



# OPERATIONS COMMITTEE

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## Agenda Report

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**File #:** 2022-2136

**Agenda Date:** 2/23/2022

**Agenda Item No:** 13.

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**FROM:** James D. Herberg, General Manager  
Originator: Kathy Millea, Director of Engineering

**SUBJECT:**

**ACTIVATED SLUDGE CLARIFIER REPAIRS AT PLANT NO. 2, PROJECT NO. FR2-0018**

**GENERAL MANAGER'S RECOMMENDATION**

RECOMMENDATION:

- A. Receive and file Bid Tabulation and Recommendation for Activated Sludge Clarifier Repairs at Plant No. 2, Project No. FR2-0018;
- B. Receive and file Award Protest from J.R. Filanc Construction Co., Inc. dated December 20, 2021 concerning the award to W.M. Lyles Co.;
- C. Receive and file Award Protest from Shimmick Construction Co., Inc. dated December 22, 2021 concerning the non-responsive bids submitted by all other contractors;
- D. Receive and file Orange County Sanitation District's determination letter dated January 4, 2022, issued to all bidders, recommending the rejection of all bids and re-advertising the project; and
- E. Reject all bids and direct staff to re-advertise this project for bid.

**BACKGROUND**

The Activated Sludge Plant at the Orange County Sanitation District (OC San) Plant No. 2 uses chain and flight mechanisms to collect sludge settling along the length of the clarifiers to hoppers at the upstream end. The collectors, which include 2,900 feet of plastic chains and 160 flights per clarifier are subject to degradation and wear. Although the collector mechanisms were replaced in six of the clarifiers in 2020, the collectors in the remaining six clarifiers have been in service since 1996.

**RELEVANT STANDARDS**

- Comply with California Public Contract Code Section 20103.8, award construction contract to lowest responsive, responsible bidder
- Maintain a proactive asset management program

**PROBLEM**

The collectors in six of the clarifiers are at the end of their useful life, resulting in a number of recent catastrophic failures that required expensive repairs during which the clarifiers were unavailable for service for many weeks.

Bids for Activated Sludge Clarifier Repairs at Plant No. 2, Project No. FR2-0018, were opened on November 23, 2021. Following receipt of two award protests, staff, with advice from legal counsel, concluded that erroneous instructions in the Invitation for Bids created an incurable ambiguity that warrants rejecting all bids.

**PROPOSED SOLUTION**

Reject all bids for Activated Sludge Clarifier Repairs at Plant No. 2, Project No. FR2-0018 and re-advertise the project with a corrected Invitation for Bids. Staff will also revise some specifications that will allow bidders to better determine how to complete the work within the specified duration.

**TIMING CONCERNS**

The collectors will continue to require frequent maintenance. The clarifiers must be reliable so that the Activated Sludge Plant at Plant No. 2 will have sufficient capacity to handle peak wet weather flows.

**RAMIFICATIONS OF NOT TAKING ACTION**

Board action is required by the California Public Contract Code to reject all bids and re-advertise the project.

**PRIOR COMMITTEE/BOARD ACTIONS**

N/A

**ADDITIONAL INFORMATION**

OC San advertised Project No. FR2-0018 for bids on October 4, 2021 and 11 bids were received on November 23, 2021. A summary of the bid results is as follows:

<u>Bidder</u>	<u>Amount of Bid</u>
Engineer's Estimate	\$ 4,836,000
W.M. Lyles Co.	\$4,394,500
JR Filanc Construction Co., Inc.	\$4,735,900
Abhe & Svoboda, Inc.	\$4,861,546
Environmental Construction, Inc.	\$5,101,891
Kiewit Infrastructure West Company	\$5,111,000
Metro Builders & Engineers Group, Ltd.	\$5,402,788
Steve P. Rados, Inc.	\$5,443,000
Mehta Mechanical Company Inc.	\$5,524,000

Orion Construction Corporation	\$5,847,000
Shimmick Construction Co., Inc.	\$6,136,040
Tharsos Inc.	\$6,655,941

The bids were evaluated in accordance with the OC San's policies and procedures.

On December 20, 2021, OC San received an award protest from the second apparent low bidder, J.R. Filanc Construction Co., Inc. (Filanc). Filanc alleged that W.M. Lyles Co.'s bid was non-responsive due to non-compliance with the bidding requirements. On December 22, 2021, OC San received an award protest from the tenth apparent low bidder, Shimmick Construction Co., Inc. (Shimmick). Shimmick alleged that all other bids were non-responsive due to non-compliance with the bidding requirements. Both protests focused on BF- 4 Performance History and Financial Resources, Attachment C, Baseline Construction Bid Schedule (Bar Chart) and Baseline Narrative Bid Work Plan requirements (BF-4, Attachment C). Both protests alleged that bids were non-responsive due to omission of a narrative and/or a bar chart bid schedule by some of the Bidders, including W.M. Lyles Co. (apparent low bidder).

After reviewing the Invitation for Bids requirements related to the award protests, the Evaluation Team found an inadvertent error in BF-4, Attachment C instructions which created ambiguity in the bidding requirements. Staff consulted with General Counsel regarding the award protests received and provided additional findings by the Evaluation Team. On December 27, 2021, General Counsel provided their response and recommended to re-bid the project since both protests ultimately stem from the fact that the instructions in BF-4, Attachment C were ambiguous.

## **CEQA**

The project is exempt from CEQA under the Class 1 categorical exemptions set forth in California Code of Regulations Section 15301. A Notice of Exemption will be filed with the OC Clerk-Recorder after OC San Board of Directors approval of the construction contract.

## **FINANCIAL CONSIDERATIONS**

N/A

## **ATTACHMENT**

*The following attachment(s) may be viewed on-line at the OC San website ([www.ocsan.gov](http://www.ocsan.gov)) with the complete agenda package:*

- Award Protest letter from J.R. Filanc Construction Co., Inc. dated 12/20/2021
- Award Protest letter from Shimmick Construction Co., Inc. dated 12/22/2021
- OC San Determination letter dated 01/04/2022

SS:jw