



## MONTEREY PENINSULA WATER SUPPLY PROJECT GOVERNANCE COMMITTEE

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**TO:** Jason Burnett, Chair, MPWSP Governance Committee  
**FROM:** Richard Svindland, VP – Engineering, California American Water  
**DATE:** June 28, 2013  
**RE:** Response to Recommendations from Monterey Peninsula Water Supply Project Governance Committee – Draft Desalination Infrastructure Request for Proposals and Draft Design-Build Contract

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As discussed at the June 19, 2013 Monterey Peninsula Water Supply Project Governance Committee (“Governance Committee”) meeting, this memorandum will confirm the decisions made by California American Water with respect to the six recommendations included in the Governance Committee’s May 28, 2013 correspondence. As explained in detail below, California American Water followed all six of the Governance Committee’s recommendations by revising language in the Request for Proposals (“RFP”) and draft design-build contract (“DB contract”) and by carefully considering revising terms in the DB contract related to the schedule for acceptance.

### Background

On May 20, 2013, California American Water submitted to you Notification #2 pursuant to, and in compliance with, Section V.B. of the Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee (the “Agreement”), dated March 8, 2013, entered into by and among the Monterey Peninsula Regional Water Authority (“MPRWA”), the Monterey Peninsula Water Management District (“MPWMD”), the County of Monterey (“County”), and California-American Water Company (“Cal-Am”). Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

As described in Notification #2, pursuant to Section V.D., Category B.1., of the Agreement, the Governance Committee may recommend qualifications and selection criteria to be included in the RFP relating to the procurement of a Contract. Additionally, pursuant to Section V.D., Category C.2., of the Agreement, prior to Cal-Am’s commencement of negotiations with a selected contractor relating to a Contract, the

Governance Committee may review and issue recommendations concerning contract terms relating to such Contract. Section V.A of the Agreement provides: (1) if Cal-Am chooses not to follow a recommendation of the Governance Committee under Category B, Cal-Am must provide a written explanation of its reasons for the decision; and (2) if Cal-Am chooses not to follow a recommendation under Category C, Cal-Am need not issue a written explanation for its decision.

### Responses to Recommendations

The Governance Committee's recommendations and Cal-Am's corresponding responses are set forth in detail below. In summary, Cal-Am followed all of the Governance Committee's recommendations. With respect to Governance Committee Recommendation 7, Cal-Am carefully considered, but did not incorporate, revisions to the terms of the DB contract relating to the schedule for acceptance.

### **Governance Committee Recommendation 1:**

The request for proposals (RFP) continue to require detailed bids for the base-case design in order to facilitate the comparison of bids but should do more to encourage creativity in development of alternative designs that may save money and/or increase value. Alternative designs should require same level of detail as the base-case design and meet or exceed same performance standards.

#### **Cal-Am Response:**

This recommendation was followed. RFP Section 2.9.1 was revised, Section 4.4.3.M was added, and Proposal Form 13D was revised, to include the following language:

Revised Section 2.9.1: Proposers are encouraged to submit voluntary alternative proposals for each element of the Project that reduce life cycle cost or improve operations which deviate from the Design and Construction Requirements set forth in Appendix 2 of the draft DB Agreement ("Voluntary Alternative Proposals"). Each such Voluntary Alternative Proposal shall include detail sufficient for CAW to evaluate each element of the Voluntary Alternative Proposals individually including price impact and anticipated effect on operation and maintenance costs, comparison of its advantages and disadvantages to the Base Project, and contact information to allow CAW to perform diligence where such alternative has been implemented.

New Section 4.4.3.M: Proposers are encouraged to provide Voluntary Alternative Proposals that reduce life cycle cost or improve operation which deviate from the Design and Construction Requirements set forth in Appendix 2 of the draft DB Agreement. Proposers shall identify whether the Voluntary Alternative Proposal is for a Project with Rated Capacity of 9.6 mgd, 6.4 mgd, or both. Voluntary Alternative Proposals shall be numbered to correspond with the pricing information provided on Proposal Form 13D and shall clearly indicate how all provided documents correspond to the pricing information provided on Proposal Form 13D. Proposers shall include any changes to the

Preliminary Project Schedule, Scheduled Construction Date, and Scheduled Acceptance Date identified on Proposal Form 12, if any, and any changes to the plan for performance of the Design-Build Work identified in subsection I above, if any, for any Voluntary Alternative Proposals.

These Voluntary Alternative Proposals are to be independent of one another. For each Voluntary Alternative Proposal, the Proposer must provide similar comprehensive detailed information to that which is required for the Base Proposal so that the Voluntary Alternative Proposal can be effectively evaluated and compared against the Base Proposals and other Voluntary Alternative Proposals received. All Voluntary Alternative Proposals must meet the Acceptance Standards and Requirements set forth in Appendix 7 of the DB Agreement. Voluntary Alternative Proposals that consist of only general concepts or marketing materials will not be considered. CAW may elect to choose any or all such Voluntary Alternative Proposals at its sole discretion.

Revised Proposal Form 13D: see attached.

**Governance Committee Recommendation 2:**

The RFP should state that all workers will be paid, at least, the prevailing wage.

**Cal-Am Response:**

This recommendation was followed. Section 2.13 of the RFP and Section 3.11(E) of the DB contract were revised to include the following language:

Revised Section 2.13: CAW has the responsibility for financing the Project. CAW anticipates that a portion of the funding will come from the State's revolving loan program. Prevailing wages must be paid on projects receiving such funding. Proposers, therefore, will be required to pay prevailing wages.

Revised Section 3.11(E): The Design-Builder shall pay prevailing wage rates. The general prevailing wage rates for the Design-Build Work are available on the California Department of Industrial Relations' website at <http://www.dir.ca.gov>, copies of which are on file at the offices of Owner and are available to the Design-Builder or any interested party upon request. Pursuant to Public Resources Code section 75075 and Labor Code section 1771.5(b), the Design-Build Work is subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. The Design-Builder shall, at no additional cost to Owner, comply with labor compliance program requirements. The Design-Builder is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Design-Build Work is to be done have been determined by the Director of the California Department of Industrial Relations.

### **Governance Committee Recommendation 3:**

The Governance Committee supports inclusion of a goal for local hiring. California American Water (Cal-Am) shall review the County of Monterey ordinance that specifies local hires and consider inclusion of that or similar language in the RFP. The bidder's local utilization plan should be a factor in the 40% technical evaluation criteria.

#### **Cal-Am Response:**

This recommendation was followed. Section 2.12 of the RFP and Section 11.12(E) of the DB contract were revised to include the following language:

Revised Section 2.12: Proposers must prepare and submit a local resources utilization and reporting plan ("Local Resources Utilization Plan") as part of its response to this RFP. The Local Resources Utilization Plan is a written commitment to contract with local contractors, subcontractors, sub-consultants, vendors, suppliers, and labor forces. The DB Entity will be required to make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent (50%) of the DB Entity's total construction work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties.

Revised Section 11.12(E): The Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. The Design-Builder has submitted a local resources utilization plan which is included in Appendix 17 (Local Resources Utilization Plan). The Design-Builder will make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than \_\_\_\_\_ percent [Note: percent to be proposed by Design-Builder and shall not be less than 50%] of the Design-Builder's total construction work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. The Design-Builder must monitor and report the continued implementation of the local resources utilization plan throughout the performance of this Design-Build Agreement.

**Governance Committee Recommendation 4:**

Establish a 30-year net present value cost comparison, instead of (or in addition to) a 20-year term.

**Cal-Am Response:**

This recommendation was followed. Section 5.2.6 of the RFP was revised to include the following language:

The net present value (“NPV”) life-cycle costs of the Proposals shall be calculated over an assumed 20-year operation period, as well as an assumed 30-year operation period, primarily based upon the following factors: . . .

**Governance Committee Recommendation 5:**

Bidders should be advised that the rate of corrosion is high in the local coastal marine environment. Good quality materials are required so that Cal-Am and the rate payers will not be responsible to pay for replacement of components that have developed rust after a short period of time.

**Cal-Am Response:**

This recommendation was followed. Section 5.2.3 of the RFP was revised and Sections 2(K) and 2(L) were added to Appendix 2 of the DB contract to include the following language:

Revised Section 5.2.3: CAW shall conduct an assessment of the technical viability factors such as, but not limited to: . . .

Quality of equipment and materials, including consideration of the corrosive local coastal marine atmosphere.

New Section 2(K): The coastal marine environment is corrosive to many metals, and the Design-Builder is to carefully select materials of construction to provide long service life and aesthetic appearance.

New Section 2(L): Saline water can be highly corrosive to metals. All metallic components in contact with saline water are to be selected with materials of construction that are compatible with seawater. Pitting is a particular problem with chlorides and stainless steels. Design-Builder is to identify a minimum Pitting Resistance Equivalency Number (“PREN”) for metals in contact with saline water.

**Governance Committee Recommendation 6:**

The Governance Committee agrees with the approach to apply penalties for late delivery, but understands and agrees with the approach to not provide for a bonus for early project completion.

**Cal-Am Response:**

No decision by Cal-Am was necessary.

**Governance Committee Recommendation 7:**

The Governance Committee understands that Cal-Am is proposing to ask for an estimated schedule for both permitting and construction and that the date for completion (and associated penalties for late delivery) would be set relative to the signing of the Design-Build contract. The Governance Committee requests that Cal-Am consider ways to bifurcate the permit schedule from the construction schedule, recognizing certain parts of the permitting process will be outside the control of the Design-Build firm/team.

**Cal-Am Response:**

This recommendation was followed. CAW carefully considered and discussed at length separating the permitting and construction schedules. The final decision was to keep the schedule as-is. The DB contract already provides a mechanism for schedule relief if permitting delays occur that are outside the control of the design-build entity (“DBE”). Further, bifurcation would be less beneficial to the DBE in that failure to meet the permit schedule could result in DBE liability for liquidated damages even if the DBE ultimately meets the scheduled acceptance date.

Cal-Am thanks the other members of the Governance Committee for their valuable input into this procurement process.

Attachment

**PROPOSAL FORM 13D**

**VOLUNTARY ALTERNATIVE PROPOSALS**

Proposers are encouraged to provide Voluntary Alternative Proposals. Pricing must be included for each Voluntary Alternative Proposal using this format. Identify whether the alternative is for a Rated Capacity of 9.6 mgd or 6.4 mgd. Voluntary Alternative Proposals shall be numbered so that the pricing information submitted on this Proposal Form corresponds with the technical information provided in Section 3.0(M) of the Technical Proposal.

A. Voluntary Alternative Proposal # \_\_

B. Deduct to the Fixed Design-Build Price:

\$ \_\_\_\_\_

C. Expected Operating Cost Savings

(Identify savings by year, for 30 years, assuming no inflation)

For each Voluntary Alternative Proposal, the Proposer must provide in Section 3.0(L) similar comprehensive detailed information to that which is required for the Base Proposal so that the Voluntary Alternative Proposal can be effectively evaluated and compared against the Base Proposals and other Voluntary Alternative Proposals received. All Voluntary Alternative Proposals must meet the Acceptance Standards and Requirements set forth in Appendix 7 of the DB Agreement. Voluntary Alternative Proposals that consist of only general concepts or marketing materials will not be considered.

Proposers shall provide additional Voluntary Alternative Proposals using the format as shown above.