above calls for the contractor and the County’s engineer to work out, post-award, “a reasonable allocation of the Contract Price” to be attached to each construction activity listed in the Construction Schedule. It does not allow the contractor to frontload its progress payments based on the Bid Breakdown or anything else written in the contractor’s bid. Accordingly, Balfour Beatty could not—as Anderson alleges—enjoy any competitive advantage through frontloading. As such, the County has discretion under California law to waive the irregularity.

B. Even If This Were A Unit-Price Project, Anderson’s Frontloading Allegation Would Still Be Wrong

Even if the Bid Documents called for the contractor to be paid according to the Bid Breakdown, Anderson’s frontloading allegation would still be incorrect. Balfour Beatty’s Bid Breakdown does not overstate values for early work—especially when compared with the other bidders’ valuation of those Bid Items. For example, Balfour Beatty’s mobilization Bid Item price is the second lowest among the five bidders. (See summary of all bids at Tab 3.) In addition, Balfour Beatty’s price to construct the facility in accordance with the plans and specifications (Bid Item No. 9) is the lowest among the five bidders by more than \$1 million. (See Tab 3.)

A comparison of Balfour Beatty’s and Anderson’s pre-demobilization Bid Item valuations highlights how unremarkable Balfour Beatty’s pre-demobilization values are. The percentages of pre-demobilization total bid pricing allocated by Balfour Beatty and Anderson to discrete pre-demobilization Bid Items are nearly identical:

<u>Bid Item</u>	<u>Balfour Beatty (Percent Of Total Pre- Demobilization Costs)</u>	<u>Anderson (Percent Of Total Pre- Demobilization Costs)</u>
1 - Mobilization	1.95%	1.72%
2 - Sheeting, Shoring And Bracing	0.32%	0.32%
3 - Diaphragm-Type Meter Pumps	0.13%	0.13%
4 - Cloth Media Disk Filter Units	2.37%	2.36%
5 - Control System Programming	3.03%	3.65%
6 - Electrical System Studies	0.08%	0.08%
7 - Owner Assistance	2.16%	2.15%
9 - General Work	89.95%	89.60%

In the aggregate, Balfour Beatty’s pre-demobilization bid pricing is nearly \$350,000.00 less than Anderson’s pre-demobilization bid pricing. Anderson’s assertion Balfour Beatty frontloaded Project costs is not supported by the bid-day numbers—comparatively, Anderson’s pre-demobilization bid pricing would cost the County one-third of \$1 million more than Balfour Beatty’s pre-demobilization bid pricing.

In other words, even if Anderson’s unit-price premise were correct (which it is not), the Bid Breakdowns of each bidder reveal Balfour Beatty made no attempt to frontload. As such, Balfour Beatty did not enjoy an advantage not afforded the other bidders, and the County may and should accept Balfour Beatty’s bid.

5. Anderson’s “Favoritism” Argument Is Devoid Of Factual Support

The County’s waiver of Balfour Beatty’s bid irregularity will not demonstrate any “appearance of favoritism” toward Balfour Beatty. Balfour Beatty has not previously performed any projects for the County. The County will save at least \$1.1 million by waiving Balfour Beatty’s bid irregularity and awarding Balfour Beatty the project. The County’s desire to save money in this economic climate has nothing to do with favoritism. Anderson’s invocation of favoritism rings hollow and is not supported by the facts.

6. Anderson’s Bid Contains Defects—The Kind That May Not Be Waived

Ironically, Anderson casts stones at Balfour Beatty without acknowledging the glass house within which Anderson sits. Detailed below are several defects in Anderson’s bid that would preclude the County from awarding to Anderson even if it decided not to waive Balfour Beatty’s bid irregularity.

In accordance with Public Contract Code section 4100, bidders were required to list subcontractors they had retained to perform work on the project. The Bid Forms included a table requiring bidders to list each such subcontractor’s name, address and contractor’s license number, the work to be performed and the “percent of total contract.” (Tab 10.) Anderson completed the table, but listed its subcontractor work percentages in

a manner that severely understates the amount of subcontracted work. Summarily, Anderson listed the subcontracted work in terms of decimals and percents. Relevant portions of Anderson’s subcontractor listings are set forth below:

Work to be Performed	License Number	Percent of Total Contract	Subcontractor's Name and Address
3. HVAC	821027	0.01%	JAMES LONG CONST. SARVILES SACRAMENTO CA
5. Monorail	105023	0.05%	General Conveyor Co CORONA CA
7. Rebar	695035	0.03%	HARRIS SALINAS LIVERMORE CA
5. Electrical	408443	0.13%	ELECTRIC CRAFT SAN LUIS OBISPO CA

(Tab 10.) Anderson likely intended to express the work percentages in terms of decimals only—not percentages too. For example, Anderson likely intended to subcontract the electrical scope at a price equivalent to 13 percent of its bid. On its subcontractor list, Anderson represented its electrical subcontract was only 13/100ths of one percent. (Tab 10.)

Other aspects of Anderson’s bid confirm the errors. For example, Anderson’s Bidder List states \$1,536,714.00 as the approximate amount of Harris Rebar’s bid for rebar work. (Tab 11.) That amount is approximately 3 percent of Anderson’s total bid price, not .03 percent of the total bid price as listed in the subcontractor listing form. Likewise, Anderson’s Bidder List states \$311,060.00 as the approximate amount of General Conveyor, Inc.’s bid for monorail work. (Tab 11.) That amount is approximately .6 percent of Anderson’s total bid price; it is not .05 percent of the total bid price as listed in the subcontractor listing form.

Unlike the imaginary “frontloading” advantage Anderson contends Balfour Beatty enjoyed, Anderson’s understatement of the percentages of work to be subcontracted resulted in actual competitive advantages. The errors afforded Anderson the opportunity to pull its bid, post-bid, without forfeiting its bid bond, pursuant to Public Contract Code section 5103. Section 5103 allows such bid-pulls where the bid contains an error of an arithmetical or typographical nature that materially alters the bid. Anderson’s bid errors are classic section 5103 arithmetic/typographical errors. They also materially altered the bid, e.g., limiting the amount of subcontracted electrical work to 13/100ths of a percent rather than 13 percent of Anderson’s bid price. By building such an error into its bid, Anderson had a “second look”—an opportunity to pull its bid after seeing the bids of other without forfeiting its bid security.

Under California law, such a second look—arising out of a section 5103 bid defect—is a competitive advantage that may not be waived. (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442.) Faced with similar facts, the Court of Appeal in *Valley Crest* clearly set the rule:

[W]e conclude [the erroneous bidder] had an unfair advantage because it could have withdrawn its bid. Misstating the correct percentage of work to be done by a subcontractor is in the nature of a typographical or arithmetical error. It makes the bid materially different and is a mistake in filling out the bid. As such, under Public Contract Code section 5103, [the bidder] could have sought relief by giving the [owner] notice of the mistake within five days of the opening of the bid. That [the bidder] did not seek such relief is of no moment. The key point is that such relief was available. Thus, [the bidder] had a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an “irregularity.”

(*Ibid.*) In other words, Anderson’s subcontractor percentage listing error would preclude award to Anderson even if the County elected not to waive Balfour Beatty’s minor irregularity. (*Konica Business Machines U.S.A. Inc. v. Regents of University of California, supra*, 206 Cal.App.3d at pp. 454-455.)

Awarding to the third-low bidder over Balfour Beatty will cost the County’s taxpayers an additional \$1,790,128.22.

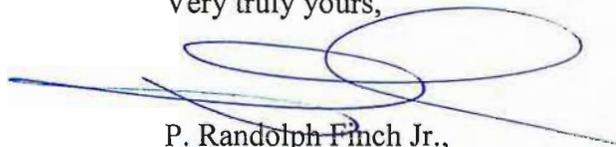
7. Conclusion

Balfour Beatty made a minor mistake in its bid—a mistake that had no impact on its lump sum bid price and did not result in any competitive advantage. The only hypothetical competitive advantage imagined by Anderson—frontloading—could not happen on the lump sum contract paid via a County approved Schedule of Values. Anderson submitted a bid in excess of the County engineer’s estimate and \$1,150,000.00 more than Balfour Beatty’s price, and Anderson’s bid contained non-waivable defects. The choice before the County is to accept Balfour Beatty’s bid or needlessly pay the third-low bidder a \$1,790,128.22 premium for the Project. The only practical and fiscally sound option is to proceed with award to Balfour Beatty, the lowest responsible bidder.

Mr. Jeff Werst
December 10, 2013
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We request copies of all documents related to Anderson's protest and notice of any hearing concerning the above issues. Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

P. Randolph Finch Jr.,
Partner of
MARKS, FINCH,
THORNTON & BAIRD, LLP

Enclosures

PRF:kam/3600461.DOCX

cc: Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Crandall Bates, Vice President and
Western Region General Manager (via e-mail only)
Mr. Chris Rutherford, Project Sponsor (via e-mail only)
Balfour Beatty Infrastructure, Inc. - West Covina
Attn: Mr. Dan Dischner, Chief Estimator (via e-mail only)
Anderson Pacific Engineering Construction, Inc.
Attn: Timothy L. McInerney, Esq. (via e-mail only)
San Luis Obispo County
Attn: Rita L. Neal, Esq. (via e-mail only)

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SECTION 00200

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - INTRODUCTION

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions. While the General Conditions herein (Section 00700) are similar to the EJCDC C-700 Standard General Conditions (2007 Edition) in many respects, the General Conditions also differ from said EJCDC document in many respects in order to conform with Federal, State, and County requirements. A copy of the differences between the General Conditions herein and said EJCDC document is available upon request.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the purchase price, stated in the Advertisement for Bids may be obtained from the Public Works Department.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Designer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Designer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.
- 2.04 Bidding Documents are available for download from the following website:

http://www.slocounty.ca.gov/PW/Design_Division/PROJECTs_Out_To_BID.htm

ARTICLE 3 - BLANK

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- 4.01 Subsurface and Physical Conditions
- A. The General Conditions identify:
1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, that Designer has used in preparing the Bidding Documents.
 2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities), if any, that Designer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in Paragraph 4.01.A, if any, will be made available by Owner to any Bidder for download from the following website:

http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm

Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely is described in Paragraph 4.02 of the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Designer by owners of such Underground Facilities, including Owner, or others, unless otherwise specified in the Drawings and Specifications.

4.03 Hazardous Environmental Condition

- A. The General Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Designer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A, may be examined at the Department of Public Works and Transportation at 1050 Monterey Street, Room 207, County Government Center, San Luis Obispo, CA 93408. “Information only” copies of the reports, if any, are available for download on the following website:

http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm.

Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely is described in Paragraph 4.06 of the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition

upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to locating of excavation and utility.

4.06 Additional Owner Provided Information

- A. Reference is made to the General Conditions for the identification of the general nature of other work, if any, that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of available documents (other than portions thereof related to price) for such other work.
- B. Paragraph 6.13.C of the General Conditions states that if an Owner Safety program exists it will be noted in the Specifications.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all Federal, State, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the General Conditions as containing reliable "technical data.";
- E. Obtain and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

- G. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. Promptly give Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Owner is acceptable to Bidder; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Owner written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Owner are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – MANDATORY PRE-BID CONFERENCE

- 5.01 A mandatory pre-Bid conference will be held at 1:00 p.m. local time on Friday, October 18, 2013 at San Luis Obispo City/County Library, Community Room, 995 Palm Street, San Luis Obispo. Representatives of Owner, Engineer, and Designer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Bidders must sign an attendance sheet as proof of attendance which shall be forwarded to the office of the Clerk of the Board of Supervisors of the County of San Luis Obispo. Any Bid submitted by a Bidder not represented at the pre-bid meeting will be deemed non-responsive and rejected by the Owner. Owner will transmit to each planholder on the County's official planholder list such Addenda as Owner considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 - SITE AND OTHER AREAS

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. Except for those areas identified in the Bidding Documents as temporary staging areas, all additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Owner in writing, at the following website:

http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm.

Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda faxed or emailed to all parties recorded by Owner as having received the Bidding Documents and made available on the following website:

http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm.

Questions received less than five days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner. Any such addendum issued before the time in which to submit bids expires shall be e-mailed to each planholder on the County's official planholder list, at the e-mail address provided to the County at the time bid documents were purchased from the Department of Public Works. An informational electronic copy of such addenda will also be posted to the County's website for the Bidder's convenience at the following web address:

http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm

ARTICLE 8 - BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 10 percent of Bidder's maximum Bid price and in the form of a certified check or bank money order or a Bid bond (Section 00430) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required Contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required Contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders will be retained by Owner until the award of the Contract to the Successful Bidder.

ARTICLE 9 - CONTRACT TIMES

- 9.01 The dates by which the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 - LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as described in Paragraph 6.05 of the General Conditions, or those substitute materials and equipment approved by Owner and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. Request for clarification of materials and equipment considered "or-equal" prior to the Effective Date of Agreement must be received by the Owner at the office of the County Clerk, 1055 Monterey Street, D-120, San Luis Obispo, CA 93408, no later than 4:00 p.m. on _____, 2013. No item of material or equipment will be considered by Owner as a substitute unless written request for approval has been submitted by Bidder and has been received by Owner at the office of the County Clerk, 1055 Monterey Street, D-120, San Luis Obispo, CA 93408, no later than 4:00 p.m. on _____, 2013. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Owner's decision of approval or disapproval of a proposed item will be final. If Owner approves any proposed substitute item, such approval will be set forth in an Addendum issued to each planholder on the County's official planholder list. Bidders shall not rely upon approvals made in any other manner.
- 11.02 The term "without exception", or "no equal" when used in the Contract Documents following the name of a Supplier or a proprietary item of equipment, product, or material, shall mean that the sources of the product are limited to the listed Suppliers or products and that no like, equivalent, or "or-equal" item and no substitution will be permitted.

ARTICLE 12 - BLANK

ARTICLE 13 - PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Owner.
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid Item listed therein.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be provided on the Bid Form.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be provided on the Bid Form.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

- 13.06 A Bid by an individual shall show the Bidder's name and business address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture must be provided on the Bid Form.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.
- 13.10 The postal and email addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state or locality where the Project is located or Bidder shall covenant in writing to obtain such qualification prior to award of the Contract and attach such covenant to the Bid Form. Bidder's state contractor license number shall also be shown on the Bid Form.

ARTICLE 14 - BASIS OF BID; COMPARISON OF BIDS

14.01 Lump Sum

- A. Bidders shall submit a Bid on lump sum basis as set forth in the Bid Form.

ARTICLE 15 - SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and the Bid bond form. The unbound copy of the Bid Form is to be completed and submitted with all of the attachments outlined in Article 7 of the Bid Form.
- 15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the Advertisement for Bid. A mailed Bid shall be addressed to Owner at the address in Article 1.01 of the Bid Form.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn prior to the date and time for opening of bids by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 5 days after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that

there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid or negotiated, that Bidder will be disqualified from further bidding on the Work. This provision to withdraw a Bid without forfeiting the Bid security does not apply to Bidder's errors in judgment in preparing the Bid, or to carelessness in inspecting the site of Work or in reading the Drawings and Specifications.

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the Bids and alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, at its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner also reserves the right to reject any or all bids, and to waive discrepancies, irregularities, informalities, or any other error in the bids or bidding, if to do so seems to best serve the public interest.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, bid items and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.04 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the responsible Bidder whose Bid, conforming with all the material terms and conditions of the Instructions to Bidders, is the lowest price.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by properly executed bonds pursuant to the

forms set forth in Section 00610 and 00615. Said bond forms are not Contract Documents, and are attached for reference purposes only.

When the Successful Bidder delivers the executed Agreement to Owner, it shall also be accompanied by certificates of insurance for all of the insurance which Contractor is required to purchase and maintain in accordance with Article 5 of the General Conditions.

ARTICLE 21 - SIGNING OF AGREEMENT

- 21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.
- 21.02 This Contract is expected to be funded in part with funds provided by the United States Department of Agriculture, Rural Utilities Service (RUS) and the State Water Resources Control Board. Refer to the General Conditions for Federal Requirements.
- 21.03 Concurrence by RUS in the Contract is required before the Contract is effective.

ARTICLE 22 - SALES AND USE TAXES

- 22.01 Contractor shall pay all California sales, use and other taxes as specified in Paragraph 6.10 of the General Conditions.

ARTICLE 23- WORKERS' COMPENSATION REQUIREMENTS

- 23.01 As required by Section 1860 of the California Labor Code and in accordance with the provisions of Section 3700 of the Labor Code, every Contractor will be required to secure the payment of workers' compensation to its employees.
- 23.02 In accordance with Section 1861 of the California Labor Code, the Contractor shall furnish the Owner with a statement as follows: "I am aware of the provisions of 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

ARTICLE 24 – SUBCONTRACTOR LISTING LAW

- 24.01 In accordance with Section 4104 of the California Public Contract Code, each Bidder, in his or her Bid, shall set forth the name and the location of the place of business of each Subcontractor who will perform Work or labor or render service to the prime Contractor in or about the construction of the Work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed

drawings contained in the Drawings and Specifications, in an amount in excess of one-half of one percent of the prime Contractor's total Bid.

- 24.02 In accordance with Section 4107 of the California Public Contract Code, no Contractor whose Bid is accepted shall without consent of the Owner either: (a) substitute a person as a Subcontractor in place of the Subcontractor listed in the original Bid; or (b) permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original Subcontractor listed in the original Bid; or (c) sublet or subcontract any portion of the Work in excess of one-half of one percent of the prime Contractor's total Bid as to which his or her original Bid did not designate a Subcontractor.
- 24.03 Penalties for failure to comply with the foregoing sections of the California Public Contract Code are set forth in Sections 4106, 4110, and 4111 of the Public Contract Code. A prime Contractor violating this law violates his or her Contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime Contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime Contract is awarded. In any proceedings under this section the prime Contractor shall be entitled to a public hearing and to 5 day's notice of the time and place thereof.

ARTICLE 25 – RURAL UTILITIES SERVICE REQUIREMENTS

- 25.01 Bidders are advised that funding for this Project is being provided in whole or in part by the United States Department of Agriculture, Rural Utilities Service which will review and approve the Contract award, Contract Agreement, partial and final payments, and Contract Change Orders.
- 25.02 Payment and retainage will comply with the Contract Agreement Paragraph 6.02 "Progress Payments; Retainage." Bidders are notified that this Contract does not permit retainage to be placed in escrow nor to be invested for the benefit of the Contractor.
- 25.03 Bidders are notified that financing for this Project is provided pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Section 1921 et seq.), and that as allowed in Public Contract Code Section 22300, this Contract does not provide for substitution of securities for any monies withheld by the Owner to ensure performance under the Contract.
- 25.04 Bidders are notified of the requirement for affirmative action to ensure equal employment opportunity (Executive Order No. 11246) as set forth in the Equal Opportunity Requirements found in paragraph 18.10 of the General Conditions.

ARTICLE 26 – AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

- 26.01 This Contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for

metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for this Project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this Project.

- 26.02 Section 1606 of the ARRA requires compliance with the Davis-Bacon and Related Acts and adherence to the current U.S. Department of Labor Wage Decision. The Contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts. The Contract provisions and related matters set forth in 29 CFR Part 5-Section 5.5 are hereby made a part of this Contract. Attention is called to the fact that not less than the minimum salaries and wages set forth in the Contract Documents must be paid on this Project. The Wage Decision, including modification, must be posted by the Contractor at the Site.
- 26.03 This is a Public Works Project subject to the rate of prevailing wages as established by the California Department of Industrial Relations, Bidders are notified that the higher of either the Davis-Bacon or the State prevailing wage rate shall apply.

ARTICLE 27 – STATE WATER RESOURCES CONTROL BOARD REQUIREMENTS

- 27.01 This Contract is funded in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board, The contents of the Contract Documents do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use, (Gov. Code § 7550, 40 CFR § 31 .20.)
- 27.02 Bidders are hereby notified of the requirement for good faith efforts to ensure Disadvantaged Business Enterprises have the opportunity to participate on this Contract (40 CFR part 33) as set forth in the Disadvantaged Business Enterprises Program Requirements found in Paragraph 18.06 of the General Conditions.
- 27.03 Bidders are hereby notified of the requirement to comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-I) et seq.) as set forth in Paragraph 18.15 of the General Conditions.
- 27.04 Bidders are hereby notified of the prohibition of subcontracting with debarred entities set forth in Paragraph 18.16 of the General Conditions.

ARTICLE 28 – ESCROW BID DOCUMENTS

Bidders are hereby notified of the requirements for the three low bidders to submit Escrow Bid Documents no later than 4:00 p.m. on the second business day after bid opening, as set forth in Section 01115, "Escrow Bid Documents," of Division 1, "General Requirements."

ARTICLE 29 – BID PROTESTS

Bid protests and any other challenges to the award of this construction contract must comply with the requirements described in the "Rules Governing Bid Protests and Other Challenges to Construction Contracts" ("Rules"), a copy of which is attached as an Exhibit to the Appendix of this Contract. In addition to the requirements described in said Rules, any protest must be submitted in writing to the Department of Public Works, Room 207, County Government Center, 976 Osos Street, San Luis Obispo, CA 93408; Attention: Design Division Manager.

END OF SECTION

00200-12

②

SECTION 00410

BID FORM

**LOS OSOS WASTEWATER PROJECT
LOS OSOS WATER RECYCLING FACILITY
LOS OSOS, CA
CONTRACT NO. 300448.08.02**

ARTICLE 1- BID RECIPIENT

- 1.01 This Bid is submitted to: Office of the County Clerk
1055 Monterey Street, Room D-120
San Luis Obispo, CA 93408

- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2- BIDDERS ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3- BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:
 - A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

- C. Bidder is familiar with and is satisfied as to all Federal, State and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the General Conditions as containing reliable "technical data."
- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, if any, when applicable; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that any further examinations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of the Work to be performed by Owner and others at the Site, if any, that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Owner is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Bidder will submit written evidence of its authority to do business in the State or other jurisdiction where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4- BIDDER'S CERTIFICATION

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process.
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made to (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5- BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the prices indicated in the Bid Schedule:

Bid Item	Description	Unit	Quantity	Total Price (in Figures)
1	Mobilization (Not in excess of 2 percent of the Total Bid Price)	Lump Sum	1	\$
2	Provide adequate sheeting, shoring, and bracing, or equivalent method per Labor Code Section 6707.	Lump Sum	1	\$
3	Provide diaphragm-type metering pumps as specified in Section 11242 (this bid item does not include the Work referenced in Section 11242 and on the Drawings)	Lump Sum	1	\$58,940.60 (Preset - Do Not Change)
4	Provide cloth media disk filter units as specified in Section 11366A (this bid item does not include the Work referenced in Section 11336A and on the Drawings)	Lump Sum	1	\$1,096,230.18 (Preset - Do Not Change)
5	Provide control system programming as specified in Section 17100/17101 and provide industrial instrumentation and control system as specified in Section 17050, including those required for the Los Osos Collection System facilities.	Lump Sum	1	\$
6	Perform electrical system studies in accordance with Section 16305.	Lump Sum	1	\$
7	Allowance: Provide assistance to Owner during Start-Up Phase for handling or treating plant influent flows as specified in Section 01210 and 01660.	Lump Sum	1	\$1,000,000.00 (Preset - Do Not Change)
8	Perform demobilization, commissioning, and training (Not less than 2 percent of the Total Bid Price).	Lump Sum	1	\$
9	Los Osos Water Recycling Facility Project complete and in place in accordance with the Contract Drawings and Specifications exclusive of costs included for the bid items above.	Lump Sum	1	\$
			Total Bid Price	\$

ARTICLE 6- TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damage.

ARTICLE 7- ATTACHMENTS TO THIS BID

- 7.01 The following documents are attached to and made a condition of this Bid and must be signed and submitted with the Bid:
- A. Section 00420 – Non-Collusion Affidavit
 - B. Required Bid security in the form of a Bid Bond (Section 00430) or Certified Check (circle type of security provided)
 - C. Section 00440 – If Bid amount exceeds \$10,000, signed Compliance Statement/Certifications of Nonsegregated Facilities RD 400-6). Refer to specific equal opportunity requirements set forth in the General Conditions.
 - D. Section 00450 – If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tiered Covered Transactions (AD-1048)
 - E. Section 00460 – If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grant, and Loans. Refer to paragraph 18.11 of the General Conditions;
 - F. Section 00470 – Workers Compensation Certification
 - G. Section 00480 – List of Subcontractors (Note that electrical subcontractors listed to perform electrical specialty trade work are required to be on the final list of pre-qualified bidders. The final list of pre-qualified Electrical Subcontractors is posted at http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm).
 - H. Section 00485 – Bidders List
 - I. Section 00490 – Good Faith Effort Documentation Summary Form
 - J. Section 00495 – Disadvantaged Business Enterprise Contactor - Subcontractor Certification

ARTICLE 8- DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders and the General Conditions.

ARTICLE 9 – CALIFORNIA CONTRACTOR’S LICENSE INFORMATION

9.01 The undersigned Bidder is licensed in accordance with Chapter 9, Division 3 of the California Business and Professions Code and section 3300 of the California Public Contract Code, and the laws of California.

Bidders Valid California Contractor’s License No. _____ Class _____

Expiration Date: _____

Bidder has contracted under this license number for _____ years.

ARTICLE 10- BID SUBMITTAL

10.01 This Bid is submitted by: _____

The undersigned hereby states that all representation made herein are made under the penalty of perjury.

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual’s signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Attest: _____
(Signature of Corporate Secretary)

Date of Qualification to do business in California is ____ \ ____ \ ____.

A Joint Venture

Name of Joint Venturer: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business address: _____

Business Phone No. (____) _____

Business FAX No. (____) _____

Business E-Mail Address

Employer's Tax ID No. _____

DUNS No. _____

Phone and FAX Numbers, and Address for receipt of official communications, if different from Business contact information:

9.02 Bid submitted on _____, 20__.

END OF SECTION

00410-8

③

**LOS OSOS WASTEWATER PROJECT
LOS OSOS WATER RECYCLING FACILITY**

LOS OSOS CA
CONTRACT NO. 300448.08.02
PROJECT MANAGER: JOHN WADDELL
PROJECT ENGINEER: JEFF WERST
Bid Opening Date: November 25, 2013
ENGINEER'S ESTIMATE: \$46,579,000.00

ITEM NO.	DESCRIPTION OF ITEM	QTY.	UNIT PRICE (IN FIGURES) DOLLARS, CENTS	TOTAL AMOUNT DOLLARS, CENTS	BID 1		BID 2		BID 3		BID 4		BID 5	
					UNIT PRICE (IN FIGURES) DOLLARS, CENTS	TOTAL AMOUNT DOLLARS, CENTS								
1	Mobilization (Not in excess of 2 percent of the Total Bid Price)	1	LUMP SUM	\$ 900,000.00	LUMP SUM	\$ 800,000.00	LUMP SUM	\$ 900,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,100,000.00	LUMP SUM	\$ 50,000.00
	Provide adequate sheeting, shoring, and bracing, or equivalent method per Labor Code Section 6707.	1	LUMP SUM	\$ 150,000.00	LUMP SUM	\$ 150,000.00	LUMP SUM	\$ 50,128.22	LUMP SUM	\$ 40,000.00	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 50,000.00
3	Provide diaphragm-type metalting pumps as specified in Section 11242 (this bid item does not include the Work referenced in Section 11242 and on the Drawings)	1	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 58,940.60	LUMP SUM	\$ 58,940.60
4	Provide cloth media disk filter units as specified in Section 11366A (this bid item does not include the Work referenced in Section 11336A and on the Drawings)	1	LUMP SUM	\$ 1,096,230.18	LUMP SUM	\$ 1,096,230.18	LUMP SUM	\$ 1,096,230.18	LUMP SUM	\$ 1,096,230.18	LUMP SUM	\$ 1,096,230.18	LUMP SUM	\$ 1,096,230.18
5	Provide control system programming as specified in Section 17100/17101 and provide Industrial Instrumentation and control system as specified in Section 17050. Including those required for the Los Osos Collection System facilities.	1	LUMP SUM	\$ 1,400,000.00	LUMP SUM	\$ 1,700,000.00	LUMP SUM	\$ 1,300,000.00	LUMP SUM	\$ 1,200,000.00	LUMP SUM	\$ 1,300,000.00	LUMP SUM	\$ 1,300,000.00
6	Perform electrical system studies in accordance with Section 16305.	1	LUMP SUM	\$ 35,000.00	LUMP SUM	\$ 35,000.00	LUMP SUM	\$ 50,000.00	LUMP SUM	\$ 32,000.00	LUMP SUM	\$ 32,000.00	LUMP SUM	\$ 32,000.00
	Allowance: Provide assistance to Owner during Start-Up Phase for handling or treating plant influent flows as specified in Section 01210 and 01660.	1	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00
8	Perform demobilization, commissioning, and training (Not less than 2 percent of the Total Bid Price).	1	LUMP SUM	\$ 200,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,000,000.00	LUMP SUM	\$ 1,060,000.00	LUMP SUM	\$ 1,300,000.00	LUMP SUM	\$ 1,300,000.00
9	Los Osos Water Recycling Facility Project complete and in place in accordance with the Contract Drawings and Specifications exclusive of costs included for the bid items above.	1	LUMP SUM	\$ 41,530,000.00	LUMP SUM	\$ 41,700,000.00	LUMP SUM	\$ 42,725,000.00	LUMP SUM	\$ 47,352,079.22	LUMP SUM	\$ 49,582,636.00	LUMP SUM	\$ 55,519,806.78
Bid Check Date: November 25, 2013														
LEGEND:  highlighted = math error														
				Bid proposal rounded to \$46,390,170.78										
				\$46,390,171										

④

SECTION 01324A

PROGRESS SCHEDULES AND REPORTS

PART 1 GENERAL

1.01 SUMMARY

- A. Section includes: Preparation, submittal, and maintenance of computerized progress schedule and reports, Contract Time adjustments, and payment requests, including the following:
 - 1. Preliminary Schedule.
 - 2. Baseline Schedule.
 - 3. Summary Schedule.
 - 4. Weekly Schedule.
 - 5. Schedule Updates.
 - 6. Schedule Revisions.
 - 7. Time Impact Analyses.
 - 8. Final Schedule Submittal.

- B. Related sections:
 - 1. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
 - 2. It is the Contractor's responsibility for scheduling and coordinating the Work of subcontractors, suppliers, and other individuals or entities performing or furnishing any of Contractor's Work.
 - 3. The following Sections are related to the Work described in this Section. This list of Related Sections is provided for convenience only and is not intended to excuse or otherwise diminish the duty of the Contractor to see that the completed Work complies accurately with the Contract Documents.
 - a. Section 00500 - Agreement.
 - b. Section 00700 - General Conditions.
 - c. Section 01292 - Schedule of Values.
 - d. Section 01294 - Applications for Payment.
 - e. Section 01312 - Project Meetings.

1.02 RESPONSIBLE PERSON

- A. Designate, in writing and within 5 calendar days after Notice of Award, person responsible for preparation, maintenance, updating, and revision of all schedules.

- B. Qualifications of responsible person:
 - 1. Authority to act on behalf of Contractor.
 - 2. 5 years verifiable experience in preparation of complex construction schedules for projects of similar value, size, and complexity.
 - 3. Knowledge of critical path method (CPM) scheduling utilizing the specified Oracle Primavera software.

- C. References: Submit written reference of 3 project Owners who have personal experience with this scheduler on previous projects. Identify name, address, telephone number, project name, and cost.

- D. Scheduler: Dedicated full time to this project, located on-site. All scheduling software and hardware located on-site. Scheduler will attend all project meetings called for as specified in Section 01312.
- E. Engineer reserves the right to disapprove scheduler when submitted by Contractor if not qualified. Engineer reserves the right to remove scheduler from the project if found to be incompetent.

1.03 SCHEDULING FORMAT AND SOFTWARE

- A. Schedule format: Utilize (CPM) format.
- B. Prepare computerized schedule utilizing Oracle Primavera P6 Professional release 7 or greater.

1.04 PRECONSTRUCTION SCHEDULING MEETING

- A. Engineer will conduct Preconstruction Scheduling Meeting with Contractor's Project Manager, General Superintendent, and scheduler within 7 calendar days after Notice To Proceed. This meeting is separate from the Preconstruction Conference Meeting and is intended to cover schedule issues exclusively.
- B. At the meeting, review scheduling requirements. These include schedule preparation, reporting requirements, labor and equipment loading, updates, revisions, and schedule delay analysis. Present schedule methodology, planned sequence of operations, resource loading methodology, and proposed activity coding structure.
- C. Coding structure:
 - 1. Submit proposed coding structure, identifying the code fields and the associated code values it intends to use in the project schedule.
 - 2. A minimum, include code fields for Project Segment or Phase, Area of Work, Type of Work, Submittal/Procurement/Construction and Responsibility/Subcontractor. Refer to NETWORK DETAILS AND GRAPHICAL OUTPUT for listing of activity categories to be included in the schedule.

1.05 PREPARATION

- A. Preparation and submittal of Progress Schedule represents Contractor's intention to execute the Work within specified time and constraints. Failure to conform to requirement may result in termination for cause as defined in Section 00700, under Suspension of Work and Termination.
- B. Contractor's bid covers all costs associated with the execution of the Work in accordance with the Progress Schedule.
- C. During preparation of the preliminary Progress Schedule, Engineer will facilitate Contractor's efforts by being available to answer questions regarding sequencing issues, scheduling constraints, interface points, and dependency relationships.
- D. Prepare schedule utilizing Precedence Diagramming Method (PDM).

- E. Prepare schedule utilizing activity durations in terms of working days. Do not exceed 15 working day duration on activities except concrete curing, submittal review, and equipment fabrication and deliveries. Where duration of continuous work exceeds 15 working days, subdivide activities by location, stationing, or other sub-element of the Work. Coordinate holidays to be observed with the Owner and incorporate them into the schedule as non-working days.
- F. Failure to include an activity required for execution of the Work does not excuse Contractor from completing the Work and portions thereof within specified times and at price specified in Agreement. Contract requirements are not waived by failure of Contractor to include required schedule constraints, sequences, or milestones in schedule. Contract requirements are not waived by Owner's acceptance of the schedule. In event of conflict between accepted schedule and Contract requirements, terms of Contract govern at all times, unless requirements are waived in writing by the Owner.
- G. Reference schedule to working days with beginning of Contract Time as Day "1."
- H. Baseline Schedule and Project Completion: Should Contractor submit a Baseline Schedule showing project completion more than 20 working days prior to Contract completion date, Owner may issue Change Order, at no cost to Owner, revising time of performance of Work and Contract completion date to match Contractor's schedule completion date. Adjust accordingly any Contract milestone dates.
- I. Contract float is for the mutual benefit of both Owner and Contractor. Changes to the project that can be accomplished within this available period of float may be made by Owner without extending the Contract Time, by utilizing float. Time extensions will not be granted nor delay damages owed until Work extends beyond currently accepted Contract completion date. Likewise, Contractor may utilize float to offset delays other than delays caused by Owner. Mutual use of float can continue until all available float shown by schedule has been utilized by either Owner or Contractor, or both. At that time, extensions of the Contract Time will be granted by Owner for valid Owner-caused or third party-caused delays which affect the planned completion date and which have been properly documented and demonstrated by Contractor.
- J. Resource loading and leveling: Input labor and equipment data on each construction activity. Manpower data consist of the man-hours estimated to perform each task, categorized by trade. Equipment data consist of equipment hours estimated to perform each task, categorized by piece of equipment. Optimize and level manpower and equipment requirements. Resource leveling reflect a reasonable plan for accomplishing Work. Individual activities may be sequenced within limits of available float. Keep to a minimum critical or near critical paths resulting from use of labor or equipment restraints. Near critical path identified as path with 15 or less working days of float.
- K. Schedule logic: Assembled to show order in which Contractor proposes to carry out Work, indicate restrictions of access, availability of Work areas, and availability and use of manpower, materials, and equipment. Form basis for assembly of schedule logic on the following criteria:
 - 1. Which activities must be completed before subsequent activities can be started?

2. Which activities can be performed concurrently?
 3. Which activities must be started immediately following completed activities?
 4. What major facility, equipment or manpower restrictions are required for sequencing these activities?
- L. Non-sequestering of float: Pursuant to float sharing requirements of Contract, schedule submittals can be rejected for, use of float suppression techniques such as preferential sequencing or logic, special lead or lag logic restraints, extended activity durations or imposed dates.
- M. Major subcontractor, parallel prime contractor sign off: Provide written confirmation of concurrence from all major subcontractors and independent prime contractors on site with all schedule submittals. Term "major subcontractor" as used in this Section means any subcontractor, at any tier, with a subcontract worth 5 percent or more of the total cost of the Work.
- N. Imposed dates, hidden logic prohibited: Do not use imposed dates or hidden logic in preparation of schedule.
- O. Interim milestone dates, operational constraints: In event there are interim milestone dates and/or operational constraints set forth in Contract, show them on schedule. Do not use Zero Total Float constraint or Mandatory Finish Date on such Contract requirements.
- P. Schedule windows for Owner-furnished, Contractor-installed equipment or materials: Immediately after Award of Contract, obtain from Engineer anticipated delivery dates of Owner furnished equipment or materials. Show these dates in the schedule in same manner indicated by Engineer.
- Q. Cost loading: All schedules:
1. Only on-site construction activities.
 2. The sum total of all cost loaded activities equal to the current value of the Contract, including change orders, at all times.
 3. Payment for mobilization or payment for materials or equipment delivered to the site, not yet incorporated into the Work.
 4. Owner acceptance of the Baseline Schedule creates the Schedule of Values required as specified in Section 01292.
 5. Provide updated Schedule of Values as the monthly Payment Application as specified in Section 01294.
 6. Payments will not be made until updated Schedule of Values is accepted.

1.06 SUBMITTAL OF PROGRESS SCHEDULES

- A. Submit preliminary and baseline schedule.
- B. Submit, on a monthly basis, updated schedules as specified. Submit final schedule update as specified.
- C. Submit revised schedules and time impact analyses as specified.

- D. Submit schedules in the media and number of copies as follows:
 - 1. 3 sets of the CPM network and/or barchart (as specified by the Owner) on D-size sheets. Color-coding to be specified by the Owner.
 - 2. 3 sets of Tabular reports listing all activities sorted numerically identifying duration, early start, late start, early finish, late finish, total float, and all predecessor/successor information.
 - 3. 2 sets of CPM Schedule data electronic files stored on CD/DVD.

1.07 PRELIMINARY SCHEDULE

- A. Submit Preliminary Schedule within 10 calendar days after Notice to Proceed. Include a detailed plan of operations for first 90 calendar days of Work after receipt of Notice to Proceed.
- B. Meet with Engineer within 7 calendar days after receipt of Preliminary Schedule to review and make necessary adjustments. Submit revised preliminary schedule within 5 calendar days after meeting.
- C. Submit schedule of manpower and costs for all activities with revised Preliminary Schedule. Provide realistic and level manpower and costs so as not to have unusual manpower requirements.
- D. Schedule of costs:
 - 1. Schedule of Values as specified in Section 01292 for first 90 calendar days of Work.
 - 2. Submittal and acceptance of Preliminary Schedule is condition precedent to making of progress payments as specified in Section 01294 and payments for mobilization costs otherwise provided for in the Contract.
 - 3. Proceed with pay item Work after Preliminary Schedule and schedule of costs have been accepted by Owner.
- E. Incorporate unchanged, the accepted Preliminary Schedule as first 90 calendar days of activity in Contractor's Baseline Schedule.
- F. Update Preliminary Schedule monthly during first 90 calendar days after Notice to Proceed. Use Preliminary Schedule as the payment application as specified in Section 01294.

1.08 BASELINE SCHEDULE

- A. No more than 45 calendar days after Notice of Award, submit the Baseline Schedule for all Work of the project. Show sequence and interdependence of all activities required for complete performance of all Work, beginning with date of Notice to Proceed and concluding with date of final completion of Contract.
- B. Acceptance of the Baseline Schedule by the Owner is a condition precedent to making payments as specified in Section 01294 after the first 90 calendar days after Notice to Proceed.

1.09 NETWORK DETAILS AND GRAPHICAL OUTPUT

- A. Produce a clear, legible, and accurate calendar based, time scaled, graphical network diagram. Group activities related to the same physical areas of the Work. Produce the network diagram based upon the early start of all activities.
- B. Include for each activity, the description, activity number, estimated duration in working days, total float, and all activity relationship lines.
- C. Illustrate order and interdependence of activities and sequence in which Work is planned to be accomplished. Incorporate the basic concept of the precedence diagram network method to show how the start of 1 activity is dependent upon the start or completion of preceding activities and its completion restricts the start of following activities.
- D. Indicate the critical path for the project.
- E. Delineate the specified contract duration and identify the planned completion of the Work as a milestone. Show the time period between the planned and Contract completion dates, if any, as an activity identified as project float unless a Change Order is issued to officially change the Contract completion date.
- F. Identify system shutdown dates, system tie-in dates, specified interim completion or milestone dates and contract completion date as milestones.
- G. Include, in addition to construction activities:
 - 1. Submission dates and review periods for major equipment submittals, shoring submittals, and indicator pile program:
 - a. Shoring reviews: Allow 4-week review period for each shoring submittal.
 - b. Pile indicator program: Allow 3-week review period for analysis of program.
 - 2. Any activity by the Owner or the Engineer that may affect progress or required completion dates.
 - 3. Equipment and long-lead material deliveries over 8 weeks.
 - 4. Approvals required by regulatory agencies or other third parties.
- H. Produce network diagram on 22-inch by 34-inch sheets with grid coordinate system on the border of all sheets utilizing alpha and numeric designations.
- I. Identify the execution of the following:
 - 1. Mobilization.
 - a. All required submittals and submittal review times showing 30 calendar day duration for such activities and equal amount of time for re-submittal reviews.
 - b. Equipment and materials procurement/fabrication/delivery.
 - 2. Excavation.
 - a. Shoring design and submission of detailed shoring submittals. Identify submission as a milestone.
 - b. Shoring review, shoring materials procurement, shoring installation, and shoring removal.
 - c. Backfill and compaction.
 - 3. Dewatering.
 - a. Grading, subbase, base, paving, and curb and gutters.

- b. Fencing and landscaping.
 - c. Concrete, including installation of forms and reinforcement, placement of concrete, curing, stripping, finishing, and patching.
 - d. Tests for leakage of concrete structures intended to hold water.
4. Masonry.
 5. Metal fastenings, framing, structures, and fabrications.
 6. Wood structures, finish carpentry, architectural woodwork, and plastic fabrications.
 7. Waterproofing and dampproofing, insulation, roofing and flashing, and sealants.
 8. Doors and windows, including hardware and glazing.
 9. Finishes including coating and painting, flooring, ceiling, and wall covering.
 10. Building specialties including furnishings, laboratory equipment, and toilet and bath accessories.
 11. Process equipment, including identification of ordering lead-time, factory testing, installation, and witnessed operational testing.
 12. Pumps and drives, including identification of ordering lead time, factory testing, and installation.
 13. Conveying equipment including hoists and cranes, conveyor systems, and materials handling equipment, including identification of ordering lead-time and installation.
 14. Other mechanical equipment including fans and heating, ventilating, and air conditioning equipment.
 15. Trenching, pipe laying, and trench backfill and compaction.
 16. Piping, fittings and appurtenances, including identification of ordering and fabrication lead time, layout, installation and testing.
 17. Valves, gates, and operators, including identification of order lead-time, installation, and testing.
 18. Plumbing specialties.
 19. Electric transmission, service, and distribution equipment, including identification of ordering lead-time, factory testing, and witnessed operational testing.
 20. Other electrical work including lighting, heating and cooling, and special systems, including identification of ordering lead-time.
 21. Instrumentation and controls, including identification of ordering lead-time and witnessed operational testing.
 22. Preliminary and witnessed operational testing of equipment, instrumentation, and controls.
 23. Testing Phase including ten-day operational test.
 24. Operation and maintenance training.
 25. Start-Up Phase.
 26. Commissioning Phase.
 27. Substantial completion.
 28. Punch list work.
 29. Demobilization.

1.10 SUMMARY SCHEDULE

- A. Provide Summary Schedule, which consolidates groups of activities associated with Major Items of Work shown on Baseline Schedule. Summary Schedule is intended to give an overall indication of the project schedule without a large amount of detail.
- B. Updated and submitted monthly and after each Schedule Update or Schedule Revision.

1.11 SCHEDULE OF SHOP DRAWING AND SAMPLE SUBMITTALS

- A. After Preliminary Schedule has been submitted and accepted by Owner, submit a list of all shop drawings and sample submittals anticipated in first 90 calendar days after Notice to Proceed using early start dates.
- B. Progress payments during the first 90 calendar days after Notice to Proceed will not be made until preliminary list of all shop drawings and sample submittals is provided.
- C. After Baseline Schedule has been submitted and accepted by Owner, print out and submit list of all shop drawings and sample submittals for all Work using early start dates. This listing will contain all submittals required for the entire Work including those listed above.
- D. Submittal of final list: Condition precedent to making of progress payments after the first 90 calendar days after Notice to Proceed.

1.12 MANPOWER SCHEDULES

- A. After Baseline Schedule has been submitted and accepted by Owner, submit a schedule histogram depicting total craft manpower and craft manpower for Contractor's own labor forces and those of each subcontractor. Submit this manpower schedule electronically on a computer disk in Excel format, with 1 paper copy.
- B. Progress payments during the first 90 calendar days after Notice to Proceed will not be made until manpower schedule is provided.

1.13 EQUIPMENT SCHEDULE

- A. After Baseline Schedule has been submitted and accepted by Owner, submit a tabular report listing each major piece of construction equipment to be used in performing the Work. This report will list major equipment for Contractor and each subcontractor. Submit this tabular report of equipment electronically on a computer disk in Excel format with 1 paper copy.
- B. Progress payments during the first 90 calendar days after Notice to Proceed will not be made until equipment schedule is provided.

1.14 WEATHER DAY ALLOWANCE

- A. Include as a separate identifiable activity on the critical path, an activity labeled "Weather Days Allowance." Insert this activity at the end of the schedule.
 - 1. The duration of the Weather Days Allowance shall be 50 days. Weather Days are defined as those days (as approved by the ENGINEER) in which the CONTRACTOR is unable to work on critical path activities due to the effects of inclement weather. Time extensions will be granted for approved Weather Days in excess of 50 days. The 50 days are included in the contract duration for Intermediate Milestone No. 2, which is specified in Section 00500. The Weather Day allowance shall also apply to Intermediate Milestone No. 1 in a pro-rated fashion.
- B. Insert an activity in critical path to reflect weather day occurrences when weather days are experienced and accepted by Engineer. Identify this activity as a weather delay.
- C. Reduce duration of Weather Days Allowance activity as weather delays are experienced and inserted into the Schedule. Remaining weather days in Weather Day Allowance at completion of project is considered float.

1.15 REVIEW AND ACCEPTANCE OF SCHEDULES

- A. Engineer will review Baseline Schedules, Schedule Updates, Schedule Revisions and Time Impact Analyses to ascertain compliance with specified project constraints, compliance with milestone dates, reasonableness of durations and sequence, accurate inter-relationships, and completeness.
- B. Engineer and Owner will issue written comments following completion of review of Baseline Schedule within 21 calendar days after receipt. Written comments on review of Schedule Updates and Schedule Revisions and Time Impact Analyses will be returned to Contractor within 14 calendar days after receipt by Engineer.
- C. Revise and resubmit schedule in accordance with Engineer's comments within 7 calendar days after receipt of such comments, or request joint meeting to resolve objections. If a meeting is requested the Contractor and all major subcontractors must participate in the meeting with Engineer. Revise and resubmit schedule within 7 calendar days after meeting.
- D. When schedule reflects Owner's and Contractor's agreement of project approach and sequence, schedule will be accepted by Owner. Use accepted schedule for planning, organizing, and directing the work and for reporting progress.

1.16 UPDATING THE SCHEDULE

- A. Update the schedule prior to monthly progress meeting. Submit a written report of significant changes in progress meeting. Submit at the monthly progress meeting a detailed written list of all changes to the previous schedule submittal contained in the Schedule Update.
- B. Submit updated schedule and materials specified under Submittal of Progress Schedules, 5 calendar days before the progress meeting.

- C. Since monthly Schedule Update is the application for progress payment required as specified in Section 01294, submittal and acceptance of the monthly Schedule Update is a condition precedent to the making of any progress payments.
- D. Prepare update using most recent accepted version of schedule. Include:
 - 1. Actual start dates of activities that have been started.
 - 2. Actual finish dates of activities that have been completed.
 - 3. Percentage of completion of activities that have been started but not finished.
 - 4. Actual dates on which milestones were achieved.
 - 5. Update activities by inputting percent complete figures with actual dates.
 - 6. Use retained logic in preparing Schedule Updates.
 - 7. When necessary, input remaining durations for activities whose finish dates cannot be calculated accurately with a percent complete figure only.
 - 8. Revisions to the schedule may be included that have been previously approved in under Revisions to Schedule.
- E. Submit written narrative report in conjunction with each Schedule Update. Describe:
 - 1. Activities added to or deleted from schedule. Identify added activities in manner distinctly different from original activity designations.
 - 2. Changes in sequence or estimated duration of activities.
 - 3. Current or anticipated problems and delays affecting progress, impact of these problems and delays and measures taken to mitigate impact.
 - 4. Assumptions made and activities affected by incorporating change order work into the schedule.
 - 5. Activities added to or deleted from the schedule are to adhere to cost and other resource loading requirements.
- F. Identify overall progress of each Major Item of Work in the Summary Schedule.
- G. Should monthly Schedule Update show project completion earlier than current Contract completion date show early completion time as schedule activity, identified as "Project Float."
- H. Should monthly Schedule Update show project completion later than current Contract completion date prepare and submit a Schedule Revision in accordance with the Revisions to Schedule.

1.17 REVISIONS TO SCHEDULE

- A. Submit Revised Schedule within 5 days:
 - 1. When delay in completion of any activity or group of activities indicates an overrun of the Contract Time or milestone dates by 20 working days or 5 percent of the remaining duration, whichever is less.
 - 2. When delays in submittals, deliveries, or work stoppages are encountered making necessary the replanning or rescheduling of activities.
 - 3. When the schedule does not represent the actual progress of activities.
 - 4. When any change to the sequence of activities, the completion date for major portions of the work, or when changes occur which affect the critical path.
 - 5. When Contract modification necessitates schedule revision, submit schedule analysis of change order work with cost proposal.
- B. Submit revised schedule and materials as specified under Submittals of Progress Schedules.

- C. Make revisions on most recently accepted version of schedule.
- D. Create a separate submittal for Schedule Revisions. The Schedule Revisions shall not be submitted with Schedule Updates.
- E. Schedule revisions will not be reflected in the schedule until after the revision is accepted by the Owner. This includes Schedule Revisions submitted for the purpose of mitigating a Contractor-caused project delay (Recovery Schedule).

1.18 PAYMENT REQUESTS AND CASH FLOW

- A. After Baseline Schedule has been submitted and accepted by the Owner, submit on a monthly basis a tabular report showing anticipated earnings each month of the Contract period. This tabulation will be based on the summation of the cost-loaded activities each month. Submit an updated payment schedule each month showing actual earned amounts and anticipated remaining earnings.
- B. Utilize cost loaded monthly Schedule Updates as the applications for payment specified in Section 01294. List payment application in Excel format of all schedule activities showing cost and percentage completion during the current month for which payment is sought. Progress payments will not be made until monthly Schedule Update is provided.

1.19 WEEKLY SCHEDULE

- A. Submit to Engineer, on the last working day of every week, a progress schedule showing the activities completed during the previous week and the schedule of activities for the following 2 weeks.
- B. Use the logic and conform to the status of the current progress schedule when producing a Weekly Schedule in CPM schedule or a bar chart format. In the event that the Weekly Schedule no longer conforms to the current schedule, Contractor may be required to revise the schedule.
- C. The activity designations used in the Weekly Schedule must be consistent with those used in the Baseline Schedule and the monthly Schedule Updates.
- D. Contractor and Engineer must agree on the format of the Weekly Schedule.

1.20 SCHEDULE OF VALUES

- A. Requirements for Schedule of Values are specified in Section 01292.
- B. Submit, in conjunction with the Progress Schedule, a Schedule of Values identifying costs of all on-site construction activities as generated by the cost loaded schedule. Equate the aggregate of these costs to the Lump Sum Contract Price.

1.21 ADJUSTMENT OF CONTRACT TIMES

- A. Contract Time will be adjusted only for causes specified in Contract Documents.
 1. Non-excusable delay: Non-excusable delays include actions or inactions of the Contractor, or events for which the Contractor has assumed contractual responsibility (including actions or inactions of subcontractors, suppliers, or

material manufacturers at any tier) that would independently delay the completion of the Work beyond the current Contract completion date). No time extensions will be granted for non-excusable delays.

2. Excusable delay: Events which are unforeseeable, outside the control of, and without the fault or negligence of either the Owner or the Contractor (or any party for whom either is responsible), which would independently delay the completion of the Work beyond the current Contract completion date. The Contractor is entitled to a time extension only. No other damages will be approved.
 3. Compensable delay: Actions or inactions of the Owner, or events for which the Owner has assumed contractual responsibility, which would independently delay the completion of the Work beyond the current Contract completion date. The Contractor is entitled to a time extension and delay damages.
 4. Concurrent delay: Concurrent delay is any combination of the above 3 types of delay occurring on the same calendar date.
 - a. Exception to concurrent delay: Cases where the combination consists of 2 or more instances of the same type of delay occurring on the same calendar date. When one cause of delay is Owner-caused or caused by an event which is beyond the control and without the fault or negligence of either the Owner or the Contractor and the other Contractor-caused, the Contractor is entitled only to a time extension and no delay damages.
- B. If the Contractor believes that the Owner has impacted its work, such that the project completion date will be delayed, the Contractor must submit proof demonstrating the delay to the critical path. This proof, in the form of a Time Impact Analysis, may entitle the Contractor to an adjustment of Contract Time.
- C. Time Impact Analysis:
1. Use the accepted schedule update that is current relative to the time frame of the delay event (change order, third party delay, or other Owner-caused delay). Represent the delay event in the schedule by:
 - a. Inserting new activities associated with the delay event into the schedule.
 - b. Revising activity logic.
 - c. Revising activity durations.
 2. If the project schedule's critical path and completion date are impacted as a result of adding this delay event to the schedule, a time extension equal to the magnitude of the impact may be warranted.
 3. The Time Impact Analysis submittal must include the following information:
 - a. A fragment of the portion of the schedule affected by the delay event.
 - b. A narrative explanation of the delay issue and how it impacted the schedule.
 - c. A CD containing the schedule file used to perform the Time Impact Analysis.
- D. When a delay to the project as a whole can be avoided by revising preferential sequencing or logic, and the Contractor chooses not to implement the revisions, the Contractor may be entitled to a time extension and no compensation for extended overhead. The OWNER may seek compensation for extended overhead.
- E. Indicate clearly that the Contractor has used, in full, all project float available for the work involved in the request, including any float that may exist between the Contractor's planned completion date and the Contract completion date. Utilize the

latest version of the Schedule Update accepted at the time of the alleged delay, and all other relevant information, to determine the adjustment of the Contract Time.

- F. Adjustment of the Contract Times will be granted only when the Contract Float has been fully utilized and only when the revised date of completion of the Work has been pushed beyond the Contract completion date. Adjustment of the Contract Times will be made only for the number of days that the planned completion of the work has been extended.
- G. Actual delays in activities which do not affect the critical path work or which do not move the Contractor's planned completion date beyond the Contract completion date will not be the basis for an adjustment to the Contract Time.
- H. If completion of the project occurs within the specified Contract Time, the Contractor is not entitled to job-site or home office overhead beyond the Contractor's originally planned occupancy of the site.
- I. Notify Engineer of a request for Contract Time adjustment. Submit request as specified with Contract Documents. In cases where the Contractor does not submit a request for Contract Time adjustment for a specific change order, delay, or Contractor request within the specified period of time, then it is mutually agreed that the particular change order, delay, or Contractor request has no time impact on the Contract completion date and no time extension is required.
- J. The Engineer will, within 30 calendar days after receipt of a Contract Time adjustment, request any supporting evidence, review the facts, and advise the Contractor in writing.
 - 1. Include the new Progress Schedule data, if accepted by the Owner, in the next monthly Schedule Update.
 - 2. When the Owner has not yet made a final determination as to the adjustment of the Contract Time, and the parties are unable to agree as to the amount of the adjustment to be reflected in the Progress Schedule, reflect that amount of time adjustment in the Progress Schedule as the Engineer may accept as appropriate for such interim purpose. It is understood and agreed that any such interim acceptance by the Engineer shall not be binding and shall be made only for the purpose of continuing to schedule the Work, until such time as a final determination as to any adjustment of the Contract Time acceptable to the Engineer has been made. Revise the Progress Schedule prepared thereafter in accordance with the final decision.
- K. Refer to Section 00700, Article 12 for additional requirements.

1.22 FINAL SCHEDULE SUBMITTAL

- A. The final Schedule Update becomes the As-Built Schedule.
 - 1. The As-Built Schedule reflects the exact manner in which the project was constructed by reflecting actual start and completion dates for all activities accomplished on the project.
 - 2. Contractor's Project Manager and scheduler sign and certify the As-Built Schedule as being an accurate record of the way the project was actually constructed.
- B. Retainage will not be released until final Schedule Update is provided.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

5

SECTION 01010
SUMMARY OF WORK

PART 1 GENERAL

1.01 SUMMARY

- A. Section includes: Identification and summary description of the Project, the Work, location, OWNER-furnished products, activities by others, coordination, and early occupancy by OWNER.
- B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- C. It is the Contractor's responsibility for scheduling and coordinating the Work of subcontractors, suppliers, and other individuals or entities performing or furnishing any of Contractor's Work.

1.02 THE WORK

- A. The Work consists of construction of the Los Osos Water Recycling Facility (LOWRF), including but not limited to:
 - 1. Administration Building.
 - 2. Maintenance Building.
 - 3. Headworks/Septage Receiving.
 - 4. Odor Control Facility.
 - 5. Oxidation Ditches.
 - 6. Secondary Clarifiers.
 - 7. Scum Pump Station.
 - 8. Filter Influent Pump Station.
 - 9. Tertiary Filters.
 - 10. UV Facility.
 - 11. Chemical Facility.
 - 12. Effluent Pump Station.
 - 13. Sludge Storage Tanks.
 - 14. Dewatering Building.
 - 15. Electrical Building.
 - 16. Groundwater Wells and Pumps.
 - 17. Water Storage Tank.
 - 18. Recycled Water Storage Ponds.
 - 19. Storm Water Retention Pond.
 - 20. Plant Drain Pump Station.
 - 21. Storm Water Pump Station.
 - 22. All associated electrical, instrumentation, and control system work.
 - 23. All associated yard work, including yard piping, paving, grading, and landscaping.
 - 24. Plant Entrance Road from Los Osos Valley Road (LOVR) to the LOWRF site (approximately 1,500 linear feet long).
 - 25. LOVR Improvements.

- B. Except as specifically noted otherwise, provide and pay for:
 - 1. Insurance and bonds.
 - 2. Labor, materials, and equipment.
 - 3. Tools, equipment, and machinery required for construction.
 - 4. Utilities required for construction.
 - 5. Temporary facilities including sheeting and shoring.
 - 6. Traffic control and dust control measures.
 - 7. Other facilities and services necessary for proper execution and completion of the Work.
- C. Secure and pay for all permits including OSHA excavation permits, Department of Transportation permits, government fees, and licenses.
- D. Comply with codes, ordinances, regulations, orders, and other legal requirements of public authorities having bearing on the performance of the Work.

1.03 LOCATION OF PROJECT

- A. The Work is primarily located north of the intersection of LOVR and Clark Valley Road in the community of Los Osos, San Luis Obispo County, California. This Site is situated north of the Los Osos Mortuary and Memorial Park and does not currently have a postal address. The Los Osos Mortuary and Memorial Park is at 2260 Los Osos Valley Road, Los Osos, California, 93402.
- B. Other Work is located at the Mid-Town Standby Power Building and other collection system facilities, which are listed on Sheet 00N08. All of these facilities are located in Los Osos. The Work at these locations pertains to the SCADA system for the collection system. The Los Osos collection system is currently under construction by others.

1.04 OWNER-FURNISHED EQUIPMENT

- A. Owner will furnish the following products:
 - 1. None.

1.05 ACTIVITIES BY OTHERS

- A. OWNER, utilities, and others may perform activities within Site while the Work is in progress.
 - 1. Schedule the Work with OWNER, utilities, and others to minimize mutual interference.
- B. Activities by others which may affect performance of work include:
 - 1. Los Osos Collection System Project, which consists of multiple construction contracts currently in progress in the community of Los Osos to provide wastewater collection and recycled water distribution to and from the LOWRF, will construct buried influent force main and recycled water piping, fiber-optic conduits and wiring, and associated manholes, up to the intersection of LOVR and the plant entrance road.
 - 2. Southern California Gas Company will furnish and install a natural gas pipeline on the Plant Entrance Road, terminating it within the LOWRF in the vicinity of the Main Entrance with a gas meter and a pressure regulator. The

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3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
 4. a preliminary Staking Request Schedule for the initial thirty (30) days of Work.
- B. *Recycling Plan:* Within 14 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit Recycling Plan to Owner for timely review, as specified in the Contact Documents.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, Designer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.
1. Generally, Contractor shall communicate with Engineer, or Engineer's designated representative under Paragraph 9.03, as Engineer shall specify, concerning matters affecting Engineer or Owner. In the event that Contractor believes he/she cannot physically locate or deliver necessary communications to Engineer, or Engineer's designated representative, as specific circumstances require those communications to be received by Engineer, Contractor may transmit those communications to Owner with a copy to Engineer, or Engineer's designated representative, and shall include in the communication an explanation why Contractor is sending the communication to Owner as well as Engineer, or Engineer's representatives.

2.07 *Initial Acceptance of Schedules*

- A. Contractor shall be responsible for arranging a meeting to be held at least 5 days before submission of the first Application for Payment, where Contractor, Engineer, Owner, and others as appropriate, shall review for acceptability to Engineer and Owner the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until Contractor submits schedules that are accepted by Engineer and Owner in writing. Such acceptance shall only mean that the schedule satisfies the acceptability standard set forth below, and shall not constitute any type of approval or ratification by Engineer or Owner as to any means or methods of Work chosen by Contractor (which Contractor shall be solely responsible for).

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times, in compliance with the requirements of Paragraph 2.05.A.1. If not accepted, the Progress Schedule shall be promptly revised by Contractor in accordance with the recommendations of Owner and Engineer and resubmitted for acceptance. Upon review and acceptance by Owner and Engineer, the Progress Schedule shall be deemed to be part of the Contract Documents and attached to the Agreement. Such acceptance must be in a writing signed by Owner and Engineer that expressly states that the Progress Schedule is deemed part of the Contract Documents and an attachment to the Agreement. Such acceptance will not impose on Engineer or Owner any responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.
4. Contractor's Staking Request Schedule will be acceptable to Engineer and Owner if it correlates with the Progress Schedule.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

Contractor shall be responsible for verifying at the Site the accuracy of all grades, elevations, dimensions, locations and field measurements in any Drawings, Specifications, or any other Contract Documents. In all cases of the interconnection of its Work with existing or other Work, Contractor shall verify at the site all dimensions relating to such existing or other Work. Any additional work caused by Contractor's failure to verify all such grades, elevations, dimensions, locations, or field measurements shall be promptly rectified by Contractor without any increase in Contract Price or Contract Times. Nothing in this paragraph is intended to require the Contractor to assume responsibility for the completeness and accuracy of any Drawings, Specifications, or other Contract Documents. This paragraph simply sets forth

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All Work required by the Contract Documents shall be considered incidental to the Work and considered as included in the Contract Price.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Within thirty (30) days of Engineer's receipt of a proper Application for Payment under Article 14 of the General Conditions, Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Within 60 days of Substantial Completion of all Work under the Contract Documents, Owner shall pay to Contractor an amount sufficient to reduce the retainage withheld on Work properly completed to zero percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 150 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. In the event of any disputes between the Owner and Contractor, the Owner may also withhold an additional amount not to exceed 150 percent of the disputed amount. Nothing in this paragraph shall require the Owner to pay any amounts which the Owner refuses to pay pursuant to Paragraph 14.02.D. of the General Conditions (or any other provision in the Contract Documents authorizing the withholding or reduction of any payment to the Contractor).



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31. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
32. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

The Owner is the County of San Luis Obispo.
33. *PCBs*—Polychlorinated biphenyls.
34. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
35. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
36. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
37. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
38. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
39. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
40. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
41. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
42. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
43. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

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SECTION 01292
SCHEDULE OF VALUES

PART 1 GENERAL

1.01 SUMMARY

- A. Section includes: Requirements for preparation, format, and submittal of Schedule of Values.
- B. Related section:
 - 1. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
 - 2. It is the Contractor's responsibility for scheduling and coordinating the Work of subcontractors, suppliers, and other individuals or entities performing or furnishing any of Contractor's Work.
 - 3. The following Sections are related to the Work described in this Section. This list of Related Sections is provided for convenience only and is not intended to excuse or otherwise diminish the duty of the Contractor to see that the completed Work complies accurately with the Contract Documents.
 - a. Section 01324A - Progress Schedules and Reports.
 - b. Section 01660 - Testing, Training, and Commissioning.
 - c. Section 16050 - Common Work Results for Electrical.

1.02 PREPARATION

- A. Print out Schedule of Values from accepted Preliminary or Baseline Schedule submitted and accepted under Section 01324A.
- B. Schedule of Values shall be a listing of all cost loaded, on- site construction activities from the progress schedule, listed in numerical order, showing that the sum total of all cost loaded activities equals the value of Contract.
- C. When the schedule is changed or revised to include added or deleted work, the Schedule of Values shall also be revised such that the sum total of all cost loaded activities continuously equals the current Contract value.
- D. Refer to Section 01660 for Contractor's activities during Start-Up Phase and Commissioning Phase.

1.03 SUBMITTALS

- A. Submit Schedule of Values for the Preliminary Schedule in accordance with the requirements in Article "Preliminary Schedule," Section 01324A.
- B. Submit Schedule of Values for the Baseline Schedule in accordance with the requirements in Article "Baseline Schedule," Section 01324A.
- C. Submittal of the Schedule of Values is a condition precedent to the issuance of any payment under this Contract.

1.04 SAMPLE SCHEDULE OF VALUES

A. Following is an acceptable form for Schedule of Values:

(SAMPLE ONLY) SCHEDULE OF VALUES		
No.	Description of Item	Lump Sum Cost
1.	Mobilization.	
2.	General earthwork and grading.	
3.	List Major Items of Work identified in Paragraph 1.02 B and number consecutively.	
4.	Electrical work schedule of values as specified in Section 16050.	
5.	General instrumentation work not included on Major Items of Work.	
6.	Testing and demobilization	
7.	Additional guard posts as indicated on DWG 01C01.	
8.	Allowance: Assistance during Start-Up Phase	
9.	Commissioning and Training	
10.	Miscellaneous work items and other prices not included in previous items and necessary to complete the Work.	
TOTAL LUMP SUM BID		

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

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SECTION 00480

LIST OF SUBCONTRACTORS

In compliance with the provisions of Sections 4100-4113 of the Public Contract Code of the State of California, and any amendments thereto, the undersigned bidder sets forth the following:

- a. The name and location of the place of business of each subcontractor who will perform work or labor, or render service to the undersigned Prime Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the undersigned Prime Contractor's total bid or in the case of bids for the construction of streets and highways, including bridges, in excess of one-half of one percent or ten thousand dollars (\$10,000), whichever is greater.*
- b. The portion of the work which will be done by each such subcontractor. Only one subcontractor shall be listed for each such portion.

*When there is a failure to list a subcontractor, as required, the law provides that the Contractor agrees to do the work with his or her own forces. In such case, bidder must be authorized to perform said work. Any bid not complying with the provisions hereof may be rejected.

Electrical Subcontractors must be pre-qualified to perform electrical specialty trade work. The final list of pre-qualified Electrical Subcontractors posted at http://www.slocounty.ca.gov/PW/Design_Division/Projects_Out_To_Bid.htm

Work to be Performed	License Number	Percent of Total Contract	Subcontractor's Name and Address
1. Steel TANK V#	3339891	0.701%	Spess Const. Co Y H SANTA MARIA, CA
2. MASONRY	496931	0.01%	Santa Maria Masonry Nipomo, CA
3. HVAC	821827	0.01%	James Long Const. SERVICES SACRAMENTO CA
4. FIRE SPRINKLER	943465	0.0014%	Deep Blue Integration San Luis Obispo, CA

CANC

Work to be Performed	Invoice Number	Percent of Job Contract	Subcontractor's Name and Address
5. monorail	105023	0.05%	General Conveyor Inc, CORONA CA
6. EARTHWORK	767055	0.06%	Papich Const. Co Grover Beach CA
7. Rebar	695035	0.03%	HARRIS Salinas LIVERMORE CA
YH 8. Painting/coatings	233474 YH		Cor Ray Painting Co YH SANTA FE SPRINGS CA
9. Plumbing YH	667241 YH		Kawata Plumbing Contractors YH Yuba City CA
10. Thoma YH Electrical	274276 YH	0.16% YH	Thoma Electrical YH SANTA ROSA OBISPO CA
11. Painting/coatings	742112	0.12%	Parada Painting Inc Roway CA
12. Steel tank	784971	0.7%	Paso Robles Tank Inc Paso Robles CA

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

Anderson Pacific Engineering Construction, Inc.

(Name of Bidder)

Pete E. Anderson

(Signature)

11/21/10

(Date)

END OF SECTION

00480-2

Work to be Performed	Quantity	Percentage of Contract	Subcontractor Name and Address
5. Electrical	408443	0.13%	Electric Craft San Luis obispo ca
6.			
7.			
8.			
9.			
10.			
11.			
12.			

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

Anderson Pacific Engineering Construction, Inc.

(Name of Bidder)

Peter E. Smith

(Signature)

11/21/13

(Date)

END OF SECTION

00480-73

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SECTION 00485

BIDDERS LIST

In compliance with the provisions of 40 CFR 33, the undersigned bidder sets forth that the following lists all subcontractors, subconsultants, and suppliers who supplied bids or quoted on the Project. [Note: None of the information requested on this form is material to the County's determination of which Bidder's Bid is the lowest responsive bid.]

Name, Address, Contact Name & Phone Number of Firm	Description of Work Items	Approximate \$ amount	DBE	MBE	WBE
1. Rocky Boydston Masonry Orcutt, CA 805-217-4089	Masonry	\$510,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Cencal MorroBay, CA 805-772-6806	Metal Roofing Siding	\$370,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. B&B Garage Doors Los Osos, CA 805-528-4283	Doors Roll up	\$44,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Superior Door El Cajon, CA 619-562-0224	Roll up Doors	\$57,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. McKendry Door Santa Fe Springs, CA 560-531-2576	Roll up Doors	\$78,000	<input checked="" type="checkbox"/> SBE	<input type="checkbox"/>	<input type="checkbox"/>
6. Gonzales Construction Tarzana, CA 818-758-2490	Building	\$404,000	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. A.D.C. Constructors Jupiter, FL 561-506-7353	FRP Items	\$81,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Pluser Construction Bakersfield, CA 661-477-5858	Building	\$29,910	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Integrated 8A Solutions Newport Beach, CA 949-675-9934	FRP Tank	\$80,848	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Bidders List

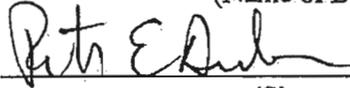
Name, Address, & Phone Number of Firm	Description of Work Items	Approximate Amount	DBE	MBE	WBE
10. Southwest V-Ditch, Inc. Riverside, CA 951-781-4303	Concrete	\$277,732.70	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Augusta Fiberglass Blackville, South Carolina 803-284-2246	FRP Tank	\$38,090	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Engineered Storage Systems Azusa, CA 626-961-0961	Metal Lockers	\$6,4000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Sherrin Glass & Metal Los Alamitos, CA 562-594-9960	Windows and Doors	\$213,469	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. CML Construction Arroyo Grande, CA 805-481-4326	Retaining Walls	\$180,848.61	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Glass-Steel, Inc. Conroe, TX 281-572-2211	FRP Weirs and Baffles	\$57,908	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. CMC Rebar Fresno, CA 559-487-2000	Reinforcing Steel	\$92,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Knight's Carpets & Interiors Paso Robles, CA 805-237-1400	Floors - Carpet, tile, and rubber base	\$69,222	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. General Conveyor, Inc. Corona, CA 951-734-3460	Cranes	\$311,060	<input checked="" type="checkbox"/> SVOB	<input type="checkbox"/>	<input type="checkbox"/>
19. D&E Construction, Inc. Visalia, CA 559-732-1601	Misc. Metals	\$236,279.63	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Santa Marina Acoustical Co. Grover Beach, CA 805-464-4031	Acoustic	\$10,630	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Number	Name, Address & Phone Number of Firm	Description of Work/Items	Approximate Amount	DBE	MBE	WBE
21.	Glendon Co. Santa Fe Springs, CA 562-921-1226	Fire Ext./ Cabinets	\$2,763	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22.	Rusco San Gabriel, CA 626-285-2291	Lockers	\$38,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23.	Lab Design Burlington, NJ 609-387-7580	Lab Equip./ Casework	\$71,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24.	Bird Solutions Vista, CA 760-758-9747	Poly Bird Spikes	\$13,200	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25.	Golden Railings Golden, CO 303-279-5807	Handrail	\$111,750	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26.	Fibergrate Dallas, TX 800-507-4043	FRP Grating	\$80,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27.	Diversified Hangar Paso Robles, CA 805-239-8229	Canopies	\$77,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

Anderson Pacific Engineering Construction, Inc.

(Name of Bidder)



(Signature)

11/25/13

(Date)

END OF SECTION

00485-3

Name, Address & Phone Number of Firm	Description of Work Items	Approximate \$ amount	DBE	MBE	WBE
10. Floor Connection Arroyo Grande, CA 805-481-2761	Carpet	\$4,650	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Industrial Coatings Inc. Stanton, CA 562-285-6520	Work Field Coatings	\$1,436,462	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Harris Rebar Livermore, CA 559-251-7363	Rebar	\$1,536,714 Add: \$71,400 for hoisting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. EC Applications Orange, CA 775-343-9968	Pond Liner	\$241,018	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Paso Robles Tank Paso Robles, CA 805-227-1641	Water Storage Tanks	\$280,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Southwest Valve Fresno, CA 559-261-2703	Pumps	\$317,906	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Merit Metal Products Oxnard, CA 805-981-9747	Structural Steel	\$634,500	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. KCI Environmental San Luis Obispo, CA 805-543-3311	Landscape	\$417,084	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Stemdahl Enterprises Sun Valley, CA 818-834-8199	Striping	\$21,500	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. National Coating & Lining Co. Murrieta, CA 951-674-1030	Painting	\$997,608	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Atascadero Glass	Windows	\$110,680	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

00485-24

Name, Address & Phone Number of Firm	Description of Work Items	Approximate \$ amount	DBE	MBE	WBE
10. Waterman Industries Exeter, CA 714-892-4200	Slide Gates and Stop Gates	\$463,809	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Visalia Ceramic Tile Visalia, CA 559-651-2925	Ceramic Tile	\$31,639	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. ESP Surveying, Inc. Fresno, CA 559-442-0883	Surveying	\$73,950	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
13. Rockwell Engineering and Equipment Co. Tustin, CA 714-505-9700	Pumps	\$47,680	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Accurate Door Solutions Inc. Huntington Beach, CA 714-842-0299	Doors	\$51,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Santa Barbara Glass Company Carpenteria, CA 805-962-7648	Glass	\$34,374	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Envirotrol Rancho Murieta, CA 916-939-7924	FRP Tank	\$291,500	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Hamon Overhead Door Company Paso Robles, CA 805-238-0524	Doors Rollup	\$54,033	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Rarig Construction San Luis Obispo, CA 805-543-9397	Metal Building Systems	\$55,567	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. R. Burke Corporation San Luis Obispo, CA 805-543-8568	Paving	\$3,595,000	<input checked="" type="checkbox"/> CSM	<input type="checkbox"/>	<input type="checkbox"/>
20. Woodward Acoustics, Inc. Santa Paula, CA 805-525-0501	Acoustics	\$72,510	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

00485-^{YH}25



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit D

Letter dated
December 13, 2013
from Anderson Pacific

TIMOTHY L. MCINERNEY

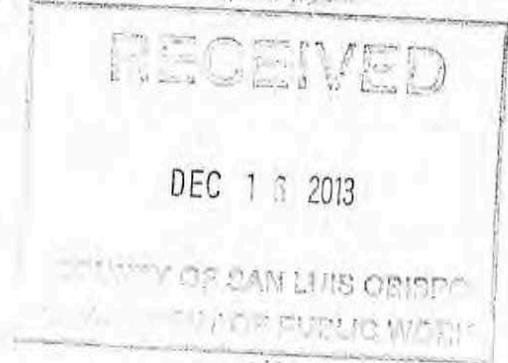
LAW OFFICES
McINERNEY & DILLON
PROFESSIONAL CORPORATION
1999 HARRISON STREET • SUITE 1700
OAKLAND, CALIFORNIA 94612-4700
TELEPHONE (510) 465-7100
FAX (510) 465-8556

tlm@mcinerney-dillon.com

December 13, 2013

Via Overnight Mail & email: Jwerst@co.slo.us

Mr. Jeff Werst
Design Division Manager
Dept. of Public Works, Room 207
County Government Center
976 Osos Street
San Luis Obispo, CA 93408



RE: Los Osos Wastewater Project – Los Osos Water Recycling Facility
Contract No.: 300448.08.02

Dear Mr. Werst:

Despite Balfour Beatty Infrastructure, Inc.'s ("Balfour") lengthy reply, the issue before the County is simple. Balfour acknowledges that its bid is not responsive and does not dispute the County has complete authority to reject its bid. Balfour also does not dispute Anderson Pacific's position based on California law and the County's contract that a material error cannot be waived. The sole question is whether the defect in Balfour's bid is material.

Here, again, Balfour does not dispute Anderson Pacific's position on the legal definition of a "material error" as one that "could be a vehicle for favoritism or affect the ability to make bid comparisons". *MCM Construction, Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359. Both situations exist with Balfour's error. Without the appropriate amount of money in Bid Item No. 8, the County is prevented from comparing all parts of the bids, as all other bidders complied. Allowing Balfour to violate the explicit direction of the bid form, while other bidders did not, clearly show favoritism. As previously addressed, and contrary to Balfour's argument, it is only the "appearance of favoritism" that makes the error material. Not actual proof, as stated succinctly in *MCM Construction. Schram Construction, Inc. v. The Regents of U.C.* (2010) 187 Cal.App.4th 1040.

Because of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside. This preventative approach is applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the entity money. [Citations.] The importance of maintaining integrity in government and the ease with which policy goals underlying the

requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements. [Citation.]"

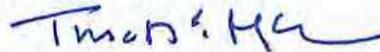
Finally, Balfour goes to great lengths to try and convince the County that it really isn't front-loading because the unit price bid is wholly disconnected with payment through a schedule of values. The conclusion is that the County's unit price bid sheet was not intended to be implemented or utilized for payment in any manner. Balfour's position is contradicted by Article 5 which directly ties the amounts in the bid form to payment. Article 5.01 states:

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

- A. For all Work, at the prices stated in the Contractor's Bid, as set forth below:

The County used the plural term "prices" for a reason. The County is prohibited by the terms of its contract from awarding the contract to Balfour. Anderson Pacific will address the allegation regarding its bid when requested.

Very truly yours,



Timothy L. McInerney

TLM/sjf

cc: P. Randolph Finch, Jr. – overnight and email
Anderson Pacific Engineering Construction, Inc.



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit E

Letter dated
December 17, 2013
from Balfour Beatty

MARKS, FINCH, THORNTON & BAIRD, LLP

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WILLIAM S. WILSON

December 17, 2013

* OF COUNSEL

OUR FILE NUMBER

1439.001

+ OF COUNSEL via MERRILL,
SCHULTZ & BENNETT, LTD.

**VIA NORCO OVERNITE
AND ELECTRONIC MAIL**

Mr. Jeff Werst
Design Division Manager
Department Of Public Works
County Government Center
976 Osos Street, Room 207
San Luis Obispo, California 93408
Jwerst@co.slo.ca.us



Re: Bid Protest By Anderson Pacific Engineering Construction, Inc.

Entity: County Of San Luis Obispo
Project: Los Osos Water Recycling Facility
Contract No.: 300448.08.02
Low Bidder: Balfour Beatty Infrastructure, Inc.
Bid Price: \$46,390,170.78
Bid Spread: \$1,150,000.00 to \$1,790,128.22
Engineer's Estimate: \$46,579,000.00

Dear Mr. Werst:

1. Introduction

This responds to Anderson Pacific's letter dated December 13, 2013. The County should reject Anderson's protest for the reasons set forth below. Balfour Beatty respectfully requests that it be awarded the project on the basis of its low bid.

2. Anderson Ignores The Applicable Legal Standard For Waiver, Under Which The County May And Should Accept Balfour Beatty's Low Bid

Public entities have unfettered discretion to waive bid deviations except when the deviation affected the bidder's price or resulted in an advantage or benefit not allowed the other bidders. (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904 [setting forth the waiver standard]; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1440 [same].) This waiver standard was originally articulated by the California Attorney General and ultimately adopted by California courts. (See *Konica Business Machines U.S.A. Inc. v. Regents of University of California* ("Konica") (1988) 206 Cal.App.3d 449, 454, citing 47 Ops.Cal.Atty.Gen. 129, 130-131 (1966).) Balfour Beatty

detailed this long-established standard in its response to Anderson's protest dated December 10, 2013, and demonstrated how its bid issue neither affected price nor resulted in a competitive advantage.

Unable to nullify the County's discretion under the established California waiver standard, Anderson advanced an alternative waiver standard—that a deviation may not be waived if it “could be a vehicle for favoritism or affect the ability to make bid comparison.” Anderson ostensibly quoted the standard from *MCM Const., Inc. v. City & County of San Francisco* (“*MCM*”) (1998) 66 Cal.App.4th 359.

Notwithstanding Anderson's use of quotation marks and citation to *MCM* as if the proposed standard were articulated by the Court of Appeal in that case, the text/standard does not appear in *MCM*. In fact, rather than announcing a new waiver standard, the Court of Appeal in *MCM* cited and applied the accepted standard articulated by Balfour Beatty, relying on *Ghilotti* and *Valley Crest*. (See *MCM, supra*, 66 Cal.App.4th at p. 375.) In other words, Anderson's protest is based on a legal standard that does not apply. For that reason, alone, the protest should be rejected and the project should be awarded to Balfour Beatty.

3. Even Under The “Favoritism” And
“Bid Comparison” Standard Advanced By Anderson,
The City May And Should Accept Balfour Beatty's Low Bid

A. The Likely Origin Of Anderson's Alternative Standard

Anderson likely gleaned its alternative waiver standard from New Jersey case law that was considered by the California Court of Appeal when it clearly established the California waiver standard. (See *Konica, supra*, 206 Cal.App.3d at pp. 454-455, citing *L. Pucillo & Sons v. Mayor and Council, Etc.* (1977) 73 N.J. 349.) In *Pucillo*, the New Jersey court outlined a factor-driven test for waiver that included whether the deviation could be a vehicle for favoritism or could affect the ability to make a bid comparison. The New Jersey test was cited but not adopted by the court in *Konica*—the Court of Appeal adopted the California Attorney General's standard instead. That said, the County would have full discretion to accept Balfour Beatty's bid even if the New Jersey factors applied, as detailed below.

B. Anderson Has Made No Showing Of “Favoritism”

Anderson has now had two opportunities—its original protest and its December 13, 2013 letter—to support its contention that acceptance of Balfour Beatty's low bid would constitute favoritism. Anderson failed to meet that burden, devoting only a single sentence to doing so in its latest letter: “Allowing Balfour Beatty to violate the explicit direction in the bid form, while other bidders did not, clearly shows favoritism.”

The conclusory argument makes no sense. If waiver of any bid irregularity “shows favoritism,” no irregularity could ever be waived. That is: (1) not the law—public entities have waiver discretion as detailed above; and (2) not the practice—California public entities routinely waive bid errors rather than paying premiums to companies that were not low on

bid day. Nobody can reasonably suggest the County's decision to save \$1.15 million over Anderson's high bid (which was \$1 million more than the County's estimate) constitutes favoritism. To the contrary, it is good business and sound stewardship of taxpayer dollars. As such, Anderson's favoritism allegation is unsupported and must be rejected. (See also *MCM, supra*, 66 Cal.App.4th at p. 378 [public entity properly rejected "favoritism" protest where protest failed to demonstrate any facts showing favoritism].)

C. The County Can Easily Compare The Lump Sum Bids

Without explanation, Anderson contends the issue in the bid breakdown of Balfour Beatty's lump sum bid price somehow prevents the County from comparing Balfour Beatty's bid to the bids of others. This argument also makes no sense. Article 14 of the County's Instructions To Bidders sets forth the extremely simple bid-comparison framework—the County is to compare the lump sum price submitted by each bidder:

ARTICLE 14 - BASIS OF BID; COMPARISON OF BIDS

14.01 Lump Sum

A. Bidders shall submit a Bid on lump sum basis as set forth in the Bid Form.

(Instructions To Bidders, Art. 14.01(A), p. 00200-7.) In other words, the low bidder is determined by the lump sum bid price, not the bid breakdown. As such, Balfour Beatty's bid breakdown has no impact on the County's ability to determine who submitted the low bid on bid day (Balfour Beatty did by \$1.15 million). As such, Anderson's protest should be rejected.

4. Anderson Failed To Overcome The Fact That Frontloading Is Impossible Under This Lump Sum Contract

Anderson does not dispute that the contract sets forth a detailed progress payment framework, pursuant to which the contractor is paid according to a County-approved Schedule of Values. Instead, Anderson vaguely contends Balfour Beatty's bid breakdown is somehow still relevant to payment because of Article 5 of the contract. Article 5 defines the "CONTRACT PRICE." Anderson contends the bid breakdown is relevant to payment because Article 5 refers to "prices" stated in the bid, rather than a single "price."

The argument strains credulity. Article 5 defines the contract price—it has nothing to do with the timing of payment to the contractor. Further, it defines the contract price as "the sum of the amounts" listed in the bid breakdown, i.e., the lump sum bid price. (Emphasis added.) In other words, Article 5 simply memorializes the unremarkable notion that the total contract price equals the low bidder's lump sum bid price.

Article 5 has nothing to do with progress payments, which is covered by the very next article, titled "Article 6 – PAYMENT PROCEDURES." Anderson ignores Article 6,

Mr. Jeff Werst
December 17, 2013
Page 4 of 4

which clearly outlines the Schedule of Values process procedure and how it prevents front-loading of lump-sum projects. Anderson's citation to the contract price provision cannot undermine the basic Schedule of Values framework of the contract, which prevents frontloading. Since Balfour Beatty cannot frontload its progress payments, there was no competitive advantage and the County may accept its bid.

5. Conclusion

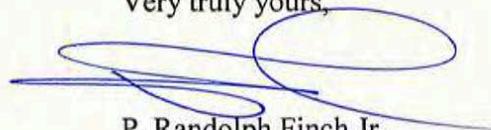
While misquoting the Court of Appeal's decision in *MCM*, Anderson simply ignores the Court of Appeal's admonishment in *Ghilotti*:

It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.

(*Ghilotti, supra*, 45 Cal.App.4th at pp. 908-909, citing *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377, 383.) Long-standing California law has secured the right of the County to accept Balfour Beatty's bid. The County should do so in the interest of its taxpayers.

We request notice of any hearing on this matter and copies of any correspondence received by the County on this issue. Thank you for your consideration.

Very truly yours,



P. Randolph Finch Jr.,
Partner of
MARKS, FINCH,
THORNTON & BAIRD, LLP

PRF:nlh/3610679

cc: Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Crandall Bates, Vice President and
Western Region General Manager (via e-mail only)
Mr. Chris Rutherford, Project Sponsor (via e-mail only)
Balfour Beatty Infrastructure, Inc. - West Covina
Attn: Mr. Dan Dischner, Chief Estimator (via e-mail only)
Anderson Pacific Engineering Construction, Inc.
Attn: Timothy L. McInerney, Esq. (via e-mail and facsimile)
Office Of County Counsel, County Government Center
Attn: Patrick J. Foran, Esq. (via facsimile only)



**FINAL DECISION ON BID PROTEST OF ANDERSON PACIFIC
CHALLENGING THE BID OF BALFOUR BEATTY**

**Los Osos Wastewater project – Water Recycling Plant
Contract No. 300448.08.02**

Bid opening Date: November 25, 2013

Exhibit F

County of San Luis Obispo Rules Governing Bid Protests and Other Challenges to Awards of Construction Contracts



COUNTY OF SAN LUIS OBISPO

Rules Governing Bid Protests And Other Challenges to Awards of Construction Contracts

The requirements set forth in these “Rules Governing Bid Protests And Other Challenges to Awards of Construction Contracts” (“Rules”) are mandatory and are a Bidder’s sole and exclusive remedy in the event a Bidder desires to challenge, protest or contest the award of any Construction Contract. A Bidder’s failure to comply with these requirements shall constitute a waiver of any right to challenge, protest or contest the award of a Construction Contract in any subsequent proceeding, including but not limited to, the filing of a court action.

A Bidder may not rely upon another Bidder’s compliance with the requirements of these Rules. Any Bidder that does not independently comply with the requirements set forth herein shall be deemed to have waived any right to challenge, protest or contest the award of a Construction Contract.

Nothing in these Rules affects the right of the County to reject all bids at any time prior to the award of a Construction Contract.

1.1 Definitions

- 1.1.1 Bidder - The contractor submitting a bid in response to a County solicitation for bids on a Construction Contract.
- 1.1.2 Protestor - A Bidder who files a Protest in accordance with the provisions of these Rules.
- 1.1.3 Board – Board of Supervisors of the County of San Luis Obispo (hereinafter, also “County”)
- 1.1.4 Construction Contract - Any Construction Contract which is formally or informally advertised for bids in which the County of San Luis Obispo is, or will be, a party.
- 1.1.5 Protest – Any challenge, objection, or protest to the award of a Construction Contract to any Bidder.
- 1.1.6 Response – Any response to a Protest that is filed by an Interested Party in accordance with the provisions of these Rules.
- 1.1.7 Responsible Department - The County department, agency, or office responsible for the preparation of the bid documents for the Construction Contract and the administration of the Construction Contract.
- 1.1.8 Department Head - The person designated by the Board to be the head of the Responsible Department, or that person designated by the Department

Head to assume the powers, duties, and responsibilities conferred upon the Department Head under these Rules.

- 1.1.9 Initial Determination – A written notice by the Department Head that notifies a Bidder of the reasons why the Department Head believes that a bid is nonresponsive, or that a Bidder is not a responsible Bidder.
- 1.1.10 Interested Parties - For the purpose of these Rules, Interested Parties are defined as:
 - 1.1.10.1 The Responsible Department and/or its Department Head.
 - 1.1.10.2 Any Bidder that filed a Protest or whose bid is the subject of an Initial Determination.
 - 1.1.10.3 Any Bidder whose eligibility for having the Construction Contract awarded to it as a responsible Bidder with the lowest responsive bid would be affected by the outcome of a Protest or Initial Determination.

1.2 Department Head's Independent Authority to Determine Bid Responsiveness and Bidder Responsibility.

- 1.2.1 Regardless of whether a Protest is submitted under these Rules, the Department Head is authorized to determine whether any bid is a responsive bid and whether any Bidder is a responsible Bidder. In the event the Department Head issues an Initial Determination, the Department Head shall provide the Interested Parties with written notice of the Initial Determination at least five (5) business days before the Department Head renders a final decision addressing the grounds stated in the Initial Determination. A final decision of the Department Head under this section 1.2 shall be the final decision of the County with no provision for reconsideration or appeal to the Board.
- 1.2.2 The Department Head need not issue an Initial Determination in order to make a final decision on whether a bid is a responsive bid or a Bidder is a responsible Bidder. A final decision can also be issued by the Department Head through the processing of a Protest pursuant to the procedures set forth in these Rules.
- 1.2.3 The Department Head reserves the right to amend or withdraw an Initial Determination at any time before the Department Head renders a final decision addressing the grounds stated in the Initial Determination. When an Initial Determination is withdrawn, it shall have the same effect as if the Initial Determination had never been made.

1.3 Basis for Protest

- 1.3.1 Grounds for Protest – The grounds for a Protest may include any grounds a Protestor may have for contesting or challenging the award of a Construction Contract to any Bidder, including but not limited to the following grounds:

- 1.3.1.1 A Protestor objects to a Construction Contract being awarded to another Bidder on the grounds that the other Bidder's bid is nonresponsive.
- 1.3.1.2 A Protestor objects to a Construction Contract being awarded to another Bidder on the grounds that the other Bidder is not a responsible Bidder.
- 1.3.1.3 A Protestor objects to a Construction Contract being awarded to the Protestor on the grounds that the Protestor made a mistake in its bid that entitles the Protestor to be relieved of its bid under Public Contract Code Sections 5100 et seq
- 1.3.1.4 A Protestor objects to a Department Head's Initial Determination issued under section 1.2.1 above.
- 1.3.2 Required Form of Protest - All Protests shall be made in writing, containing the information listed below, and shall be filed with the Department Head . Protests shall contain the following information:
 - 1.3.2.1 The name, address, telephone, facsimile numbers, and email address of the Protestor.
 - 1.3.2.2 The signature of the Protestor or its representative.
 - 1.3.2.3 The bid, solicitation and/or contract number.
 - 1.3.2.4 The Protest must contain a complete statement of all grounds for the Protest, and must refer to the specific portion of the bid documents that are the basis of the Protest. The Protest must set forth all supporting facts and documentation. If Protester believes there are some facts relevant to its Protest that Protester cannot adequately present in writing, Protester must describe such facts in its Protest under the heading "Facts Requiring Oral Presentation", and state therein the reasons why the Bid Protester believes it cannot adequately present those facts through documentation.
 - 1.3.2.5 All information establishing that the Protestor is a Bidder for the purpose of filing a Protest.
 - 1.3.2.6 The form of relief requested.

1.4 Protest Requirements and Procedure

- 1.4.1 Standing to Protest - Protests shall be filed only by a Bidder.
- 1.4.2 Time for Filing a Protest
 - 1.4.2.1 Except as provided in sections 1.4.2.2 and 1.4.2.3 below, all Protests must be submitted in writing to the Department Head before 5 p.m. PST of the fifth (5) business day following the date upon which the bids on the Construction Contract were opened.
 - 1.4.2.2 When a Protestor objects to a Construction Contract being awarded to the Protestor on the grounds that the Protestor made a mistake in its bid that entitles the Protestor to be relieved of its bid under Public Contract Code Sections 5100 et seq, the Protest must be submitted in writing to the Department Head before 5 p.m. PST of the fifth (5) business day following the date upon

which the bids on the Construction Contract were opened pursuant to Public Contract Code Section 5103.

- 1.4.2.3 When the Protestor objects to an Initial Determination made by the Department Head under section 1.2.1 above, the Protest must be submitted in writing to the Department Head before 5 p.m. PST of the fifth (5) business day following the date upon which the Initial Determination was first delivered to Protestor (either electronically or otherwise).
- 1.4.3 Written Responses of Interested Parties - If any Interested Party desires to respond to the Protest, the Response must be submitted in writing to the Department Head within five (5) business days of the date the Protest was first delivered to the Interested Party (either electronically or otherwise). If an Interested Party believes there are some facts relevant to its Response that the Interested Party cannot adequately present in writing, the Interested Party must describe such facts in its Response under the heading "Facts Requiring Oral Presentation", and state therein the reasons why the Interested Party believes it cannot adequately present those facts through documentation.
- 1.4.4 Proof of Transmittal - All Protests, Responses, and Replies shall include documentation evidencing that all Interested Parties were concurrently sent a complete copy of the respective Protest, Response or Reply in a manner that would provide all Interested Parties with a complete copy of the respective Protest, Response or Reply no later than one (1) business day after it was sent to the Department Head. The means of transmission chosen must also provide the sending party a means of verifying the date and time the copy was received by each Interested Party. Transmission by email may be an acceptable means of transmittal.
- 1.4.5 No Ex Parte or Unilateral Communications on the Merits of a Protest - No Bidder shall have any written communications regarding the merits of a Protest with the Responsible Department or its Department Head that are not concurrently sent to all of the other Interested Parties. No Bidder shall have any oral communications regarding the merits of a Protest with the Responsible Department or its Department Head other than during an oral presentation properly noticed by the Department Head under these Rules.
- 1.4.6 Suspension of Process for Proposed Rejection of all Bids - At any time during the processing of a Protest, the Department Head may elect to indefinitely suspend any further processing of the Protest by providing written notice to all Interested Parties that the Department Head intends to recommend to the Board that all bids be rejected. All time deadlines provided in these Rules shall be tolled during any such suspension period. If the Board decides to not reject all bids, or if the Department Head otherwise decides to lift the suspension, the requirements of these Rules shall be reactivated upon the Department Head providing all Interested Parties with written notice thereof.

1.5 Summary Dismissal of Protest

The Department Head may summarily dismiss a protest, or specific protest allegations, at any time that the Department Head determines that the Protest is untimely, frivolous, or without merit; is not submitted in the required form of Protest, as set forth above in section 1.3.2., "Required Form of Protest;" or is submitted by a non-Bidder. In such cases, a notice of summary dismissal will be furnished to the Interested Parties. Such a summary dismissal shall be the final decision of the County with no provision for reconsideration or appeal to the Board.

1.6 Decision by the Department Head Based on Written Submissions Only

In reaching a decision on the merits of a Protest, the Department Head may consider relevant documentation submitted by the Protestor and any other Interested Party. If the Department Head wishes to have additional information submitted that was not included in the Protest or in any documentation from other Interested Parties, the Department Head may make a request specifying the information sought and time for submittal. Submissions of additional information that have not been specifically requested by the Department Head may not be considered at the Department Head's sole discretion. If the Department Head does not provide an opportunity for an oral presentation under section 1.7 below, the Department Head will issue a written decision without any oral presentation. . The Department Head's decision shall be the final decision of the County with no provision for reconsideration or appeal to the Board.

1.7 Decision by the Department Head Following Oral Presentation

1.7.1 The Department Head may, at his or her discretion, elect to provide an opportunity for the Protestor and other Interested Parties to make an oral presentation to the Department Head regarding the Protest. In such event, oral presentations shall be conducted in accordance with the following procedure:

1.7.1.1 Notice of Oral Presentation - The Department Head will set a date, time, and place for an oral presentation. Written notice will be sent to Interested Parties not less than five (5) business days in advance of the oral presentation unless it is agreeable to all parties that an earlier date be established. Continuances may be granted by the Department Head for good cause.

1.7.1.2 Guidelines for Oral Presentation - Oral presentations are informal in nature and shall be made by the Protestor or its authorized representative. Technical rules of evidence shall not apply. The Department Head will determine how the oral presentations will be conducted and may set time limits for the presentation. The Department Head may question Interested Parties or provide an opportunity for Interested Parties to make an oral presentation. The Department Head may request additional documentation or information prior to, during or after the oral presentation. Unless

requested by the Department Head, additional documentation or information may not be accepted.

1.7.1.3 Record of Oral Presentation - Any Interested Party may request, and in the Department Head's sole discretion, the Department Head may allow recording of the presentation. If the Department Head allows the presentation to be recorded, the Interested Party requesting that the presentation be recorded must pay the cost of recording, including the costs to make and distribute copies of the recording to the Department Head and other Interested Parties. There shall be no cost to the County.

1.7.1.4 Decisions - The Department Head will issue a written decision within 30 calendar days of the oral presentation; however, the time for issuing the written decision may be extended by the Department Head. A copy of the decision will be furnished to the Interested Parties. The decision shall be the final decision of the County with no provision for reconsideration or appeal to the Board.

1.8 Effect on Contracts

The failure of a County employee or department to comply with the provisions stated in these Rules shall in no way affect the validity of any Construction Contract entered into by the County.

1.9 Department Head Decisions on Protests Seeking Relief from a Bidder's Mistake under Public Contract Code Section 5103.

When a Protestor objects to a Construction Contract being awarded to the Bid Protester on the grounds that the Protestor made a mistake in its bid that entitles the Protestor to be relieved of its bid under Public Contract Code Sections 5100 et seq, a final decision of the Department Head that relieves the Protestor of its bid on the grounds of mistake must be approved by the Board before it can become a final decision of the County. Any other final decision of the Department Head regarding a Protestor's request to be relieved of its bid on the grounds of mistake under Public Contract Code Sections 5100 et seq, shall be the final decision of the County with no provision for reconsideration or appeal to the Board.