

Association of Bay Area Governments
Bay Area Metro Center
375 Beale Street, Suite 700
San Francisco, CA 94105
Attn: Noah Cohen

Basis for Protest

Brannon Corporation is protesting the Palo Alto Horizontal Levee contract award to Corcus Construction, on the basis that Brannon is actually the lowest responsible bidder for this project. The basis for protestation includes:

- I. Corcus Construction's bid submission is non responsive due to the project references cited not meeting the qualification requirements.
- II. Corcus Construction has not demonstrated responsibility – this includes both its lack of history in general due to being a newly formed company, and the limited history since its inception reflecting negative records related to previous public works contract awards
- III. Corcus Construction lacks the specialized experience in the realm of environmental restoration and ecologically sensitive projects of this nature. It would not be good stewardship of EPA grant funds to entrust this complex environmental restoration project to a new firm that lacks the qualifications and experience to reliably perform the work.
- IV. Funding for this project is at least partly sponsored by EPA grants, which have strict evaluation criteria for contract award, with the cost of the bid as one part of a larger whole. The other criteria factored into the evaluation are weighted accordingly, including relevant experience and project references. (Using the recommended EPA bid evaluation formula, Brannon qualifies as the lowest responsible bidder.)

Background Information & Support

- I. Corcus Construction's bid submission is non responsive due to the project references cited not meeting the qualification requirements as noted in the bid documents. Bid form #5 requires three project references: *"The references given must be for commercial clients with contracts in excess of \$100,000 each **and similar in nature to the Specifications as outlined in this IFB.**"* Two of the three project references cited do not meet this requirement. The references cited by Corcus failed to meet this requirement as follows:
 - a. Marin Municipal Water District (MMWD) - \$2.3Mil contract value. Upon verification of this contract award, this project consisted of a pipeline replacement project, and fails to meet the requirement "similar in nature to the specifications as outlined in this IFB." The project reference scope of work, per the MMWD website, states *"This contract is for furnishing labor and equipment for the installation of 3,490 linear feet of 8-inch, 6-inch, and 4-inch welded steel pipe with valves, fittings, pipe disinfection, and appurtenances. The work to be done is located in the Town of Tiburon within the County of Marin, California."* Under the bid form section to list the project name (which is missing), the bidder is required to list the "bidder's role/key personnel". Corcus' entry in this field is cut off and missing the required information. (See the screen capture below.) It fails to list the key personnel and the bidder's role, other than it was the prime

contractor. The DIR website reflects four contractors listed for this project – Corcus is one, with the others including: Bennett Marine Utility, Charles Custom Welding, Sierra Traffic Markings. None of these other firms is marked as a subcontractor on the DIR website. In addition to incomplete information and missing information, this project reference does not reflect experience and qualifications to perform the environmentally sensitive and complex work scope required in the horizontal levee project.

Contractor	Sub Contractor	Parent	Project
Bennett.Marine.Utility	false		2024 Tiburon PRP
CHARLES.CUSTOM.WELDING	false		2024 Tiburon PRP
Corcus.Construction.Inc.	false		2024 Tiburon PRP
Sierra.Traffic.Markings.Inc.	false		2024 Tiburon PRP

Description of Work
 Performed/Contract
 Amount/Start-Finish Dates

Install of 3,490 LF of 6" to 8" welded steel water line through the streets of Tiburon, CA/ Contract Amount: \$2,319,685.00 / Start-Finish Dates: Started in August 2024 and Finished on 2/21/2025

Bidders Role/Key Personnel

Corcus were the Prime Contractor responsible for 95% of the work, Subs used w

*Required information was cut off and not included with the bid submission; information that is visible does not match the number of firms listed on the Project DIR page on the DIR website.

- b. City of Cotati – contract value \$309K – Corcus describes this project reference as “sewer install and spot repairs of existing sewer line”. This project also fails to meet the bid requirement, “*The references given must be for commercial clients with contracts in excess of \$100,000 each **and similar in nature to the Specifications as outlined in this IFB.***” This project reference does not reflect experience and qualifications to perform the environmentally sensitive and complex work scope required in the horizontal levee project, in addition to the very small monetary value of this contract as compared with the high value of the horizontal levee contract. Corcus also was not actually the lowest monetary bidder on this project. City Council records indicate that Corcus submitted an informal protest via email, expressing concern over the low bidder’s lack of experience listed in the bid submission, and its failure to instead list a qualified subcontractor as required in the project specifications. This email was sent prior to the notice of intent to award being filed. The City granted the bid protest, designating the low bidder based on lack of

experience, and instead awarded the contract to Corcus Construction at a higher price point. (Brannon attempted to express similar concern regarding the horizontal levee project, via email, prior to the Board vote to award this project to Corcus, but this did not yield further consideration and Brannon was instructed to submit its formal protest after the award posted.) Below, is a screen capture of the City of Cotati rejection of low bidder based on an email received from Corcus, and the subsequent award to Corcus at a higher price point. Should the Agency overseeing this contract award do the same, there is precedent established in the public records provided for the projects protested by Corcus due to lack of experience demonstrated by low bidder.

2.	Client's Name	City of Cotati
	Contact Person	Dyanna Stetina
	Address	201 West Sierra Avenue
	City & Zip Code	Cotati, California 94931
	Phone Number & Email	707-636-3748 - stetina@brce.com
	Description of Work	
	Performed/Contract	
	Amount/Start-Finish Dates	

Sewer Install and Spot Repairs of an existing sewer line in Cotati, CA / Contract Amount: \$309,900.00 / Started in March 2024 and Completed in May 2024

On May 9, 2023, the City Council approved a professional services agreement with Brelje and Race Consulting Engineers, for an amount of \$88,700, to design and prepare bid documents for the Cypress Avenue Sewer Repairs Project. The design has been completed and, in October 2023, a request for bids was put out for the repairs of Cypress Avenue's sewer. On December 5, 2024, the City received and opened four bids for the Project. The apparent low bidder was Michael Paul Co, Inc. with a bid of \$288,754, which is 12.3 percent below the engineer's estimate. However, the second low bidder, expressed deficiencies with the low bid based on the low bidder not having provided a subcontractor or demonstrated experience coating manholes, as provided for in the bid specifications. There is ambiguity as to whether the e-mails provided by the second low bidder met the definition of a formal protest, but Staff recommends the City act as if it were and consider their bid protest. After a review of the apparent low bid from Michael Paul, Co., Inc., the bid failed to meet the requirement to either have a qualified subcontractor to perform the manhole lining/repair work or provide evidence of the prime contractor having that experience. Neither of these requirements were met by the Michael Paul, Co. Inc. proposal. Therefore, Staff finds merit to the bid protest and recommends City Council accept the protest as valid. Therefore, in accordance with bidding procedure, the award would be given to the second low bidder which is Corcus Construction, Inc. with a total bid price of \$309,900, which is 6 percent below the Engineer's Cost Estimate. Staff reviewed the Corcus Construction Inc. proposal and determined it to be a responsive bid.

- c. Alameda County Flood Conservation District – \$182.5K contract value – while the scope of work described is more relevant to the required scope for the horizontal levee project, the contract value is insignificant as compared to the contract value and complexity of the project at the subject of this bid protest. Further, Brannon could not find documentation that this project was actually completed within budget and by the completion date cited in Corcus’ reference. The DIR website reflects that Corcus is also listed as a subcontractor for this project (entered later after the first contractor entry) – it’s possible that Corcus did not complete this project as the general contractor after all, and instead performed subcontractor work, per the DIR entry shown below. Brannon also found examples of smaller (unrelated scope) projects awarded to Corcus, which resulted in significant change orders versus the original bid values, signaling that Corcus has a history of submitting low value bids (often also protesting the low bidder to win the contract award) without properly reviewing the required project document details, only later to request additional contingency funds to cover the additional costs.

Contractor	Sub Contractor	Parent	Project
Corcus Construction, Inc.	true		THE EMBANKMENT RESTORATION ALONG LINE F-
Corcus Construction, Inc.	false		THE EMBANKMENT RESTORATION ALONG LINE F-

2024-08-12 13:20:28 jami@acpwa.org

Contractor: Parent:

Project: Sub Contractor

Further, the Bonfire website where the IFB for the horizontal levee project is posted, reflects an audit trail showing which firms downloaded documents, the number of documents downloaded, document descriptions, and date of download. Below, is the history for Corcus (see screen capture of the bonfire IFB.) There were 6 relevant bid documents downloaded prior to bid submission. When this project previously went to bid in April 2024, later cancelled, the audit trail reflects that Corcus accessed two documents in February 2025, neither of which were the project specifications or technical details. (From the prior cancelled contract page, Corcus downloaded the mandatory pre bid meeting list of attendees and the bid form #1A with the price schedule and quantities.) By comparison, Brannon downloaded 33 documents, including both sets of project specifications and the

plan drawings. The pre-bid conference presentation references specific portions of the project technical specifications related to certain material types required, constraints on equipment to be used, environmental details, and permitting requirements. Corcus Construction did not download or review either of the project specifications documents explaining these crucial details, which must be factored into the bid pricing – no record of downloading Volume 1, Volume 2 (Technical Specs), or Final Plans (003). It is a valid argument that a bidder that has not accessed these vital project documents, the knowledge of which is required to build a responsible bid submission (material cost, unit pricing, turbidity curtain detail, etc), should have its bid rejected. Further, on the bid price sheet, item #004 (SWPPP) – Corcus does not have this item designated to a subcontractor on its subcontractor form. The permit and SWPPP requirements (outlined in the project specifications, which Corcus failed to read or access), state that the person performing this work must be licensed accordingly. Section 1.5E of the technical specifications states, *“The Contractor’s plan shall be prepared by a Qualified SWPPP Developer (QSD). The Contractor shall assume that the site is a Risk Level 2.”* The permit requires ongoing monitoring and report filing in SMARTS for the duration of the project. Brannon listed a properly licensed firm on its subcontractor list for bid item #004. Corcus is not a licensed QSD as required to perform this work; therefore, how does Corcus intend to self perform this work in compliance with the project documents and permit requirements? The bid price for this line item is more than one half of one percent, and must be disclosed on the subcontractor form per public contract code. If not properly licensed, Corcus will need to enlist a properly licensed subcontractor. This subcontractor would have needed to be listed on the required bid form for subcontractor designation per public contract code, at the time of bid submission. Therefore, bid item #4 (SWPPP) constitutes a material bid omission, as Corcus is not licensed to self perform this work legally and did not list a licensed sub on its subcontractor bid form. Corcus bid this line item at a fraction of market value cost, likely because it does not understand the requirements and did not read the project documents explaining what is required or solicit bids from licensed subcontractors to understand the real cost. This omission gives Corcus an unfair advantage over Brannon, whose pricing for this line item was higher due to proper inclusion of a licensed subcontractor, disclosed at the time of the bid submission. It also speaks to Corcus’ lack of environmental experience, which is a crucial element to this ecologically sensitive project, sponsored by EPA grants and San Francisco Estuary Partnership. Another crucial environmental item was noted in the pre bid conference presentation, *“see project plans and special provisions section 31 23 00: Imported soil site sampling and analysis plan – required for imported levee berm material; maintain flood protection throughout construction – existing levee shall not be lowered below EL 9.0ft until new levee berm is constructed to EL 11.0ft; horizontal levee consists of treatment area and habitat slope – see plans and special provisions for material composition requirements; wood fines – on site composting per special provisions.”* Corcus failed to download and review these critical project documents; therefore, it could not have considered these material items mentioned and referenced in the pre bid conference presentation without obtaining possession of the documents. Corcus’ bid pricing for the related line items was significantly less expensive than Brannon, which gives Corcus an unfair advantage to Brannon’s pricing (which properly incorporated the pertinent project details discovered from review of the required plans and specifications.)

Corcus Construction

Documents

Name	Date Downloaded
000- Submission Instructions - IFB for Palo Alto Horizontal Levee Project.pdf	Mar 5th 2025, 12:45 PM PST
000.1 - Bid Opening Results - IFB for Palo Alto Horizontal Levee Project.pdf	Mar 6th 2025, 8:28 AM PST
001-1 - Addendum 1 - IFB for Palo Alto Horizontal Levee Project.pdf	Mar 1st 2025, 1:41 PM PST
001a - Bid Form 1B - CONTRACTOR INFORMATION AND CONTRACTOR PRICE DECLARATION.pdf	Mar 5th 2025, 1:38 PM PST
007a - Question and Answers Document 2 - IFB - Palo Alto Horizontal Levee Project.pdf	Mar 8th 2025, 3:21 PM PST
Bid Form 1A: Schedule of Price and Quantities (BT-47RV)	Feb 22nd 2025, 12:24 PM PST
Bid Form 1A: Schedule of Price and Quantities (BT-47RV)	Mar 5th 2025, 12:24 PM PST
Executive Board Approval 20250320 SFEP Palo Alto Horizontal Levee Corcus Construction.pdf	Mar 21st 2025, 8:59 AM PDT

- II. Corcus Construction does not have an established record of responsibility. The company was newly licensed via the CSLB less than two years ago, in 2023 (per the CSLB website and Secretary of State filing). Further, the DIR registration was created less than one year ago, in July 2024. The website belonging to Corcus Construction advertises scope of work limited to underground construction, utility lines, and infrastructure. The company does not have a project portfolio or public record history indicating relevant environmental restoration work contracts of this complexity and size have been successfully completed. Corcus was also awarded a contract by the City of Richmond in July 2024, less than a year ago. After awarding the contract and investing time in pre construction work, the City discovered that Corcus failed to meet federal requirements for the project. The City subsequently brought the matter to the City Council, upon which formal termination of Corcus' contract was ordered. (See attached contract termination letter dated July 2024.) Due to Corcus' failure, the City then had to invest in releasing the project again for rebid. Also within the last year, many public agencies have rejected bids from Corcus for various reasons, awarding those projects to the next lowest bidder instead, per public records. On June 10, 2024, the City of San Pablo rejected a bid from Corcus for another public works project, instead awarding to the next low bidder (see City Council

public meeting minutes excerpt below.) Further, on May 14, 2024, the City of Berkeley rejected a bid submission from Corcus and awarded the project to the next lowest bidder. The named officers for Corcus have only recently joined the corporation, with minimal experience prior to that, working in field supervisory roles for pipeline companies. All of the officers previously were schooled and worked in Ireland (internationally), and have very little experience with heavy civil construction management within the United States. The United States civil construction realm is vastly different than Ireland, and it does not translate apples to apples.

City of Richmond Contract Termination (post award)

	Ken Cheng, PE, Senior Civil Engineer
Subject:	Lincoln Elementary SRT Construction Contract Termination Letter
FINANCIAL IMPACT:	The contract totaling \$599,831 being terminated was funded from the General Capital Fund (account string: 20136031-400708-23041) in the amount of \$103,831 and Engineering Grants Fund (account string: 15436431-400708-23041) in the amount of \$496,000. These amounts will need to be re-budgeted in fiscal year 2024-25.
PREVIOUS COUNCIL ACTION:	September 12, 2017 (Resolution 108-17) October 24, 2023 April 16, 2024 (Resolution 28-24)
STATEMENT OF THE ISSUE:	The bid documents associated with awarding the construction contract to Corcus Construction Inc., did not meet the federal requirements. Hence, the City is required to terminate the construction agreement with Corcus Construction, Inc and rebid this project.
RECOMMENDED ACTION:	ADOPT a resolution to terminate a construction contract with Corcus Construction, Inc.; DIRECT Public Works staff to rebid the Lincoln Elementary School Safe Route to School Improvement Project CML-5137(055); AND RE-APPROPRIATE funds in the General Capital Fund in the amount of \$103,831 and Engineering Grants Fund in the amount of \$496,000 in Fiscal Year 2024-25 - Public Works

City of San Pablo Bid Rejection

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Pablo hereby:

(1) Approves and adopts the Plans and Specification for the Project;

(2) Rejects the bid by Corcus Construction, Inc., San Francisco, CA;

(3) Awards a contract to Golden Bay Construction, Inc. of Hayward, CA, in the amount of \$691,705 with a 10% contingency for a total authorization of \$760,876;

(4) Authorizes the City Manager to execute an agreement with Golden Bay Construction, Inc. for the Project;

City of Berkeley Bid Rejection

Following the rejection of bids and some changes in project scope, the project was re-issued for bids on February 28, 2024, and bids were opened on March 26, 2024. Three non-local bids were received, from a low of \$390,850 to a high of \$531,534. The engineer's estimate for the project was \$450,000. The lowest bid, submitted by Corcus Construction, Inc. **was found to be non-responsive**

The principal owners of Corcus Construction, along with the CEO who also states he will be overseeing field supervision for this particular project, Thomas Breen, have mostly international construction experience in Ireland. Upon coming to the United States, they worked in field supervisory roles for Ranger Pipelines doing solely pipeline work, for a few years. Two of the three owners have only been with Corcus for 6-12 months, and the primary owner who will be responsible for field oversight on this project, also worked for Ranger Pipelines as a field supervisor for less than 5 years, prior to getting a contractor's license under the name Corcus Construction to start his own business. Only in July 2024 did Corcus even register for a DIR number.

CORCUS WEBSITE – DESCRIPTION OF WORK SCOPE PERFORMED:

PROFESSIONAL SERVICES

Corcus Construction Inc offers a range of underground construction services, including installation of utility lines, excavation and grading for foundations, tunneling, and infrastructure construction. We use state-of-the-art equipment and technology to ensure that our work is efficient, safe, and environmentally responsible. Our team of experienced professionals is committed to delivering high-quality workmanship and outstanding customer service.

Experience



President/Owner

Corcus Construction Inc. · Full-time
Aug 2021 - Present · 3 yrs 8 mos
San Francisco Bay Area · On-site



Construction Project Manager

RANGER PIPELINES INC · Full-time
Oct 2017 - Dec 2021 · 4 yrs 3 mos
San Francisco Bay Area

Supervision and project management of large scale civil engineering projects with a value range of 5 to 30 million dollars. Experience in estimating, project scheduling, extra work orders, submittals, RFI's, contract admr ...see more



Construction Project Manager

JRL Group Ltd
Sep 2016 - Sep 2017 · 1 yr 1 mo
London, United Kingdom



Project Engineer

L&M Keating Ltd.
Jun 2014 - Sep 2016 · 2 yrs 4 mos
Ireland

Education



University of Galway

Bachelor of Engineering - BE, Civil Engineering



University of Galway

Master's degree, Civil Engineering



Noel Gallagher
Corcus Construction

Activity

364 followers

Noel hasn't posted yet

Recent posts Noel shares will be displayed here.

Show all activity →

Experience



Corcus Construction

Corcus Construction
Sep 2024 - Present · 7 mos



Project Manager

Ranger Pipelines
Nov 2013 - Sep 2024 · 10 yrs 11 mos
San Francisco Bay Area

Responsibilities Include:

...

...see more



Construction Engineer

McNicholas Construction (Holdings) Ltd
Jul 2011 - Sep 2013 · 2 yrs 3 mos
Belfast, Northern Ireland

Working as a Construction Engineer with McNicholas involved meeting weekly targets for Natural Gas installations. This necessitated daily planning and maximizing resources in order to meet and exceed t ...see more

Education



Ulster University

Construction Engineering & Management, Construction Management
2007 - 2011

Grade: Construction Manager

Experience

Project Management
Corcus Construction, Inc - Full-time
Dec 2023 - Present - 1 yr 4 mos
San Francisco Bay Area - On-site

Estimator
Ranger Pipelines - Full-time
Sep 2014 - Dec 2023 - 9 yrs 4 mos
San Francisco Bay Area

Outdoor Services
Old Head Golf Links
May 2007 - Sep 2009 - 2 yrs 5 mos
Cork, Ireland
Assisted golfers with their queries, maintained golfing equipment and general tasks.

Education

Munster Technological University
Master's Degree, MSc in Construction Project Management
2013 - 2014
Grade: Final grade: Second class honours, grade 1 (2:1)
Key Modules:
... [...see more](#)

Munster Technological University
Bachelor's Degree, Quantity Surveying
2008 - 2012
Grade: Second class Honours, grade 1 (2:1)
Project Evaluation and Procurement:
...

CONTRACTORS STATE LICENSE BOARD HISTORY

DEPARTMENT OF CONSUMER AFFAIRS
CONTRACTORS STATE LICENSE BOARD

Consumers Licensees Applicants Onl

Business Information

CORCUS CONSTRUCTION INC
1592 UNION STREET STE 476
SAN FRANCISCO, CA 94123
Business Phone Number:(415) 423-4603

Entity Corporation
Issue Date 07/14/2023
Expire Date 07/31/2025

License Status

This license is current and active.

All information below should be reviewed.

Classifications

[A - GENERAL ENGINEERING](#)

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with [AMERICAN ALTERNATIVE INSURANCE CORPORATION](#).

Bond Number: S7A2SU0002688
Bond Amount: \$25,000
Effective Date: 05/08/2024

[Contractor's Bond History](#)

Bond of Qualifying Individual

The qualifying individual THOMAS PATRICK BREEN certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 07/14/2023

DIR REGISTRATION DATE (with registration status blank)



The screenshot shows the DIR website header with the logo and navigation links. Below the header, there is a section titled "Historical Registration Dates" with a filter for "Contractor = Corcus Construction, Inc.". A table displays the registration start and end dates for this contractor.

Contractor	Registration Start Date	Registration End Date	Registration Status
Corcus Construction, Inc.	2024-07-01	2025-06-30	

- III. Corcus Construction lacks the specialized experience in the realm of environmental restoration and ecologically sensitive projects of this nature. It would not be good stewardship of EPA grant funds to entrust this complex environmental restoration project to a new firm that lacks the qualifications and experience to reliably perform the work.
- IV. Under the guidance provided to grant recipients, total cost of each firm's bid should be one part of a larger whole in determining the lowest responsible bidder. Each criteria should be weighted accordingly. The examples cited for evaluation criteria are displayed below and can be found on the EPA grant website – a) demonstrated experience in similar project activities b) demonstrated experience in successfully completing tasks/projects c) Experience and capacity of project team and personnel and d) references. A screen capture from the EPA grant website is included below, for reference, which details the guidelines for Agencies to evaluate bids funded with EPA grants.
- a) Under the bid evaluation criteria suggested by the EPA for grant recipients, Corcus does not demonstrate sufficient experience in similar project activities – both scope of work and in monetary contract value. Under these evaluation guidelines, Brannon would rank higher than Corcus based on all four criteria. Brannon previously sent its statement of qualifications in support of its position as the lowest responsible bidder (via email – to the project engineer overseeing the bid process.) Brannon is reattaching its SOQ to the electronic version of this bid protest, for consideration. Due to the volume of pages, Brannon will not send a hard copy with its hard copy bid protest.
- b & c) Professional history of management individuals named in bid proposal fails to demonstrate the necessary qualifications to understand, oversee, and execute this specialized scope of environmental restoration with ecologically sensitive concerns. (See linkedin screen captures previously provided under section II.)
- d) The three project references provided by Corcus with its bid submission fail to demonstrate adequate qualifications to perform this specialized scope of work. References listed are. (See previous details provided in Section I.)

EPA GRANT FUNDED PROJECT BID EVALUATION GUIDELINES

The RFP/RFQ must include weighted factors against which responses will be evaluated or a similar evaluation framework that establishes a documented rationale for selecting the contractor as required by 2 CFR 200.318(i).

- EPA recommends that the reasonableness of cost/price proposal is at least 25% of the total percentage. This factor may be evaluated at the same time as the other factors for all bids (which is EPA's preference) or only evaluated for two or more top-scoring bids (when multiple bids are received).

For example, responses will be evaluated against the following factors:

- X% - Demonstrated experience in [infrastructure project activities]
- X% - Demonstrated experience in successfully completing tasks/projects
- X% - Experience and capacity of project team/personnel
- X% - Reasonableness of cost/price proposal (e.g., rates) based on a comparison of prices among competing offerors and other available information on market rates for consulting services (*if applicable*)
- X% - References

Instead of criteria that are weighted by percentage, you may choose to assign points to each selection factor or include a range of points with associated descriptors. **For example**:

- Highly Advantageous (4 Points): Proposal demonstrates...
- Advantageous (3 Points): Proposal demonstrates...
- Not Advantageous (2 Points): Proposal demonstrates...
- Unacceptable (0 Points): Proposal does not demonstrate...

In summary, Brannon requests that the bid submission for Corcus Construction be rejected on the basis outlined herein, and the contract awarded to Brannon as the lowest responsible bidder.

Sincerely,

Elizabeth Dorsa

Beth@Brannondemo.com

(737) 895-6253

10492 Dougherty Ave

Morgan Hill, CA 95037

Brannon Corporation



ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION

Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105
415.778.6700
www.mtc.ca.gov

April 30, 2025

Via email to Howard@Brannondemo.com and US Mail

Howard Jones
Senior Project Manager
Brannon Corporation
10492 Dougherty Ave.
Morgan Hill, CA 95037

RE: Bid Protest of Brannon Corporation

Dear Mr. Jones:

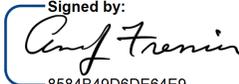
Pursuant to a May 30, 2017 Contract for Services under which The Metropolitan Transportation Commission (MTC) provides administrative and program services to the Association of Bay Area Governments (ABAG) and its affiliated entities, MTC has reviewed your protest letter regarding ABAG's award of the Palo Alto Horizontal Levee Project.

We received Brannon Corporation's timely Bid Protest paperwork on/about March 25, 2025. Following the ABAG selection protest procedures included in the Invitation for Bids (IFB), as amended, I appointed James Tung, Principal Program Coordinator, Capital Delivery, Asset Management & Roadside Tolling, as review officer to consider your protest. Mr. Tung's analysis, a copy of which is enclosed with this letter, concluded that the award of the Palo Alto Horizontal Levee Project at the City of Palo Alto Regional Water Quality Control Plant to Corcus Corporation was conducted properly in compliance with ABAG's procurement process.

I have reviewed Mr. Tung's report and agree with its findings and conclusion. Accordingly, your protest is denied. If, after reviewing his report, you continue to believe that the award was improper, you may appeal this decision to the ABAG Executive Board within three working days of your receipt of this letter.

ABAG appreciates your participation in the IFB, and hope that you continue your interest in future procurements.

Sincerely,

Signed by:

8584B49D6DE64E9...
Andrew B. Fremier
Executive Director

Acting pursuant to the Contract for Services dated
May 30, 2017

Enclosure: (1)

cc: James Tung



METROPOLITAN
TRANSPORTATION
COMMISSION

Bay Area Metro Center
375 Beale Street
San Francisco, CA 94105
TEL 415.778.6700
WEB www.mtc.ca.gov

Memorandum

TO: Andrew B. Fremier, Executive Director

DATE: April 25, 2025

FR: James Tung, Review Officer

RE: Review Officer Findings for Bid Protest of Palo Alto Horizontal Levee Project by Brannon Corporation

Purpose:

This memorandum discusses my findings regarding the bid protest of the award of the Palo Alto Horizontal Levee Project to Corcus Construction (Corcus) on March 20, 2025, by the Association of Bay Area Governments (ABAG) Executive Board.

On May 30, 2017, ABAG and the Metropolitan Transportation Commission (MTC) entered into a Contract for Services (the CS) under which MTC provides administrative and program services to ABAG and its affiliated entities. Effective July 1, 2017, the employees of ABAG transitioned to MTC employees. MTC staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. It is through this CS that I am performing my duties as the appointed ABAG staff Review Officer.

Background:

The Palo Alto Horizontal Levee Project will deliver treated wastewater to a newly created habitat zone for the purpose of promoting ecological diversity at the harbor marsh area. Project elements include construction of a horizontal levee berm, planting of native riparian scrubs, replacement of stormwater pipes under a road, and the installation of a water pump.

ABAG received four proposals in response to the Invitation for Bid (IFB) by the closing date on March 5, 2025. Following opening and review of the bids, staff recommended that the contract be awarded to the “lowest responsive and responsible Bidder” subject to approval of the ABAG Executive Board. Per the IFB, interviews were not necessary prior to contract award. The lowest bidder was Corcus at approximately \$2.8 million, followed by Brannon Corporation’s (Brannon) bid of approximately \$3.5 million. Both bids were higher than the pre-bid engineer’s estimate of approximately \$2.5 million. The Board approved Corcus’ bid on March 20, 2025.

On March 25, 2025, within the period for which a bid protest may be submitted, Brannon submitted a letter protesting the contract award to Corcus. Executive Director Fremier assigned me (James Tung) as the staff Review Officer of the bid protest.

To make my recommendation, I reviewed:

- IFB proposal and all related bid documents.
- Corcus’ project references (using online research and email/phone call follow ups)

The information below summarizes the four main points raised in Brannon’s protest and my findings.

Contention 1: Project References Do Not Meet Qualification Requirements

Brannon first alleges that Corcus’ bid submission is nonresponsive due to the project references not meeting the qualification requirements. Bid form #5 requires three project references with contracts in excess of \$100,000 each and similar in nature to the specifications as outlined in the IFB. The form also noted that the references must be from commercial clients, but did not otherwise specify requirements. Brannon notes in their protest that the Palo Alto Horizontal Levee Project scope has elements of storm water management and environmental restoration work which require specialized licenses per the project specifications. However, of the three references provided in Corcus’ bid, only one project contains these elements. The other two projects are for underground pipe repair and replacement.

Brannon continues to allege that Corcus did not download the project specifications and therefore did not realize the requirement of Qualified Storm Water Pollution Prevention Plan Developer (QSD). Brannon then infers that Corcus did not factor this into their bid price and under bid a key component of the project. Their allegation is that neither Corcus nor their subcontractors are QSDs, and that they therefore omitted a key component of the work.

Finding: Brannon’s assertions have been confirmed by researching the three agencies listed in the project references. Among the three, the Alameda County Public Works Agency (ACPWA) project provided the most relevant project components, with a combination of underground piping, dewatering systems, planting of erosion control shrubs, and requirement of a QSD. Upon reaching out, the agency confirmed that Corcus had performed and closed out the work to their satisfaction. While the other two projects did not have sensitive environmental components, they were both over the minimum \$100,000 cost threshold and were also performed to satisfaction.

In reviewing the cost comparison document, two items regarding the storm water system (amongst others) appear under bid in comparison to the original engineer’s estimate: storm water pollution and pump.

Corcus Under Bid Items:

	Pre-Bid	Corcus	Brannon
Item 4. STORMWATER POLLUTION	\$43,000	\$18,500	\$40,000
Item 9. RENZEL MARSH PUMP	\$194,675	\$85,000	\$200,000

While Corcus' costs may have been significantly lower than the other estimates, this review and the IFB award does not take the quality of the estimate into account, only that the numbers were not omitted. Further, their past work experience on storm water management projects is evidence that they have previously navigated QSD requirements.

Therefore, I find that Corcus' project references conform to the requirements of the Invitation for Bids and substantiate their ability to perform the scope of work required.

Contention 2: Corcus is Inexperienced

Brannon contends that Corcus Construction was newly licensed less than two years ago, and that the leadership positions have only recently been filled. They note that Corcus' Officers are from Ireland, where civil construction is vastly different from the United States. Finally, Brannon alleges that Corcus had been rejected from a previous contract, the Lincoln Elementary SRT Construction project, based on their inability to meet federal requirements.

Finding: As discussed in Contention 1 above, I find that the project references have demonstrated Corcus' capabilities. It appears that working with underground utilities is their specialty, and they have a clean track record of completing the projects which they referenced in their bid documents. While all the projects listed were performed in 2024, I consider the recent experience a positive characteristic of their bid.

In researching the Lincoln Elementary Contract mentioned in the protest, I found that Corcus was terminated due to issues with their bid as their submission missed several federal forms. By the time the error was noticed, the contract had already been executed. The termination of contract was not due to their inexperience or inability to perform, but rather because the agency had approved a bid which was incomplete and then needed to be cancelled. For the Palo Alto project here, Corcus' bid contained all the required materials and forms.

Therefore, I find that Corcus has proven themselves experienced enough to be a responsible bidder in this project.

Contention 3: Lack of Environmental Restoration and Ecologically Sensitive Projects

Brannon next alleges that Corcus Construction lacks specialized experience in the realm of environmental restoration and ecologically sensitive projects of this nature. They state that it would not be good stewardship of EPA grant funds to entrust this complex environmental restoration project to a new firm that lacks the qualifications and experience to reliably perform the work.

Finding: As discussed in Contention 1 above, the project references have demonstrated the capability of the firm. The ACPWA project was similar in nature, as regulatory permits were required and biological surveys and training were performed. While this project is by no means

identical to the Palo Alto project, their success in a similar scope shows that Corcus has worked in environmentally sensitive areas and has the capability to perform the scope of work.

Therefore, I find that Corcus is a responsible bidder who will be capable of working on habitat restoration in this ecologically sensitive area.

Contention 4: Use EPA's Grant Criteria

Funding for this project is partially sponsored by EPA grants, and the EPA publishes guidelines criteria for contract award. Brannon notes that relevant experience and project references are weighed more heavily than the cost component in the guidelines they quoted. They state that if ABAG had used the recommended EPA bid evaluation formula, Brannon qualifies as the lowest responsible bidder.

Finding: This project is made possible by grants from the California Department of Water Resources, the California State Coastal Conservancy, and the federal EPA. EPA is not the only agency with bid requirements.

While EPA is a significant funding agency, the guidelines provided by Brannon are relevant to a procurement strategy that uses an RFP/RFQ process. Here, the project was procured using sealed bidding. In the former, contractors must first respond to the RFQ to establish credibility prior to being shortlisted for RFP. Brannon is correct that this procurement strategy focuses more on technical experience and strategy. However, in this instance, ABAG's IFB procurement method awards the contract to the lowest responsive and responsible bidder.

Furthermore, EPA's procurement guidelines does consider cost as a major factor, stating that if the awarded contractor is not offering the lowest price, the agency must document the rationale and basis for the contract price. While not necessary to my determination above, I find that the significant lower cost of Corcus would have still been a heavily weighted factor even if ABAG had used an RFP/RFQ process.

Therefore, I find that the contract award should continue to be based upon the criteria set by the IFB, and awarded to the lowest responsive and responsible bidder, Corcus.

Conclusion:

Brannon's Letter of Protest was detailed and well-researched. It included a reiteration of the project references, as well as additional project examples, which demonstrated that they are an exceptional firm. They have a successful track record of working in ecologically sensitive areas and they have identified a sub-contractor that specializes in storm water management. However, their service comes at a premium, as their bid price was also approximately 25% higher than Corcus'.

While the Letter of Protest had many logical and reasonable arguments, none of the contentions disqualified the Corcus bid. Corcus complied with all requirements in the IFB and are clearly a responsible bidder.

Based on my review, I conclude that Corcus Construction has adequately met the standards as presented in the IFB and is the lowest responsive and responsible bidder. Therefore, I recommend that the award to Corcus by ABAG's Executive Board be sustained.



James Tung

Association of Bay Area Governments
ATTN: Noah Cohen, Contract Specialist
Bay Area Metro Center 375 Beale Street, Suite 700
San Francisco, CA 94105

May 2, 2025

Re: Bid Protest Denial Appeal – Horizontal Levee Project Contract Award

Dear Mr. Cohen,

This letter is Brannon's formal appeal of the Agency's protest denial letter received on April 29, 2025. While Brannon included a designated point of contact in the bid protest document, and provided contact information for such, the Agency's protest denial letter was sent to an unrelated person on Brannon's staff who was not involved or knowledgeable about this protest. Accordingly, he forwarded the Agency's response email to the correct designated party; however, with the Agency dictating an allowance of three business days for a response, this significantly impeded Brannon's response time to state its appeal of the denial.

Brannon appeals the protest denial on the basis that its original bases for protest remain true and were not fully addressed by the Agency in its denial letter. Some of the outstanding, unaddressed bases for protest involve the low bidder's failure to maintain proper QSD licensure as required by the California State Water Resources Control Board and the Regional Water Quality Board under the General Construction Permit, and as required in the project specifications and bidder's documents. Both the General Construction Permit and the project specific documents require a licensed QSD to complete the permit approval and compliance work, as the project is designated as a Level II SWPPP compliance project. Failure to obtain Construction General Permit Coverage is a violation of the Federal Clean Water Act and the California Water Code. The low bidder's lack of QSD licensure jeopardizes and compromises both the project itself as well as the Agency's ability to use grant funds towards this project and potentially its eligibility to obtain future grant funds for future projects. The low bidder's recent history of contract cancellation with the City of Richmond was due to its failure to meet the Federal requirements as outlined in the project bid documents, which disrupted the City's grant funding for the project, and as such, the City cancelled the contract and had to start the rebid process over again to preserve the project's funding source. The situation with this project at the subject of this protest and appeal, is similar in nature to what occurred with the City of Richmond, as well as other projects for which Corcus was deemed non-responsive prior to contract award due to its submission of bids which did not meet the requirements for those projects.

On March 20, 2025, the Agency requested contract award approval from the Board, and it represented that Corcus Construction would be responsible for "permit compliance" as outlined in the bid document requirements. Corcus Construction failed to list a licensed QSD subcontractor as it would have been required to if not self-performing this on-site and off-site permit compliance work; however, Corcus does not hold proper QSD licensure in order to self-perform this work. As such, Corcus is not authorized to obtain coverage under the General Construction Permit, and will not be able to fulfill the scope of work requirements for this project. Per public contract code and at this late juncture, Corcus cannot lawfully add a licensed QSD subcontractor to perform the permit work legally, and as such, is ineligible for contract award and should be deemed non-responsive. Brannon fully reviewed and

understands all project specific permit requirements, and accordingly listed a licensed QSD subcontractor in its bid, as reflected in its bid submission price. In its response to Brannon's protest, the Agency acknowledged that this line item price quoted by Corcus is unreasonably out of range of the engineer's estimate for this item (lower, by more than half), in addition to other sensitive project specific environmental compliance line items. However, the Agency stated that because one of the three projects referenced on Corcus' bid submission involved environmental work, that somehow it can be assumed that Corcus was a properly licensed QSD, legally able to perform the required permit compliance work on this project. This is a false assumption, as the project reference used as the basis for the assumption, the only project reference listed that somewhat met the qualifications and experience requirement mandate in the invitation to bidders, did not require a licensed QSD as it was exempted from General Construction Permit compliance. Projects performed during the low risk season, and dually are less than one acre in size, are exempted from Construction General Permit coverage, as they qualify for an erosivity waiver; therefore, no QSD (or lesser QSP license) would have been required on the project referenced for Alameda County Public Works Agency, and as such, cannot be used to verify Corcus' QSD licensure for this project. The QSD license is easily verifiable through the RWQB website and its companion site, via license number search or license holder search. Brannon cannot verify that Corcus Construction holds this license and given that it is a newly formed company within just the last few years, with only a few employees, most of whom only have International underground utility construction experience, it is reasonable to assume that Corcus Construction does not hold this license. The QSD licensure requirements mandate many years of full time SWPPP permit compliance, certification as an engineer or equivalent, an in person exam, and more. These extensive requirements for QSD licensure are available online for the Agency's review. This requirement for QSD licensure to carry out the permit compliance work was explicitly stated in the project bid documents; however, Corcus Construction failed to download these substantive documents, per the audit trail on the Agency's bid website. Based on these facts, Brannon infers this to mean that Corcus did not properly review the Level II permit compliance requirements for this project, and thus did not incorporate such a subcontractor in its bid submission as it was not aware that a QSD license was required. Its bid price for this line item that is unreasonably out of range of the Engineer's Estimate is supportive of this inference.

In its original protest letter, Brannon stated four main reasons demonstrating why Corcus is ineligible for this particular contract award. Within each main reason, Brannon cited the specific examples from Corcus' bid proposal in support of each reason cited. The Agency's denial letter overlooked many of these materially substantive examples and/or restated its understanding of Brannon's reasons in a manner that is not the actual definition of these reasons, minimizing them as inconsequential, when in fact they are material and substantial. The implications of these material and substantial facts could be disruptive to both the completion and the funding of this project, and as such, Brannon is compelled to reiterate them in this appeal. The numbered reasons outlined previously in Brannon's protest letter are included below, itemized, with a summary of the Agency's responses below.

- I. Corcus Construction's bid submission is non-responsive due to the project references cited not meeting the qualification requirements. The notice to bidders states, "D. References You **must** provide **at least three (3) references** for work performed by you for work similar to the work described in this IFB." These bolded words within the requirement were bolded by the Agency for emphasis on **must** and **at least 3 references**. It also states, "For required information, refer to IFB Part 5, Bid Forms, Bid Form #6, Contractors Reference Form." This bid form requiring at least three project references states, "The references given must be for commercial clients with contracts in excess of \$100,000 each and **similar in nature to the Specifications as outlined in this IFB.**" Two of the three project references cited by Corcus do not meet this bare minimum requirement of **at least three references similar in nature to the specifications as outlined in this IFB**, and therefore should not be counted. With only

one project reference counted, Corcus did not provide a minimum of three project references “similar in nature to the specifications as outlined in the IFB” as required and therefore Corcus is not eligible for contract award as it did not meet the same requirements that the Agency required from all other bidders, including Brannon. Overlooking this requirement for the sake of awarding a contract to a firm with a less expensive bid, but which does not meet the experience requirements mandated and emphasized in the bid documents, and as would be reasonably required for such a groundbreaking natural solution based horizontal levee pilot project, does not comply with competitive bidding standards or the contractual standards set forth by the Agency in its own invitation to bidders.

- a. Two of the references cited by Corcus were **not similar in nature to specifications outlined in the IFB**. They were small projects just barely meeting the contract value requirement of \$100K, and both were underground utility projects, not levee construction in environmentally sensitive areas, as required in the bidder’s documents. The Agency’s bid protest denial letter agreed with the assessment that two out of the three project references cited by Corcus are not “similar in nature to the Specifications as outlined in this IFB”, but also stated that as one of the three references provided was similar and successfully completed, it would overlook the other two dissimilar projects and accept the one project reference as proof of responsibility and qualifications. Two of the three project references were not similar in nature as required on the bid form, and as overly emphasized on the invitation to bidders; Therefore, per the Agency’s bid requirements, only one of these project references should be counted, and as such, Corcus’ bid does not comply with the requirements to list **a minimum of three project references proving successful completion of three projects similar in nature to the specifications outlined in this bid.** (Separately, Corcus did not even download the specifications for this project and likely had not even read them to formulate its bid values, as discussed under item ii below.)
- b. The Agency’s invitation to bidders states, “F. Specifications and Schedule: The specifications and schedule for this project are described herein. The IFB also contains substantive requirements with which Bidders must fully comply in order to guarantee responsiveness.” The Agency’s bid protest denial letter states that “Brannon continues to allege that Corcus did not download the project specifications”, while also stating that this fact is not relevant. In its protest, Brannon called attention to Corcus’ failure to download the substantive documents and provided the audit log proving such, with the implication that Corcus is not properly informed in order to formulate an accurate and comprehensive bid proposal inclusive of various elements, including the QSD licensure requirement related to the SWPPP bid line item, as well as the stringent compliance standards for specialized import fill material and marsh pump details. The Agency’s response that whether Corcus downloaded the documents is irrelevant, contradicts its own bid documents stating that it *is* relevant, even requiring bidders to certify that their bid line item values reflect understanding and review of those same substantive bid documents which Corcus did not download. The QSD licensure requirements for this project exist not because the Agency opted to require them, but rather they are required by the state oversight agency due to the high risk environmental sensitivity of this project and its complexity; therefore, the Agency is not in a position to forgive or overlook this requirement as a minor oversight or omission. SWPPP compliance oversight is administered by the California Water Board, and the high risk factor involved in this project trigger Level II SWPPP Compliance, requiring a licensed QSD to perform all reporting within the Water Board’s online SMARTS system. In order to even obtain a SMARTS login to file paperwork, the legally responsible party has to demonstrate actual QSD licensing in order to file the ongoing compliance paperwork. The element of on-site monitoring required for

Level II SMARTS compliance constitutes “subcontracting” work, if not self performed by Corcus. Corcus did not list a subcontractor for this line item, as it was required to if it is not licensed to self-perform the work. The audit trail logs on the bid website utilized by the Agency reflects each bidder’s audit trail, and this audit trail proves that Corcus did not download all required and essential bidder’s documents to formulate its bid, including the project specifications. This is not an “allegation” but an actual fact that Corcus did not access the essential documents to be fully informed about this project at the time of its bid submission, and Brannon included a screenshot of the audit trail in its protest as verification. This audit trail paired with Corcus’ bid totals for certain items being monetarily out of range of the other bidders as well as lower than the Engineer’s estimate (unbalanced), should raise concerns. The Agency denied Brannon’s protest without taking the essential step of verifying Corcus’ QSD license, which is easily and publicly verifiable through the California Water Board’s companion site and/or through the Water Board website (accessible online.) If Corcus maintains a QSD license amongst its very limited, small team of staff members, a record would exist when searching the verification website. No such record existed when Brannon did its due diligence to verify the licensure status. Further, Corcus is a newly formed company and the requirements to obtain a QSD license are in excess of the number of years Corcus has even existed as a company. Corcus has not turned over its QSD license or license number to prove it is licensed to self perform this work, no such records exist when searching the license records on the designated registry website, and the Agency’s assumption that Corcus’ project reference for ACPWA infers that it also holds the proper licensing to perform Level II SWPPP compliance on this project with entirely different requirements, is false and fails to address this basis for Brannon’s protest. The ACPWA project was exempt from these requirements, and therefore this SWPPP level II compliance requirement applicable to this project, was not part of that project reference and thus does not prove that Corcus has the proper licensing as it was not required to perform this work due to the exemption. (Please refer to further information explained under item iii below.) In fact, Brannon was unable to verify that Corcus has any relevant Level II SWPPP compliance work requiring a QSD license on any project not listed as a reference as part of its bid document. Therefore, it is a reasonable and likely assumption that without actual vetting and affirmation of Corcus’ QSD license number via the proper channels, that Corcus cannot legally self-perform this work under the permitting requirements for the project. Failure to obtain Construction General Permit Coverage is a violation of the Federal Clean Water Act and the California Water Code, which could result in a project shut down, or to preserve and comply with the terms of the permit, Corcus would need to outsource the onsite and administrative offsite work to a licensed QSD subcontractor. Corcus did not list a subcontractor in its bid as the rest of the bidders were required to list at the time of bid submission, a subcontractor listing which also comes with a premium cost due to the increased QSD licensure and reporting requirements. From a public contract code and competitive bidding standpoint, this gives Corcus an unfair pricing advantage over the other bidders by allowing unbalanced, lower bid values than the other bidders due to Corcus’ failure to incorporate the substantive project requirements into its price values like the other bidders were required to do and which the Agency required all bidders to certify on a formal bid document. From an environmental compliance standpoint, all parties are now informed that Corcus does not have a verifiable QSD license at the present time – to award Corcus the contract and deny Brannon’s protest without first properly verifying that Corcus holds a valid QSD license as required to legally self perform this work, is not allowable. The Agency also cannot permit Corcus

to add a properly licensed QSD subcontractor at this late juncture per public contract code and competitive bidding practices. This license and requirements for this bid item were explicitly called out in both the specifications and in later clarifications released to bidders, and Corcus' failure to properly review (or download) the substantive requirements for this project is not a minor omission that can be overlooked or lawfully corrected at the present time. Had this discovery been disclosed to the board prior to approval on March 20th, this would have been grounds to reject the bid submission as non responsive and award to the next lowest bidder. The meeting minutes reflect that the following was communicated to the board, with recommendation to award the contract to Corcus, "staff reviewed the Corcus Construction bid to confirm that it is both a responsible and responsive bid based on a review of all bid forms received as part of the bid, including its bid security bond, minimum insurance requirement certification and reference information from past projects. In addition, staff met with the Project team's construction management consultant (Zoon Engineering) and the design consultant (ESA and HDR) to discuss the bid analysis. The consultant teams are of the opinion that the bid is not unbalanced and recommend staff move forward with the award."

To further clarify, and as outlined in Brannon's original bid protest, each bidder was required to list its subcontractors, as well as the line items of work being subcontracted to each, and the dollar value being subcontracted to each. While Corcus provided a properly licensed subcontractor to perform the landscaping work (C-27 licensing), it failed to attribute the SWPPP permit compliance line item (line item #4) with any of its subcontractors, reflected in both the line item numbers being outsourced to each subcontractor as well as the corresponding dollar value outsourced to each subcontractor. As such, Corcus did not subcontract out the SWPPP permit compliance work line item (bid item #4) which requires the QSD license. Corcus' subcontractor form cannot be modified to add this as a subcontracted item at this juncture per public contract code.

- c. The third and final project reference provided by Corcus, a project for ACPWA, while it more closely meets the project reference requirements, is not fully verifiable. Brannon went so far as to submit a public information request to ACPWA in late March 2025 to confirm the contract scope and project completion details, and to date, Brannon received three separate replies that there are no records responsive to Brannon's request, including a request for a completion/acceptance letter outlining total contract value and whether change orders were issued. Further, the contract award for this project reference outlines that there was simply a basic water pollution control plan required for this project reference (also a small contract value, a fraction of the contract value for this project at hand.) The project received a permit exemption due to its low risk status (work performed during low risk season and total acreage totaling less than 1 mile, erosivity factor guidelines established by EPA standards) and as such was also exempted from the high risk SWPPP requirements that are a requirement for this horizontal levee project. The ACPWA project reference received a permit exemption and **did not require a licensed QSD**, as it was exempted from such requirements and did not meet the high risk level that would trigger such a requirement with expanded reporting and monitoring. Basic Water Pollution Control Plans, common on most low risk projects with a CGP exemption, do not require entry in the Regional Water Quality Board's SMARTS system. On the contrary, higher risk projects with erosivity factors meeting the threshold, trigger expanded requirements for SWPPP permit compliance and reporting requirements, which must be filed by the legally responsible party within the Water

Board's SMARTS system. This project's Level II SWPPP requirement, also requires a QSD license, as noted in the project specifications. QSD licensing requirements are extensive, involving many years of education, 3+ years of full time SWPPP compliance work preceding the application, training certification, and pre-licensure obtainment of a certified engineer license or other equivalent professional license – all of this is just to be eligible to apply for QSD certification, eligibility for which also then requires the passing of an in person exam. After meeting the qualifications and passing the exam, the licensed QSD is then formally entered into the Water Board's registry of licensed QSD professionals, which is then used to vet SWPPP compliance on projects filed into the SMARTS system, to verify proper licensure. Even the lesser of the two licenses for SWPPP compliance (QSP) requires three years of full time swppp compliance work, obtainment of an education certificate, subsequently followed by passing a test. Nonetheless, this project and the California Water Board (and permit requirements) **require a licensed QSD to perform both onsite and offsite SWPPP compliance work**. QSD licensing can be easily verified at the website link previously provided. Brannon was unable to verify that Corcus' principals or employees (of which it has very few), particularly those named as the oversight officers for this project, are licensed. The Agency's protest denial letter states that because a public document exists acknowledging that Corcus was awarded the project reference cited for ACPWA and the word "water pollution control plan" was mentioned in the contract award online record, that this also proves that Corcus meets the QSD licensure requirement for the current horizontal levee project. This is incorrect and false. The project reference cited for ACPWA did not require a licensed QSD to perform SWPPP compliance work, as it received a formal exemption from such requirements and therefore Corcus did not perform this work and was not required to prove its licensed QSD status. That project reference, while more similar in scope of work nature to the one at the subject of this bid protest, is entirely different from this horizontal levee project with entirely different requirements. The project reference did not require a licensed QSD, and therefore, the assumption that Corcus created a basic water pollution control plan for this project reference that may not even have required a licensed QSP (less stringent requirements than a QSD), does not mean that Corcus is a properly licensed QSD to self perform the required work on this project at hand. Brannon reiterates that if Corcus cannot be verified as a licensed QSD (with an existing direct employee, not a third party consultant to work around the subcontractor requirement) as verifiable on the oversight agency's website, it is not properly licensed to self perform this work, and as such would need to outsource this bid line item to a subcontractor. A subcontractor was not listed on Corcus' bid at the time of bid submission due to its own failure to properly review the requirements, and this line item was significantly underbid versus the Engineer's Estimate and the next low bidder. (The Agency's protest response letter acknowledged the underbidding of this item as well – see below.) Corcus did not download all project documents where this requirement was outlined, and as Brannon also stated, has underground pipeline experience mostly internationally based in Ireland, where no such environmental and swppp licensing requirements exist and it would not be intuitive for Corcus to have this knowledge without reading the project documents. Without QSD licensure, Corcus cannot legally perform the swppp compliance work required for this project. Further, the other two projects listed to not demonstrate work completed similar in nature to this project at hand as outlined in the project specifications, and as required of all bidders. All other bidders were required to comply with this requirement and list a minimum of three project reference that satisfied the requirement, and Corcus should not be awarded the project based on just one somewhat similar

project reference, with a value of less than \$200K – this is not proper demonstration of qualifications or experience. Awarding the contract to Corcus simply because its bid is less costly than the next lowest bidder who is properly qualified, when Corcus has not demonstrated its responsibility or responsiveness, is not justifiable.

- d. The following item included in Brannon’s protest that the Agency failed to address in its protest denial is as follows: “Another crucial environmental item was noted in the pre bid conference presentation, “see project plans and special provisions section 31 23 00: Imported soil site sampling and analysis plan – required for imported levee berm material; maintain flood protection throughout construction – existing levee shall not be lowered below EL 9.0ft until new levee berm is constructed to EL 11.0ft; horizontal levee consists of treatment area and habitat slope – see plans and special provisions for material composition requirements; wood fines – on site composting per special provisions.” Corcus failed to download and review these critical project documents; therefore, it could not have considered these material items mentioned and referenced in the pre bid conference presentation without obtaining possession of the documents. Corcus’ bid pricing for the related line items was significantly less expensive than Brannon, which gives Corcus an unfair advantage to Brannon’s pricing (which properly incorporated the pertinent project details discovered from review of the required plans and specifications.)” Brannon maintains that Corcus was unaware of this pertinent item due to failure to access and download the corresponding required bid specifications, and that it is a reasonable assumption that this contributed to Corcus’ corresponding bid line items being lower than the other bidders and the Engineer’s estimate. Although the Agency acknowledges the multiple line item values that were underbid and out of range of the Engineer’s estimate, it also states that it will not consider whether the bid is balanced or not in its decision to award the contract to Corcus and denied Brannon’s protest of this particular issue. The Agency states it is only concerned with whether the bidder entered a value in the field, and not that the value is balanced. After highlighting a few bid line items which are unbalanced and out of range, and referencing other out of range items that are not specifically called out, the Agency’s protest response states, “*While Corcus’ costs may have been **significantly lower than the other estimates**, this review and the IFB award does not take the quality of the estimate into account, only that the numbers were not omitted. Further, their past work experience on storm water management projects is evidence that they have previously navigated QSD requirements. Therefore, I find that Corcus’ project references conform to the requirements of the Invitation for Bids and substantiate their ability to perform the scope of work required.*” The second part of this statement is incorrect, that Corcus’s past work experience on storm water management project is also evidence that they have previously navigated QSD requirements. At the present time, Corcus is not shown to hold a QSD license; therefore, whether they are navigating QSD requirements is irrelevant. Brannon also is informed well enough to self navigate such requirements, but also was required by the Agency’s bid documents (formulated per state environmental regulation requirements) to outsource the SWPPP line item to a licensed QSD and did so according to the requirements and with the increased cost incorporated into its bid with the proper subcontractor listed per public contract code requirements. Navigating requirements (per the Agency’s words) is not the issue – whether Corcus **holds a valid QSD license** to legally self perform this work and as required by the Agency’s bid documents, is the issue. As for the first part of this statement, under Federal and State standards, a public entity can and should consider whether a bid is materially unbalanced when choosing to award a contract, when it could potentially result in final project

costs in excess of the next lowest bidder. Brannon maintains that due to the environmental sensitivity of this project, the materially unbalanced bid involving SWPPP, import material specification and marsh pump requirements and compliance, could jeopardize the payment of grant funds towards this project, and as such, must be considered. Environmental compliance financial penalties, loss of grant funding, or project disruptions caused by compliance issues, would exponentially increase the cost of this contract well beyond the value submitted by Corcus, and likely would result in costs exceeding Brannon's bid submission value (the next lowest bidder.)

While the Agency's protest response states that Corcus submitted bid line items well under the engineer's estimate, including line items Brannon specified related to Corcus not having reviewed the project documents (per the audit trail log), that the Agency only counts whether a value was entered or left blank, and not whether the bid line items are balanced. Yet, in the invitation to bidders, the Agency specifically calls out the importance of accessing these documents as they provide substantive information to properly formulate a bid submission. Further, bid form 1B was required of all bidders, with each bidder certifying that the bid line item values and the overall bid submission value, incorporate the knowledge gleaned from the contract documents. The form states, "In compliance with the Invitation for Bids for this project, the undersigned Bidder, being thoroughly familiar with the terms and conditions of the Contract Documents, hereby proposes and agrees fully to perform the work within the time stated and in strict accordance with the Contract Documents. Bidder hereby incorporates by reference all provisions of the Contract Documents that follow this Bid Form." The Agency's protest denial confirms that substantive bid line items are unbalanced and not within reasonable range of the Engineer's estimate, including the line item for which Corcus is not properly licensed as a QSD, but at the same time stating that it will ignore them and not evaluate as a basis of bidder responsibility or responsiveness, is not acceptable or allowable under legal standards. Case law exists in support of Brannon's point on this item. It also contradicts the Agency's bid forms which required bidders to certify that they had properly reviewed all contract documents, including the project specifications that Corcus failed to download per the bid page audit log records previously provided, and that these project details were understood and incorporated into the bid pricing. Therefore, the Agency cannot now state that it does not care whether Corcus reviewed these specifications and factored them into the bid line item values and will only evaluate whether any value was entered versus left blank. If that were the case, then the other bidders should not have been required to download and review the documents, and produce accurate cost assessments reflective of the substantive details in their bids. Not requiring the same of Corcus violates competitive bidding statutes, giving unfair advantage to the uninformed bidder who produced unbalanced bid line item values which underbid the other bidders. Under Federal and State standards, Corcus' bid submission must be evaluated at both the line item level as compared to the engineer's estimate for each line item, as well as whether it is overall materially unbalanced. The Agency is acknowledging that Corcus's line items in question are not in reasonable conformance to the engineer's estimates for these line items, and case law supports the rejection of such a bid, particularly as these line items have environmental legal compliance implications that could also jeopardize grant funding payments, which would ultimately make Corcus' bid not the lowest monetary value bid due to penalties and potential interference with grant funding. Brannon also maintains that Corcus' history of submitting other improperly researched bid

proposals with pricing significantly lower than both the engineer's estimates and its competitors, to later submit substantial change orders to cover the extra costs, is further evidence that this particular bid is likely to result in the same pattern, and would likely lead to an ending contract value that would be higher than the next lowest bidder (Brannon.) Brannon included a number of these examples in its original protest, but the Agency failed to address this point in its protest rejection. As such, Brannon contends that Corcus' bid submission is materially unbalanced and that it should be rejected as non responsive.

- e. One of the two project references cited by Corcus, which failed to meet the similarity requirement, still required proper disclosure of project details on the bid submission form. Brannon's protest outlined that Corcus omitted the required information, per text that is not visible and cut off on the document field, as well conflicting details shown on the DIR page for this same project reference. The Agency did not address this omission. Brannon's protest stated, "Marin Municipal Water District (MMWD) - \$2.3Mil contract value. Upon verification of this contract award, this project consisted of a pipeline replacement project, and fails to meet the requirement "similar in nature to the specifications as outlined in this IFB." The project reference scope of work, per the MMWD website, states "This contract is for furnishing labor and equipment for the installation of 3,490 linear feet of 8-inch, 6-inch, and 4-inch welded steel pipe with valves, fittings, pipe disinfection, and appurtenances. The work to be done is located in the Town of Tiburon within the County of Marin, California." Under the bid form section to list the project name (which is missing), the bidder is required to list the "bidder's role/key personnel". Corcus' entry in this field is cut off and missing the required information. (See the screen capture included in Brannon's original protest.) It fails to list the key personnel and the bidder's role, other than it was the prime contractor. The DIR website reflects four contractors listed for this project – Corcus is one, with the others including: Bennett Marine Utility, Charles Custom Welding, Sierra Traffic Markings. None of these other firms is marked as a subcontractor on the DIR website. In addition to incomplete information and missing information, this project reference does not reflect experience and qualifications to perform the environmentally sensitive and complex work scope required in the horizontal levee project."

Contention 1: Project References Do Not Meet Qualification Requirements

Brannon first alleges that Corcus' bid submission is nonresponsive due to the project references not meeting the qualification requirements. Bid form #5 requires three project references with contracts in excess of \$100,000 each and similar in nature to the specifications as outlined in the IFB. The form also noted that the references must be from commercial clients, but did not otherwise specify requirements. Brannon notes in their protest that the Palo Alto Horizontal Levee Project scope has elements of storm water management and environmental restoration work which require specialized licenses per the project specifications. However, of the three references provided in Corcus' bid, only one project contains these elements. The other two projects are for underground pipe repair and replacement.

Brannon continues to allege that Corcus did not download the project specifications and therefore did not realize the requirement of Qualified Storm Water Pollution Prevention Plan Developer (QSD). Brannon then infers that Corcus did not factor this into their bid price and under bid a key component of the project. Their allegation is that neither Corcus nor their subcontractors are QSDs, and that they therefore omitted a key component of the work.

Finding: Brannon's assertions have been confirmed by researching the three agencies listed in the project references. Among the three, the Alameda County Public Works Agency (ACPWA) project provided the most relevant project components, with a combination of underground piping, dewatering systems, planting of erosion control shrubs, and requirement of a QSD. Upon reaching out, the agency confirmed that Corcus had performed and closed out the work to their satisfaction. While the other two projects did not have sensitive environmental components, they were both over the minimum \$100,000 cost threshold and were also performed to satisfaction.

In reviewing the cost comparison document, two items regarding the storm water system (amongst others) appear under bid in comparison to the original engineer's estimate: storm water pollution and pump.

Corcus Under Bid Items:

	Pre-Bid	Corcus	Brannon
Item 4. STORMWATER POLLUTION	\$43,000	\$18,500	\$40,000
Item 9. RENZEL MARSH PUMP	\$194,675	\$85,000	\$200,000

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While Corcus' costs may have been significantly lower than the other estimates, this review and the IFB award does not take the quality of the estimate into account, only that the numbers were not omitted. Further, their past work experience on storm water management projects is evidence that they have previously navigated QSD requirements.

Therefore, I find that Corcus' project references conform to the requirements of the Invitation for Bids and substantiate their ability to perform the scope of work required.

- II. Corcus Construction has not demonstrated responsibility – this includes both its lack of history in general due to being a newly formed company, and the limited history since its inception reflecting negative records related to previous public works contract awards
 - a. Brannon's protest outlined Corcus' lack of demonstrated responsibility – both lack of history in general due to its status as a newly formed company and that the limited history since its inception reflects negative records related to previous public works contract awards and contract cancellations. The Agency's protest response letter mischaracterizes Brannon's argument made under item II, instead relating it to Corcus' specialty experience versus its overall responsibility. It also states that because the three project references were completed and not cancelled, the Agency is willing to overlook the negative recent history of contract cancellation. In its response letter section II, the Agency further proves Brannon's previous argument made within section I above, which asserts that Corcus' project references do not meet the bid requirements to list three project reference similar in nature to the project specifications. The agency states in its own words, "It appears that working with underground utilities is their specialty, and they have a clean track record of completing the projects which they referenced in their bid documents." To reiterate, the project at the subject of this bid protest and appeal, is not an underground utility project. It is a horizontal levee project with a contract value of \$2.8 Million, with high risk Level II

SWPPP compliance requirements in an environmentally sensitive area, requiring specialized expertise, and two of the three project references listed by Corcus are underground utility/pipeline work projects aligning with its underground utility experience and expertise. Underground utility project references do not demonstrate a (minimum) total of three project references **similar in nature to the project specifications as required of bidders in the project bid documents**. If this bidder requirement was not substantial or important, then the Agency should not have required it, and the other bidders should not have had to meet this burden of furnishing very specific and detailed project references similar in nature to the project specifications.

- b. Brannon pointed out the negative public records related to contract cancellation for other public works projects. One such example cited was a City of Richmond project contract cancellation within the last year. The Agency dismissed this as an inconsequential cancellation due to a simple clerical error, when in fact, this project was mostly funded by Federal Grant Funds, which required that specific criteria from bidders be met at the time of bid submission. The details were outlined clearly in the specifications and all other bidders properly complied. After the contract was awarded and the City submitted the documentation to initiate the actual grant funding for the project, the City discovered that Corcus did not meet the federal requirements for the project to be funded with the designated grant funding. As such, the contract was cancelled, and if it had not been cancelled with Corcus remaining as the contractor, the project could not have been funded with the appropriated grant funding. The Agency's protest response letter does not address that this history of non-responsibility related to Corcus' submission of bids that fail to meet key project requirements, is significant and substantial, as the impact of Corcus' actions was a disruption to the federal grant project funding source, as well as the cost impacts of having to put the project out for rebid due to Corcus' actions. Public records related to the contract cancellation (screen capture below) state "the contract documentation lacked required Federal forms that are necessary for the receipt of grant funding." A contract cancellation due to bidder failure or omission occurring after contract award is not a common occurrence at all. It is a very serious offense, and it is usually one that requires penalty imposed on the bidder and formal designation of non responsibility preventing future bids to the same agency; however the City chose to waive the penalty and notified Corcus of the penalty waiver in a letter that is publicly accessible online. Corcus was not the lowest monetary bidder on the cancelled contract in the first place, but notified the City after bid opening that the lowest bidder was "not qualified", and as such, the contract was awarded to Corcus, only to later discover after contract award that Corcus had submitted a non responsible bid that did not meet federal requirements, which disrupted the grant funding source for this project. The City then had to start the entire process over and put the project out for rebid such that it did not lose its funding for the project, which also wasted some of the City's budget for project administration. This contract cancellation is both material and significant to the project at hand, because paired with the facts outlined under item I, with Corcus not downloading the project specifications and submitting a bid representing it will self perform SWPPP compliance work which it is not legally licensed to self perform (requires QSD license), in addition to the other bids it has submitted with the same pattern of lack of proper project specification review and bid formulation, further demonstrates that Corcus is a non responsible bidder on this project and calls their bid submission into question. The agency's response letter further states, "In researching the Lincoln Elementary Contract mentioned in the protest, I found that Corcus was terminated due to issues with their bid as their

submission missed several federal forms. By the time the error was noticed, the contract had already been executed. The termination of contract was not due to their inexperience or inability to perform, but rather because the agency had approved a bid which was incomplete and then needed to be cancelled. For the Palo Alto project here, Corcus' bid contained all the required materials and forms. Therefore, I find that Corcus has proven themselves experienced enough to be a responsible bidder in this project." The response fails to recognize that Corcus' actions were a serious violation, an act usually qualifying as a designation of non responsibility in the future, and which jeopardized the entire federal grant funding for the project. The Agency also states that Corcus has completed all required "forms" on this bid submission; however, as Brannon has outlined, this project requires SWPPP environmental compliance by a licensed QSD which Corcus is not licensed to self perform. If this contract is awarded, and Corcus attempts to submit items in the Water Board SMART system, the submissions will be rejected, and further, failure to comply with these environmental requirements surely will jeopardize the Agency's project grant funding in a similar manner to what occurred with the City of Richmond's project cancellation. Therefore, one project reference somewhat matching the scope requirements for this project, and one which had a Construction General Permit exemption not requiring the same licensure and reporting as this project, does not demonstrate that Corcus has a proven track record responsible bidder or that it is a responsible bidder on this project. The Agency's response letter stated, "Corcus has proven themselves experienced enough to be a responsible bidder in this project", which seems unlikely based on just one project reference with entirely different requirements, and which was valued at less than \$200K. The stakes are high with the complexity and environmental sensitivity of this project, as well as the contract value of \$2.8Mil – not to mention that Corcus does not have QSD licensing to self perform at least one item of work on the bid schedule. Further, the Agency did not address the other multiple recent examples of Corcus' bid submission being rejected as non responsive, and the history of submitting bids representing that all requirements are met, only to fail to provide the required documentation. Such is the case here with this bid submission as well.

Contention 2: Corcus is Inexperienced

Brannon contends that Corcus Construction was newly licensed less than two years ago, and that the leadership positions have only recently been filled. They note that Corcus' Officers are from Ireland, where civil construction is vastly different from the United States. Finally, Brannon alleges that Corcus had been rejected from a previous contract, the Lincoln Elementary SRT Construction project, based on their inability to meet federal requirements.

Finding: As discussed in Contention 1 above, I find that the project references have demonstrated Corcus' capabilities. It appears that working with underground utilities is their specialty, and they have a clean track record of completing the projects which they referenced in their bid documents. While all the projects listed were performed in 2024, I consider the recent experience a positive characteristic of their bid.

In researching the Lincoln Elementary Contract mentioned in the protest, I found that Corcus was terminated due to issues with their bid as their submission missed several federal forms. By the time the error was noticed, the contract had already been executed. The termination of contract was not due to their inexperience or inability to perform, but rather because the agency had approved a bid which was incomplete and then needed to be cancelled. For the Palo Alto project here, Corcus' bid contained all the required materials and forms.

Therefore, I find that Corcus has proven themselves experienced enough to be a responsible bidder in this project.

Corcus Construction, Inc.
1592 Union St. Suite 476
San Francisco, CA 94123

Attention: Thomas Breen

RE: Termination of the Lincoln Elementary School Safe Route Improvement Project Agreement

Dear Mr. Breen:

Thank you for your business. Please consider this our formal notice to terminate the contract between Corcus Construction, Inc. and the City of Richmond. On July 2, 2024, the City Council of the City of Richmond approved the termination of the contract with Corcus Construction Inc., due to non-compliance with federal requirements for bidding this project. Because of the funding for this project, the project cannot go forward without rebidding the project with the proper forms included. Per Article II Default and Remedies, Section 2.3

WHEREAS, during the processing of the contract for execution, a clerical error in the construction contract was discovered. Unfortunately, by the time the error was noticed, the contract had already been fully executed; the contract lacked required federal forms; and

WHEREAS, the contract documentation lacked required Federal forms that are necessary for the receipt of grant funding; and

WHEREAS, City staff is recommending City Council terminate the construction contract with Corcus Construction, Inc., and direct Public Works staff to rebid the Lincoln Elementary School Safe Route to School Improvement Project CML-5137(055), and re-

- Form FHWA-1273

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July 2, 2024

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- Bidder's List of Subcontractors (DBE and Non-DBE) Exhibit 12-B
 - Bidder's Experience/Qualifications (Exhibit E)
 - Construction Contract DBE Commitment (Exhibit 15-G)
 - DBE Information – Good Faith Efforts (Exhibit 15-H)
 - Bid Tabulation Summary Sheet (Exhibit 15-D)
 - Detail Estimate (Exhibit 15-M)
 - Disclosure of Lobbying Activities

Caltrans Local Assistance was immediately informed and recommended that the City of Richmond terminate the contract with Corcus Construction, Inc., for the Lincoln Elementary School Safe Route to School Improvement Project (CML-5137(055)) and

- III. Corcus Construction lacks the specialized experience in the realm of environmental restoration and ecologically sensitive projects of this nature. It would not be good stewardship of EPA grant funds to

entrust this complex environmental restoration project to a new firm that lacks the qualifications and experience to reliably perform the work.

- a. The Agency's response letter states, "As discussed in Contention 1 above, the project references have demonstrated the capability of the firm. The ACPWA project was similar in nature, as regulatory permits were required and biological surveys and training were performed." This statement is false as previously substantiated above. The ACPWA project did not require similar regulatory permits, as it was exempted from Construction General Permit coverage. It was low risk with work performed during the summer months and therefore was exempted and did not trigger the high risk level involved in the project at the subject of this bid protest. Therefore, Brannon reiterates this argument once more and maintains that Corcus providing one small project for ACPWA that was somewhat similar in scope nature to this project, does not absolve the Agency's bidder requirement to list three projects demonstrating experience similar in nature to the project as described in the specifications. It also was exempted from the SWPPP Level II high risk compliance requirements for this project, and cannot be used to demonstrate this relevant experience, as the project was exempted. As the Agency also stated, the other two project references demonstrate Corcus' expertise in underground utility work. This firm very well may be experts in this field; however, this is not an underground utility project, and these project references do not satisfy the project reference requirements in the bid documents that all other bidders complied with.

IV. Funding for this project is at least partly sponsored by EPA grants, which have strict evaluation criteria for contract award, with the cost of the bid as one part of a larger whole. The other criteria factored into the evaluation are weighted accordingly, including relevant experience and project references. (Using the recommended EPA bid evaluation formula, Brannon qualifies as the lowest responsible bidder.)

- a. Once again, Brannon reiterates that if experience and expertise was not a factor of consideration in this bidding process, the Agency would not have required in bold lettering, three project references similar in both size and nature to the bid documents. This language has been provided many times in Brannon's original protest and in this appeal letter. Choosing to overlook the experience mandate that was required of every bidder, simply because Corcus' bid was lower in monetary value, and for certain line items questionably lower than the engineer's estimate for items of work requiring a specialty license Corcus does not have, is not acting in good faith and in the proper spirit of competitive bidding regulations. The Agency's response under this argument further proves Brannon's previous arguments that Corcus is not the lowest responsible, responsive bidder on this project due to its obvious failure to substantively meet the requirements set forth in the invitation to bidders. The Agency's response letter states, "I find that the contract award should continue to be based upon the criteria set by the IFB." Under this assertion, Corcus has not met the criteria set by the IFB as outline herein above, and in the prior protest letter. Therefore, Corcus is not the lowest responsive and responsible bidder. Under these guidelines, Brannon is the lowest responsive and responsible bidder as it has substantively met or exceeded all IFB requirements.

Therefore, I find that the contract award should continue to be based upon the criteria set by the IFB, and awarded to the lowest responsive and responsible bidder, Corcus.

The agency's conclusion states, "*Brannon's Letter of Protest was detailed and well-researched. It included a reiteration of the project references, as well as additional project examples, which demonstrated that they are an exceptional firm. They have a successful track record of working in ecologically sensitive areas and they have identified a sub-contractor that specializes in storm water management. However, their service comes at a premium, as their bid price was also approximately 25% higher than Corcus'. While the Letter of Protest had many logical and reasonable arguments, none of the contentions disqualified the Corcus bid. Corcus complied with all requirements in the IFB and are clearly a responsible bidder. Based on my review, I conclude that Corcus Construction has adequately met the standards as presented in the IFB and is the lowest responsive and responsible bidder. Therefore, I recommend that the award to Corcus by ABAG's Executive Board be sustained.*"

Brannon unequivocally disagrees with this statement related to whether Brannon's contentions disqualify Corcus' bid, and that Corcus complied with all requirements in the IFB. The evidence previously provided by Brannon and reiterated herein reflects the exact opposite of this statement as it relates to whether Brannon's contentions in its bid protest disqualify Corcus' bid, that Corcus complied with all requirements in the IFB, and that Corcus is clearly a responsible bidder. To recap:

- 1) Corcus' bid should be disqualified due to its failure to prove that it holds a valid QSD license as required to legally perform this work. Brannon listed a stormwater management subcontractor as the Agency mentioned, and it came at an increased cost – also correct. That is because the project documents and the Water Board required valid QSD licensing to perform this line item of work. Penalizing Brannon for properly subcontracting this item of work to a licensed subcontractor, which came with an increased cost, while rewarding Corcus' attempt to underbid this item and self-perform the work without proper verification of its licensing, should not be permitted. Due to failure to list a licensed QSD subcontractor for the bid item in question, Corcus did not comply with all requirements in the IFB, did not comply with public contract code requirements mandating that each subcontractor (defined by performance of on site work, which is required under Level II SWPPP compliance) valued at more than one half of one percent of the contract award amount, be formally listed as a subcontractor at the time of bid submission. Corcus did not list such a subcontractor and therefore, represented that it will be self performing this work, and it is not licensed with QSD licensure to legally perform this work. This was also clearly explained to bidders in the bid documents that Corcus failed to download per the audit trail on the bid website. Addition of a QSD subcontractor cannot occur at this juncture after bid submission per public contract code, which further invalidates and disqualifies Corcus' bid. Corcus signed and certified the Agency's bid form confirming that it had accessed and incorporated the substantive project documents into its bid values, but the audit trail shows it did not download the documents in order for such a statement to be true.
- 2) The bid requirements mandated a **minimum of three project references similar in nature to this project.** Corcus provided one reference that (somewhat) met this requirement in the scope of work, but not similar in contract value size or environmentally sensitive complexity. It was a project exempted entirely from the environmental and SWPPP high risk monitoring that is required in this particular project at hand, and this one project reference when the Agency required a minimum of three project references, does not demonstrate proper history of experience or QSD licensure, as required by both the bid documents and the environmental oversight agencies.
- 3) Denying Brannon's protest not on its merits, but simply because Brannon's proper experience and qualifications per the bidder requirements established by the Agency comes at a cost 25% higher than Corcus' bid, is not a valid justification for denying Brannon's protest and instead moving forward with contract award to Corcus, a firm that has not met the requirements and is not even legally authorized to self-perform some of the line items of work. Brannon submitted its most competitive bid, shaving down its

profit margin to a very low amount. Brannon contends that the project cannot be performed at the price listed by Corcus, when all legal and compliance requirements stated in the project documents are met. The Agency acknowledged one such example in Corcus' bid for the SWPPP item of work, submitted at less than half of the value of the engineer's estimate for that line item. This signals improper understanding of the requirements. Brannon was also made aware that a special City of Palo Alto City Council meeting was called on April 21st, 2025, during which a change to this project's construction budget was approved for approximately \$4.9 Mil. In that formal documentation brought to the board for approval, it was stated that the Agency received four qualified bids in total for the project, and that all four bidders fell within the new proposed allotted construction budget of \$4.9Mil. The budget increase approval was granted. Brannon's bid is within the construction budget allotment for this project, and as such, the price of Brannon's bid is not improper or unreasonable, per the Agency's representations during the special budget increase meeting this past week. Brannon's bid value leaves nearly \$1.5Mil remaining in the total \$4.9Mil budget to be allocated towards construction project management, contract administration, etc.

ANALYSIS

Funding sources for Horizontal Levee Pilot Project (WQ-22001) construction at time of Cooperative Agreement approval were from the Environmental Protection Agency (EPA) Breaking Ground, Nature Based Solutions for Resilient Shorelines, and National Estuary Program Bipartisan Infrastructure Law grants. These grants were awarded to and are administered by ABAG and required local match of in-kind services (e.g., non-monetary contribution) from the City of \$3.4 million, which the City was to provide by showing proof of expenditures in the RWQCP's Capital Improvement Program projects. The project was bid through ABAG in Spring 2024 and received three bids for construction that exceeded the total available budget at the time. Since then, the bids expired while the project team evaluated ways to decrease construction costs (e.g., bidding earlier in the year) as well as ways to increase available budget (e.g., pursue additional grant opportunities). In November 2024, the California Coastal Conservancy awarded ABAG \$2 million to construct the Project with no local match requirement. Amendment No. 1 (Attachment A) to the Cooperative Agreement between ABAG and the City includes modifications in several locations to account for this additional funding source.

With the addition of California Coastal Conservancy funds, the project has a total of \$4.9 million available for construction and construction management (see below table for detailed breakdown of project funding including the changes described in this report). The proposed amendment to the Cooperative Agreement adds the California Coastal Conservancy grant of \$2 million to the ABAG contributions to the project and decreases the City's required local match for construction from \$3.4 million to \$1.4 million to be provided in-kind from Long Range Facilities Plan Update expenses instead of expenses from the Local Advanced Water Purification Facility project. The project was re-bid in early 2025 and received four bids within the new construction budget. Construction is anticipated to begin in Spring 2025 and end in early 2026.

Sincerely,

Elizabeth Miller
Brannon Corporation
Beth@BrannonCorp.com