

**** BIDDER NOTIFICATION ******DETERMINATION THAT BIDDER
DOES NOT MEET RESPONSIBILITY CRITERIA**

June 26, 2012

WM. Dickson Co.
3315 South Pine Street
Tacoma, WA 98409-5793

Sent via: Fax: 253-472-4521
Email: snichols@wmdickson.net

RE: McAllister Transmission Main, Project #CW37 Bid Proposal
Notification of Determination of Non-Responsibility

Dear Mr. Nichols:

This letter concerns the bid submitted by WM. Dickson to the City of Olympia, Washington, for the above referenced project. Upon review of your proposal, City staff has determined that the information you submitted does not meet the following supplemental bidder responsibility criteria for this project:

- The contractor failed to meet Section 1-02.1(1) H. 5. Completion of Similar Projects. Contractor has not successfully completed the installation of at least 4,000 linear feet of large diameter (36-inch diameter or larger) welded joint steel pipe during the ten (10) year period immediately preceding the bid submittal deadline for this Project. The contractor did not list any similar projects;
- The contractor failed to meet Section 1-02.1(1) H. 6. Experience of Contractor's Personnel. The field superintendent must have successfully supervised the installation of at least 4,000 linear feet of large diameter (36-inch diameter or larger) welded joint steel pipe during the ten (10) year period immediately preceding the bid submittal deadline for this Project. The field superintendent's experience supervising the installation of large diameter welded joint steel pipe occurred more than ten (10) years ago.

Further, WM Dickson's bid may be deemed non-responsive for failure to accurately complete the Subcontractor List, as required in the bid proposal.

The City Council is scheduled to award the contract for this project at its meeting on July 10, 2012 at City Hall Council Chambers (First Floor), 601 4th Avenue East, Olympia, WA. In its report to Council, City staff will recommend formal rejection of your bid for failing to meet the responsibility criteria. **If you wish to submit additional, relevant information for consideration, please refer to the procedure found in Section 1-02.1(1) of the Project Special Provisions. Any appeal of this determination must be received by the City no later than 4:00 p.m. on June 27, 2012.** Appeals must be clearly marked "APPEAL" and must be delivered to: City of Olympia, Attn: Tim Richardson, at City Hall (*please note the new City Hall location*), 601 4th Avenue East, Olympia, Washington.

Sincerely,



Tim Richardson, P.E.
Project Manager
Public Works Technical Services

c: Rich Hoey, P.E., Director of Public Works
Steve Hall, City Manager
Tom Morrill, City Attorney

WM. DICKSON CO.

3315 South Pine Street • (253) 472-4489 FAX (253) 472-4521 • Tacoma, WA 98409-5793
General Contractors • Reg. # WMDICC*108J7

June 27, 2012

City of Olympia
601 4th Avenue East
Olympia, WA 98501

Attn: Mr. Tim Richardson, P.E.

Subject: McAllister Transmission Main
Project No. CW37
Supplemental Bidder Responsibility Criteria
“APPEAL”

Dear Mr. Richardson,

Wm. Dickson Company is in receipt of your letter dated June 26, 2012 notifying Wm. Dickson Company that the information submitted with our proposal does not meet the Supplemental Bidder Responsibility Criteria for this project. It is our contention that Wm. Dickson Company is the lowest responsive, responsible bidder for this project and we are appealing the City of Olympia's determination based on the following:

- Pursuant to RCW 39.04.350(1) Mandatory Bidder Responsibility Criteria (See attachment A) – Wm. Dickson Company must meet the following responsibility criteria to be considered a “responsible bidder” and qualified to be awarded a public works project: (Please see enclosed copies of):
 1. Certificate of Registration WMDICC*108J7.
 2. Washington Unified Business Identifier (UBI) number – C278045472
 3. Wm. Dickson Company is in good standing with the Washington State Secretary of State's Office, Department of Revenue, and the Department of Labor & Industries.
 4. Labor & Industries (Workmen's Compensation) No. 094,534-00
 5. Washington Employment Security Department No. 283 905 00 7
 6. Washington State Department of Revenue State Excise Tax Registration No. 278045472
 7. Wm. Dickson Company has not been disqualified from bidding on any public works contract under RCW 39.06.101 or 39.12.065(3).
 8. Wm. Dickson Company has not been found out of compliance with RCW 39.04.320 – Apprenticeship Utilization requirements for the one-year period immediately preceding the date of the bid solicitation.
 9. Wm. Dickson Company has not violated Section 1 of RCW 39.04.370 – Contract Requirements – Offsite Prefabricated Items.
- In accordance with RCW 39.04.350(2)(B) “In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.” Wm. Dickson Company submitted two letters prior to the bid submittal deadline dated



June 4, 2012 (Attachment B) and June 15, 2012 (Attachment C) requesting the Supplemental Bidder Criteria be waived for Section 1-02.1(1)(H)(5) – Completion of Similar Projects. The City of Olympia issued Addendum No. 1 (Attachment D) in response to our first letter dated Jun 4, 2012, changing the requirement that the Contractor had successfully completed the installation of at least 4,000 linear feet of large diameter (36-inch diameter or larger) welded joint steel pipe during the five (5) year period immediately preceding the bid submittal deadline for this project to a ten (10) year period immediately preceding the bid submittal deadline. The City of Olympia's response to our second letter dated June 15, 2012 requesting the Similar Size & Scope criteria be waived was rejected. NW Pipe is the major supplier for welded steel joint pipe in the Pacific Northwest and in the United States. In the past ten years of projects of at least 4,000 linear feet and of 36" diameter or larger, only ten companies locally have been awarded projects that are in compliance with the supplemental criteria. Only two of those contractors submitted bids for the City of Olympia McAllister Transmission Main. Since only a handful of contractors locally meet the supplemental criteria, this limits the amount of qualified bidders to submit a proposal for your solicitation. When the City of Olympia did not waive this requirement, the narrowly tailored supplemental bidder criteria limited the number of contractors or subcontractors submitting bids, which limits competition and as a result drives pricing up. Waiving the requirement will expand competition to the benefit of the construction community and taxpayers.

- In accordance with 1-02.1(1)(E) – Failure to Meet Bidder Responsibility Criteria; the City of Olympia has the right to determine (in its discretion) whether or not Wm. Dickson Company is, or is not a responsible bidder by not meeting the supplemental bidder criteria. In accordance with the Mandatory Bidder Criteria which we fulfill, Wm. Dickson Company is a responsible bidder, even though we were not in strict compliance with the supplemental bidder criteria.

Wm. Dickson Company celebrates our 75th Anniversary of conducting construction business in the State of Washington and other adjoining states, and has resided in Tacoma, Washington all of those years. We have provided our services all over the State of Washington, and recently completed a bonded project on the Hanford Nuclear Reservation for the Department of Energy/Washington Closure Hanford as a Prime Contractor for over \$38,000,000.00. Wm. Dickson Company is qualified by experience, our key personnel experience, owned heavy equipment, Project Manager and team experience, experienced and qualified subcontractors, and financing. Recently, Wm. Dickson Company completed a project for the City of Olympia called the Sleater-Kinney Sanitary Sewer Main, Project No. CZ25. The Engineer was Zheng Lu, and the project was completed on time and within budget. We have a reputation in our industry as a competent, fair and experienced contractor.

Wm. Dickson Company is a responsive and responsible contractor, and we should be awarded the McAllister Transmission Main project. We appeal to the City of Olympia to reconsider their determination.

Sincerely,
Wm. Dickson Company



Randy Asahara
Estimator

DEPARTMENT OF LABOR AND INDUSTRIES

REGISTERED AS PROVIDED BY LAW AS
CONST CONTR GENERAL

REGIST. #	EXP. DATE
CC01 WMDICC*108J7	4/1/2013
EFFECTIVE DATE	4/27/1990

WM DICKSON CO
3315 S PINE ST
TACOMA WA 98409

F625-052-000 (8/97)

←———— Detach And Display Certificate —————→

This is your Washington Corporation
or LLC License.
This is not a Washington Business
License.

WM. DICKSON CO.
C/O WM B DICKSON
3315 S PINE ST
TACOMA WA 98409-5793

Detach before posting

005034

Department of Licensing
Master License Service

Office of the Secretary of State
Corporations Division

LEGAL ENTITY REGISTRATION

Unified Business ID #: 278 045 472
Business ID #: 1

Expires: 06-30-2012

WM. DICKSON CO.
3315 S PINE ST
TACOMA WA 98409 5793

Domestic Public Service Corporation
Renewed by Authority of Secretary of State

By accepting this document the licensee certifies that information
provided on the renewal was complete, true, and accurate to the
best of his or her knowledge, and that the company will stay in
compliance with all applicable Washington State regulations.

Elizabeth A. Luce

Director, Department of Licensing

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If "Non-revenue" appears after Tax Registration Number, the account is not registered with the Department of Revenue. However, it may be registered with other agencies in the state.

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**Washington State Department of Revenue
State Business Records Database Detail**

TAX REGISTRATION NO: 278045472	ACCOUNT OPENED: 04/01/1965
UBI: 278045472	ACCOUNT CLOSED: OPEN
ENTITY NAME: W M DICKSON CO	
BUSINESS NAME:	
MAILING ADDRESS: 3315 S PINE ST TACOMA, WA 98409-5718	BUSINESS LOCATION: 3315 S PINE ST TACOMA, WA 98409-5718
ENTITY TYPE: CORPORATION	RESELLER PERMIT NO: A16 6985 13
	PERMIT EFFECTIVE: 01/01/2012
NAICS CODE: 238910	PERMIT EXPIRES: 12/31/2013
NAICS DEFINITION: SITE PREPARATION CONTRACTORS (PT)	

FOR NON-COMMERCIAL USE ONLY

06/27/2012 7:26 AM

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Voter registration assistance (SECRETARY OF STATE)

Washington State Department of
Labor and Industries



**Employer Liability
Certificate**

Department of Labor and Industries

Employer Liability Certificate

Date: 06/27/2012

UBI #: 278 045 472

Legal Business Name: WM DICKSON CO

Account #: 094,534-00

'Doing Business As' Name: WM DICKSON CO

Estimated Workers Reported: Quarter 1 of Year 2012 "51 to 75 Workers"
(See Description Below)

Workers' Comp Premium Status: Account is current. Firm has voluntarily reported and paid their premiums.

Licensed Contractor? Yes

License: WMDICC*108J7

Expire Date: 4/1/2013

Account Representative: T4 / BAC-NAM DO (360)902-4724 - Email:
BACN235@lni.wa.gov

What does "Estimated Workers Reported" mean?

Estimated workers reported represents the number of full time position requiring at least 480 hours of work per calendar quarter. A single 480 hour position may be filled by one person, or several part time workers.

Industrial Insurance Information

Employers report and pay premiums each quarter based on hours of employee work already performed, and are liable for premiums found later to be due. Industrial insurance accounts have no policy periods, cancellation dates, limitations of coverage or waiver of subrogation (See RCW 51.12.050 and 51.16.190).

CERTIFICATE OF COVERAGE



Insurance Services Division
Employer Services

Department of Labor & Industries
PO Box 44144
Olympia WA 98504-4144

EMPLOYER: This is your official certificate of industrial insurance coverage. It remains active until your account is closed. You are required by law to post both this certificate and copies of the posters listed below. You will soon be receiving 1 copy of each. If you require additional copies, call Labor and Industries at 360-902-4817.

- Job Safety and Health Protection (available in Spanish)
- Your Rights as a Worker/Family Care
- Notice to Employees

WORKER: The employer named below is an insured policyholder with the Washington State Industrial Insurance Trust Fund.

UBI*: 278 045 472 Policy Effective Date

11/25/75

Location

WM DICKSON CO.
3315 SO PINE ST
TACOMA WA 98409-5793

Employer

WM DICKSON CO
3315 SO PINE ST
TACOMA WA 984095793

*Your Unified Business Identifier is the only number you need to discuss your business account with the Washington state departments of Revenue, Licensing, Employment Security, Labor and Industries and the Office of the Secretary of State. Other state licenses or registrations may be required for proper licensing of your business.

F211-141-000 (7-91)

ATTACHMENT "A"

RCW 39.04.350

Bidder responsibility criteria — Supplemental criteria.

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, **without appropriate** supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and

(f) Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries.

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's **web site**.

[2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

Notes:

Rules--Implementation -- 2009 c 197: See note following RCW 39.04.320.

WM, DICKSON CO.

3315 South Pine Street • (253) 472-4489 FAX (253) 472-4521 • Tacoma, WA 98409-5793
General Contractors • Reg. # WMDICC*108J7

June 4, 2012

Mr. Zheng Lu, PE
City of Olympia, Public Works
601 4th Avenue East
Olympia, WA 98501

Subject: McAllister Transmission Main
Bidder responsibility Criteria, Section 1-02.1 (I)
Procedure to request Modification of Supplemental Bidder Criteria

Dear Mr. Lu,

As required by the Contract Provisions for the McAllister Transmission Main Project, Wm Dickson is requesting the City to modify the bidder responsibility criteria for the project. We are asking that the City waive the 5 year requirement for the Company and the Superintendent on the project. Currently your criteria would limit this project to probably only one or two bidders only.

Over the last 5-years there has been very little if any welded steel water main work in our area. Most all municipalities who bid out this type of work require the contractors' personnel (Superintendent, Project Manager etc.) to have installed a minimum footage of pipe.

Wm Dickson's Superintendent has installed the following:

- City of Seattle, Tolt Pipeline. 26, 0000 lf, 78-In.
- Lake Young's, 4,900 lf, 72-In.
- City of Tacoma, 12,000 lf, 48-In.
- City of Tacoma, 10,000 lf, 36-In.

We appreciate the City reviewing our request for this modification to the bidder criteria



Respectfully,
Wm. Dickson Company

A handwritten signature in black ink that reads "Steve Nichols". The signature is written in a cursive style with a large, sweeping initial "S".

Steve Nichols
Project Manager
Phone- -472-4489
Cell—405-9711
E-mail—snichols@wmdickson.net

WM. DICKSON CO.

3315 South Pine Street • (253) 472-4489 FAX (253) 472-4521 • Tacoma, WA 98409-5793
 General Contractors • Reg. # WMDICC* 10BJ7

June 15, 2012

Mr. Zheng Lu, PE
 City of Olympia, Public Works
 601 4th Avenue East
 Olympia, WA 98501

Subject: McAllister Transmission Main
 Bidder responsibility Criteria, Section 1-02.1 (I)
 Procedure to request Modification of Supplemental Bidder Criteria

Dear Mr. Lu,

As required by the Contract Provisions for the McAllister Transmission Main Project, Wm Dickson is requesting the City to modify the bidder responsibility criteria for the project. Addendum No. 1 changed the Bidder Responsibility Criteria to a ten (10) year period for both the Contractor and the Contractors personnel. We are asking that the City waive the 10 year requirement for the Company and Personnel.

I have attached the specifications for the City of Everett which does a fair amount of welded steel work, and they require the contractors Project Manager, Superintendent and Foreman to have installed a minimum length of welded steel pipe with no time limit. The City of Tacoma, back in 2004 had the requirement for the contractor's personnel to have the experience only and on their last steel project which bid in April of 2011; there were no special requirements on a project with approximately 1400 feet of 36-in welded steel pipe.

Over the last 5-years there has been very little if any welded steel water main work in our area. Most all municipalities who bid out this type of work require the contractors' personnel (Superintendent, Project Manager etc.) to have installed a minimum footage of pipe.

Wm Dickson's Superintendent has installed the following:

- City of Seattle, Tolt Pipeline. 26, 0000 lf, 78-In.
- Lake Young's, 4,900 lf, 72-In.



- City of Tacoma, 12,000 lf, 48-In.
- City of Tacoma, 10,000 lf, 36-In.

We appreciate the City reviewing our request for this modification to the bidder criteria

Respectfully,
Wm. Dickson Company

A handwritten signature in black ink that reads "STEVE NICHOLS". The signature is written in a cursive style with a large, stylized "S" at the beginning.

Steve Nichols
SR. Project Manager
Phone- -472-4489
Cell—405-9711
E-mail—snichols@wmdickson.net

out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation.

- (b) **Supplemental Bidder Responsibility Criteria: RCW 39.04.350(2).** In addition to the mandatory bidder responsibility criteria above, the Bidder must also meet the supplemental bidder responsibility criteria listed below. **Further, the apparent low Bidder must submit the Bidder's Information Statement (Section 004110) and any other documentation listed below to the City within 2 business days after the bid opening.** The City reserves the right to require such documentation from other bidders also.

1. **Completion of Similar Projects**

a. **Criteria:**

(i) The Bidder's project manager for the Project must have successfully supervised the installation at least 5,000 linear feet of large diameter welded joint steel pipe. All such installation must have occurred prior to the date of Bid opening.

(ii) The Bidder's superintendent for the Project must have successfully supervised the installation at least 5,000 linear feet of large diameter welded joint steel pipe. All such installation must have occurred prior to the date of Bid opening.

(iii) The Bidder's principal foreman for the Project must have successfully supervised the installation at least 2,000 linear feet of large diameter welded joint steel pipe. All such installation must have occurred prior to the date of Bid opening.

For the purposes of these criteria, "large diameter" means 24-inch diameter pipe or greater.

In evaluating whether these criteria are met, the City may check references for the previous projects and may evaluate the project owner's assessment of the Bidder's performance, including but not limited to the following areas:

- Quality control;
- Safety record;
- Timeliness of performance;
- Use of skilled personnel;
- Management of subcontractors;

Section. Note: The Bidder or Subcontractor responsible for performing the work described in Sections 02571, 02227, 02340, 02345, and 13100 must demonstrate company and/or personnel experience performing said work as described below.

- TALOMA
2004
1. The Bidder or the Subcontractor who will perform any portion of the work described in Section 02571 shall have successfully performed and completed, within the last 10 years, at least two projects, one of which included installation of over 1,000 feet of 36-inch or larger steel welded joint pipeline and one of which included installation of over 1,000 feet of 60-inch or larger steel welded joint pipeline. Acceptance of the water pipeline system by the OWNER defines having successfully performed and completed the work.
 2. The Bidder's or Subcontractor's employee who will be Project Manager, for any portion of the work described in Section 02571 shall have managed at least one project, successfully performed and completed within the last 10 years, which included installation of at least 1,000 feet of 36-inch or larger steel welded joint pipeline.
 3. The Bidder's or Subcontractor's employee who will be Project Field Superintendent for any portion of the work described in Section 02571 shall have been the field superintendent on at least one project, successfully performed and completed within the last 10 years, which included installation of at least 1,000 feet of 36-inch or larger steel welded joint pipeline.
 4. The Bidder or the Subcontractor who will perform any portion of the work described in Section 02227 shall have successfully performed and completed a minimum of three wetland mitigation projects within the last 10 years. The Bidder or Subcontractor performing the work in Section 02227 shall be a contractor bonded and licensed in the State of Washington specializing in landscape work. Acceptance of the landscape work by the OWNER defines having successfully performed and completed the work.
 5. The assigned Project Manager and Field Superintendent who will perform the tunneling work described in Section 02340 shall have successfully performed and completed at least five tunnels in the last 10 years, each tunnel having a minimum casing diameter of 60 inches, and a minimum length of 50 feet. These tunnels shall have been constructed using trenchless excavation for installation of jacked casings. The proposed Project Manager and Field Superintendent shall be full-time employees of the Bidder or Subcontractor at the time of the pre-award conference, and shall have directly supervised the successful performance and completion of the above tunnels.
 6. The assigned Project Manager and Field Superintendent who will perform the microtunneling work described in Section 02345 shall have successfully performed and completed at least five microtunnels in the last 10 years, each microtunnel having a minimum inside diameter of 42 inches, and a minimum length of 300 feet, three of which were constructed in saturated soil with a minimum hydrostatic head of 5 feet above the crown of the pipe. These microtunnels shall have been constructed using slurry-face or earth pressure balance (EPB) equipment for installation of casings or pipelines. The proposed Project Manager and Field Superintendent shall be full-time employees of the Bidder or Subcontractor at the time of the pre-award conference, and shall have directly supervised the successful performance and completion of the above microtunnels.

City of Olympia | Capital of Washington State

P.O. Box 1967, Olympia, WA 98507

**CITY OF OLYMPIA
MCALLISTER TRANSMISSION MAIN
PROJECT NO. CW37**

ADDENDUM NO. 1

This addendum takes precedence in resolving inconsistencies in any parts of the contract documents. This addendum consists of nine (9) pages. Bidders are hereby notified that the bidding documents have been amended as follows:

1-02.1(1) BIDDER RESPONSIBILITY CRITERIA – CHANGED.

H. Supplemental Bidder Responsibility Criteria

5. Completion of Similar Projects

Delete the reference to the five (5) year period in the sentences containing, "... during the five (5) year period immediately preceding the bid submittal deadline for this Project" and replace with the following:

"...during the ~~ten~~ (10) year period immediately preceding the bid submittal deadline for this Project".

6. Experience of Contractor's Personnel

Delete the reference to the five (5) year period in the sentences containing, "... during the five (5) year period immediately preceding the bid submittal deadline for this Project" and replace with the following:

"...during the ~~ten~~ (10) year period immediately preceding the bid submittal deadline for this Project".



TECHNICAL PROVISIONS – CHANGED
Division 10, Section 10-03.4 Fabrication of Pipe

Paragraph 10, delete the reference to, “Class F, suitable for 300 psi working pressure” and replace with, “Class E, suitable for 275 psi working pressure”.

Paragraph 11, delete the reference to “AWWA C207 standards for Class F flanges”, and replace with “AWWA C207 standards for Class E flanges”.

SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA SECTION PAGES
SC5, SC7, SC9, and SC10 – CHANGED.

Delete the reference to the five (5) year period in the sentences containing, “... during the five (5) year period immediately preceding the bid submittal deadline for this Project” and replace with the following:

“...during the **ten (10)** year period immediately preceding the bid submittal deadline for this Project”.

PROJECT PROPOSAL - CHANGED
Proposal, Pages P-11 and P-12 of 13

Remove and replace Page P-11 and Page P-12 (Attached).

Bid items have been renumbered, some quantities have changed as shown in bold, and original Item Number 18 is deleted.

PLAN SHEETS – CHANGED**Sheets 3, 4, 5, and 15 (Attached)**

Remove and replace Sheets 3, 4, 5, and 15.

Sheet 3. Station and pressure at far left changed to Sta. 50+20, centerline 36" = 137.99.

Sheet 4. The 36-inch steel water main pipe, 2-inch conduit and associated J-box, 6-inch conduit and associated PSE 5'x7' Power Vault, and Utility Post Markers, have been relocated further north.

The Cathodic test station symbol is deleted.

The note that references the cross section for the construction access path is deleted.

The 20 LF of 24" DI Pipe (Casing pipe for future use) is deleted.

The note "Installed by PSE" under the power vault call out is deleted.

The temporary construction access path alignment has changed.

Sheet 5. The 36-inch steel water main pipe, 2-inch conduit, associated J-box, 6-inch conduit, and associated PSE 5'x7' Power Vault, and Utility Post Markers, have been relocated further north.

The Cathodic test station at Sta. 48+83 is deleted.

The 20 LF of 24" DI Pipe (Casing pipe for future use) is deleted.

The note "Full Strength Fillet Weld, Inside and Out Sta. 49+00 to 50+62" is deleted.

Sheet 15. Sheet changed to reflect changes made on Sheet 4 and Sheet 5.

Sheet 13 (Not Attached)

All references to AWWA C-207 Class "F" shall be deleted and replaced with AWWA C-207 Class "E" (Not Attached).

The undersigned hereby certifies that he/she has personally examined the details for this project and understands the methods by which payment will be made, and hereby proposes to supply the materials in accordance with the Contract Documents at the following schedule of rates and prices.

NOTE: Unit prices for all items, all extensions and total amount of bid must be shown in ink or typewritten. Show unit prices in figures only.

Item Number	Schedule Item	Description	Unit	Approx. Quantity	Unit Price	Total Price
1	104-000	Minor Change	EST	1	75,000	75,000
2	107-000	SPCC Plan	LS	1	LUMP SUM	
3	109-000	Mobilization	LS	1	LUMP SUM	
4	110-000	Project Temporary Traffic Control	LS	1	LUMP SUM	
5	110-005	Flaggers and Spotters	HR	400		
6	110-015	Construction Signs Class A	SF	48		
7	201-000	Clearing and Grubbing	LS	1	LUMP SUM	
8	202-090	Removal of Fence	LF	5200		
9	203-015	Unsuitable Foundation Excavation Incl. Haul	CY	400		
10	212-005	Construction Geotextile for Separation	SY	300		
11	402-000	Gravel Base	TN	50		
12	404-000	Crushed Surfacing Top Course	TN	30		
13	504-000	HMA CL. 1/2" PG 64-22	TN	12		
14	708-000	Bank Run Gravel for Trench Backfill	TN	5000		
15	708-112	Casing 12 In. Diam.	LF	355		
16	708-154	Casing 54 In. Diam.	LF	362		
17	709-008	Ductile Iron Water Main Pipe 8 In. Diam.	LF	234		
18	709-236	Steel Water Main Pipe 36 In. Diam.	LF	4066		
19	712-008	Gate Valve 8 In.	EA	1		
20	712-136	Butterfly Valve 36 In.	EA	3		
21	714-000	Hydrant Assembly	EA	1		
22	715-300	Sampling Station	EA	1		
23	801-000	High Visibility Fence	LF	8350		
24	801-015	Erosion/Water Pollution Control	LS	1	LUMP SUM	
25	801-020	Stabilized Construction Entrance	SY	350		
26	801-025	Silt Fence	LF	2500		
27	801-030	Compost Berm	LF	2000		
28	801-052	Seeding, Fertilizing, and Mulching	AC	5		
29	802-200	Topsoil Type A	CY	2400		
30	802-210	Topsoil Type B	CY	2400		
31	803-000	Irrigation System	LS	1	LUMP SUM	
32	812-200	Barbed Wire Fence Type 6-Strand	LF	5110		
33	812-300	Cattle Gate	EA	8		

Item Number	Schedule Item	Description	Unit	Approx. Quantity	Unit Price	Total Price
34	812-400	Security Fence	LF	60		
35	815-005	Light Loose Riprap	TN	100		
36	815-020	Quarry Spalls	TN	100		
37	820-130	Junction Box Type 1	EA	9		
38	820-220	Conduit Pipe 2 In. Diam.	LF	4150		
39	997-030	Well Decommissioning	EA	2		
40	997-040	Delay Time For Obstruction Removal	HR	50		
41	997-045	36 In. Water Main Pipe Tie-In	LS	1	LUMP SUM	
42	997-050	Blow Off/ Manway Chamber	EA	3		
43	997-060	Air Valve Manhole	EA	2		
44	997-070	Air Valve/ Manway Chamber	EA	1		
45	997-080	Cathodic Protection System	LS	1	LUMP SUM	
46	997-100	Utility Post Markers	LS	1	LUMP SUM	
47	997-110	PSE Power Vault Installation	EA	4		
48	997-120	PSE Conduit Installation 6 In. Diam.	LF	2965		

PROJECT NO. CW37 SUB TOTAL _____

WASHINGTON STATE SALES TAX @ 7.9% _____

PROJECT NO. CW37 GRAND TOTAL _____

On this project McAllister Transmission Main, CW3, the Contractor shall not include sales taxes in the bid items, but shall collect from the City for payment to the State, retail sales tax on the total cost of the project (i.e., include such taxes on the line for Washington State Sales Tax located beneath the sub-total line).

WM. DICKSON CO.



3315 SOUTH PINE STREET ~ TACOMA WA 98409

City of Olympia
601 4th Avenue East
Olympia, WA 98501

Attn: Mr. Tim Richardson, P.E.

Subject: McAllister Transmission
"APEAL"

RECEIVED

JUN 27 2012

CITY OF OLYMPIA
CUSTOMER CARE CENTER

1134am

**** BIDDER NOTIFICATION ******DETERMINATION THAT BIDDER
DOES NOT MEET RESPONSIBILITY CRITERIA**

June 26, 2012

Jennings Northwest, LLC
1105 140th Ave CT E
Sumner, WA 98390

Sent via: Fax: 253-863-0667
Email: Randy.Durr@jenningscivil.com

RE: McAllister Transmission Main, Project #CW37 Bid Proposal
Notification of Determination of Non-Responsibility

Dear Mr. Durr:

This letter concerns the bid submitted by Jennings Northwest to the City of Olympia, Washington, for the above referenced project. Upon review of your proposal, City staff has determined that the information you submitted does not meet the following supplemental bidder responsibility criteria for this project:

- The contractor failed to meet Section 1-02.1(1) H. 5. Completion of Similar Projects. Contractor has insufficient experience in that, according to the information contractor submitted, Jennings Northwest has not successfully completed the installation of at least 4,000 linear feet of large diameter (36-inch diameter or larger) welded joint steel pipe during the ten (10) year period immediately preceding the bid submittal deadline for this project. Instead, contractor submitted information that Jennings Northwest has completed installation of only 1,452 linear feet of 36-inch diameter steel pipe within the required timeframe.

In addition, the submittal notes prior claims against retainage, which is a potential issue of responsibility that has not been determined due to the City's finding that Jennings Northwest is not responsible for failure to meet the required experience.

The City Council is scheduled to award the contract for this project at its meeting on July 10, 2012, at City Hall Council Chambers (First Floor), 601 4th Avenue East, Olympia, WA. In its report to Council, City staff will recommend formal rejection of your bid for failing to meet the

responsibility criteria. **If you wish to submit additional, relevant information for consideration, please refer to the procedure found in Section 1-02.1(1) of the Project Special Provisions. Any appeal of this determination must be received by the City no later than 4:00 p.m. on June 27, 2012.** Appeals must be clearly marked "APPEAL" and must be delivered to: City of Olympia, Attn: Tim Richardson, at City Hall (*please note the new City Hall location*), 601 4th Avenue East, Olympia, Washington.

Sincerely,



Tim Richardson, P.E.

Project Manager

Public Works Technical Services

c: Rich Hoey, P.E., Director of Public Works
Steve Hall, City Manager
Tom Morrill, City Attorney

B. Michael Schestopol

E-mail: schestopol@oles.com

Direct Phone: 206-467-7468

Adam K. Lasky

E-mail: lasky@oles.com

Direct Phone: 206-467-7465

June 27, 2012

City of Olympia Public Works Department
Olympia City Hall
601 Fourth Avenue East
Olympia, Washington 98501

Attention: Tim Richardson (trichard@ci.olympia.wa.us)

VIA ELECTRONIC MAIL

**Re: Jennings Northwest LLC's Appeal of Non-Responsibility Determination
McAllister Transmission Main – Proj. No. CW37**

Dear Mr. Richardson:

This office represents Jennings Northwest, LLC. This letter is submitted in response to your June 26, 2012 "Determination" that Jennings Northwest, LLC failed to meet the responsibility criteria for the McAllister Transmission Main, Project #CW37. It is the position of Jennings Northwest, LLC that, for the reasons set forth below, that Determination is improper.

"Pursuant to RCW 39.04.350, a municipality may require that a bidder meet what is called supplemental bidder responsibility criteria for construction projects where specialized experience, beyond the experience needed to complete a typical municipal project, is necessary."¹ The statute cited reads in pertinent part:

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

¹ City Manager's Recommendation at p. 2, Olympia City Council Meeting Packet Agenda Item 7A, Sept. 28, 2010, "Although staff makes the initial determination for projects awarded by Council, the City's practice is that Council makes the final determination regarding bidder responsibility." Available at http://olympiawa.gov/documents/CouncilPackets/20100927/OB_HendersonParkBidAwardSTF.pdf.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.² (Emphasis added)

Notably, RCW 39.04.350(2) does not require rejection of a bidder who fails to meet *all* the supplemental responsibility criteria. Rather, a public agency has “discretion” to accept a bid from a bidder that substantially meets the supplemental bidder responsibility criteria: “If the bidder does not meet each element of the criteria, the public agency may, nevertheless, exercise its discretion and declare the bidder responsible if the agency is confident that the bidder is capable of successfully performing the project.”³

Per the CPARB, “RCW 39.04.350(2) requires that Supplemental Bidder Responsibility Criteria be ‘relevant’ to the project.”⁴ **Supplemental Bidder Responsibility Criteria must “not be written in such a way as to unduly restrict the pool of available qualified bidders.”**⁵ There must be a “clear relationship between the Owner’s concerns about obtaining a qualified contractor and the specific Supplemental Bidder Responsibility Criteria.”⁶ Further, the agency must “be able to demonstrate, upon request, the rationale of why a particular criterion is appropriate and what methodology was used in establishing the requirements.”⁷ **In other words, the Owner has the burden of demonstrating that the Supplemental Bidder Responsibility Criteria is reasonably necessary to meet its minimum needs.**

This “relevancy” standard/burden is consistent standard applied in federal bid protests when assessing whether a minimum bidder experience requirement is relevant and/or unduly restrictive of competition. See *Total Health Resources*, B-403209, Oct. 4, 2010, 2010 CPD ¶1226 (“In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent necessary to satisfy the agency’s legitimate needs. ... Where a protester

² RCW 39.04.350(2),(3).

³ Washington Capital Projects Advisory Review Board, *Suggested Guidelines for Bidder Responsibility* at p. 19 (rev. Feb. 9, 2012), available at <http://ga.wa.gov/CPARB/BidderResponsibilityGuidelines.doc> (hereinafter referred to as “CPARB Bidder Responsibility Guidelines”). See also Mike Purdy, *Revised Bidder Responsibility Guidelines Adopted* (Feb. 26, 2012), available at <http://publiccontracting.blogspot.com/2012/02/revised-bidder-responsibility.html> (“a public agency may exercise discretion and determine that a bidder is responsible if they substantially meet the criteria.”).

⁴ See CPARB Bidder Responsibility Guidelines, *supra* note 3, at p. 14. See also *id* at p. 11 (“Supplemental Bidder Responsibility Criteria describe the relevant experience, training, and/or certification requirements or qualifications that must be met by the low bidder.”).

⁵ See CPARB Bidder Responsibility Guidelines, *supra* note 3, at p. 11. See also *id* at p. 9 (“In establishing Supplemental Bidder Responsibility Criteria, the competing interests of public agencies and contractors must be balanced. The public agency’s interests to ensure that a responsible contractor builds the project must be weighed against the competing interest to ensure that the procurement encourages sufficient competition from the contracting community, without unduly restricting the pool of qualified bidders. Only when these two interests are balanced will the public obtain the work at the best price.”); CPARB Bidder Responsibility Workshop at Slide #36 (March 10, 2011), available at http://www.ac-lawyers.com/files/fetch/old/CPARB-Full_Bidder_Responsibility_Seminar.pdf (listing as “Inappropriate” any supplemental criteria that is “Not Relevant; Too Subjective; Non-Specific; Too Specific; Too Restrictive”).

⁶ See CPARB Bidder Responsibility Guidelines, *supra* note 3, at p. 14.

⁷ See CPARB Bidder Responsibility Guidelines, *supra* note 3, at p. 14.

challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs.”). Accordingly, federal case law is instructive on the issue here of whether or not Supplemental Bidder Criteria #5 is permissible under Washington law.⁸

As noted above, supplemental bidder criteria must not be unduly restrictive. Minimum bidder experience requirements may only be included in a solicitation to the extent they are absolutely necessary to ensure the agency’s needs are met. *Computers Universal, Inc.*, B-296501, Aug. 18, 2005, 2005 CPD ¶ 161 (“a contracting agency must specify its needs and solicit offers or quotations in a manner designed to achieve full and open competition; restrictive provisions or conditions may be included only to the extent necessary to satisfy those needs”). To the extent such requirements are inserted, the owner must be able to justify why that level of experience is necessary to ensure the agency’s needs are met. *Total Health Resources*, B-403209, Oct. 10, 2010, 2010 CPD ¶ 226

Experience Requirement that Could Be Satisfied by Performance of Solitary Project 10 Years Ago is Irrational and Not Relevant to Ensuring the Needs of the City are met on the McAllister Transmission Main Project.

In the present case, Supplemental Responsibility Criteria #5 of the solicitation requires the bidder, as a company, to have “successfully completed the installation of at least 4,000 linear feet of large diameter (36-inch diameter or larger) welded joint steel pipe during the ten (10) year period immediately preceding the bid submittal deadline for this Project.”⁹ This requirement is illogical on its face, and not relevant to ensure the City’s needs are met on this project. For instance, a bidder would satisfy this criteria if it had performed a single 4,000 foot large diameter pipe job 10 years ago, even if since that time the bidder had not performed any other large diameter pipe jobs and all of the bidder’s personnel that worked on the previous job had moved on to other companies. Clearly, under that scenario, the bidder’s past experience would do nothing to ensure the City that it was capable of performing the work on this project. The requirement simply bears no relationship to ensuring the needs of the City are met on the McAllister Transmission Main Project. Supplemental Responsibility Criteria #5, as presently worded, is *not* relevant to the project and is therefore improper under RCW 39.04.350(2).

Requirement that Relevant Project Experience Include At Least 4,000 linear feet of Pipe is Not Relevant and is Unduly Restrictive of Competition.

Supplemental Responsibility Criteria #5 requires the bidder to have experience on projects with a minimum of 4,000 linear feet of large diameter welded joint steel pipe. Setting the required minimum experience at 4,000 linear feet is unduly restrictive of competition, and not relevant to ensure the City’s needs are met on this the project.

As discussed above, minimum bidder experience requirements may only be included in a solicitation to the extent they are absolutely necessary to ensure the agency’s needs are met. *Total Health Resources*, B-403209, Oct. 10, 2010, 2010 CPD ¶ 226; *Computers Universal, Inc.*, B-296501, Aug. 18, 2005, 2005 CPD ¶ 161. The City has presented no rational explanation to justify the minimum experience requirement of 4,000 linear feet. Not even counting the

⁸ See *Golf Landscaping, Inc. v. Century Const.* 39 Wn. App. 895 (1984)

⁹ Specification § 1-02-1(1)(H)(5) (as amended by Addendum No. 1).

separate experience of its General Superintendent, Jennings Northwest LLC has demonstrated past experience on a project installing 1,452 linear feet of large diameter pipe. In fact, prior to bid, Jennings requested that the City modify this criterion from 4,000 to 1,400 linear feet. In rejecting this request, the City failed to provide a rational justification (nor any justification at all) why bidders must have experience installing 4,000 feet of pipe, and how successfully installed 1,400 feet of pipe was insufficient to reasonably ensure the contractor could successfully perform the subject work. It is the City's responsibility to provide a rational explanation why experience installing 4,000 feet of pipe, and not some lesser amount, is absolutely necessary to satisfy the City's needs. Absent a rational explanation, the minimum requirement of 4,000 feet is unduly restrictive of competition, and therefore improper under RCW 39.04.350(2).

Experience Requirements are Unduly Restrictive of Competition and Not Relevant to Ensuring Needs of City are Met.

In the present procurement, the City has indicated that intends to reject Jennings' bid as non-responsible due to the fact that Jennings failed to list sufficient organizational experience to satisfy Supplement Responsibility Criteria #5, as the company itself only had installed 1,452 feet of large diameter pipe in the past 10 years. However, Jennings' General Superintendent, Mark Heintz, has relevant experience installing over 282,698 feet (53.5 miles) of large diameter pipe over the course of his career. (See Pipe Installation Experience for Mark Heintz, attached). There is no legitimate rational basis for why the past experience of Jennings' field superintendent cannot be used to satisfy the experience requirement of Supplement Responsibility Criteria #5. Therefore, Supplement Responsibility Criteria #5, as applied by the City, is unduly restrictive of competition and improper under RCW 39.04.350(2).

As a general rule the experience of a prime contractor's key personnel may be used to satisfy a requirement that the prime contractor have past experience on similar projects. See *Tutor-Saliba Corp., Perini Corp., Buckley & Co., Inc., and O & G Indus., Inc., A Joint Venture*, B-255756, Mar. 29, 1994, 94-1 CPD ¶ 223; *Western Roofing Serv.*, B-232666.3, Apr. 11, 1989, 89-1 CPD ¶ 368; *Hawco Mfg. Co.*, B-265795, Oct. 26, 1995, 95-2 CPD ¶ 191; *United Coatings*, B-291978.2, July 7, 2003, 2003 CPD ¶ 146; *SDS International*, Comp Gen Dec B-285822, 2000 CPD ¶ 167; *Tucson Mobilephone, Inc.*, B-258408.3, 95-1 CPD 267 ("In determining whether a contractor satisfies a definitive responsibility criterion for a specified number of years of experience, an agency may consider the experience of the bidder's employees, even if the experience was gained while these employees worked for other employers"). In fact, "a contracting agency may properly consider the experience of a firm's personnel in evaluating its organizational experience even where the solicitation defines the factor in terms of corporate experience." *Cygnus Corp.*, B-275957, April 23, 1997, 97-1 CPD ¶ 202.

Even if the City had a legitimate rationale for why the minimum experience requirements in Supplement Responsibility Criteria #5 are necessary to ensure successful performance of the contract, the City has not (and cannot) provide a legitimate rationale for why the relevant experience of a bidder's key personnel for the project (i.e., the field superintendent) cannot satisfy the City's needs. Here, the past experience that *is* rationally related to the successful completion of this project is the bidder's experience supervising and performing similar work. That experience is directly tied to the experience of the bidder's employees who work on the project. Thus the bidder's relevant experience is *not* distinct from the technical experience and expertise of the bidder's key employees. In fact, the experience of a bidder's field superintendent for the project is far and away more relevant than the experience of the bidder's

City of Olympia Public Works Department
June 27, 2012
Page 5

organization itself. This is especially the case in the current construction market, where employees have been regularly forced to change companies. If the employees who performed a past project for the bidder are no longer employed by the bidder, the bidder's experience with that past project is essentially irrelevant.

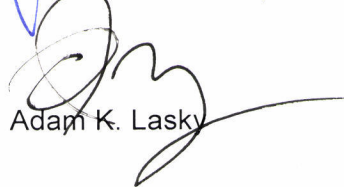
Accordingly, there is no legitimate rational basis for why the past experience of Jennings' proposed field superintendent cannot be used to satisfy the experience requirement in Supplement Responsibility Criteria #5. Should the City apply Supplement Responsibility Criteria #5 in such a restrictive manner, is unduly restrictive of competition and improper under RCW 39.04.350(2).

Your June 26, 2012 Determination also made reference to "issues" concerning claims against Jennings' bond and/or retainage. We believe the attached letter from Propel Insurance should allay any concerns or issues.

Very truly yours,

OLES MORRISON RINKER & BAKER LLP


B. Michael Schestopol


Adam K. Lasky

Enclosures

cc: Jennings Northwest LLC, w/enclosures

JENNINGS

Steel Pipe Installation Experience of Mark Heintz, General Superintendent for Jennings Northwest LLC

ATTACHMENT 6

Project Name	Period of Construction	Owner	Contact	Diameter	Approximate Length, ft
Tacoma Pipeline No. 1 replacement at Puallup River Valley, Phase II	2011 to 2012	City of Tacoma, WA	Michel Pelouquin, 253-502-8212	36"	1,452
Tacoma Second Supply Headworks Pipeline	2004 to 2005	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	60", 74", 84", and 102"	8,500
Anacortes Water Main	2003 to 2004	City of Anacortes, WA	Bob Clumppner, 360-299-1966	36"	27,000
N. Transmission Line, Phase 2A/East Baseline L.E.D.	2002 to 2003	City of Cornelius, OR	Supplied upon request	72"	15,625
Tacoma Second Supply Pipeline - Middle Reach - Western Section	2002 to 2003	City of Cornelius, OR	Supplied upon request	54"	391
Tacoma Second Supply Pipeline - Kent/Covington Section	2001 to 2003	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	60"	47,520
Tacoma Second Supply Pipeline - Kent/Covington Section	2000 to 2001	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	60"	18,700
NE Tacoma/Federal Way Transmission Main 2	2000 to 2001	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	72"	25,500
NE Tacoma/Federal Way Transmission Main 2	1999 to 2000	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	48"	20,530
NE Tacoma/Federal Way Transmission Main 1	1999 to 2000	City of Tacoma, WA	Tim Larson, M 253-548-4019, W 425-468-1525	60"	5,480
Seattle Tolt Tie Line	1998 to 1999	Seattle Public Utilities	Dana Wren, contact information upon request	48" and 60"	30,000
Everett/Marysville Transmission Main	1997 to 1998	Seattle Public Utilities	Dana Wren, contact information upon request	54" and 60"	30,000
Tolt River Replacement	1991	Seattle Public Utilities	Dana Wren, contact information upon request	36"	26,000
	1989 to 1990	Seattle Public Utilities		66" to 84"	26,000
				TOTAL, lineal feet	282,698
				TOTAL, miles	53.5



1201 Pacific Avenue
Suite 1000
Tacoma WA 98402-4321

253 759 2200

Mr. Tim Richardson, P.E.
Project Manager
Public Works Technical Services
City of Olympia
P.O. Box 1967
Olympia, WA 98507-1967

Re: Project #CW37; McAllister Transmission Main

Subject: Jennings Northwest LLC; Claims Against Retainage and Bonds/Explanation

Dear Mr. Richardson:

Propel Insurance acts as the bonding agent for Jennings Northwest LLC. As bonding agent we are aware of any claims asserted against bonds issued on behalf of Jennings Northwest LLC as claims or potential claims directly impact bonding capacity and premium costs.

In your letter of June 26, 2012 you advised Jennings Northwest LLC that their supplemental criteria raised "potential issues" with respect to claims against bond and retainage. We have reviewed the Supplemental Bidder Responsibility Criteria form at SC-1 submitted by Mr. Durr on behalf of Jennings Northwest LLC for the above project. (Copy attached.) Mr. Durr listed three projects as having experienced claims against the retainage and/or bonds. Mr. Durr is mistaken; Jennings Northwest LLC received mandatory statutory notices necessary to preserve subcontractors/suppliers rights against the bonds and retainage for those projects. In none of those instances were claims asserted against the bonds issued on behalf of Jennings Northwest LLC.

Sincerely,

Propel Insurance

A handwritten signature in black ink, appearing to read "Eric Zimmerman", is written over the printed name below.

Eric Zimmerman

SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA
 McAllister Transmission Main
 CW37

These forms shall be completed in their entirety and submitted by the apparent low bidder to the Owner by 12:00PM (noon) of the second business day following the bid submittal deadline. Failure to submit and meet the requirements as stated in Section 1-02 of the Special Provisions shall be grounds for rejection of the bid.

Claims Against Retainage and Bonds/Explanation
 (See Section 1-02.1(1) Bidder Responsibility Criteria)

The Bidder shall submit a list of public works projects completed during the five (5) year period immediately preceding the bid submittal deadline for this Project and include for each project the following information:

#1 Name of Project TACOMA PIPELINE NO. 1 REPLACEMENT @ PUYALLUP RIVER VALLEY
 Owner CITY OF TACOMA Contact Person: MICHEL PELOQUIN
 Claims filed against retainage and/or payment bond: N/A

Explanation of circumstances surrounding each claim and the ultimate resolution of the claim: N/A

#2 Name of Project N. TEXAS - E. MARCH PT ROAD WATERLINE RPLCMT
 Owner CITY OF ANACORTES Contact Person: BOB CLUMPNER
 Claims filed against retainage and/or payment bond: STRANDBERG EXCAVATION

Explanation of circumstances surrounding each claim and the ultimate resolution of the claim: INVOICE WAS LOST IN THE MAIL. WE QUICKLY PAID THEM ONCE WE WERE MADE AWARE OF THE SITUATION. CLAIM WAS DROPPED BY STRANDBERG.

#3 Name of Project TONQUIN AVE BRIDGE REPLACEMENT
 Owner CITY OF OCEAN SHORES Contact Person: KARLA ROBERTS
 Claims filed against retainage and/or payment bond: NORTHWEST ROCK

Explanation of circumstances surrounding each claim and the ultimate resolution of the claim: LATE PAYMENT. SUPPLIER WAS PAID AND THE CLAIM WAS DROPPED.

B. Michael Schestopol

E-mail: schestopol@oles.com

Direct Phone: 206-467-7468

Adam K. Lasky

E-mail: lasky@oles.com

Direct Phone: 206-467-7465

July 3, 2012

City of Olympia Public Works Department
Olympia City Hall
601 Fourth Avenue East
Olympia, Washington 98501

Attention: Tim Richardson (trichard@ci.olympia.wa.us)

VIA ELECTRONIC MAIL

**Re: Jennings Northwest LLC's Appeal of Non-Responsibility Determination
McAllister Transmission Main – Proj. No. CW37**

Dear Mr. Richardson:

This is further to our correspondence of June 27, 2012 concerning Jennings Northwest LLC's Appeal of the City's June 26, 2012 Determination of Non-Responsibility for the performance of the work of Project CW37, McAllister Transmission Main. Attached is a letter from Mr. Tim Larson, P.E. setting forth additional details of the welded steel pipeline projects performed under the direction of Mr. Mark Heintz, Jennings Northwest LLC's General Superintendent. As noted by Mr. Larson, "*Mr. Heintz, as the contractor's superintendent, personally directed the successful installation for four of the five sections of Tacoma Water Division's Second Supply Pipeline Project totaling over 26 miles of welded steel water pipe.*" After discussing the details and particular challenges of the work involved, Mr. Larson concludes "*All of the work was completed in a professional manner, in accordance with specifications, and in compliance with safety standards.*"

Mr. Larson retired from Tacoma Water after many years of service as Senior Special Project Engineer. He is a registered Professional Engineer in the State of Washington and is presently employed by HDR Engineers. He is not employed by nor does he act in any capacity as a consultant to Jennings Northwest, LLC.

As noted in our Appeal, the City has the discretion to accept a bid from a bidder that substantially meets the supplemental bidder responsibility criteria: "If the bidder does not meet each element of the criteria, the public agency may, nevertheless, exercise its discretion and

City of Olympia Public Works Department
Attention: Tim Richardson
July 3, 2012
Page 2

declare the bidder responsible if the agency is confident that the bidder is capable of successfully performing the project." (Citing Washington Capital Projects Advisory Review Board *Guidelines for Bidder Responsibility*, (2012)) and that it is appropriate to consider the experience of a prime contractor's key personnel on past projects of a similar nature. (See decisions cited at page 4 of our June 27, 2012 Appeal). Based on the information Jennings Northwest LLC has provided, we submit that the City should be confident that Jennings can successfully perform this project, in the words of Mr. Larson, "... *in a professional manner, in accordance with specifications, and in compliance with safety standards.*"

Very truly yours,

OLES MORRISON RINKER & BAKER LLP



B. Michael Schestopol



Adam K. Lasky

Enclosure

cc: Jennings Northwest LLC, w/enclosure

July 2, 2012

Re: Mr. Mark Heintz Welded Steel Pipe Experience

To Whom It May Concern,

This letter is to attest to the qualifications and experience of Mr. Mark Heintz for the construction and installation of welded steel pipelines. It has been Tacoma Water's experience that the personnel actually performing the pipeline installation work is much more important than the construction company's experience, as the experienced personnel are recruited by companies that desire to bid welded steel pipeline work. Mr. Heintz, as the contractor's superintendent, personally directed the successful installation for four of the five sections of Tacoma Water Division's Second Supply Pipeline Project totaling over 26 miles of welded steel water pipe .

The first section, Kent-Covington Section, is 9.1 miles of 60-inch and 72-inch diameter pipe. Construction included three trenchless railroad crossings, an open-cut stream crossing, an aerial river crossing, steep slopes and narrow wetland corridors.

The second section, Northeast Tacoma Federal Way Section, consisted of 8.6 miles of 48-inch to 60-inch diameter pipe. The construction included pipe installation in city streets, highway crossings, trenchless railroad crossings, trenchless river crossing and cross country steep slopes and narrow wetland corridors.

The third section, Middle Reach West Section, is 8.4 miles of 60-inch diameter pipe. Construction challenges included trenchless crossings of Interstate 5, two railroads, two major arterials and a river.

The last section, Headworks Section, consisted of 96-inch and 72-inch diameter pipe. In addition to the pipe installation the project including installation of a box culvert to improve fish access to a slough and the rebuilding of the access road to Tacoma's Headworks.

All of the work was completed in a professional manner, in accordance with specifications , and in compliance with safety standards.

Mark is exceptionally qualified for the construction and installation of welded steel pipelines.

Sincerely,



Tim A. Larson, P.E.

Senior Special Project Engineer

Tacoma Water (Retired)

253-548-4019