



**DEPARTMENT OF PUBLIC UTILITIES  
MEMORANDUM**

September 25, 2017

**TO:** WILMA QUAN-SCHECTER, City Manager  
TIM ORMAN, Chief of Staff to the Mayor

**FROM:** THOMAS C. ESQUEDA, Director  
Department of Public Utilities

MICHAEL CARBAJAL, Planning Manager  
Department of Public Utilities, Utilities Planning & Engineering

**SUBJECT:** NESWTF STORAGE TANK DESIGN-BUILD PROCUREMENT  
STAFF RECOMMENDATION FOR POST-PROTEST HEARING ACTION

The purpose of this memorandum is to present DPU staff recommendation for procuring a general contractor to construct a 6 million gallon tank at the Northeast Surface Water Treatment Facility.

**Recommendation:**

Proceed with award of NESWTF Storage Tank design-build contract to W. M. Lyles Company (Lyles).

**Basis of recommendation to proceed with award of contract to Lyles:**

- 1) For the subject project, the City received two proposals:
  - a) W.M. Lyles Company
  - b) Mountain Cascade, Inc.
- 2) The two proposals were reviewed and evaluated by multi-discipline team of City staff.
  - a) City staff recommendation was to award the construction contract to W.M. Lyles Company based on their significant experience as the lead firm on design-build projects.
  - b) Mountain Cascade, Inc. has never been the lead firm for a design-build project, and City staff deemed the Mountain Cascade, Inc. proposal as non-responsible.



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- 3) Upon being advised of the City's decision to award the construction contract to W.M. Lyles Company based on their experience with design-build projects, and the determination that the Mountain Cascade, Inc. proposal was non-responsible, Mountain Cascade, Inc. exercised their right to protest the City's decision.
- 4) Hearing Officer agreed with the City's determination that Mountain Cascade, Inc. (MCI) is non-responsible.
- 5) Hearing Officer's recommendation in brief:
  - a) Deny MCI's request to reverse designation as non-responsible. – Essentially agreeing with the City's finding.
  - b) Find bidding process in compliance with City's policies, recognizing staff actions may have been in violation of those policies. – Referenced violation related no signature on Lyles' last proposal, which may be cleared prior to award.
  - c) Reject bids to avoid perception of unlawful or unfair bidding process – This recommendation is to avoid perception of unlawfulness or unfairness, recognizing they did not find any unlawfulness and unfairness.
- 6) Selection process was honest and fair toward selecting best-qualified and best-value team. Hearing Officer had no findings against this.
- 7) Proceeding with award to Lyles enables best case with respect to project completion schedule and lowest cost. Re-packaging/re-bidding project will drive further delays and increased overall project cost.
- 8) Hearing Officer recognized that City may make decision to proceed in one of the following ways:
  - a) Award to protesting bidder
  - b) Award to other than protesting bidder
  - c) Reject all bids
- 9) Considering that prior City's determinations have been found to be reasonable by the Hearing Officer, rejection of bids may be unfair to Lyles, especially as they were found to be best qualified and to provide best value.

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- 10) Rejection of bids and rebidding, in similar or alternate manner, may drive less interest by prior bidders in bidding same project a second time. Considering only two bidders on first round, proposal/bid price for second round may be driven higher.

### **Risks to proceeding as recommended:**

- 1) Perception by others that selection process was unlawful or unfair – If any impact at all, such impact will be minor and or negligible.
- 2) Filing of injunction or suit by MCI
- 3) If Mountain Cascade, Inc. files an injunction, DPU will consult with the City Attorney's Office on next steps.

### **Lessons learned:**

- 1) Don't read proposed Design-Build (DB) amounts out loud. Treat DB proposals more similarly to consultant proposals, as opposed to hard bids for pure construction contracts.
- 2) Better define experience requirements within DB RFP, especially as related to experience with past DB projects.
- 3) Better define and document selection/evaluation process, including criteria, scoring process, etc.
- 4) Do not use Last/Best/Final approach on DB projects. Simply follow RFP-specified approach which allows negotiation with one or more proposers.