

50 Muller Place
Little Falls NJ 07424
973-812-0333
(FAX) 973-812-0330

April 18, 2022

Baltimore City
City Hall, Room 204
100 Holliday Street
Baltimore MD 21202

Re. *Metra's Combined Supplemental Bid Protest Regarding:*
WC 1252 - Bid on: October 6, 2021, 11:00 AM
WC 1410 - Bid on: June 30, 2021, 11:00 AM
WC 1285 - Bid on: June 23, 2021, 11:00 AM

Attention: Tim Wolfe

Dear Mr. Wolfe:

As you know, Metra previously submitted bid protests concerning Water Contracts 1252, 1410 and 1285—three Department of Public Work (“DPW”) contracts for which Metra was the lowest responsive and responsible bidder but that the DPW has nonetheless recommended to be awarded to a different contractor. Metra hereby supplements its prior protests based upon the information it obtained through its action against the DPW to disclose documents in accordance with Metra’s requests under the Maryland Public Information Act (“MPIA”). We ask that this supplemental bid protest, together with our prior protests, be considered by the Baltimore City Board of Estimates in advance of the April 20, 2022 hearing and be made a part of the official record.

A. Metra’s Bid Protests Extend Far-Beyond This Dispute and Implicate the Integrity of the Public Procurement Process.

Some context is essential to understand the magnitude of these protests, not merely for Metra but for the integrity of a public, *supposedly competitive* procurement system that is either broken, or, at a minimum, sits at a dangerous crossroads. By way of background, over the past 20 years, Metra has completed a significant number of public works projects for the DPW all of which were bid and awarded through a legally mandated competitive bidding process whereby contracts *must* be awarded to the lowest responsive bidder. Indeed, during the 20 years through June of 2021, Metra bid on over 600 Baltimore City solicitations without a single instance in which the DPW recommended that Metra’s bid be thrown out as unbalanced.

In an incredible turn of events, Metra has gone from a perfect record of *no rejections for* unbalanced bidding on over 600 consecutive Baltimore City solicitations spread over 20 years, to discovering last January that the DPW has recommended that all three of Metra's *low bids* opened since June 2021 will be rejected as "materially unbalanced." The aggregate value of these contracts on which Metra was the low bidder (but is now to be bypassed in favor of a higher cost offeror) is over \$22 million, ***representing more than 80% of Metra's annual revenue.***

The shroud of secrecy under which the DPW's *de facto* "Metra ban" has been perpetrated only adds to the intrigue. Following the opening of the bids, and upon learning that Metra was the low bidder on each contract, Metra made repeated inquiries to DPW over the course of many months to confirm that no bid protests had been filed and to ensure that there was no issue with regard to the award of these contracts to Metra. Throughout the fall and early winter of 2021 and 2022, the DPW led Metra to believe that no bid protests had been filed and that it was unaware of any alleged issue with regard to Metra's status as *both* the lowest *and* responsive bidder concerning the contracts at issue.

That all changed in late January 2022, just a few days before Metra received an agenda from the BOE indicating that two of the three contracts on which Metra was the low bidder *were now slated to be awarded to other higher cost offerors.* With the hearings just days away at that time, and despite countless phone calls and emails, the DPW refused to provide Metra with any information as to why Metra's low bids were suddenly being rejected as "mathematically and materially unbalanced," let alone with documents bearing upon that finding. Indeed, in early March 2022, the DPW took the incredible position that it would only provide documents in response to Metra's requests under the Maryland Public Information Act ("MPIA") *after* Metra lost the protests for which the records were sought.

Metra had to file not just one but two motions for emergency relief before the Baltimore City Circuit Court to finally obtain the documents sought in its MPIA requests. Having now reviewed those documents, the impetus underlying the DPW's "cloak and dagger" approach has become crystal clear. After all, it could be a source of embarrassment for the DPW if the public were to learn that ***the DPW's outside consultant,*** Johnson, Mirmiran & Thompson ("JMT") originally recommended that Metra be awarded Water Contract 1252 and, in so doing, specifically found that ***Metra's "low bid represents an excellent value for the City."*** See October 17, 2021 letter from JMT to the DPW Office of Engineering and Construction (Exhibit A) (emphasis added).

In that same letter, and specific to the issue of balanced bids, JMT explained that:

Attachment A contains highlighted bid items that are considerably lower (green) and significantly higher (red) than the other submitted bids. ***Each of the bids have a similar number of bid items that could be considered unbalanced, therefore JMT does not feel there is justification to reject one bid over another.***

The wonders of discovery reveals why, after recommending an award to Metra on October 17, 2021 and noting that there was “*no justification to reject one bid over another,*” JMT pivoted just one month later and recommended an award to Monumental. (Exhibit B). Acting at DPW’s direction, JMT engaged in a *post-bid* adjustment to the bid quantities for milling and paving—which is expressly forbidden by the Greenbook—and, in so doing, concluded that Monumental was now slightly lower than Metra.

The smoking gun evidence of this fact is set forth in the following excerpt from JMT’s October 29, 2021 email to the DPW:

I’ve updated the paving quantities based on the revised DOT direction for full mill and overlay. Due to the difference in unit price for this item, Monumental Paving becomes the low bidder.... I would suggest that we revise the selection to Monumental.

(Exhibit C).

Again, the Greenbook could not be any clearer in stating that the estimated quantities included *from the Solicitation* “will be used for the purpose of tabulating and *comparing the Bids and awarding the Contract.*” See Greenbook, Section 00 21 13.16(B). Yet, instead of being forthright about the fact that it was now comparing bids and recommending contract awards based upon the revised quantities it was now expecting, the DPW urged JMT to prepare a “draft version of justification” for the change to Monumental. (Exhibit D).

Abiding by its client’s request, JMT proceeded with its sham letter dated November 18, 2022 recommending that Metra’s bid be set aside due to supposed balancing concerns and that the contract be awarded to Monumental. JMT avoided the real issue noted in its October 29, 2021 email

– *i.e.*, a post-bid change to the quantities for milling and paving – but explained instead that its “*revised recommendation*” was based upon it having suddenly become aware of the City’s “more rigorous stance towards unbalanced bid prices.” The only thing “Monumental” here was DPW’s flagrant disregard for the evaluative criteria for comparing bids using *as bid quantities*, as required by the Greenbook, and its subsequent efforts to cover its tracks through a trumped-up claim against Metra for unbalanced bidding.

The DPW’s recommended rejection of Metra’s other two bids are based upon similar manipulations. Specifically, the evaluations rest upon quantities that are *different* from the quantities set forth in Solicitations which, per the express terms of the Greenbook, *must* be used in comparing bids and awarding contracts. These Solicitations contain hundreds of bid items and, if new and different quantities are used to replace the *bid quantities* in violation of the Greenbook, the DPW could literally make any offeror the low bidder. In so doing, the DPW can select its “favored son” contractor without regard to price competition or, as they so causally state “revise the selection”.

“[T]he purpose of competitive bidding is ‘to prevent favoritism and collusion and thereby procure public improvements at the lowest cost to the taxpayer.’ *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City*, 992 A.2d 459, 473–74 (Md. 2010). To be clear, Metra’s bid protests are not truly *against* Monumental, Spiniello or Civil Construction. Instead, Metra is protesting arbitrary, black-box, anti-competitive and (in the case of Water Contract 1252) downright fraudulent award processes that harm taxpayers and every contractor trying to legitimately compete for work in the City of Baltimore.

Metra has presented below additional specific comments on the allegations of unbalanced bidding resulting in its low bids being thrown out on Water Contract 1252, 1410 and 1285 with the taxpayers to then be charged well over a million dollars more for the same work. As detailed below, the common thread to each protest is whether the DPW’s ability to rejigger post-bid quantities and prices to reject any contractor it wants is more important to the City of Baltimore than legitimate price competition.

B. “Unbalanced Bidding” Was the *Real* Reason the DPW Replaced Metra with Monumental.

The DPW's conduct as it relates to bypassing Metra as the low bidder could not be more egregious. DPW's trusted consultant, JMT, did a thorough bid analysis, found that there was no "justification to reject one bid over another," and then proceeded to recommend the contract be awarded to Metra as its "*low bid represents an excellent value for the City.*" See October 17, 2021 letter from JMT to the DPW Office of Engineering and Construction (Exhibit A).

Two days after recommending an award to Metra, JMT advised DPW that, based upon post-bid design changes, the City could anticipate "about an 80% increase in milling and overlay quantity." (Exhibit E). JMT crunched the numbers and, on October 29, 2021, reported back to DPW as follows:

I've updated the paving quantities based on the revised DOT direction for full mill and overlay. Due to the difference in unit price for this item, Monumental Paving becomes the low bidder.... I would suggest that we revise the selection to Monumental.

(Exhibit C).

Because the Greenbook required that the bids be analyzed and awarded based upon the *bid* quantities (and not *post hoc* design changes), the DPW needed some way of getting rid of Metra's low bid. Accordingly, the record got papered with a "revised recommendation" saying nothing at all about the quantity change, but stating instead that the City was "at risk" based upon Metra having allegedly underbid two *contingent* concrete items (505 and 506) that could *supposedly* be renegotiated if the quantity varied by more than 25%. (Exhibit B).

As the *real reason* for the change in recommendation from Metra to Monumental has now been exposed (*i.e.*, Monumental was now thought to be the low bidder because of a post-bid increase in paving quantities), there is no need to spend much time on this *fake reason*. Metra offers only the following three points. First, *contingent prices for a pay item cannot be renegotiated*—a fact that JMT made crystal clear in its October 29, 2021 comments about another contractor:

The Contractor provided a very low price for contingent rock excavation... [T]hey priced the item very low and took the risk on themselves that there would not be any of that work on the project. Unfortunately for them they experienced a bunch of rock and had to settle for the price bid, since the spec was clear.

(Exhibit F);. There is no “risk” that Metra will not “honor the bid price due to changes in quantity” because Metra cannot renegotiate its “low” bid price on *contingent* bid items 505 and 506.

Second, Metra did not “underbid” the concrete and paving items as JMT’s “revised” analysis states but instead priced these concrete items by taking into account that they were a “contingent” replacement for the asphalt that is *already included* in Metra’s price for the pipeline items. By way of background, the line item for pipe is required to include road restoration in the unit price. In other words, for each lineal foot included in the pipe line item, the City is receiving (a) excavation, (b) pipe installation, (c) backfill, and (d) *road restoration*. Ordinarily, the road restoration will include asphalt. When the existing road is found to have concrete underneath it, however, the backfill changes from asphalt to concrete. Concrete backfill is a contingent line item which, when being priced, *should reflect the savings relating to the fact that asphalt is not being placed*. The concrete is priced by taking the cost differential between the concrete and the asphalt. Thus, Metra’s concrete price, which it has to honor in any event, is not “low” but is instead the differential between the concrete that is being placed versus the asphalt that would not be provided where concrete is used instead.

Third, JMT found that the *non-contingent* milling and paving item for which Monumental was low was likely to overrun by 80% under the post-bid redesign. It is curious that JMT finds risk in Metra rebidding a non-contingent item based upon a *theoretical* change in quantity, while completely ignoring the likelihood that Monumental will use the variation in quantity clause to renegotiate its price for a *known* post-bid change to the *non-contingent* milling and paving quantities. With an 80% increase in the paving and milling quantities coming, the City is setting itself up for a change order from Monumental that is virtually a given. This change order would push Monumental back above Metra even after the redesign that precipitated the change in recommendation.

Turning back to the crux of the issue, per the express terms of the Greenbook, the comparison of bids and award of contracts must be made based upon the quantities listed in the Solicitation. Rather than following the rules, the DPW had its consultant evaluate which bidder was believed to be low following a post-bid design change. Ignoring the change order that is coming, JMT concluded that Monumental was now slightly lower than Metra and the DPW then had JMT prepare a sham “revised analysis” pivoting from Metra to Monumental based on an alleged bid imbalance that did not exist one month earlier.

Metra is entitled to have its bid analyzed based upon the quantities included in the Solicitation without regard to *post hoc* quantity changes. That analysis was performed by JMT on October 17, 2021 with JMT concluding that Water Contract 1252 should be awarded to Metra whose “*low bid represents an excellent value for the City.*” See October 17, 2021 letter from JMT to the DPW Office of Engineering and Construction (Exhibit A). Metra asks that WC 1252 be awarded consistently with the Greenbook using the quantities that existed when the Solicitation was issued, and not based upon a post hoc redesign implicating the quantity of milling and paving.

C. Metra’s Bid on Water Contract 1410 is Not Mathematically and Materially Unbalanced.

Water Contract 1410 is for emergency water main repair work—the exact same repair work for which Metra has received numerous compliments from the citizens of Baltimore and its suburbs. The following email from Joann Hawken is representative of the appreciation Metra has received for its commitment and dedication:

All the residents of Wilson Ave Parkville MD wanted to extend a huge God Bless and Thank You ***for coming to our rescue Friday evening 2/21/2020.*** We had been without water for two days and the Baltimore City crews quit after an all day attempt to repair the day before.

I was so impressed with your crews phenomenal teamwork and needless to say the much upgraded equipment that arrived in the dark and so cold, soon the whole area was lit up and it was so apparent each man knew their jobs and worked so well together! ***They worked all night and into early Saturday morning by 5:30am the whole block had water restored !!!***

I am sure you know the great crews you manage but if you could possibly extend a huge God Bless and Thank You to all of them from us they will always be our heroes!

(Exhibit G).

Unfortunately, Metra cannot come to anyone’s “rescue” or work “all night” to restore water service because, despite 20 years of having no bids rejected on the basis of “unbalancing,” since June 2021 every one of Metra’s low bids are now being rejected as mathematically and materially unbalanced. In this case, the DPW’s *de facto* “Metra ban” will cost the taxpayers *at least* \$886,550 with this number reflecting the bid spread

between Metra (who is being passed over) and Spiniello (the suggested awardee).

Curiously, while the DPW had EBA Engineering perform “a contract bid analysis” as to whether **Metra’s** bid was unbalanced (Exhibit H), ***neither the DPW nor EBA ever performed an analysis of whether Spiniello’s bid was unbalanced.*** In other words, using the actual estimated quantities from the Solicitation, *as required by the Greenbook*, Spiniello’s bid was nearly \$900,000 higher than Metra’s and yet the DPW is recommending an award to Spiniello despite having undertaken no analysis whatsoever as to whether Spiniello’s bid was unbalanced. This glaring omission alone renders the DPW’s suggested award to Spiniello arbitrary and capricious.

Compounding matters, EBA’s methodology for determining unbalanced bids (which again was applied strictly to Metra) is both flawed and contradictory. EBA begins its August 30, 2021 report, stating that:

a materially unbalanced bid is one based on prices significantly less than ***the cost*** for some work and prices significantly overstated for [the cost of] other work where there is a reasonable doubt that the bid will result in the lowest overall cost to the government even though it may be the low evaluated bid.

Incredibly, after stating that the cost for the work is the baseline for evaluating unbalanced bidding, neither the DPW nor EBA ever *sought or analyzed Metra’s cost for any of the items being analyzed.* Rather than applying its stated cost-based framework, EBA compared Metra’s bid price to the *average* of the other three bidders to identify 17 instances where Metra’s price was higher than the average and 73 instances where Metra’s bid was lower than the average.

The fact that Metra’s bid on particular line items was typically lower than the average means nothing and, in fact, is to be expected given that Metra was the low bidder. Further, because there are only three inputs (and sometimes less) in EBA’s “high/low” average, in almost every instance, that analysis is grossly skewed by an extremely low or extremely high bid from only one other bidder. The reality is that similar unit pricing to that included in Metra’s bid can be found on numerous City contracts currently underway and recently completed.

It is odd that, as support for a theoretical \$62,000 cost increase with Metra's bid, EBA hypothesizes a situation in which the quantities are higher on one of the handful of bid items where Metra's price was higher than the average *while ignoring the impact of a quantity overrun for the 73 line items where Metra's bid was lower than the average.* EBA's approach of changing the quantities to increase Metra's price is also inconsistent with EBA's admission that "a quantitative evaluation cannot be performed for this contract since there are only estimated quantities." (Exhibit H, at p. 3). As EBA admits, in an emergency repair contract like this one, Metra has no idea whether the City is going to need a thousand units of a particular item or none.

Under the circumstances, it is literally impossible for Metra to "game the system" by loading its higher prices into items that are more likely to be used. Metra simply has no way of knowing which items will be heavily used versus those that may not be used at all. What Metra does know is that: (i) it has a stellar reputation for performing this exact type of work, (ii) its bid is 11% lower than the proposed awardee (Spiniello); (iii) the DPW has never analyzed potential unbalanced bidding by Spiniello but has instead reserved this type of analysis for Metra; and (iv) the analysis that was done is worthless inasmuch as it contains no assessment of Metra's costs which EBA itself lists as the guidepost for a determination of unbalanced bidding.

Metra earned the right to the award of this emergency water main repair contract (WC 1410) by virtue of it having submitted the lowest responsive bid. The DPW's new approach—where bids are evaluated based upon imaginary quantities and where low prices are bad and higher prices are good—does nothing to promote the public interest. To the contrary, it strips the public procurement process of any predictability or transparency and results in a situation whereby the DPW can simply award the contract to whichever contractor is next on their list. If bids are not to be awarded for great performance and low pricing, than on what basis are they making their "selection?" We stand this week at the crossroads of competition and cronyism. Metra urges this Board to choose the proper path.

D. Metra's Bid on Water Contract 1285 is Not Mathematically and Materially Unbalanced.

As noted previously, the sham reason given for rejecting Metra's low bid on Water Contract 1252 related to the alleged concern that Metra would not honor its price for the *contingent* bid items where concrete was used in lieu of asphalt. Discovery revealed that this was merely pretext and that the

real issue concerned a *post-bid* redesign resulting in a significantly increased quantity of milling and paving for which Monumental was the low bidder.

In the case of WC 1285, the DPW had its consultant, RK&K use this same “contingent” price gambit to bypass Metra and recommend an award to the second low bidder, Civil Construction. See Exhibit I, RK&K letter dated February 14, 2022 (submitted *after* Metra’s protest had already been submitted). The way the game works is as follows. RK&K takes three contingent line items where it first invents a 25% or more variation in quantity for these contingent items. *Id.*, at pp. 2-3. After changing the quantity by 25% or more, in violation of the Greenbook, RK&K proceeds to double or even triple Metra’s price for these contingent items based upon the knowingly false supposition that Metra can renegotiate its contingent prices based upon the variation in quantities clause. *Id.* Having changed the quantities (and doubled or tripled Metra’s price for each line item), RK&K manufactures a situation where Metra’s bid price could actually be higher than Civil Construction’s.

This manipulation is egregious under any circumstance but is particularly so here in that the variation in quantities clause does not allow a contractor to renegotiate its *contingent* prices. (See Greenbook Article 01 26 34, paragraph C which states: “*Contingent items may be increased, decreased or eliminated entirely without negotiation*”.) JMT made this exact point to DPW in discussing a different contractor:

The Contractor provided a very low price for ***contingent*** rock excavation... [T]hey priced the item very low and took the risk on themselves that there would not be any of that work on the project. Unfortunately for them they experienced a bunch of rock ***and had to settle for the price bid, since the spec was clear.***

(Exhibit F).

RK&K notes in its “justification letter” that “*if the quantities vary, the lowest bidder (Metra) may not remain as low bidder.*” (Exhibit I, p. 3). Manipulating the quantities, which is contrary to the Greenbook, can, of course, yield any result that DPW wants. That manipulation is even easier where, as here, in addition to changing the quantity the DPW’s consultant doubles or even triples the low bidder’s unit prices on contingent bid items without regard to the fact that contingent prices cannot be renegotiated (reference article 01 26 34, paragraph C of the Greenbook cited above.)

The Greenbook states that estimated quantities included *from the Solicitation* “will be used for the purpose of tabulating and *comparing the Bids and awarding the Contract.*” See Greenbook, Section 00 21 13.16(B). Despite having found “no anomalies” in the estimated quantities (Exhibit I, p. 3), RK&K cast aside the estimated quantities for WC 1285 and then compounded the manipulation by doubling or even tripling Metra’s bid prices for *contingent* line items that *cannot be renegotiated* under the Greenbook’s variation in quantities clause.

If quantities are randomly changed and new (higher) prices inserted in lieu of those a contractor actually bid, the DPW can make anyone it wants the new “low bidder.” If this is the path that we are to now follow, then Metra submits that the competitive public procurement process no longer exists in the City of Baltimore. See *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City*, 992 A.2d 459, 473–74 (Md. 2010) (“[T]he purpose of competitive bidding is ‘to prevent favoritism and collusion and thereby procure public improvements at the lowest cost to the taxpayer.’”).

It is evident that some within the DPW place a great value on a black-box decision-making process. Metra urges the BOE to take serious measure of what is actually at stake here and ask itself whether the “black box” is really worth it or if it’s a recipe for corruption and favoritism. Finally, to the extent Metra’s bid protests are denied, Metra respectfully requests that future Solicitations be issued with a range of acceptable pricing so that *all* contractors bidding on Baltimore City public procurements understand the new rules and can then *compete* within that context and with the knowledge that, if they win, their victory will not be handed over to the second or third place bidder.

By copy of this letter to James.Knighton@BaltimoreCity.gov, Tonorah Burgee, Yosef Kebede and Darnell Ingram, please allow this letter to serve as Metra’s Supplemental Bid Protest concerning Water Contracts 1252, 1410 and 1258 and to satisfy any requirements for inclusion in the record for upcoming BOE hearing scheduled for April 20, 2022.

City of Baltimore
4/18/2022
Page 12 of 12

Very truly yours

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

Stephan P. Dioslaki

Encl.

cc: Tonorah Burgee
Yosef Kebede
Darnell E. Ingram, Esq.
William Groscup, Esq.

/spd.

Exhibit A



October 17, 2021

Mr. Pawan Poudel
Office of Engineering and Construction
City of Baltimore, Department of Public Works
305 Abel Wolman Municipal Building
200 N. Holliday Street
Baltimore, MD 21202

RE: Water Contract 1252 – Bid Evaluation
JMT Job No. 17-11671-009
Client Ref No. 1802

Dear Mr. Poudel:

At the City’s request, Johnson, Mimiran & Thompson (JMT) considered the results of the bids received for the above-referenced project. Bids were opened on October 6, 2021 and a summary of the total bid prices by contractor are in the table below. A copy of the bid tabulation prepared by the City is enclosed as **Attachment A**. We verified the math for all bidders and did not discover errors in the bid tabulation file. The apparent low bidder is Metra Industries.

Bidder	Total Bid Submitted	Difference from Engineer’s Estimate (%)
Metra Industries	\$6,795,813	
Monumental Paving & Excavating, Inc.	\$6,901,193.50	
Gamey Companies, Inc.	\$6,956,161.25	
Spiniello Companies	\$7,133,300	
J. Fletcher Creamer & Son, Inc.	\$7,420,355	
Civil Construction, LLC	\$7,956,166	
R.E. Harrington Plumbing & Heating Co., Inc.	\$8,954,720	
Anchor Construction Corporation	\$9,613,322.50	

The Engineer’s opinion of probable cost prior to receiving bids was \$ [REDACTED]

Six of the eight received bids were lower than the Engineer’s Estimate. However, the average of the eight bids is [REDACTED] less than the Engineer’s Estimate. In addition, the average bids for the non-contingent items are [REDACTED] less than the non-contingent items in the Engineer’s Estimate, indicating that the cost estimate represented a true reflection of the bidding environment. The apparent low bidder is [REDACTED] lower than the Engineer’s Estimate.

Analyzing the low bid, Metra Industries has priced the principal items of work, installation of ductile iron water mains (Items 802 – 807) at \$3,398,742 while the price on the Engineer's Estimate totaled \$██████. This suggests an aggressive approach to win the project, however the unit prices for these items are comparable to the prices seen on other recent City of Baltimore water contracts.

Attachment A contains highlighted bid items that are considered significantly lower (green) and significantly higher (red) than the other submitted bids. Each of the bids have a similar number of bid items that could be considered unbalanced, therefore JMT does not feel there is justification to reject any one bid over another.

After review, JMT concludes that the low bid represents an excellent value for the City and recommends awarding the WC 1252 contract to Metra Industries.

If you have any questions or need further information, please do not hesitate to contact me at 410-316-2496 or spickel@jmt.com.

Very truly yours,

JOHNSON, MIRMIRAN & THOMPSON, INC.



Steven Pickel, PE
Senior Associate

SSP/ssp

Cc: Hernan Guadalupe, City of Baltimore

Enclosures: Attachment A: Bid Tabulation

Exhibit B



November 18, 2021

Mr. Pawan Poudel
Office of Engineering and Construction
City of Baltimore, Department of Public Works
305 Abel Wolman Municipal Building
200 N. Holliday Street
Baltimore, MD 21202

RE: Water Contract 1252 – Bid Evaluation **(Revised)**
JMT Job No. 17-11671-009
Client Ref No. 1802

Dear Mr. Poudel:

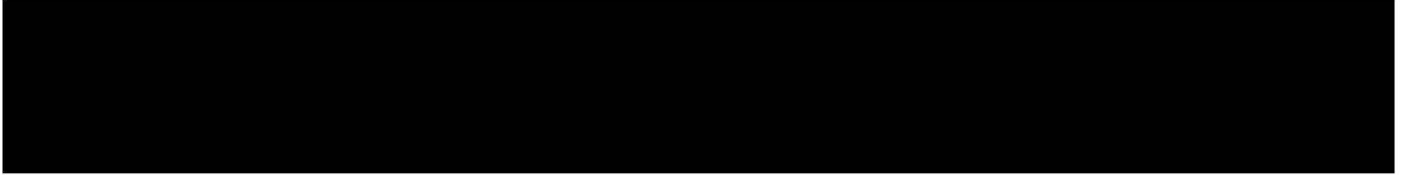
Johnson, Mirmiran & Thompson (JMT) was recently made aware of **modifications to the City's methodology of analyzing Contractor bids** and the more rigorous stance toward unbalanced bid prices. Based on this revised methodology, **JMT has prepared this letter to revise the recommendation of award for Water Contract 1252.**

The table below, previously presented in our original letter dated October 17, 2021, shows the total bids submitted for this Contract. A copy of the bid tabulation prepared by the City is enclosed as **Attachment A**. The apparent low bidder is Metra Industries.

Bidder	Total Bid Submitted	Difference from Engineer's Estimate (%)
Engineer's Estimate		
Metra Industries	\$6,795,813	
Monumental Paving & Excavating, Inc.	\$6,901,193.50	
Garney Companies, Inc.	\$6,956,161.25	
Spiniello Companies	\$7,133,300	
J. Fletcher Creamer & Son, Inc.	\$7,420,355	
Civil Construction, LLC	\$7,956,166	
R.E. Harrington Plumbing & Heating Co., Inc.	\$8,954,720	
Anchor Construction Corporation	\$9,613,322.50	

Metra has underbid two of the paving items (505 & 506) at a unit price that may put the City at financial risk if the Contractor does not honor the price bid, due to changes in the quantity. The quantity includes assumptions for concrete that could not be easily quantified, which may or may not be realized during construction. These assumptions were included to prevent significant overruns requiring a change order,

as the City has seen frequently on recent utility projects. Per the Green Book, the Contractor may renegotiate these items when the actual quantity is +/- 25%. At that point, the unit price may increase substantially resulting in a higher overall project construction cost that may exceed the cost difference of \$105,382 between the lowest bidder (Metra) and the second lowest bidder (Monumental). In addition, the unit price for three items (816, 817, 818) are the highest by any of the bidders.



If you have any questions or need further information, please do not hesitate to contact me at 410-316-2496 or spickel@jmt.com.

Very truly yours,

JOHNSON, MIRMIRAN & THOMPSON, INC.

Steven Pickel, PE
Senior Associate

SSP/ssp

Cc: Hernan Guadalupe, City of Baltimore

Enclosures: Attachment A: Bid Tabulation

Exhibit C

From: Pickel, Steven <SPickel@jmt.com>
Sent: Friday, October 29, 2021 12:34 PM UTC
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1252-Detailed Bid Tabulation
Attachment(s): "BAWC1252 - Revised Paving.xlsx"

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

Good morning Pawan,

I was wondering if you've heard back from the PMT about Metra's bid. I was thinking about this a little bit over the past week for some instances where we've accepted a few low bid items. The one I thought of is the current construction project for SC940. The Contractor provided a very low price for contingent rock excavation, approximately [REDACTED] of our estimate. Since the items are contingent, they priced the item low and took the risk on themselves that there would not be any of that work on the project. Unfortunately for them, they experienced a bunch of rock and had to settle for the price bid, since the spec was clear.

On another note, I've updated the paving quantities based on the revised DOT direction for full mill and overlay. Due to the difference in unit price for this item, Monumental Paving becomes the low bidder. See attached for updated bid tabs showing the new totals. I would now suggest that we revise the selection to Monumental.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail



JMT thanks you for helping us achieve 50 years in business!

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent of the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete it from your system.

Thank You.

From: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Sent: Friday, October 22, 2021 10:28 AM
To: Pickel, Steven <SPickel@jmt.com>
Subject: Fw: WC 1252-Detailed Bid Tabulation

Steve,

Can you look in the email below. Do you think we should consider this as unbalance bid?

Regards,
Pawan

From: Houston-Burgee, Tonorah (DPW) <Tonorah.Houston@baltimorecity.gov>
Sent: Friday, October 22, 2021 10:04 AM
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>; Guadalupe, Hernan (DPW) <Hernan.Guadalupe@baltimorecity.gov>
Cc: Walston, Latonia (DPW) <LWalston@baltimorecity.gov>; Ahmad, Azzam (DPW) <Azzam.Ahmad@baltimorecity.gov>; Wolfe, Timothy (DPW) <Timothy.Wolfe@baltimorecity.gov>; Mullen, Michael (Law Dept) <Michael.Mullen@baltimorecity.gov>
Subject: FW: WC 1252-Detailed Bid Tabulation

Good Morning to All,

I asked Latonia to provide me an update on the award and she is waiting on the assigned BD number. Once we received that we could have moved forward with processing the award but we can't.

Upon reviewing the justification letter from OEC, it looks like OEC acknowledges that:

Exhibit D



November 12, 2021

Mr. Pawan Poudel
Office of Engineering and Construction
City of Baltimore, Department of Public Works
305 Abel Wolman Municipal Building
200 N. Holliday Street
Baltimore, MD 21202

RE: Water Contract 1252 – Bid Evaluation **(Revised)**
JMT Job No. 17-11671-009
Client Ref No. 1802

Dear Mr. Poudel:

Johnson, Mimiran & Thompson (JMT) was recently made aware of modifications to the City's methodology of analyzing Contractor bids and the more rigorous stance toward unbalanced bid prices. Based on this revised methodology, JMT has prepared this letter to revise the recommendation of award for Water Contract 1252.

The table below, previously presented in our original letter, shows the total bids submitted for this Contract. A copy of the bid tabulation prepared by the City is enclosed as **Attachment A**. The apparent low bidder is Metra Industries.

Bidder	Total Bid Submitted	Difference from Engineer's Estimate (%)
Metra Industries	\$6,795,813	
Monumental Paving & Excavating, Inc.	\$6,901,193.50	
Gamey Companies, Inc.	\$6,956,161.25	
Spiniello Companies	\$7,133,300	
J. Fletcher Creamer & Son, Inc.	\$7,420,355	
Civil Construction, LLC	\$7,956,166	
R.E. Harrington Plumbing & Heating Co., Inc.	\$8,954,720	
Anchor Construction Corporation	\$9,613,322.50	

The following addresses unbalanced bid items under the new methodology that the City has adopted:

Metra has underbid two of the paving items (505 & 506) at a unit price that may put the City at financial risk if the Contractor does not honor the price bid, due to changes in the quantity. The quantity includes assumptions for concrete that could not be easily quantified, which may or may not be realized during

construction. These assumptions were included to prevent significant overruns requiring a change order, as the City has seen frequently on recent utility projects. Per the Green Book, the Contractor may renegotiate these items when the actual quantity is +/- 25%. At that point, the unit price may increase substantially resulting in a higher overall project construction cost. In addition, the unit price for three items (816, 817, 818) are the highest by any of the bidders.

JMT acknowledges that the second lowest bidder, Monumental Paving & Excavating, has several items that are priced higher than the other bids and the Engineer's Estimate. However, their bid contains fewer items that are low, which reduces the City's risk of cost overruns. In addition, Monumental's bid becomes the lowest when contingent items are removed from the total price.

Through this revised analysis process, JMT believes that Monumental's bid still represents good value for the City and reduces financial risk. Therefore, JMT is revising our recommendation for award of Water Contract 1252 to Monumental Paving & Excavating, Inc.

If you have any questions or need further information, please do not hesitate to contact me at 410-316-2496 or spickel@jmt.com.

Very truly yours,

JOHNSON, MIRMIRAN & THOMPSON, INC.

Steven Pickel, PE
Senior Associate

SSP/ssp

Cc: Heman Guadalupe, City of Baltimore

Enclosures: Attachment A: Bid Tabulation

that may exceed the cost difference of \$129,241 between the lowest bidder (Metra) and the second lowest bidder (Monumental)

From: Pickel, Steven <SPickel@jmt.com>
Sent: Sunday, October 17, 2021 9:23 PM UTC
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1274 AND WC 275 specifications
Attachment(s): "WC 1252 Bid Eval Letter.pdf"

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

Hello Pawan,

Attached is the Engineer's justification letter for WC1252. If you have any questions, please let me know.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail

From: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Sent: Tuesday, October 12, 2021 11:30 AM
To: Pickel, Steven <SPickel@jmt.com>
Subject: Re: WC 1274 AND WC 275 specifications

Good Morning Steven,

Just a reminder WC 1252 engineer justification, WC 1274 and WC 1275 are on your court.

Regards,
Pawan

From: Pickel, Steven <SPickel@jmt.com>
Sent: Thursday, October 7, 2021 12:55 PM
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1274 AND WC 275 specifications

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

Hi Pawan,

Does Tuesday work? If we can squeeze it in sooner, we will.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail

[JMT 50th Anniversary](#)

JMT thanks you for helping us achieve 50 years in business!

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent of the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete it from your system.

From: Poudel, Pawan (DPW) on behalf of Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Sent: Friday, October 22, 2021 2:27 PM UTC
To: Pickel, Steven <spickel@jmt.com>
Subject: Fw: WC 1252-Detailed Bid Tabulation
Attachment(s): "WC 1252 Justification Letter.pdf", "WC 1252 - Bid Review.pdf"

Steve,

Can you look in the email below. Do you think we should consider this as unbalance bid?

Regards,
Pawan

From: Houston-Burgee, Tonorah (DPW) <Tonorah.Houston@baltimorecity.gov>
Sent: Friday, October 22, 2021 10:04 AM
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>; Guadalupe, Hernan (DPW) <Hernan.Guadalupe@baltimorecity.gov>
Cc: Walston, Latonia (DPW) <LWalston@baltimorecity.gov>; Ahmad, Azzam (DPW) <Azzam.Ahmad@baltimorecity.gov>; Wolfe, Timothy (DPW) <Timothy.Wolfe@baltimorecity.gov>; Mullen, Michael (Law Dept) <Michael.Mullen@baltimorecity.gov>
Subject: FW: WC 1252-Detailed Bid Tabulation

Good Morning to All,

I asked Latonia to provide me an update on the award and she is waiting on the assigned BD number. Once we received that we could have moved forward with processing the award but we can't.

Upon reviewing the justification letter from OEC, it looks like OEC acknowledges that:

- the lowest bid is approximately [REDACTED] below the engineer's estimate
- there is approximately a 1.3% difference between the two lowest bids
- majority of the bids are under the engineer's estimate (6 out of 8)
- the principal work, installation of ductile iron water mains (802-807) are below the engineer's estimate. The "aggressive" pricing is due to the competition and it appears to be inline with prices of other jobs.

I received a letter (not a protest yet) from Monumental Paving (2nd bidder). In a nutshell, their stance is that there are a couple of unbalanced bids items (505 and 506). The interesting thing is Monumental references WC 1257 in which Metra used the same prices in their bids.

I recommend that OEC review the document submitted by Metra and re-review the detailed bids previously submitted by Ms. Walston. It is great to save money at award time but we do not want to give contractors an opportunity to make up for initial cheap pricing with change orders after become the awardee.

If after review you find that OEC has made the appropriate recommendation, please let us know via email by next Friday October 29th

Thanks

Tonorah

Exhibit E

From: Pickel, Steven <SPickel@jmt.com>
Sent: Tuesday, October 19, 2021 1:13 AM UTC
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1274 AND WC 275 specifications
Attachment(s): "You've been sent large files.msg"

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

I'm using Mimecast to share large files with you. Please see the attached instructions.

Pawan,

Attached are the revised cost estimate, specifications, and project information sheet for WC1275. I pushed the advertisement date to a week after WC1274 since it's coming to you after. Feel free to revise again if needed. If you need anything further for these projects, please let me know.

I cannot get to the cost impacts on the paving for WC1252 and WC1257 until next week. Based on what I'm seeing on WC1274 and WC1275, you can estimate about an 80% increase in milling and overlay quantity and about 12x as much pavement marking. I'll have the actual numbers over to you as soon as possible.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail

From: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Sent: Tuesday, October 12, 2021 11:30 AM
To: Pickel, Steven <SPickel@jmt.com>
Subject: Re: WC 1274 AND WC 275 specifications

Good Morning Steven,

Just a reminder WC 1252 engineer justification, WC 1274 and WC 1275 are on your court.

Regards,
Pawan

From: Pickel, Steven <SPickel@jmt.com>
Sent: Thursday, October 7, 2021 12:55 PM
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1274 AND WC 275 specifications

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

Hi Pawan,

Does Tuesday work? If we can squeeze it in sooner, we will.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail

Exhibit F

From: Pickel, Steven <SPickel@jmt.com>
Sent: Friday, October 29, 2021 12:34 PM UTC
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Subject: RE: WC 1252-Detailed Bid Tabulation
Attachment(s): "BAWC1252 - Revised Paving.xlsx"

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities using the Report Phishing Email Button, or by emailing to Phishing@baltimorecity.gov

Good morning Pawan,

I was wondering if you've heard back from the PMT about Metra's bid. I was thinking about this a little bit over the past week for some instances where we've accepted a few low bid items. The one I thought of is the current construction project for SC940. The Contractor provided a very low price for contingent rock excavation, approximately [REDACTED] of our estimate. Since the items are contingent, they priced the item low and took the risk on themselves that there would not be any of that work on the project. Unfortunately for them, they experienced a bunch of rock and had to settle for the price bid, since the spec was clear.

On another note, I've updated the paving quantities based on the revised DOT direction for full mill and overlay. Due to the difference in unit price for this item, Monumental Paving becomes the low bidder. See attached for updated bid tabs showing the new totals. I would now suggest that we revise the selection to Monumental.

Johnson, Mirmiran & Thompson, Inc.
An Employee-Owned Company

Steven Pickel, PE
Senior Associate
Water/Wastewater
D. (410) 316-2496
C. (717) 309-6897

 Please consider the environment before printing this e-mail



JMT thanks you for helping us achieve 50 years in business!

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent of the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete it from your system.

Thank You.

From: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>
Sent: Friday, October 22, 2021 10:28 AM
To: Pickel, Steven <SPickel@jmt.com>
Subject: Fw: WC 1252-Detailed Bid Tabulation

Steve,

Can you look in the email below. Do you think we should consider this as unbalance bid?

Regards,
Pawan

From: Houston-Burgee, Tonorah (DPW) <Tonorah.Houston@baltimorecity.gov>
Sent: Friday, October 22, 2021 10:04 AM
To: Poudel, Pawan (DPW) <Pawan.Poudel@baltimorecity.gov>; Guadalupe, Hernan (DPW) <Hernan.Guadalupe@baltimorecity.gov>
Cc: Walston, Latonia (DPW) <LWalston@baltimorecity.gov>; Ahmad, Azzam (DPW) <Azzam.Ahmad@baltimorecity.gov>; Wolfe, Timothy (DPW) <Timothy.Wolfe@baltimorecity.gov>; Mullen, Michael (Law Dept) <Michael.Mullen@baltimorecity.gov>
Subject: FW: WC 1252-Detailed Bid Tabulation

Good Morning to All,

I asked Latonia to provide me an update on the award and she is waiting on the assigned BD number. Once we received that we could have moved forward with processing the award but we can't.

Upon reviewing the justification letter from OEC, it looks like OEC acknowledges that:

Exhibit G

Stephan Dioslaki

From: Gary Stivaly
Sent: Saturday, February 22, 2020 2:59 PM
To: Stephan Dioslaki
Subject: Fwd: Thank You

Begin forwarded message:

From: John Phillips <jphillips@metraindustries.com>
Date: February 22, 2020 at 2:08:35 PM EST
To: William Pugh <wpugh@metraindustries.com>, Gary Stivaly <gary@metraindustries.com>, "Daniel G. Stivaly" <dstivaly@metraindustries.com>
Subject: FW: Thank You

John Phillips
Superintendent
Metra Industries

----- Original message -----

From: Joann Hawken <joann.hawken@gmail.com>
Date: 2/22/20 2:00 PM (GMT-05:00)
To: John Phillips <jphillips@metraindustries.com>
Subject: Thank You

All the residents of Wilson Ave Parkville MD wanted to extend a huge God Bless and Thank You for coming to our rescue Friday evening 2/21/2020. We had been without water for two days and the Baltimore City crews quit after an all day attempt to repair the day before. My name is Joann Hawken my home 8207 Wilson is directly opposite the work area . I was so impressed with your crews phenomenal team work and needless to say the much upgraded equipment that arrived in the dark and so cold, soon the whole area was lit up and it was so apparent each man knew their jobs and worked so well together! They worked all night and into early Saturday morning by 5:30am the whole block had water restored !!!

Forgive my long winded note I am of the senior generation we love to talk. I am sure you know the great crews you manage but if you could possibly extend a huge God Bless and Thank You to all of them from us they will always be our heroes !

Joann Hawken

Exhibit H



EBA Engineering Inc.
6100 Chevy Chase Dr.
Suite 200
Laurel, MD 20707-2917

o 240.547.1124
f 301.725.0394
w www.ebaengineering.com

August 30, 2021

Mr. Wazir Qadri
City of Baltimore, Bureau of Water and Wastewater
305 Abel Wolman Building
200 N. Holliday Street
Baltimore, MD 21202

Re: WC 1410 - Urgent Need Water Infrastructure Rehabilitation Contract Bid Analysis

Dear Mr. Qadri,

EBA Engineering has performed a Bid Evaluation for Baltimore City Contract WC 1410.

The results are indeterminant due to the recommendation to reject an Unbalanced Bid submitted by the Apparent Low Bidder. A detailed evaluation of the apparent Low Bid by Metra Industries follows the Summary Chart. The basis for recommending rejection of Metra's Bid due to unbalanced bid prices as submitted is included in this Bid Analysis.

There are four bidders listed in the Bid Tabulation Summary Chart below. We show the Total Bid results from the four bidders with the percentage of variance from the Engineer's Estimate:

Bid Tabulation Summary Chart

BIDDER	TOTAL BID SUBMITTED	PERCENTAGE OF DIFFERENCE FROM ENGINEER'S ESTIMATE
METRA INDUSTRIES	\$7,746,450.00	
REHARRINGTON	\$8,070,850.00	
SPINELLO	\$8,633,000.00	
J FLETCHER	\$8,937,590.00	

BACKGROUND

The accepted definition of an unbalanced bid as defined by Federal Law (FAR) for a materially **unbalanced bid** is one based on prices significantly less than the cost for some work and prices significantly overstated for other work where there is a reasonable doubt that the bid will result in the lowest overall cost to the government even though it may be the low evaluated bid. The same provisions apply to the City of Baltimore and have resulted in a detailed analysis for WC 1410.

Page 2

Bid Analysis

August 30, 2021

A detailed analysis of the Apparent Low Bidder's prices is attached in Spread Sheet Format. The Chart is color coded showing the Flagged Bids in Red for significantly high prices and in Green for significantly low prices. The deviation Factors are shown in a column as a percent above or below the Average of the three additional Bid Prices received. During the review, we removed obvious erroneous bids from our price analysis in order to make the bid comparisons fair. In summary, we have identified at least 17 High Bid Items and 73 Low Bid Items shown color coded on the attached spread sheet which are considered unbalanced. The following list of bid items are considered mathematically unbalanced bid prices based on a comparison to current prices.

Unbalanced Bid Items List

High Price Bid Items by Bid Item Number

201, 301, 303, 503, 840, 841, 842, 843, 844, 845, 846, 857, 859, 860, 868, 906, 907.

Low Price Bid Items by Bid Item Number

505, 506, 507, 511, 512, 513, 514, 515, 811, 812, 813, 814, 815, 816, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 861, 862, 863, 864, 865, 866, 871, 872, 873, 874, 878, 879, 880, 901, 902, 903, 904, 905, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 922, 923, 928.

The above bid prices submitted for this water contract are considered unbalanced because the price deviation is significant. In clear terms, the deviation is not by 10% to 20% but by prices that are double or 200% to over 4000% from the average current price. The high bid prices will impose the greatest impact on the Project budget and the City's overall maintenance budget. We have found the high bid prices are applied to the common water items used under this contract. These items will generate greater quantities and therefore impose greater costs to the City. For example, 100 linear feet of 6-inch/ 8-inch DIP will cost \$81,000 based on a Bid of \$810 /LF compared to the next low price of \$19,000 based on a bid price of \$190/LF. The cost difference is \$62,000. This illustrates one bid item, but the combined impact of all unbalanced Bid Items has a significant impact to the City's programmed project budget.

The Baltimore City Standard Specifications reference the basis for rejection of any unbalanced bids Under Section 00 51 00.05. The WC 1410 Contract Book, IB-11, page 19 has supplemented this section with the following:

- 1. All bid item prices should be reflective of the materials, labor, equipment, overhead and profit costs required to complete the bid item.**
- 2. Bidders are advised that when the bid prices are not proportionate with the bid item work involved the bid will be considered mathematically unbalanced and may be subject to further review.**
- 3. Bids may be rejected if the City determines that any of the bid prices are mathematically and materially unbalanced and there is reasonable doubt that the bid will result in the lowest ultimate cost to the City.**

Page 3

Bid Analysis

August 30, 2021

Based on our analysis, we recommend that the Apparent Low Bidder, Metra Industries, be disqualified based on IB-11 UNRESPONSIVE AND UNBALANCED BIDS as described on page 19 of the Contract Specification Book.

We note that this finding is based entirely on mathematical comparisons of the Unit Prices submitted. **A quantitative evaluation cannot be performed for this contract since there are only estimated quantities.**

There are no drawings prepared for Urgent Need Water Infrastructure Contracts, therefore, no quantity take-off can be performed. The large number of unbalanced bid items submitted by Metra Industries as shown on the attached Bid Analysis Chart and as listed above, leaves no other determination but to render the Metra Bid for WC 1410 as unbalanced and unacceptable as defined. It is not in the best interest of the City of Baltimore to accept this bid. We also note that the high bid prices are applied to common water contract items such as ductile iron pipe and fittings and are not offset by the low bid prices received.

We continued our bid Analysis and reviewed the bid prices submitted by the next low bidder. **The number two Apparent Low Bidder is RE Harrington.** The RE Harrington Bid includes one bid item No. 879 that included an error in the calculation. The error was corrected in accordance with the Contract Specification and is reflected in the bid summary presented above. Though this one item is not considered commensurate with industry cost, the City does not anticipate this bid item being a commonly used item for this contract as reflected in the quantity – only five units. **Thus, in the best interest of the City and RE Harrington's bid being [REDACTED] below the Engineer's Estimate, we recommend awarding the contract to the 2nd low bidder, RE Harrington.**

Please let us know if we can assist further with the performance of this Water Contract.

Very truly yours,
EBA Engineering, Inc.

A handwritten signature in blue ink that reads "John R. Tabak". The signature is fluid and cursive, with a long horizontal stroke at the end.

John R. Tabak, PE

Attachment: Bid Analysis Spread Sheets (3)

Exhibit I

February 14, 2022

Mr. Timothy W. Wolfe, P.E., BCEE, Chief
Office of Engineering and Construction
City of Baltimore, Department of Public Works
200 Holliday Street, Suite 305
Baltimore, Maryland 21202

Attn: Mr. Hernán Guadalupe, DBA, MEng, PMP, PSP
Horizontal Utility Project Delivery Section (Water)

Re: Project 1273: Program Management Services for Baltimore City's Water Main Replacement/Rehabilitation Program

Subject: WC 1285: Caroline Street and Vicinity Water Main Replacements Bid Evaluation and Recommendation for Award

Supplementary Information to RK&K's Bid Evaluation dated August 10, 2021

Dear Mr. Guadalupe:

Per your request, RK&K has put together these additional details regarding the bids received for the Water Contract 1285: Caroline Street and Vicinity Water Main Replacements. The details presented here should supplement our original Bid Evaluation and Recommendation letter dated August 10, 2021, wherein RK&K recommended to award the Contract to the second lowest bidder – Civil Construction, LLC. The purpose of this letter is to provide additional details regarding the bid evaluation; this letter does not change our original recommendation.

A. SUMMARY:

- 1) Metra Industries, the apparent lowest bidder, has the highest number (> 40%) of high/low bid items – the bid items with unit prices that appear considerably higher or lower than the Engineer's Estimate and other bidders. Civil Construction, the second lowest bidder has only one such bid item.
- 2) Metra has bid substantially lower unit prices for "Contingent" bid items compared to the exact same item of "non-Contingent" nature. This kept Metra's bid artificially low compared to other bidders. These unit prices do not reflect the actual cost to complete the work. Without the Contingent bid items, Metra's bid would be 5th lowest, while Civil Construction would be the lowest bidder.
- 3) Metra's bid is mathematically and materially unbalanced. There is a reasonable doubt that award to the Metra Industries (lowest bidder) will result in the lowest ultimate cost to the City. Refer to the examples provided in Section B-2.
- 4) It is evident from A-2 that Metra has no intention of using the "Contingent" bid items in this Contract. During various discussion with the City, we learned that on at least one of the prior City Contracts, Metra has failed to honor the unit prices for certain "Contingent" bid items for which they bid substantially low unit price.



B. DETAILS:

Presented below is the bids evaluation process based on the guidelines from the Federal Highway Administration (FHA) as it applies to the bids received for Water Contract 1285.

1) *Is the bid mathematically unbalanced? Are the unit bid prices in reasonable conformance with the engineer's estimate and other bids?*

By definition, a mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question.

Based on A-1, Metra's bid is considered mathematically unbalanced.

2) *If awarded, what effect will unbalanced bid items have on the total contract amount?*

The difference between the two lowest bidders (Metra and Civil Construction, respectively) is approximately \$129,000 of the projected cost of WC 1285. If awarded, the potential cost impact may likely exceed this cost difference and would result in higher overall/total contract amount for this project; furthermore, the Contractor may not honor the low unit prices submitted at all, which would have even more detrimental effect on this Contract.

Table 1: Comparison of Key High/Low Bid Items in the Lowest Bid

No.	Description	Unit	Qty	Metra Industries (Lowest Bidder)		Civil Construction (Second Lowest)	
				Unit Price	Extended Price	Unit Price	Extended Price
Category 500 – Paving							
505	PLANT MIX ASPHALT PAVEMENT - SUPERPAVE 19.0 MM BASE COURSE	CY	1,830	\$450	\$823,500	\$310	\$567,300
506	CONTINGENT PLANT MIX ASPHALT PAVEMENT - SUPERPAVE 19.0 MM BASECOURSE	CY	500	\$100	\$50,000	\$310	\$155,000
510	PLAIN CEMENT CONCRETE PAVEMENT, USING MODIFIED MIX NO. 6	CY	100	\$380	\$38,000	\$410	\$41,000
511	CONTINGENT PLAIN CEMENT CONCRETEPAVEMENT, USING MODIFIED MIX NO. 6	CY	1,250	\$100	\$125,000	\$434	\$542,500
Category 800 – Utility							
821	RENEWAL OF WATER SUPPLY SERVICES(5/8" TO 1")	LF	2,417	\$225	\$543,825	\$80	\$193,360
823	CONTINGENT RENEWAL OF WATERSUPPLY SERVICES (5/8" TO 1")	LF	3,000	\$50	\$150,000	\$84	\$252,000
825	SINGLE METER SETTING, METER VAULT, FRAME AND COVER, (5/8" THRU 1" METER)	EA	27	\$3,000	\$81,000	\$1,450	\$39,150
827	CONTINGENT SINGLE METER SETTING, METER VAULT, FRAME AND COVER, (5/8" THRU 1" METER)	EA	110	\$250	\$27,500	\$1,500	\$165,000



Examples of potential cost implications if awarded to Metra Industries (Lowest Bidder):

Example 1: For bid item 511, using 935 CY of “actual” quantity, with a renegotiated unit price of \$380 (using equitable adjustment clause – Section 00 21 13.16 D of the Standard Specification), would increase the Contract amount by **\$230,300**. By comparison, if awarded to Civil Construction, there would be potential cost savings of **\$136,710**.

Example 2: For bid item 823, using 2,000 LF of “actual” quantity (66.67% of the estimated amount), with renegotiated unit price of \$100 using equitable adjustment clause, would increase the Contract amount by **\$50,000**. By comparison, if awarded to Civil Construction, there would be potential cost savings of **\$84,000**.

Example 3: Bid item 827 is the companion bid item for item #823. Using “actual” quantity of 75 EA for item 827, with renegotiated unit price of \$1,500 using equitable adjustment clause, would increase the Contract amount by **\$85,000**. By comparison, if awarded to Civil Construction, there would be potential cost savings of **\$52,500**.

- 3) *If quantities are incorrect, will the contract cost be increased when the quantities are corrected?*

Preliminary review of the estimated quantity for key bid items found no anomalies.

- 4) *On items where the quantities may vary, will the lower bidder remain as low bidder?*

This refers to the “Contingent” bid item. As demonstrated in Section B-2 examples, if the quantities vary, the lowest bidder may not remain as low bidder. In all three examples, Metra Industries would not remain as the lowest bidder; instead, Civil Construction will be the new lowest bidder.

This is based on variation of quantity for three separate bid items; similar variation in estimated quantity for other high/low bid items may further increase the total contract amount.

- 5) *If the bid is unbalanced, will the unbalance have a potential detrimental effect upon the competitive process or cause contract administration problems after award?*

Unbalanced bids have the potential of generating substantial “Change Orders”. Where unbalanced/unresponsive bids are not addressed will negatively impact future bids as this gives a sense of “unfair playing field” amongst other potential bidders.

Should you have any questions, please feel free to contact me at (410) 462-9284 or nshah@rkk.com.

Sincerely,
Rummel, Klepper & Kahl, LLP

Nirav K. Shah, P.E., PMP
Project Manager, Water

cc: John C. Moore, PE (RK&K)
Bill Gross, PE (RK&K)

Encl: Original Bid Evaluation Letter dated August 10, 2021