

EL DORADO COUNTY



ENVIRONMENTAL MANAGEMENT DEPARTMENT

September 12, 2006

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Board of Supervisors
330 Fair Lane
Placerville, CA 95667

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

Honorable Board Members:

Subject: Consideration of the Bid Protest letter received from Yubacon, Inc. and proceedings thereon regarding the Union Mine Disposal Site Final Cover bid.

□ **Recommendation:**

The Environmental Management Department is bringing this matter before the Board of Supervisors for consideration of the bid protest letter of Yubacon, Inc. received after the award of the bid and to take appropriate action thereon.

□ **Background:**

The California Regional Water Quality Control Board ordered the final cover of 13.6 acres of the 15.8 acres of the Class III Landfill Area in the year 2006. On July 18, 2006, your board approved the release of a Request for Bids (RFB) for the Final Cover of 13.6 Acres Class III Old Landfill Area at the Union Mine Disposal Site. Three bid proposals were opened.

<u>Vendor</u>	<u>Bid Price</u>
Pacific States – Dublin, CA	\$2,191,335
Doug Veerkamp General Engineering, Inc – Placerville, CA	\$1,862,600
Yubacon, Inc – Diamond Springs, CA	\$1,534,090

Upon reviewing the bid of Yubacon, the following irregularities were observed;

1. Contrary to the bidding instructions, Yubacon used whiteout to make corrections to the bid and failed to initial those changes;
2. Contrary to the bidding instructions, Yubacon failed to acknowledge an addendum to the bid documents; and
3. Yubacon improperly completed the Bidder Information sheet.

The bid of Yubacon, Inc was deemed non-responsive .

On August 21, 2006 an email was sent to all bidders advising them of the intention to award the bid to the "lowest responsible qualified bidder" at the Board of Supervisor's meeting the following morning.

Environmental Health Division

Air Quality Management District

Solid Waste & Hazardous Materials Divisions

Vector Control



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On August 22, 2006 the matter of the award of the bid was brought before the Board of Supervisors. The Board was advised of the non-responsive nature of the Yubacon bid. The Board of Supervisors awarded the bid to Doug Veerkamp General Engineering, Inc., the lowest responsive responsible bidder.

Reason for Recommendation:

On August 23, 2006, the day after the bid was awarded to Veerkamp, Yubacon through counsel sent a letter protesting the bid award claiming that the irregularities in the Yubacon bid were immaterial and the Board should have waived the irregularities in Yubacon's bid and awarded the bid to Yubacon. The letter is attached as Exhibit A.

The relevant instructions to bidders contained in the Notice to Bidders and irregularities are as follows:

1. The instructions provide that "Mistakes must be corrected and the correction inserted and initialed in ink by the person signing the Bid. Erasures and/or correction fluid are NOT acceptable. Changes must be lined out and corrections inserted adjacent and initialed by the Bidder's authorized representative. No **Bid** will be considered that makes exceptions, changes or reservations to the bid documents." Yubacon, in its bid, used correction fluid to make changes to the bid line item for vegetative layer and the subcontractor information for one subcontractor on the Subcontractor list. Neither of these changes was initialed by the person who signed the Yubacon bid.
2. The instructions provide that "Addenda issued are required to be acknowledged and returned by participating Bidders in order to be considered further in the evaluation process. Those Bidders not acknowledging and returning Addenda will not be considered for and will be rejected as "non-responsive." The Bid Proposal form in the bid documents contains and "Addendum Acknowledgement" where the Bidder acknowledges receipt of the following addenda, which are attached to the Proposal. Two addenda were issued in regards to this Bid. Yubacon acknowledged receipt of Addendum No. 1 by completing the Addendum Acknowledgement. Yubacon failed to acknowledge Addendum No. 2. Addendum No. 2 was the addendum that created the two Bid Options. Bid Option 1 assumed the County would provide the material for the vegetative layer and the contractor would load, haul and place the material. Bid Option 2 required that the contractor provide the vegetative layer material in addition to loading, hauling and placing the material. In addition to failing to acknowledge addendum No. 2, Yubacon failed to return either addendum. Yubacon did include with their bid, Bid Schedules for both options.
3. The instructions contained in the Notice to Bidders contains a provision which states "Bidder's failure to fully complete and execute the questions and statements required by these Bid Documents ... may prohibit award of the

subject Contract to the Bidder.” Included within the bid Documents is a Bidder Information sheet. This sheet requires that the bidder identify the classification of its business organization. Yubacon did check the “Bidder is a Corporation” portion of the sheet, but then went on to provide information under both the “Bidder is an Individual” and “Bidder is a Partnership” sections of the Bidder Information sheet.

This matter is brought before the Board to allow the parties to appear and present their case to the Board in regards to the bid protest.

Upon hearing the presentations of the parties, the Board may take one of the following actions:

1. Deny the Bid Protest
2. Accept the Bid Protest and move for reconsideration of the bid award

If the Board moves to reconsider the bid award, then the Board must determine if the irregularities in the Yubacon bid are material or immaterial.

If the Board determines the irregularities in the Yubacon bid are material and therefore cannot be waived, then the award of the bid would be to Veerkamp, the lowest responsive responsible bidder.

If the Board determines that the irregularities are immaterial and can be waived, then the Board may take one of the following actions:

- Waive the irregularities in the Yubacon bid and award the bid to Yubacon
- Decline to waive the irregularities in the Yubacon bid and confirm the award of the bid to Veerkamp
- Reject all bids and order the project re-bid

□ **Fiscal Impact:**

Funds available in the CSA #10 budget.

□ **Action to be Taken:**

Direct the Environmental Management staff to execute the Board action.

Respectfully,



Gerri Silva, M.S., REHS

Interim Director of Environmental Management