



CITY OF PETALUMA

11 ENGLISH STREET
PETALUMA, CA 94952

Kevin McDonnell
Mayor

March 25, 2024

Brian Barnacle
Mike Healy
Karen Nau

Via Email and First Class Mail

Dennis Pocekay
John Shribbs
Janice Cader Thompson
Councilmembers

Anvil Builders, Inc.
1550 Park Ave
Emeryville, CA 94608

Re: Notice Concerning Responsiveness of Bid Submitted by Anvil Builders, Inc. for
Advanced Metering Infrastructure Project

Dear Alan Guy,

Pursuant to Section 10 in the Notice Inviting Bids and Section 10 of the Instructions to Bidders for this project, which provides in pertinent part that “the City reserves the right to reject any or all bids”, please be advised that City of Petaluma staff intends to recommend that Council find the bid received from Anvil Builders, Inc for this project non-responsive and rejected due to failure to meet the minimum requirements outlined in the statement of qualifications bid form as described in Section II below.

I. LEGAL STANDARDS

California Public Contract Code section 20162, which governs the City’s award of the contract for this Project, requires that the contract be awarded, if at all, to the lowest responsible bidder. In Section 18 of the Notice Inviting Bids document: the City expressly reserves its rights to evaluate bid compliance and to waive minor bidding errors:

“The City reserves the right to reject any or all bids, to waive any minor irregularity in a bid, and to make awards to the lowest responsive, responsible bidder as it may best serve the interest of the City.”

The City’s discretion to waive inconsequential informalities or irregularities is well established under California law, “[I]t is further 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* (2014) 223 Cal.App.4th 1181, 1188 (“*Bay Cities*”).)

A bid is responsive if it promises to do what the bidding instructions demand. (*Williams v Clovis Unified Sch. Dist.* (2007) 146 CA4th 757; *Valley Crest Landscape Inc. v City Council* (1996) 41 CA4th 1432, 1438.) In general, issues of responsiveness are determined by looking exclusively at the face of the bid. (*Great West Contractors, Inc. v. Irvine Unif. Sch. Dist.* (2010) 187 Cal.App.4th 1425, 1453. (“*Great West*”) Therefore, allegations that go beyond the face of the bid are generally not relevant for determining responsiveness. In

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addition, allegations of non-responsiveness must be evaluated from a practical, rather than speculative or hyper-technical perspective, and based on the public interest:

“They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal...of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.” (*Bay Cities*, supra, at 1189; internal quotation marks omitted.)

Lastly, “A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted.” (47 Ops.Cal.Atty.Gen. 129, 130 (1966) quoted with approval in *National Identification Systems, Inc. v. State Bd. of Control*, (1992) 11 Cal.App.4th 1446, 1453 and *Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 454.) Accordingly, if a bid is not responsive to the bidding instructions, a public entity may reject the bid outright.

II. ANALYSIS

a. Anvil Builder’s Bid was Not Responsive

City staff has found Anvil Builder’s bid to be non-responsive due to failure to comply with the minimum requirements outlined in the project’s statement of qualifications bid form. The AMI project’s statement of qualifications requires bidders to submit a minimum of three projects of similar scope and value completed in the last five years. The experience and qualifications submitted by Anvil Builders have failed to meet such requirement.

The City’s AMI project scope consists of converting approximately 18,500 water meters to AMI within approximately 1-year. The experience and references submitted by Anvil Builders primarily revolve around heavy civil underground construction work including installation of new or replacement of water mains, water services and water meters, which is not of similar scope to a mass meter system upgrade project. Below are the five projects listed by Anvil Builders in their statement of qualifications form and the reasons why they do not meet the project’s minimum requirements:

- 1) MPS103 Water System Improvements \$2 million
 - a. The project was constructed in 2017, which is outside the 5-year period requirement.
 - b. The project scope is not comparable to the AMI scope as it consisted of replacing 500ft of 6” main and 12 services, underground water improvements, electrical work, site work, concrete tank demolition, pressure reducing valve install, generator install, hydropneumatic tank install, and concrete work for a pump station rebuild in San Carlos, CA.
- 2) West Sacramento Water Meters Replacement Project \$2.5 million
 - a. The project was completed in 2019.
 - b. The project scope includes comparable scope to the AMI project but in a significantly smaller scale than what will be required in the City’s project. Anvil Builders replaced approximately 1,300 water meters as well as 2,000ft of water main, whereas the AMI project will require the upgrade of approximately 18,500 water meters to AMI.
- 3) Navy Drive North Relocation of Facilities \$1.5 million


- a. The project was completed in 2017/18, which is outside the 5-year period requirement.
 - b. The project scope is not comparable to the AMI scope as it consisted of replacing a water main and under 100 fire and residential water services and water meters.
- 4) CP-01 Infrastructure 16.5 million project
- a. The project was completed in 2018, which is outside the 5-year period requirement.
 - b. The project scope is not comparable to the AMI scope as it consisted of installing wet and dry utilities for a housing development, with approximately 30 water service connections being installed.
- 5) Pier 70 Redevelopment
- a. The project was completed in 2019/20
 - b. The project scope is not comparable to the AMI scope as it consisted of various wet utilities including Badger Meters at new Hunters Point Development.

Accordingly, the City's statement of qualifications, which was part of the Project's bid packet required Anvil Builders to submit three similar projects of similar scope and value completed in the last five years. This requirement allows the City to determine whether or not the low bidder has the requisite experience to effectively perform the Project. Here, Anvil Builders did not provide three projects within the past 5- years as required by the Project's bid packet and the two projects that were completed within the past 5-years are not of similar scope or value as explained above. Therefore, Anvil Builder's bid was not responsive and the City has the ability to reject their bid.

III. CONCLUSION

Based upon the foregoing, and reviewing the protest response letter from Anvil Builders, Inc., attachment 2, City staff will recommend that the City Council find Anvil Builder Inc's bid non-responsive and that the construction contract be awarded to Professional Meters Inc, at its April 8, 2024, City Council meeting. The City appreciates Anvil Builder's interest in this project and wishes you success with your next project.

Sincerely,


Dylan Brady
Assistant City Attorney
dbrady@cityofpetaluma.org
(707) 778-4497

Cc: Lucas Pereira, Assistant Engineer
Dan Herrera, P.E., Deputy Director of Operations
Eric Danly, City Attorney
John Cummings Professional Meters, Inc. John.cummings@prometers.com

Attachments:

1. Protest Letter from Professional Meters Inc
2. Protest Response Letter from Anvil Builders, Inc on 3/31/24



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03/14/2024

Peggy Flynn
City Manager
City of Petaluma
202 N McDowell Boulevard
Petaluma, CA 94954

To Whom It May Concern,

Professional Meters Inc. (PMI) protests Anvil Builders, Inc.'s Bid and Statement and Qualifications submitted for the City of Petaluma's Advanced Metering Infrastructure (AMI) Implementation Project E67502242 due March 7, 2024.

Anvil Builder's Statement of Qualifications does not comply with the minimum qualification requirements required:

- Anvil's SOQ does not list five years' experience engaged in the performance of similar work. While a mass meter/endpoint upgrade could be included in the broad category of a water/wastewater project, it is not accurate to describe the projects listed as "similar" to the work outlined in the Request of Bids. For instance, a firm the city may hire to repaint its water towers would be doing water/wastewater work, but it is doubtful they could be viewed as being experienced in drinking water treatment facility construction.
- Additionally, Anvil Builder's SOQ does not list three projects with similar scope and value. The listed projects are primarily for water/wastewater projects with little resemblance to the specific scope and pace of this project. A project which includes the mass upgrade of 18,000 water meters in one year which averages 350 meters upgraded per week. PMI has completed over 100 mass meter/endpoint upgrade projects with similar scope of work and regularly upgrades 500-1,000 meters per week on projects.

The percentage difference in submitted bid pricing is less than 1.5%. Due to the Anvil Builder's lack of proven experience and PMI's ability to meet the qualification requirements listed in the bid document, we are requesting that Anvil Builder's bid be disqualified.

Thank you for your timely attention to this matter.

John Cummings
Vice President
Professional Meters, Inc.
John.cummings@prometers.com
815-413-0216

Delivering Innovative Metering Solutions Nationwide

Exhibit 2



Contractor ~ License #952883

DIR #1000003867

3/21/24

Peggy Flynn
City Manager
City of Petaluma
202 N McDowell Blvd.,
Petaluma, CA 94954

RE: City of Petaluma Advanced Metering Infrastructure Implementation Project
Subject: Response to Bid Protest – Anvil Builders Qualifications

Dear City of Petaluma Procurement Team,

Anvil Builders Inc ("ABI") respectfully submits this response to the protest filed by Professional Meters Inc ("PMI") regarding Anvil's qualifications for the City of Petaluma's Advanced Metering Infrastructure ("AMI") project.

Anvil's Qualifications

Anvil meets all the minimum qualifications outlined in the Instructions to Bidders ("ITB") and the Statement of Qualifications ("SOQ"). We provide a detailed summary of our Qualifications, referencing relevant sections of the bid documents.

1. Experience as a Continuously Operating Entity

Anvil has over thirteen years of continuous operation. Our extensive portfolio includes over \$1 billion of completed public works, infrastructure, emergency response, aviation, fuel and private projects across the Bay Area, North Bay, and Sacramento regions.

2. Public Works Project Experience and Default History

Anvil possesses a successful track record of public works projects with no history of default terminations. We are committed to delivering projects on time and within budget.

3. Financial Strength and Resources

Anvil submitted a confidential financial statement and a Bank Reference Letter demonstrating our strong financial position and capability to fully finance the AMI project.



Contractor – License #952883



DIR #1000003867

4. Prior Projects of Similar Scope and Value

Anvil's SOQ submitted post bid included five Wet Utility Infrastructure projects ranging from \$2 million to \$20 million, exceeding the minimum requirement. Two of these projects involved the construction of entirely new city developments, encompassing new mainlines, lift stations, residential and commercial metered services. These utilities include Force Mains, Potable Water, Fire Water, Recycled Water, and Irrigation Systems. These projects demonstrate our expertise in installing and commissioning pressurized water systems, including meters.

Similar Project Examples:

- **West Sacramento Water Meter and Main Project:** Upgraded meters with smart meter registers and endpoints, similar to the City's AMI specifications. Anvil self-performed meter installation, register testing, and paperless Meter Report generation compatible with the Utility Department's software, mirroring the City's AMI data management requirements. Additionally, we collected GPS coordinates for each location, fulfilling a key project requirement. Documentation of these reports and field installation photos were emailed to the City on March 11, 2024.
- **PG&E Master Service Agreement:** This master contract with PG&E was awarded in phases with over ten separate task order contracts between 2020 and 2022. The projects involved retrofitting and installing thousands of gas services, requiring GPS coordinate collection and submission of paperless reports compatible with the owner's utility software, demonstrating our experience with similar data management practices.
- **San Francisco Pier 70 Redevelopment:** This \$20 million project included the construction and commissioning of wet and dry utilities in the public and private right of way. Project scope included installation of metered services as well as collecting GPS coordinates and paperless deliverables.

Anvil has also installed multiple Badger Meter units for various municipalities, fulfilling the requirement for familiarity with Badger Meter water meter parts.



Contractor – License #952883



DIR #1000003867

5. Key Staff Resumes

Anvil provided resumes for superintendents and project managers with over 100 years of combined experience in the Wet Utility sector. We have additional qualified staff and can readily submit further resumes upon request.

Beyond Wet Utility Infrastructure:

Anvil's experience extends beyond Wet Utility Infrastructure projects. We have completed over \$100 million in treatment plant and pump station projects, including installing and testing electromagnetic flow meters, demonstrating our proficiency with similar technologies used in smart meters.

Additional Relevant Experience

The AMI project demands significant manpower. While not directly related to Wet Utility Infrastructure, Anvil's experience includes over \$300 million in emergency response projects and federal/state fire debris cleanups. We have managed up to 100 crews and cleared up to 500 properties per week, working through weekends and holidays. This experience demonstrates our ability to mobilize crews and meet project milestones efficiently.

Conclusion

A thorough examination of our qualifications will reveal that Anvil meets or exceeds the minimum requirements outlined in the ITB and SOQ documents. Anvil respectfully submits that the concerns raised in PMI's protest are not substantiated by the objective criteria outlined in the ITB and SOQ documents. Anvil stands as the lowest responsive bidder.

Respectfully,

A handwritten signature in dark ink, appearing to read "Alan Guy".

Alan Guy | CEO
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