



March 2, 2018

Via E-mail

calcianog@sacsewer.com

Mr. Graham Calciano
Sacramento Regional County Sanitation District
8521 Laguna Station Rd.
Elk Grove, CA 95758

RE: Tertiary Treatment Facilities Project, Contract No. 4283

Dear Mr. Calciano:

On February 28, 2018, Balfour Beatty Infrastructure, Inc. submitted a bid for the above-referenced Project in the total amount of \$299,276,808. Balfour Beatty is the low bidder with a price that is approximately \$30 million lower than the second low bid. As a result of an oversight, Balfour Beatty submitted its bid using the Addendum 4 Bid Form rather than the Addendum 5 Bid Form. Balfour Beatty acknowledged on the face of its bid (see p. 2 of Bid Form) that it had received all Addendum, including Addendum 5. The only substantive difference on the Addendum 5 bid sheet was that it added a pre-printed line item for a \$200,000 Allowance for Backfill Soil Treatment that was not in Addendum 4.

As explained below, it is apparent from the Balfour Beatty bid as submitted on February 28, 2018, that it included the \$200,000 Allowance for Backfill Soil Treatment in its total bid price. Accordingly, the Balfour Beatty total bid price would not have changed had Balfour Beatty submitted its bid on the Addendum 5 Bid Form, and it will not have received treatment different from any other offeror if its bid as submitted is accepted.

These facts can be confirmed by a review of the bid itself. Specifically, the Balfour Beatty bid on the submitted Bid Form set forth the following items:

Item 1 FIPS Drum Screen	\$ 2,770,508
Item 2 Allowance – unforeseen site conditions	1,000,000
Item 3 Allowance – utility conflicts	500,000
Item 4 Allowance – testing	900,000
Item 5 Allowance – site maintenance	100,000
Subtotal Items 1-5	5,270,508
Item 7 Base Bid	290,856,300
Item 8 Shoring	2,950,000
Total Bid Price	299,276,808

If one adds these item amounts, the total will be only \$299,076,808. But the Total Bid Price is \$299,276,808. Thus, the amount submitted on the Bid Form itself confirms that Balfour Beatty included in its submitted bid the \$200,000 Allowance for Backfill Soil Treatment provided for in Addendum 5, which Balfour Beatty had received and specifically acknowledged.

These circumstances present a clear case for the Sacramento Regional County Sanitation District (“District”) to waive the minor deviation of the use of the Addendum 4 Bid Form rather than the Addendum 5 Bid Form. First, the Bid Documents provide that the District has the right to waive deviations. See Bid Documents at 1.04 A.2.d and 1.07 A.

Second, waiver of this minor deviation would be consistent with California law. It is “well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.” *Bay Cities Paving & Grading, Inc. v. City of San Leandro*, 223 Cal.App.4th 1181, 1188 (2014). In that case, the City of San Leandro provided prospective bidders with a standard bid bond form. The low bidder submitted a bid package that included the second page of the standard bid bond form, signed by the surety and low bidder’s president, but did not include the form’s first page. The City waived the irregularity and awarded the contract to the low bidder, noting that the first page of the bid bond form contained only three blank spaces for the names of the bidder and the surety and the date of bid submission, all of which were provided on the second page of the bid bond form. Another bidder protested the award but the protest was rejected by the court. In rejecting the protest, the court noted that, as set forth in the notice to bidders, the City may waive any informalities or minor irregularities in bids received. Since the information that would have been provided on the missing page was found elsewhere in the bid packet, it was a minor bid defect that the City has the authority to waive.

Here, as in *Bay Cities*, the District stated in the bid documents that it has the authority to waive minor deviations. Moreover, Balfour Beatty acknowledged receipt of Addendum 5 which set out the \$200,000 Allowance for Backfill Soil Treatment and included an additional \$200,000 in its total bid price. As a result, the only information missing from the Addendum 4 Bid Form, separate recognition of the \$200,000 Allowance as part of the bid price, can be found elsewhere in Balfour Beatty’s bid submission, as was the case in *Bay Cities*. Accordingly, the use of Addendum 4 to submit the bid should be regarded as a minor deviation and waived by the District.

A finding that the Balfour Beatty bid deviation is only a minor irregularity is also appropriate under *Ghilotti Construction Company v. City of Richmond*, 45 Cal. App. 4th 897, 906-909 (1996). The deviation does not prevent the District from comparing bids and does not afford Balfour Beatty an unfair competitive advantage over other bidders. In addition, as the court noted in the *Ghilotti Construction* case, it is in the best interests of the public that minor technicalities not result in the cancellation of the low bid. *Id.*

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Should you wish to discuss this letter, please contact John Carpenter, our Chief Legal Officer, at JohnCarpenter@Balfourbeattyus.com.

Sincerely yours,



Crandall Bates
Vice President and Regional Manager