



March 1, 2018

via facsimile (707-942-0732)

Mr. Dylan Feik, City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Re: FEIGE CANYON WATER STORAGE TANK REPLACEMENT PROJECT
Project No. 12-5419
Bid Opening Date: February 6, 2018

Subject: **Defects in Bid of MDS Engineering & Construction, Inc.**
RE: MDS Bid Protest

1. Introduction

This supplements Granite's letter dated February 8, 2018, which responded to the unsuccessful protest of MDS Engineering & Construction, Inc. ("MDS"). In light of MDS's continued efforts to attack the evaluation and recommendation of City Staff—rejecting MDS' meritless protest, noting the fatal defects in MDS' bid is warranted.

As detailed below, MDS' bid is nonresponsive due to its failure to list required subcontractors and suppliers per the Subletting and Subcontracting Fair Practices Act (the "Act"), and the bid documents. As a result, MDS would not be eligible for award even if it had managed to deliver the lowest price to the City on bid day.

2. Brief Factual Summary

Granite was the low bidder on the Project. On February 27, 2018, MDS protested award to Granite on the bases that Granite did not sign its noncollusion affidavit and omitted other bid forms. On February 14, 2018, the City rejected MDS' protest in its entirety, waiving the noncollusion affidavit submission as a minor irregularity and informed MDS that Granite had, in fact, submitted complete copies of Granite's corporate resolution and signing authorization, the forms identified in MDS' protest as missing. The City intends to recommend award to Granite at the March 6, 2018 City Council meeting. This letter addresses the defects in MDS' bid in advance of that meeting.

3. MDS' Bid Is Nonresponsive

A. MDS Failed to List a Painting Subcontractor

Contract Specification section 09960 listed requirements for paint coating systems and surface preparation for the Project. Section 09960-1.05(C)(2) states, "[t]he application company or entity must be QP-1 and QP-2 Certified by SSPC for coatings work relevant to the qualifications of QP-1 and QP-2." (Tab 1, last page at tab.) MDS is not certified by SSPC for coatings work. Accordingly, Section 09960 required MDS to list a qualified painting subcontractor to perform this work.

The bid documents incorporated the Subletting and Subcontracting Fair Practices Act and required bidders to list each subcontractor who would perform in excess of one-half of one percent (0.5 percent) of the Total base bid or \$10,000.00, whichever is greater. Enclosed at Tab 2 is MDS' bid form in which it listed \$25,083.00 in Item 13 for this work. \$25,083.00 is 1.3 percent (greater than .5 percent) of MDS' base bid of \$1,877,229.00. MDS was therefore required to list its qualified painting subcontractor. Enclosed at Tab 3 is MDS' subcontractor listing which shows MDS did not list a painting subcontractor for this work. MDS' subcontractor listing violated the bid documents and California law, rendering its bid nonresponsive. The defect is not subject to waiver because it resulted in MDS' opportunity to bid shop the work, post bid, which is a competitive advantage. The City should continue to award to the recommended, lowest responsive bidder, Granite.

B. MDS Failed To List Its Concrete Supplier

Page 7 of the Contractor Proposal required listing of major material suppliers, defined as suppliers who would be supplying materials in excess of \$10,000.00. The concrete footing is 95 cubic yards and with bids from ready mix suppliers at a cost of \$128.75 per cubic yard the value of ready-mix concrete materials is in excess of \$12,000.00. Enclosed at Tab 4 is MDS' page 7 in which it failed to list its major concrete material supplier(s). This omission allows MDS to bid shop for concrete supplier quotes after the fact. MDS' omission violates the bid documents rendering its bid nonresponsive. The defect is not subject to waiver because the opportunity to bid shop the work, post bid, is a competitive advantage. The City should continue to award to the recommended, lowest responsive bidder, Granite.

C. MDS Failed to Identify the Age of its Subcontractors and Annual Gross Receipts of West Coast Electric

MDS' subcontractor listing is enclosed at Tab 3. The bid form required bidders to list the age of each firm and each firm's annual gross receipts. MDS did not list the age of any of its subcontractors. Further, MDS also did not list the annual gross revenue of West Coast Electric.

MDS' listing violates the bid documents and afforded MDS an unallowable advantage because it gave itself more time on bid day to focus on comparing subcontractor prices, in order to reduce their bid price, and by not spending the required time seeking the age of its listed subcontractors or West Coast Electric's annual gross receipts.

These defects may not be waived because MDS had an actual advantage in the form of more time not afforded other bidders that renders its bid nonresponsive. The City should continue award to the recommended, lowest responsive bidder, Granite.

4. Conclusion

MDS' continued attacks on Granite's bid and on City Staff are meritless, and a disservice to the public, i.e., the City of Calistoga. MDS' bid defects are multiple and not subject to waiver. MDS has no interest in the award. The City should continue award to the lowest responsive and responsible bidder, which is Granite.

Please contact our office, should you have any questions.

Sincerely,

GRANITE CONSTRUCTION COMPANY



Justin Ingram
Project Manager

cc: Derek Rayner, Deputy Director Public Works (DRayner@ci.calistoga.ca.us)

Louise Harrison, Admin. Services Technician Public Works (lharrison@ci.calistoga.ca.us)

TAB 1

SECTION 09960

HIGH PERFORMANCE COATINGS

PART 1 - GENERAL

1.01 SCOPE OF WORK

- A. Section 09960 provides the requirements for; coating systems, surface preparation, coating application, and quality assurance/quality control relative to the equipment, structures listed in the Finish Schedule/Contract Drawings.
- B. Unless specified elsewhere, or shown on the Contract Drawings, the following shall not be coated:
1. Metal completely embedded in concrete (except aluminum).
 2. Piping buried in ground or encased in concrete.
 3. Galvanized metal, including galvanized pipe supports.
 4. Chain-link fence and galvanized fence gates.
 5. Rubber.
 6. Plastic pipe, including: polyvinyl chloride, polyethylene, and polypropylene piping.
 7. Stainless steel.
 8. Bronze, brass.
 9. Nameplates and grease fittings.
 10. Factory finished electrical panels.
 11. Factory fusion-bonded epoxy coated items.
 12. Aluminum or galvanized ductwork enclosed inside furred ceiling spaces.
 13. Aluminum handrail and aluminum guardrail.
 14. Fiberglass.
 15. Electrical conduit.
 16. Copper pipe.
- C. Related Sections:
1. Section 01300: Submittals
 2. Section 11001: General Equipment and Mechanical Requirements
- D. The Contractor's bid shall be based upon using the products specified. If the products specified are not available in formulations that meet applicable regulations for volatile organic compound (VOC) levels at time of application, the Contractor shall submit for review products of equivalent quality and function that comply with regulations in effect at that time. A reasonable difference in cost of material between the first named items specified and the products that are required to meet regulations that change after the bid date and are in effect at the time of application may be approved for payment by Change Order in accordance with the General Conditions.

1.02 DEFINITIONS

- A. Abrasive: Material used for blast-cleaning, such as sand, grit or shot.
- B. Abrasive Blast Cleaning: Cleaning/surface preparation by abrasive propelled at high speed.

- C. Anchor Pattern: Profile or texture of prepared surface(s).
- D. American National Standards Institute (ANSI).
- E. ASTM International (ASTM).
- F. Bug Holes: Small cavities, usually not exceeding 15 mm in diameter, resulting from entrapment of air bubbles in the surface of formed concrete during placement and compaction.
- G. Coating/Lining Thickness: The total thickness of primer, intermediate and/or finish coats.
- H. Dewpoint: Temperature of a given air/water vapor mixture at which condensation starts.
- I. Dry Film Thickness (DFT): Depth of cured film, usually expressed in mils (0.001-inch). Use this definition as opposed to existing definition.
- J. Drying Time: Time interval between application and curing of material.
- K. Dry to Recoat: Time interval between application of material and ability to receive next coat.
- L. Dry to Touch: Time interval between application of material and ability to touch lightly without damage.
- M. Feather Edging: Reducing the thickness of the edge of paint.
- N. Feathering: Operation of tapering off the edge of a point with a comparatively dry brush.
- O. Field Coat: The application or the completion of application of the coating system after installation of the surface at the site of the work.
- P. Hold Point: A defined point, specified in Section 09960, at which work shall be halted for inspection.
- Q. Holiday: A discontinuity, skip, or void in coating or coating system film that exposes the underlying substrate.
- R. Honeycomb: Segregated condition of hardened concrete due to non-consolidation.
- S. ICRI: International Concrete Repair Institute.
- T. Incompatibility: Inability of a coating to perform well over another coating because of bleeding, poor bonding, or lifting of old coating; inability of a coating to perform well on a substrate.
- U. Laitance: A layer of weak, non-durable concrete containing cement fine that is brought to the surface through bleed water as a result of concrete finishing/over-finishing.
- V. Mil: 0.001-inch.
- W. National Association of Corrosion Engineers International (NACE).
- X. Overspray: Dry spray, particularly such paint that failed to strike the intended surface.

- Y. **Owner:** The awarding authority or entity that manages/operates the facility where the specified work will be performed. For the purposes of Section 09960, the term "Owner" may also refer to designated representatives such as the Design Engineer.
- Z. **Pinhole:** A small diameter discontinuity in a coating or coating system film that is typically created by outgassing of air from a void in a concrete substrate resulting in exposure of the substrate or a void between coats.
- AA. **Pot Life:** Time interval after mixing of components during which the coating can be satisfactorily applied.
- BB. **Resurfacer/Resurfacing Material:** A layer of cementitious and/or resin-seal material used to fill or otherwise restore surface continuity to worn or damaged concrete surfaces.
- CC. **Shelf Life:** Maximum storage time for which a material may be stored without losing its usefulness.
- DD. **Shop Coat:** One or more coats applied in a shop or plant prior to shipment to the site of the work, where the field or finishing coat is applied.
- EE. **Spreading Rate:** Surface area covered by a unit volume of paint at a specific film thickness.
- FF. **The Society for Protective Coatings (SSPC).**
- GG. **Stripe Coat:** A separate coat of paint applied to all weld seams, pits, nuts/bolts/washers, and edges by brush. This coat shall not be applied until any previous coat(s) have cured and, once applied, shall be allowed to cure prior to the application of the subsequent coat(s).
- HH. **Surface Saturated Dry (SSD):** Refers to concrete surface condition where the surface is saturated (damp) without the presence of standing water.
- II. **Tie Coat:** An intermediate coat used to bond different types of coatings. Coatings used to improve the adhesion of a succeeding coat.
- JJ. **Touch-Up Painting:** The application of paint on areas of painted surfaces to repair marks, scratches, and areas where the coating has deteriorated to restore the coating film to an unbroken condition.
- KK. **Technical Practice Committee (TPC).**
- LL. **VOC Content:** The portion of the coating that is a compound of carbon, is photochemically reactive, and evaporates during drying or curing, expressed in grams per liter (g/l) or pounds per gallon (lb/gal).
- MM. **Immersion:** Refers to a service condition in which the substrate is below the waterline or submerged in water or wastewater at least intermittently if not constantly.
- NN. **Weld Spatter:** Beads of metal scattered near seam during welding.
- OO. **Wet Film Thickness (WFT):** The primer or coating film's thickness immediately following application. Wet film thickness is measured in mils or thousandths of an inch (0.001-inch) and is abbreviated WFT.

1.03 REFERENCES

- A. Section 09960 contains various guide documents, technology reports, and other industry standards relative to surface preparation, coating application, and testing methods. They are a part of Section 09960 as specified and modified. Where a referenced document contains references to other standards, those documents are included as references under this section as if referenced directly. In the event of conflict between the requirements of this section and those of the listed documents, the requirements of Section 09960 shall prevail.
- B. Unless otherwise specified, references to documents shall mean the documents in effect at the time of Notice Inviting Bids. If referenced documents have been discontinued by the issuing organization, references to those documents shall mean the replacement documents issued or otherwise identified by that organization or, if there are no replacement documents, the last version of the document before it was discontinued. Where document dates are given in the following listing, references to those documents shall mean the specific document version associated with that date, regardless of whether the document has been superseded by a version with a later date, discontinued, or replaced.
- C. Standards and References are included as Appendix A.

1.04 SUBMITTALS

- A. Provide in accordance with Section 01300:
 - 1. Submit a list and description of all surfaces for which there is a question about what standard coating system to apply as part of the work covered by Section 09960 through a Request for Information in accordance with the General Conditions.
 - 2. Submit a Complete Finish Schedule including the specified Finish Schedule included in paragraph 2.02 and any additional surfaces to be coated by products submitted under this Section 09960. Denote the specific products and specific manufacturers for each item (structure, equipment, or substrate plus the manufacturer's brand name, product name, and designation number for each coat of each system to be used).
 - a. If materials other than those listed are submitted, provide information to justify and define the proposed substitution. The Owner may further require the Contractor to furnish additional test results from an independent paint laboratory comparing the proposed substitution with one of the named products, at no additional cost to the Owner.
 - b. Submit a color card or fan deck for each manufacturer and each coating product submitted.
 - 3. Prior to ordering material, confirm the items included in the Complete Finish Schedule and submit the Complete Finish Schedule plus the Owner approved colors for each location (structure, equipment, substrate).
 - 4. Current printed recommendations and product data sheets for coatings/coating systems including:
 - a. VOC data.
 - b. Storage requirements.
 - c. Surface preparation recommendations.
 - d. Primer type, where required.
 - e. Maximum dry and wet mil thickness per coat.

- f. Minimum and maximum curing time between coats, including atmospheric conditions for each.
 - g. Curing time before submergence in liquid.
 - h. Thinners/solvents for reduction and cleaning.
 - i. Ventilation requirements.
 - j. Minimum and maximum atmospheric application conditions.
 - k. Allowable application methods.
 - l. Maximum allowable moisture content (concrete substrates).
 - m. Maximum shelf life.
5. Manufacturer's Certification that the submitted coatings meet applicable Air Quality Management District regulations as to allowable VOC content for the place of application and use intended.
 6. Qualifications for Quality Control personnel to be provided on site by the Contractor including, but not limited to, the inspector's NACE and SSPC Certification numbers for the certifications requested in paragraph 1.05.E.2 of this Section 09960.
 7. Material Safety Data Sheets (MSDS) for all materials to be delivered to the job site, including coating system materials, solvents, and abrasive blast media.
 8. Detailed, written instructions for coating system treatment and graphic details for coating system terminations in the structures to be coated.
 9. A minimum of five project references, including current contact name, address, and telephone number where the Contractor has successfully performed similar coating work within the past 5 years.
 10. A minimum of five project references, including current contact name, address, and telephone number where the submitted materials have been successfully applied, in similar exposures, within the past 5 years. This submittal is only required if products not listed in Section 09960 are submitted.
 11. A letter from the selected and approved coating manufacturers for the project that verifies that the applicator meets the quality assurance requirements of paragraph 1.05.C of Section 09960 including application personnel training requirements.
 12. Information that defines the end date for field coating application for all equipment, machinery, and piping to ensure that the maximum recoat time for the shop applied primers will not be exceeded when field applied coatings are installed.
 13. Provide written confirmation by the shop and field applied coating manufacturers that compatibility between the shop and field applied coatings has been checked and approved by those manufacturers.

1.05 QUALITY ASSURANCE

A. Environmental Regulatory Requirements:

1. All work, material, procedures, and practices under Section 09960 shall conform to requirements of the local Air Resources Board or Air Quality Management District having jurisdiction. Prime or finish coat painting done in locations other than the project site shall be in accordance with air quality regulations in effect at the place the coating is applied. Products specified herein are, to the best of the Design Engineer's knowledge, in compliance

with the applicable VOC levels allowable at the date these Specifications were issued for bid.

2. The Air Resources Board or Air Quality Management District having jurisdiction may prohibit the sale or application of paints and enamels containing more than the stipulated quantities of volatile organic compounds manufactured after a stated date. Provide material meeting applicable regulations effective at the date of manufacture, or if not available, provide top of the line materials developed as replacements for specified materials and meeting applicable regulations as to VOC content.
3. If the Contractor applies coatings that have been modified or thinned other than as recommended or approved by manufacturer, the Contractor shall be responsible for any fines, costs, remedies, or legal actions that may result.
4. Surface preparation activities that result in the generation of airborne emissions shall be performed in accordance with applicable Federal, State, County, or Local regulations and ordinances. The Contractor shall be responsible for securing any and all licenses and permits required, at no additional cost to the Owner.
5. All debris (liquid or solid) generated from surface preparation or coating activities shall be disposed offsite in accordance with applicable Federal, State, County, or local regulations and ordinances. The Contractor shall be responsible for all required testing, licenses, permits, and fees, at no additional cost to the Owner.

B. Coating Manufacturer's Qualifications:

1. All protective coatings furnished under Section 09960 shall:
 - a. Be of a manufacturer who has been regularly engaged in the manufacture of protective coatings with a minimum of 10 years of successful experience.
 - b. Demonstrate to the satisfaction of the Engineer successful performance on comparable projects.

C. Coating Applicators Qualifications:

1. The application company or entity must demonstrate with written references as required in 1.04 A. 7. and 8. a minimum of five (5) years of practical experience in the application of the specified coatings and the successful completion of a minimum of five (5) projects of similar size and complexity within the last five (5) years. This must be verified in writing by the selected coating system manufacturer.
2. The application company or entity must be QP-1 and QP-2 Certified by SSPC for coatings work relevant to the qualifications of QP-1 and QP-2.
3. For the application company's or entity's personnel: employ only those persons on the project trained in the application of the specified protective coatings. Written confirmation of this must be provided by the approved coating systems manufacturer.

D. Coatings Preconstruction Meeting:

1. The Contractor shall attend a coatings preconstruction meeting prior to commencing any surface preparation or coating application work. Parties attending the meeting shall include the General Contractor, Owner, Owner's Representative, Coating Applicator, the Coating Applicator's Q.C. lead person, and a representative of the Coating Manufacturer. The following

TAB 2

FEIGE CANYON WATER STORAGE TANK REPLACEMENT PROJECT
BID SCHEDULE

Units of Measure abbreviations are defined in Section One of the Standard Specifications.

ITEM NO.	ITEM	EST QTY	UNIT OF MEASURE	UNIT PRICE	TOTAL ESTIMATED PRICE
1	Mobilization & Demobilization	1	LS	21,053	21,053
2	Demolition of existing tank, utilities and tree removal	1	LS	158,729	158,729
3	Earthwork, Grading, Retaining walls, Drainage	1	LS	122,743	122,743
4	Foundation (concrete rebar etc...)	1	LS	137,943	137,943
5	Pipe valve and fitting installation	1	LS	265,313	265,313
6a	Tank fabrication and erection and appurtenances	1	LS	651,200	651,200
7	Staircase	1	LS	72,335	72,335
8	Fencing	500	LF	115. ¹⁰	57,549
9	THM Removal System		LS	108,971	108,971
10	Paving	7350	SF	8. ²⁵	60,621
11	Electrical and Instrumentation Systems		LS	165,496	165,496
12	Special Inspections, SWPPP, Arborists, Biologist			30,193	30,193
13	Windows & Doors for Utility Buildings		LS	25,083	25,083
			Total Base Bid		\$1,877,229
	BID ALTERNATE				
6b	Tank Fabrication and erection and appurtenances with lower profile roof		LS	661,147	661,147
			Total Bid with 6b in place of 6a		\$1,887,176

Total Base Bid: One million eight hundred seventy seven thousand two hundred twenty nine Dollars

Total with Bid Alternate: One million eight hundred eighty seven thousand one hundred seventy six Dollars

Devon Shea
Signature of Bidder

Vice Pres
Title

2/6/18
Date

TAB 3

Bidder's List of Subcontractor (DBE and Non-DBE)

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://eiling.dir.ca.gov/WCR/ActionServer?action=displayWCRRegistrationForm>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). Photocopy this form for additional firms.

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Subcontracted	Contractor License Number DIR Reg Number	DBE Y/N	DBE Cert Number	Annual Gross Receipts
Name: Willis Reber City, State: Fairfield Ca	4 Foundation	11,518	0.4%	975362 10000049810	Y	42610	<input type="checkbox"/> <\$1 million <input checked="" type="checkbox"/> \$1 million <input type="checkbox"/> \$10 million <input type="checkbox"/> \$15 million Age of Firm: ___ yrs.
Name: Cal Nova Share City, State: South Lake Tahoe Ca	6a Tank 7 Stair case	611,450	31%	1013298 A 1000038543	N		<input type="checkbox"/> <\$1 million <input type="checkbox"/> \$1 million <input type="checkbox"/> \$5 million <input type="checkbox"/> \$10 million <input checked="" type="checkbox"/> \$15 million Age of Firm: ___ yrs.
Name: Dalobson Fence City, State: Santa Rosa Ca	8 Fencing	49,223	2%	515707 1000024902	N		<input type="checkbox"/> <\$1 million <input type="checkbox"/> \$1 million <input type="checkbox"/> \$5 million <input type="checkbox"/> \$10 million <input type="checkbox"/> \$15 million Age of Firm: ___ yrs.
Name: Kie/ney + Sun City, State: Napa Ca	10 paving	48,000	2%	616428 1000003528	N		<input type="checkbox"/> <\$1 million <input checked="" type="checkbox"/> \$1 million <input type="checkbox"/> \$5 million <input type="checkbox"/> \$10 million <input type="checkbox"/> \$15 million Age of Firm: ___ yrs.
Name: West Coast Electric City, State: Santa Rosa Ca	11 Elec	116,105	6%	985,029 1000003641	N		<input type="checkbox"/> <\$1 million <input type="checkbox"/> \$1 million <input type="checkbox"/> \$5 million <input type="checkbox"/> \$10 million <input type="checkbox"/> \$15 million Age of Firm: ___ yrs.
Name: _____ City, State: _____							<input type="checkbox"/> <\$1 million <input type="checkbox"/> \$1 million <input type="checkbox"/> \$5 million <input type="checkbox"/> \$10 million <input type="checkbox"/> \$15 million Age of Firm: ___ yrs.

All Bidders - Submit with Bid

TAB 4

PROPOSED MAJOR MATERIAL SUPPLIERS
(To be submitted with Bid – Envelope A)

The bidder is required to furnish the following information on major materials and manufacturers who will be supplying materials in value of \$10,000 or more. No substitutions will be allowed in materials or manufacturers without the prior written approval of the Engineer.

1. J. W. Woods
2. Medora
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

Devon Sher
Signature of Bidder

2/6/17
Date

LIC. NO. 867001



**ENGINEERING &
CONSTRUCTION, INC.**

14771 Wonderland Blvd. Redding, CA 96003
Telephone (530) 275-2779 Fax (530) 275-9483

MDS@MDSENGCO.COM

March 2, 2018

City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Subj: FEIGE CANYON WATER STORAGE TANK REPLACEMENT PROJECT
Project NO. 12-5419

Re: Bid Evaluation

Mr. Feik:

We have reviewed the March 1, 2018, letter from Granite listing the alleged defects in MDS's bid. We do not understand the logic of Granite's argument that these alleged defects somehow remedy Granite not signing the Noncollusion Affidavit as required under federal and state law.

Respectfully, we disagree with the City of Calistoga's determination that Granite can sign the Noncollusion Affidavit the day after the bid due date. To allow such an action would stand logic on its head. One does not testify in court then take an oath to tell the truth. Police do not interrogate a suspect then read them their right to remain silent. As such, a bidder cannot promise to not collude or engage in bid rigging after the bid has been submitted.

It appears to us that Granite is attempting to mislead the City into believing that they have no other option than to award the contract to them. Standard practices for evaluating public bids are well established. The low bidder is evaluated for compliance with the bid requirements and governing law to determine if they are "responsive". If the low bidder is determined to be non-responsive, the owner moves to the next lowest bidder for evaluation. Once a low bidder is rejected, he does not have standing to challenge another bidder, because he has no position in the outcome.

To date, the City has not contacted MDS to evaluate our bid for compliance with the bid documents or governing law. We are available to address any questions the City might have regarding our bid.

Sincerely,

M. Shawn Stierli