

MARINA COAST WATER DISTRICT  
 THIRD STREET WATER MAIN REPLACEMENT  
 CIP OW-0240

BID OPENING: 2:00 PM, AUGUST 7, 2015  
 LOCATION: 11 RESERVATION ROAD  
 MARINA, CA 93933

	BID SUBMITTAL ITEMS	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 4
		Don Chapin	MPE	Anderson Pacific	Pacific Underground
00400	Bid Submittal checklist	X	X	X	X
00410	Bid Form	X	X	X	X
	Addendum 1 Acknowledged	X	"NONE"	X	X
	Total Base Bid Price	\$ 165,350.00	\$ 213,280.00	\$ 223,140.00	\$ 235,160.00
	Signature	X	X	X	X
00412	Designation of Subcontractors	X	X	X	X
00414	List of Suppliers	X	X	X	X
00416	Designation of Insurance Agent or Broker	X	X	X	X
00418	List of Project References	X	X	X	X
00420	Stop Notice Information	X	X	X	X
00422	Non-Collusion Statement	X	X	X	X
00424	Prevailing Wage Statement	X	X	X	X
00430	Bid Bond (Bid Security)	X	X	X	X
	No form included	X	X	X	X
	Certificate of Contractor's License	X	X	X	X



August 10, 2015

Patrick Breen  
Marina Coast Water District  
11 Reservation Road  
Marina, Ca., 93933

Re: Third Street Water Main  
CIP No. OW-0240  
Bid of August 7, 2015

Dear Mr. Breen

As you are aware the Don Chapin Company Inc. submitted a bid for the above referenced project. Upon opening the bid, it was noted that we were substantially low compared to the other field of bidders. We of course went back to our bid to try to confirm our numbers were correct. In doing so, we found an error that was made when inserting the cost for materials from our supplier. The error is substantial and would be impossible to recover from should we build this project.

I am attaching two exhibits that confirm the problem. Both exhibits are taken from our estimating system. I have blocked two columns on the pay item summary sheet as we deem those columns to contain proprietary information we do not want disclosed.

Exhibit A is the document that we based our bid submission on. Note the area circled and the obvious error in placing the decimal in the wrong spot.

Exhibit B is the document that we have corrected the error on and thus revealing a new bid price of 216,410.00, a difference of 51,060.00. The area of the error is as well circled.

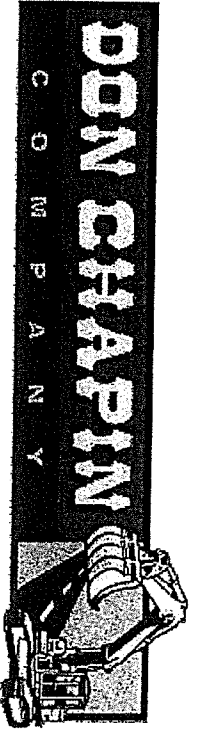
Based on this error, we respectfully request relief form this bid based on the clerical error we made. We sincerely apologize for any inconvenience this may cause you.

We strive for accurate and complete bids every time and are embarrassed by this mistake that should have never happened.

I await your earliest response.

Sincerely,

Rick Holmes  
Project Estimator



560 Crazy Horse Canyon Road, Salinas, CA 93907 Phone: (831) 449-4273 Fax: (831) 449-0700  
 License#: 406512

**Pay Item Summary**

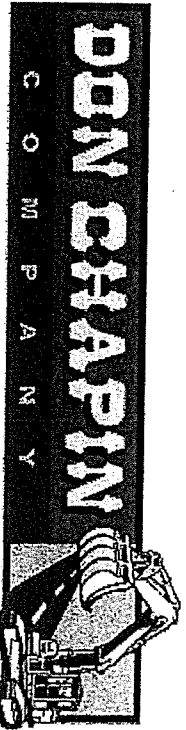
Project Name: Thrd St. Main Replacement	Customer: Marina Coast Water District
Job Number: Bid Number: 15339	Billing Address: Marina MONTEREY
Bid As: Prime	Phone:
Estimator: Rick Holmes	Contact:
Project Address: Thrd Street, Marina, CA	
Completion Date:	

**Pay Items**

Line#	Item#	Description	Bid Quantity	UM	Unit Overall Cost	Total Overall Bid Cost	Unit Bid Price	Total Bid Price	MU%
001		Mobilization & Demobilization	1.00	LS			\$5,500.00	\$5,500.00	2.63%
002		12 Inch C900 PVC Pipe, Incl. Valves & Fittings	1,380.00	LF			\$90.00	\$124,200.00	13.67%
003		Commercial Fire Hydrants, Incl. Valves & Fittings	3.00	EACH			\$9,000.00	\$27,000.00	-4.47%
004		Abandon And Remove Existing Pipe	1.00	LS			\$6,650.00	\$6,650.00	-1.00%
005		Enchrachment Permit Allowance	1.00	LS			\$2,000.00	\$2,000.00	0.00%
<b>Pay Items Totals:</b>								\$165,350.00	10.53%

*EXHIBIT A*  
*Original Quere w/ price error Item # 2*

Description	Quantity	UM	Unit Direct Cost	Total Direct Cost
<b>(Item 001 - Mobilization &amp; Demobilization continued)</b>				
LBR3 - General/Landscape/Flagman/Dumpman	4.00	HR	\$58.51	\$234.02
OE3 - Ex & Bh	4.00	HR	\$80.85	\$323.41
Backhoe - Cat 416	4.00	HR	\$54.00	\$216.00
Misc - Towable Compressor [0.5]	4.00	HR	\$29.70	\$59.40
Misc - Jack Hammer [0.5]	4.00	HR	\$18.70	\$37.40
Truck - Pickup [0.5]	4.00	HR	\$18.70	\$37.40
<b>002 - 12 Inch C900 PVC Pipe, Incl.Valves &amp; Fittings</b>	<b>1,380.00</b>	<b>LF</b>	<b>\$67.31</b>	<b>\$92,884.48</b>
Traffic Control	1.00	LS	\$9,759.83	\$9,759.83
Traffic Control Plan	1.00	LS	\$130.20	\$130.20
Traffic Control Plan Crew (8.00 LS/DY, 0.13 DY)	1.00	LS	\$130.20	\$130.20
Truck - Pickup	1.00	HR	\$18.70	\$18.70
Office - Superintendent	1.00	HR	\$111.50	\$111.50
Traffic Control Setup Daily	1.00	LS	\$9,629.63	\$9,629.63
Dead end street, one business on the right side of the street with parking lot access from Second Ave. Close street to traffic one time setup and remove, all vehicles can park at front parking area to access business on Thrid Street.				
Traffic Crew (2 Man) (0.17 LS/DY, 6.00 DY)	1.00	LS	\$9,629.63	\$9,629.63
LBR3 - General/Landscape/Flagman/Dumpman	48.00	HR	\$77.16	\$3,703.65
Foreman - Operator	48.00	HR	\$104.76	\$5,028.38
Truck - Pickup	48.00	HR	\$18.70	\$897.60
Exc. & Install 12" Mainline	1,380.00	LF	\$38.51	\$53,145.51
Exc. 1,380' x 2' x 4' = 409 cy excavation AC/Chip spoils = +/- 26 Cy. Native backfill 367 cy. spoils = 42 Cy 6" base rock section 1.196' x 2.33' x .9" = 155 tons				
1,196 Lf. in Roadway and 184 Lf. in dirt shoulder slope. Asphalt patch to be 3" min.				
Install concrete anchor and #4 rebar at Inline Valves.				
Underground Crew (6 Man W/ 315 Excavator) (197.14 LF/DY, 7.00 DY)	1,380.00	LF	\$31.05	\$42,850.78
Foreman - Operator	56.00	HR	\$79.98	\$4,478.99
LBR1 - Pipelayer/Jack Hammer [3]	56.00	HR	\$58.91	\$9,897.32
OE3 - Ex & Bh [2]	56.00	HR	\$80.85	\$9,055.35
OE4 - DZR/Ldr/Scpr/Pvr/Rllr(Ac) [0.5]	56.00	HR	\$78.98	\$2,211.50
TMS2 - Wtr Truck/Boat [0.5]	56.00	HR	\$64.91	\$1,817.42
Excavator - Cat 315 (36K Lbs)	56.00	HR	\$88.00	\$4,928.00
Backhoe - Cat 420	56.00	HR	\$54.00	\$3,024.00
Loader - Volvo L120 (4.5 Cy) [0.5]	56.00	HR	\$82.50	\$2,310.00
Backhoe - Entech Wheel	56.00	HR	\$22.00	\$1,232.00
Water Truck (3600 Gal) [0.5]	56.00	HR	\$38.50	\$1,078.00
Truck - Pickup	56.00	HR	\$18.70	\$1,047.20
Compactor - Reversible Trench Plate (Turtle) [0.5]	56.00	HR	\$33.00	\$924.00
Broom - Towable Power [0.25]	56.00	HR	\$60.50	\$847.00
Water Pipe & Fittings C-900 - 12" (R & B Company)	1,380.00	LF	\$3.80	\$5,245.09
Aggregate - Class 2 Base - Recycle	155.00	TON	\$9.50	\$1,472.50
Trucking, Base Rock (1.00 DY, 0.00 Trucks, 19.38 TON/HR)	155.00	TON	\$4.75	\$736.25
Trucking, Ac/ Chip Spoils 26 Cy. 3 Loads (3.00 DY, 1.00 Trucks, 0.13 EACH/HR)	1.00	EACH	\$787.50	\$787.50



560 Crazy Horse Canyon Road, Salinas, CA 93907 Phone: (831) 449-4273 Fax: (831) 449-0700  
 License#: 406512

*EXHIBIT B*  
*Revised Quora*  
*Contractor Price Error*

**Pay Item Summary**

Project Name: Third St. Main Replacement	Customer: Marina Coast Water District
Job Number: Bid Number: 15339	Billing Address: Marina MONTEREY
Bid As: Prime	Phone:
Estimator: Rick Holmes	Contact:
Project Address: Third Street, Marina, CA	
Completion Date:	

**Pay Items**

Line#	Item#	Description	Bid Quantity	UM	Unit Overall Cost	Total Overall Bid Cost	Unit Bid Price	Total Bid Price	MU%
001		Mobilization & Demobilization	1.00	LS			\$5,500.00	\$5,500.00	6.34%
002		12 Inch C900 PVC Pipe, Incl. Valves & Fittings	1,380.00	LF			\$127.00	\$175,260.00	10.19%
003		Commercial Fire Hydrants, Incl. Valves & Fittings	3.00	EACH			\$9,000.00	\$27,000.00	-1.02%
004		Abandon And Remove Existing Pipe	1.00	LS			\$6,650.00	\$6,650.00	2.57%
005		Enchroachment Permit Allowance	1.00	LS			\$2,000.00	\$2,000.00	0.00%
<b>Pay Items Totals:</b>									9.30%
									\$216,410.00

Description	Quantity	UM	Unit Direct Cost	Total Direct Cost
<b>(Item 001 - Mobilization &amp; Demobilization continued)</b>				
LBR3 - General/Landscape/Flagman/Dumpman	4.00	HR	\$58.51	\$234.02
OE3 - Ex & Bh	4.00	HR	\$80.85	\$323.41
Backhoe - Cat 416	4.00	HR	\$54.00	\$216.00
Misc - Towable Compressor [0.5]	4.00	HR	\$29.70	\$59.40
Misc - Jack Hammer [0.5]	4.00	HR	\$18.70	\$37.40
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<b>002 - 12 Inch C900 PVC Pipe, Incl.Valves &amp; Fittings</b>	<b>1,380.00</b>	<b>LF</b>	<b>\$101.51</b>	<b>\$140,090.27</b>
① Traffic Control	1.00	LS	\$9,759.83	\$9,759.83
① Traffic Control Plan	1.00	LS	\$130.20	\$130.20
🚚 Traffic Control Plan Crew (8.00 LS/DY, 0.13 DY)	1.00	LS	\$130.20	\$130.20
🚚 Truck - Pickup	1.00	HR	\$18.70	\$18.70
👤 Office - Superintendent	1.00	HR	\$111.50	\$111.50
🚚 Traffic Control Setup Daily	1.00	LS	\$9,629.63	\$9,629.63
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🚚 Truck - Pickup	48.00	HR	\$18.70	\$897.60
🚚 Exc. & Install 12" Mainline	1,380.00	LF	\$72.72	\$100,351.31
Exc. 1,380' x 2' x 4' = 409 cy excavation AC/Chip spoils = +/- 26 Cy. Native backfill 367 cy. spoils = 42 Cy 6" base rock section 1.196' x 2.33' x .9" = 155 tons				
1,196 Lf. in Roadway and 184 Lf. in dirt shoulder slope. Asphalt patch to be 3" min.				
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Broom - Towable Power [0.25]	56.00	HR	\$60.50	\$847.00
⚡ Water Pipe & Fittings C-900 - 12" (R & B Company)	1,380.00	LF	\$38.01	\$52,450.88
⚡ Aggregate - Class 2 Base - Recycle	155.00	TON	\$9.50	\$1,472.50
🚚 Trucking, Base Rock (1.00 DY, 0.00 Trucks, 19.38 TON/HR)	155.00	TON	\$4.75	\$736.25
🚚 Trucking, Ac/ Chip Spoils 26 Cy. 3 Loads (3.00 DY, 1.00 Trucks, 0.13 EACH/HR)	1.00	EACH	\$787.50	\$787.50

## Patrick Breen

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**From:** Peter Gmail [petertaormina@gmail.com]  
**Sent:** Monday, August 10, 2015 4:27 PM  
**To:** Patrick Breen  
**Subject:** RE: MCWD Third Street Water Main Replacment Project

Patrick

After reviewing the sequence of events on bid day we think the bid delivery clerk (while being issued the final closeout instructions via cell phone) heard the word "None" instead of "One" when populating that line item on the bid proposal. This is the first we have heard about that discrepancy, unfortunate since we have seen the addendum and have no issue with its requirements.

We apologize for the confusion, things get pretty unruly during the final minutes of a close out.

*Peter Taormina*  
  
Cell 831.277.6112

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**From:** Mike Barthel [mailto:mike@mpe2000.com]  
**Sent:** Monday, August 10, 2015 3:28 PM  
**To:** 'Peter Gmail' <petertaormina@gmail.com>  
**Subject:** FW: MCWD Third Street Water Main Replacment Project

FYI

-----Original Message-----

**From:** Patrick Breen [mailto:pgreen@mcwd.org]  
**Sent:** Monday, August 10, 2015 2:31 PM  
**To:** mike@mpe2000.com  
**Subject:** MCWD Third Street Water Main Replacment Project

Hi Mike,

I am reviewing the bids for the MCWD Third Street Water Main Replacement Project that bid Friday and had a question. The question is under the addenda acknowledgement portion of the MPE bid form is written "None", what does that mean?

Please let me know and/or if the question should be directed to someone else within MPE.

Thank you,

**Patrick J. Breen**  
Project Manager

### Marina Coast Water District

*Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.*



11 Reservation Road  
Marina, CA 93933

(831) 883-5951 off  
(831) 233-9718 mob  
(831) 883-5995 fax  
Visit us at: [www.mcwd.org](http://www.mcwd.org)



LAW OFFICES  
**McINERNEY & DILLON**  
PROFESSIONAL CORPORATION  
1999 HARRISON STREET • SUITE 1700  
OAKLAND, CALIFORNIA 94612-4727  
TELEPHONE (510) 465-7100  
FAX (510) 465-8556

TIMOTHY L. MCINERNEY

t1m@mcinerney-dillon.com

August 13, 2015

Andrew Sterbenz  
District Engineer  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

asterbenz@swwsv.com

RE: Third Street Water Main Replacement Project  
CIP No. OW-0240  
BID PROTEST

Dear Mr. Sterbenz:

I represent Anderson Pacific Engineering Construction, Inc., (Anderson Pacific) regarding the bids for the Third Street Water Main Replacement Project (Project). The bid of Monterey Peninsula Engineering (MPE) is nonresponsive and must be rejected by the Marina Coast Water District (District). MPE failed to acknowledge it received Addendum No. 1 as expressly required by the District's contract documents. This defect is material and cannot be waived.

A bid is responsive if it promises to do what the bidding instructions require. *Taylor Bus Service v. San Diego Board of Education* (1987) 195 Cal App.3d, 1331. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. *MCM Construction, Inc. v. District and County of San Francisco* (1998) 66 Cal.App. 4<sup>th</sup>, 359.

The District's Invitation to Bidders (ITB) clearly set for the requirements for all bidders. Specially, the ITB and Form of Proposal required every bidder to acknowledge the addendum. On page 2 of the Proposal, the District stated:

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

Addendum

Addendum Date

\_\_\_\_\_

\_\_\_\_\_

In addition, Addendum No. 1 specifically stated, that failure to acknowledge will result in bid being rejected. Addendum No. 1 stated:

**“Acknowledge receipt of the Addendum by inserting its number in Document 00410 – Bid Form. FAILURE TO DO SO WILL SUBJECT BID TO DISQUALIFICATION.”**

However, MPE choose to ignore the explicit instructions, and wrote “NONE” on the column under Addendum. MPE also failed to include any Addendum date, consistent with ignoring the addendum. As a result, it is undisputed that MPE’s bid is nonresponsive and must be “disqualified” as required by the District’s instruction. The only option MPE has is to plead for the District to waive the irregularity as being an immaterial mistake – it is not and the District cannot legally entertain such action.

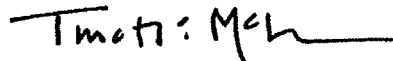
While California law allows the District to waive an “inconsequential irregularity” in a bid, it can only do so if the deviation “could not be a vehicle for favoritism, affect amount of bid...or affect ability to make comparisons.” *Ghilotti Construction Company v. District of Richmond* (1996) 45 CalApp 4<sup>th</sup> 897, 906. The District must determine if the failure to acknowledge Addendum No. 1 gives MPE an unfair advantage not enjoyed by other bidders. Here, MPE’s defect qualifies under all the criteria as a material error that cannot be waived.

The District’s must award the contract to the lowest responsible bidder that compiles with all the requirements prescribed. By failing to acknowledge Addendum No. 1 , the District cannot fairly determine the scope or compare MPE’s bid to other bidders.

Also, by failing to acknowledge the addendum, MPE can claim a clerical error and ask for relief if their number was too low. But here, if MPE’s number is competitive, they can request a waiver of the defect. California law does not give the MPE two bites at the apple, nor does the law allow the District to waive such defect because it gives MPE a clear advantage not allowed to other bidders.

Anderson Pacific is the lowest responsible bidder and should be awarded the contract.

Very truly yours,



Timothy L. McInerney

TLM:sjf

Cc: Anderson Pacific Engineering Construction, Inc.  
Monterey Peninsula Engineering