



**Shimmick Construction  
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22 December 2021

VIA EMAIL TO [construction@ocsan.gov](mailto:construction@ocsan.gov)

Brandon Garcia  
Contracts Administrator  
Orange County Sanitation District  
10844 Ellis Avenue  
Fountain Valley, CA 92708

**Subject: Bid Protest – Project FR2-0018 Activated Sludge Clarifier Repairs at Plant No. 2**

Ref: OC San's Recommendation of Award for Project FR2-0018

Dear Mr. Brandon Garcia:

1. Introduction

Shimmick Construction Company (Shimmick) is the lowest responsive, responsible bidder on the project known as FR2-0018 Activated Sludge Clarifier Repairs at P2 ("Project"). The Project consists of the replacement of all mechanical "chain and flight" collection system components within six (6) clarifiers at the Secondary Clarifiers at Plant No. 2. The Orange County Sanitation District ("OC San") received bids for the Project on November 23, 2021. The bidders consisted of Abhe & Svoboda, Inc.(A&S), Environmental Construction Inc. (Environmental), Houalla Enterprises, Ltd. dba Metro Building Engineering Group Ltd. (Metro), J.R. Filanc Construction Co. Inc. (Filanc), Kiewit Infrastructure West Co. (Kiewit), Mehta Mechanical Co. Inc. dba MMC, Inc. (MMC), Orion Construction Corp. (Orion), Steve P. Rados, Inc. (Rados), Tharsos Inc (Tharsos), and W.M. Lyles Co. (Lyles). This is Shimmick's protest to the non-responsive bids submitted by all other contractors.

As set forth below, all other contractors' bids did not conform to OC San's bid instructions. Summarily, other contractors: (1) failed to provide a Baseline Bid Schedule and Baseline Narrative Bid Work Plan per BF-4, (2) omitted commissioning activities critical to the Baseline Construction Bid Schedule, (3) omitted submittal activities which are required under specification section 01810, and (4) failed to properly show project completion within the requested 580 calendar days due to the omission of the aforementioned activities.

- A&S: Non-responsive for reasons 1-4 above
- Environmental: Non-responsive for reasons 1-4 above
- Metro: Non-responsive for reasons 1-4 above
- Filanc: Non-responsive for reasons 2-4 above



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- Kiewit: Non-responsive for reasons 2-4 above
- MMC.: Non-responsive for reasons 1-4 above
- Orion: Non-responsive for reasons 2-4 above
- Rados: Non-responsive for reasons 2-4 above
- Tharsos: Non-responsive for reasons 1-4 above
- Lyles: Non-responsive for reasons 1-4 above

Each error and omission renders all other Contractors' bid non-responsive. The errors and omissions may not be waived because – individually and in the aggregate – they impacted the other contractors' bid price and/or resulted in an unfair advantage not available to Shimmick. California law precludes acceptance of the other contractors' flawed, non-responsive bids. The project should be awarded to Shimmick the lowest responsive, responsible bidder who met the Scheduling requirements of OC San.

## 2. Factual Background

Bid Submittal Form 4 ("BF-4") Attachment C States, "The Baseline Construction Bid Schedule (Bar Chart) shall include but not be limited to the following activities as applicable: submittals, procurement, mobilization, work tasks, weather allowance, closeout and milestones for Substantial Completion and Final Completion of the Work." Contractors A&S, Environmental, Metro, MMC, Tharsos and Lyles did not submit a Baseline Construction Bid Schedule or Baseline Narrative Bid Work Plan. As these documents were not submitted, OC San is unable to ensure compliance with requirements specified as part of the Bid evaluation process and should deem these bidders non-responsive per BF-4 Attachment C.

Additionally, Specification section 01140-1.13.A states, "The CONTRACTOR shall work on one clarifier at a time until they are fully tested, certified, and completed. OCSD will provide written notification to move onto the next clarifier. Allow for two weeks between end of testing and start of next clarifier so OCSD has a chance to put new clarifier in service and drain next clarifier<sub>[AH1]</sub>."

Filanc, Kiewit, Orion and Rados did not include the Gate Report Submittals as described in Specification Section 01810-1.4 in their Baseline Construction Bid Schedules. According to Specification section 01810 - Table 1b ("Table 1b"), there will be gate reports which will require submission and OC San's approval prior to proceeding with the next Phase of Commissioning. Shimmick identified two gate reports which will necessarily be on the critical path of the project. These reports consist of Commissioning Phase 1 Gate Report which is required to be submitted after the Phase 1 Pre-ORT activities are completed and Commissioning Phase 2 Gate Report which is required to be submitted after the Phase 2 ORT and FAT activities are completed. As these commissioning activities and submittals were not identified in these contractors' Baseline Construction Bid Schedules, they have not allocated the required time for testing and commissioning as specified by OC San.

Attachment C Question 4 States, "The Baseline Construction Bid Schedule (Bar Chart) shall allocate a minimum of twenty five (25) calendar days for OC SAN submittal review."

Filanc, Kiewit, Orion and Rados did not include these required submittal activities within their bid will require an additional 50 days per clarifier to be added to its schedule. This amounts to a total

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of 300 Calendar days (50 days X 6 clarifiers). This failure is another reason the bids of the aforementioned contractors are non-responsive.

And finally, BF-4 Attachment C states, "A Baseline Construction Bid Schedule (Bar Chart) showing negative float shall not be accepted by OC SAN and shall deem Bidder Non-Responsive to the requirements of this IFB." The addition of the missing submittal activities to Filanc, Kiewit, Orion and Rados' Bid Schedules will increase the total number of calendar days in their schedules by 300 days and subsequently make the Filanc, Kiewit, Orion and Rados' bids non-responsive.

In order to meet contractual requirements, including minimal schedule review times, Shimmick included extensive OT and multiple shifts in its bid price. The failure of other contractors to submit bids accounting for schedule review times and other project requirements will result in providing those contractors with an unfair competitive advantage over Shimmick. This is not permitted under California law. Accordingly, Shimmick respectfully requests that OC San reject all of the non-responsive bids submitted as set forth above and award the Project to Shimmick.

Thank you.



Fernando De Leon  
VP MEP Division  
Shimmick Construction