



**DIAL-IN CONTACT PHONE NUMBER: +1 (253) 215-8782 / MEETING ID: 840 6890 1623**

The Granite Falls City Council will hold an in-person and online Special Meeting in the Civic Center at 7:00 PM on August 9, 2023. Information is listed above for joining the meeting by telephone. You can also join via computer at the following Zoom meeting link: <https://us06web.zoom.us/j/84068901623>

**CITY OF GRANITE FALLS  
NOTICE OF SPECIAL MEETING  
OF THE GRANITE FALLS CITY COUNCIL**

NOTICE IS HEREBY GIVEN THAT a special meeting will be held by the City Council of the City of Granite Falls on **WEDNESDAY, AUGUST 9, 2023, AT 7:00 PM** in the Granite Falls City Council Chambers located at 206 S. Granite Avenue, Granite Falls, Washington, 98252.

**AGENDA  
GRANITE FALLS CITY COUNCIL  
SPECIAL MEETING**

Special Meeting  
August 9, 2023  
7:00 PM

Council Chambers  
Granite Falls City Hall  
Granite Falls, Washington

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. NEW BUSINESS:**
  - A. Action Item - Possible Acceptance of Bid, or Rejection of all Bids, after Continued Discussion of Options related to the Wastewater Treatment Plant Upgrade**
- 4. ADJOURNMENT**

The City of Granite Falls strives to provide access and services to all members of the public.

**Notice - All Proceedings of this meeting are sound recorded  
Except Executive Sessions.**



## CITY COUNCIL AGENDA BILL

**Subject:**

**Action Item** - Possible Acceptance of Bid, or Rejection of all Bids, after Continued Discussion of Options related to the Wastewater Treatment Plant Upgrade

**Meeting Date:** Wednesday, August 9, 2023

**Date Submitted:** 8/4/23

**Originating Department:** City Manager

**Action Required:**

Action Item - Possible of acceptance of bid, or rejection of all bids, after continued discussion of options related to the Wastewater Treatment Plant Upgrade

**Clearances:**

Mayor  Police

Public Works  Attorney

**Exhibits:**

[Prospect Response Letter\\_080323](#)

Engineering

Planning

Other: \_\_\_\_\_

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**Budgeted Amount:**

\$30,000,000.00

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**Summary Statement:**

This special meeting to provide for a continuation of the discussion related to the current bids provided to the City of the WWTP upgrade, identification of lowest responsive bidder based on the supplemental bidder criteria, and options available moving forward as it relates to this project. Staff had withdrawn their recommendation to award the contract for the upgrade to Harbor Pacific Inc as the lowest bidder in light of further due diligence related to Section 9 of the supplemental bidder criteria in the bid documents. Attached is the latest correspondence from the 2nd lowest bidder for Council consideration. Staff will provide Council with additional information at the meeting for discussion as well.

**Background:**

See agenda packet from August 2, 2023 meeting for details.

**Recommended Motion:**

- 1) Motion to Award Bid to Prospect Construction Inc. for Waste Water Treatment Plant Upgrade in the amount of \$32,535,775.63.
- 2) Motion to Award Bid to Prospect Construction Inc. for Waste Water Treatment Plant Upgrade in the amount of \$32,663,420,63 (to include additive A - Pole Building).
- 3) Motion to reject all bids received for the Waste Water Treatment Plant Upgrade.
- 4) Motion to direct staff to revise call for bids concerning bidder responsibility and to issue a new Call for Bids by a specific date of \_\_\_\_\_, 2023 for the Waste Water Treatment Plant Upgrade.

August 3, 2023

City of Granite Falls  
215 S. Granite Avenue  
Granite Falls, WA 98252

Attn: Mr. Brent Kirk

RE: Granite Falls WWTF – Bid Protest

Dear Mr. Kirk,

We are writing in response to your letter dated July 31, 2023, rejecting Prospect Construction, Inc's protest of the Harbor Pacific Bid for the Granite Falls WWTF Upgrade project. The purpose of this letter is to formally request reconsideration of your determination.

The City of Granite Falls Contract Provisions for the Wastewater Treatment Facility Upgrade, Part 4 Supplementary General Conditions and General Conditions; Section 2 – Instructions for Preparation of Proposal (Or Bid); paragraph 2.01.8 DISQUALIFICATION OF BIDDERS clearly defines the criteria for determining whether a Bidder will be not responsible resulting in the rejection of their bid. Sub-paragraph 3 states: "A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1) as amended; or does not meet Supplemental Criteria 1 through 9 in this section". Harbor Pacific failed to provide evidence that they meet Supplemental Criteria 9. Harbor Pacific's failure to meet Criteria 9 requires the City of Granite Falls to reject Harbor Pacific's Bid in accordance with both the City's Contract Provisions and RCW 39.04.350. (See attached RCW for reference)

The City and their Engineer cite the sentence "The Owner may consider mitigating factors in **determining whether a Bidder complies** with the requirements of the Supplemental Criteria." In support of waiving compliance with the Supplemental Criteria 9. This is a misinterpretation of the use of mitigating factors. Mitigating Factors are limited to determining whether the Bidder complies with the Criteria, and this makes sense because a number of the Supplemental Criteria are subjective in nature and require the Owner to make a subjective determination about the Bidder's satisfaction of the requirement. For example, Criteria 4,6 and 7 each fall in this category. Criteria 4 requires the Owner to determine whether a record of excessive claims demonstrates a lack of effective management by the Bidder or are there **mitigating factors** which justify the claims. Supplemental Criteria 7 and 8 include the phrase "unless there are extenuating circumstances, and such circumstances are deemed acceptable to the Owner." Each of these Criteria are more subjective and the "mitigating factors" language aligns with the Owner's need to determine whether the Bidder complies with the criteria. In contrast other factors are objective and they are either met or not met. Criteria 9 is very objective and is only met if the Bidder has completed at least 2 projects, as the prime contractor, within the past 5 years prior to bid

date, equal to or greater than 70 percent of the bidder's current bid amount. Mitigating factors are of no effect, the Bidder either has or hasn't.

Harbor Pacific listed 7 projects as evidence that they complied with Criteria 9, yet none of the projects met the established requirements to comply with Criteria 9, of which two projects are required. We have attached a listing of the projects submitted and how they failed to demonstrate compliance with the requirements of Criteria 9.

The City's letter of July 31, 2023, cites a site visit to The City of Sultan WWTP and determined the project completed to a level to meet the intent of criteria 9. A review of the Sultan contract documents suggests that the project is not scheduled to be completed until January or February of 2024. The Sultan contract allowed 400 working days or approximately 20 months. The project was awarded May 12, 2022, and even if we make the assumption that Notice to Proceed was received the same day, the project is not scheduled to be completed until mid-January 2024, six months after the Granite Falls WWTP bids were received. A site visit of an uncompleted project does not waive the requirements of Criteria 9. The City's letter also states, "the City has reviewed Harbor Pacific's other WWTP project experience and concluded Harbor Pacific Contractors, Inc has the qualifications and experience necessary to complete this project." Yet the last listed WWTP project Harbor Pacific appears to have completed, based on the projects provided, was nearly 10 years ago and a third the size of the Granite Falls WWTF Upgrades. Hardly evidence of compliance with Criteria 9.

Section 2 – Instructions for Preparation of Proposal (Or Bid), allowed the bidding contractors to request, prior to the bid date, modifications to the Supplemental Criteria if they believed them to be too restrictive or lack relevancy. Harbor Pacific failed to request a modification to Criteria 9 which would allow them to qualify as a responsible bidder.

Prospect Construction, Inc. believes it is an uncontestable fact that Harbor Pacific Contractors, Inc. does not meet Criteria 9 and mitigating factors cannot correct this fact. Prospect also believes the City of Granite Falls and their engineers have a duty to bidding contractors and the public works bidding system to comply with both their bidding provisions and the RCWs relating to public works bidding. We respectfully request rejection of the Harbor Pacific Contractors, Inc.'s bid as not responsible and award be made to Prospect Construction, Inc. as the lowest responsive and responsible bidder.

Sincerely,  
PROSPECT CONSTRUCTION, INC.



Ryan Sondgroth

Harbor Pacific Supplemental Criteria 9

Project	Size	Date Completed	Similar in Scope	Prime Contractor?	70% of Bid?	Complete in 5 Years?	Meet Criteria 9?
Redmond WW Pump Station #13	9,978,479	June 12, 2023	Yes	Yes	No	Yes	No
Cashmere WWTP	13,922,216	October 2014	Yes	Yes	No	No	No
South Treatment Plant Pump Replacement	10,396,774	March 23, 2017	No	Yes	No	No	No
Sultan WWTF	22,295,950	Not Complete	Yes	Yes	Yes	No	No
Sound Transit S200th St. Parking Garage	33,685,828	August 8, 2019	No	No*	Yes	Yes	No
Tacoma Cushman Dam #2 Powerhouse & Fish Collection	15,049,500	May 21, 2013	Yes	Yes	No	No	No
Sound Transit Issaquah Transit Center SR 900	20,484,099	July 31, 2008	No	Yes	No	No	No

Harbor's Bid = 31,645,109  
70% = 22,151,576

\*This project was built by Harbor Pacific/Graham JV of which Harbor Pacific was a JV partner not the Prime Contractor

Harbor Pacific Supplemental Criteria 9 (Compared to Revised Requirements)  
This chart shows the outcome if Granite Falls was to relax the size and duration requirements

Project	Size	Date Completed	Similar in Scope	Prime Contractor?	50% of Bid?	Complete in 20 Years?	Meet Criteria 9?
Redmond WW Pump Station #13	9,978,479	June 12, 2023	Yes	Yes	No	Yes	No
Cashmere WWTP	13,922,216	October 2014	Yes	Yes	No	Yes	No
South Treatment Plant Pump Replacement	10,396,774	March 23, 2017	No	Yes	No	Yes	No
Sultan WWTF	22,295,950	Not Complete	Yes	Yes	Yes	No	No
Sound Transit S200th St. Parking Garage	33,685,828	August 8, 2019	No	No	Yes	Yes	No
Tacoma Cushman Dam #2 Powerhouse & Fish Collection	15,049,500	May 21, 2013	Yes	Yes	No	Yes	No
Sound Transit Issaquah Transit Center SR 900	20,484,099	July 31, 2008	No	Yes	Yes	Yes	No

Harbor's Bid = 31,645,109  
50% = 15,822,555

**Bidder responsibility criteria—Sworn statement—Supplemental criteria.**

\*\*\* CHANGE IN 2023 \*\*\* (SEE 5088.SL) \*\*\*

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the

evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(e) If the bidder has a history of receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten business days immediately following the notice to proceed date.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's website.

[ 2020 c 255 § 2; 2019 c 232 § 15; 2018 c 243 § 1; 2017 c 258 § 2; 2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

## **NOTES:**

**Effective date—2018 c 243:** "This act takes effect July 1, 2019." [ 2018 c 243 § 2.]

**Findings—2017 c 258:** "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [ 2017 c 258 § 1.]

**Rules—Implementation—2009 c 197:** See note following RCW 39.04.320.