



Adelina Huerta  
Division Manager,  
Design/Construction Division  
255 Glacier Drive,  
Martinez CA 94553-4825

**Re: 2026 Crockett and Port Costa Overlays and Curb Ramps, Project No.: 0672-6U2186**

Dear Adelina Huerta,

Radius Earthwork, Inc. (“Radius”) hereby formally appeals the County’s determination that Radius’ bid is non-responsive for failure to submit Good Faith Effort (“GFE”) documentation pursuant to Section 2-1.12A(5) of the project specifications and for not qualifying under Public Contract Code Section 10285 .

Radius respectfully requests that the County reverse its determination and recognize Radius as the lowest responsive and responsible bidder for the following reasons.

**I. RADIUS SATISFIED THE SUBSTANTIVE PURPOSE OF THE OUTREACH PROGRAM**

The County’s Outreach Program exists to promote meaningful participation by Minority Business Enterprises (“MBEs”), Disabled Veteran Business Enterprises (“DVBES”), Small Business Enterprises (“SBEs”), and other designated firms in County public works contracting.

Radius fully achieved that objective.

Radius Earthwork itself is a certified MBE contractor. In addition, Radius committed the following certified subcontractors as part of its bid:

- DR Traffic – SBE Certified
- Golden State – MBE Certified
- Sierra Traffic – SBE Certified
- Anrak – SBE Certified

The combined participation of these certified firms equals approximately 25% of the total contract amount, thereby meeting and exceeding the County’s stated MSM participation goal.



The County's position improperly elevates procedural paperwork over actual compliance with the Outreach Program's substantive participation objectives.

California Public Contract Code section 2000 expressly recognizes two alternative methods of compliance:

1. Meeting the participation goals established by the agency; or
2. Demonstrating good faith outreach efforts to achieve those goals.

California Public Contract Code § 2000(a) provides:

“A local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

- (1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises.
- (2) Makes a good faith effort ... to comply with the goals and requirements ...”

Radius satisfied the first pathway by actually achieving the participation objectives through certified firms totaling approximately 25% participation.

The County's interpretation effectively reads subsection (a)(1) out of the statute and improperly converts outreach documentation into an absolute independent requirement even where the participation goals themselves were achieved.

## **II. CALIFORNIA LAW RECOGNIZES THAT OUTREACH PROGRAMS ARE INTENDED TO ACHIEVE PARTICIPATION OBJECTIVES — NOT TO DISQUALIFY BIDDERS WHO HAVE ALREADY ACHIEVED THEM**

In *Domar Electric, Inc. v. City of Los Angeles*, the California Court of Appeal explained that Public Contract Code section 2000 authorizes two distinct forms of outreach compliance:

- programs based upon actual achievement of participation goals; and
- programs based upon good faith outreach efforts.

The Court explained:

“Section 2000 was enacted ... creating exceptions to the requirement [of award to the lowest bidder] ... The Legislature envisioned two types of programs — one whose goals and requirements could be met either by achieving a set number, percentage, or quota of MBE/WBE participation



or demonstrating the good faith effort ... and one whose goals and requirements involved only the making of a good faith outreach effort...”

Domar Electric, Inc. v. City of Los Angeles (1995) 41 Cal.App.4th 810, 823-824. ()

Radius achieved the actual participation objective through certified subcontractor utilization and therefore satisfied the fundamental purpose of the Outreach Program.

### **III. ANY OMISSION OF ADDITIONAL GFE PAPERWORK CONSTITUTES A WAIVABLE INFORMALITY RATHER THAN A MATERIAL DEFECT**

California competitive bidding law distinguishes between:

- material defects that affect price, competition, or fairness; and
- immaterial irregularities that may be waived by the public agency.

A bid irregularity is generally material only if it gives the bidder a competitive advantage or undermines the integrity of the bidding process.

Radius’ alleged omission did neither.

Radius did not gain any competitive advantage from the alleged failure to submit additional GFE paperwork because:

- Radius already committed certified MBE/DVBE/SBE firms exceeding the participation goal;
  - the subcontractor participation was disclosed and binding;
  - the omission did not affect bid price;
  - the omission did not impair competition; and
  - the omission did not prejudice other bidders.

California courts repeatedly hold that public agencies possess discretion to waive immaterial bid irregularities where the public interest is not harmed.

See generally:

- Ghilotti Construction Co. v. City of Richmond (1996) 45 Cal.App.4th 897;
- Valley Crest Landscape, Inc. v. City Council (1996) 41 Cal.App.4th 1432;
- Menefee v. County of Fresno (1985) 163 Cal.App.3d 1175.

The purpose of competitive bidding laws is to protect the public fisc and preserve fair competition — not to impose forfeitures for technical omissions where substantive compliance has been achieved.



Rejecting the lowest bidder despite full achievement of the County's participation goals would unnecessarily increase public cost while frustrating the policy objectives underlying the Outreach Program.

#### **IV. THE COUNTY'S RELIANCE ON DOMAR ELECTRIC IS DISTINGUISHABLE**

Radius recognizes that cases such as Domar Electric upheld outreach requirements generally. However, Domar is materially distinguishable from the present situation.

In Domar, the bidder neither demonstrated outreach compliance nor achieved participation goals sufficient to satisfy the agency's requirements. Here, Radius affirmatively achieved the County's stated participation objectives through certified firms representing approximately 25% of the contract value.

Further, the outreach program discussed in Domar specifically required documentation as the operative compliance mechanism. In contrast, Public Contract Code section 2000 expressly allows compliance either through actual participation achievement or good faith efforts.

Radius satisfied the actual participation objective.

#### **V. THE PUBLIC CONTRACT CODE SECTION 10285.1 ISSUE DOES NOT CONSTITUTE A MATERIAL BASIS FOR REJECTION**

The County additionally references Radius' response concerning Public Contract Code section 10285.1.

Radius respectfully states that no disqualifying conviction applicable to Radius Earthwork, Inc. or its principals exists that would legally prohibit award of this contract.

To the extent the County interpreted any response on the bid form otherwise, Radius requests the opportunity to clarify the matter because any such response was inadvertent, non-material, and not intended as an admission of statutory disqualification.

#### **VI. Page 9**

It was clerical error. It is certified that none of our firm or its members have been convicted of offenses under Public Contract Code Section 10285.1 within the past three years.

California law strongly disfavors forfeiture of public contracts based upon clerical or non-material irregularities absent fraud, bad faith, or prejudice to the competitive process.



## VII. CONCLUSION

Radius Earthwork fully satisfied the substantive objectives of the County's Outreach Program by:

- participating as a certified MBE prime contractor; and
- committing certified MBE/DBE/SBE subcontractors totaling approximately 25% of the contract amount.

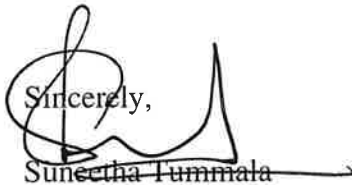
It was clerical error on Page 9. It is certified that none of our firm or its members have been convicted of offenses under Public Contract Code Section 10285.1 within the past three years.

The alleged omission of additional GFE paperwork and clerical mistake on page 9 did not affect price, fairness, competition, or the County's outreach objectives and therefore constitutes, at most, a waivable immaterial irregularity.

Accordingly, Radius respectfully requests that the County:

1. Reverse the determination of non-responsiveness;
2. Deem Radius' bid responsive and compliant; and
3. Recommend award to Radius Earthwork as the lowest responsive and responsible bidder.

Thank you for your consideration of this appeal.

Sincerely,  
  
Suneetha Tummala

Radius Earthwork Inc

408-429-3086