DURHAM
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CITY OF MEDICINE

**CITY OF DURHAM**
*Public Works Department*
101 CITY HALL PLAZA | DURHAM, NC 27701
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www.DurhamNC.gov

VIA CERTIFIED MAIL #7008 1140 0000 7490 8849
RETURN RECEIPT REQUESTED

July 19, 2012

Mr. Christopher Meyer, PE
DeVere Construction Company, Inc.
PO Box 90578
Raleigh NC 27675

RE: SD-2012-02 University Drive Culvert Replacement

Dear Mr. Meyer:

I received your letter dated July 16, 2012 protesting the pending award of the construction contract for the University Drive Culvert Replacement (SD-2012-02). Your bid was deemed non-responsive by staff because you failed to submit a portion of the required Contract Safety Record Information.

I have enclosed a copy of the Contract Safety Record Information form submitted with your bid. The information missing from your bid is a defect that cannot be waived by the City. This information is required to evaluate the safety record of the bidder and, in the event of citations classified by OSHA as serious willful, and/or repeat violations, to determine what specific actions the bidder has taken to improve its overall safety record. In my letter dated July 11, 2012, I listed some of the specific information you failed to submit. I will explain why the missing information is required, and why your bid was deemed non-responsive because this information is missing.

- Section 1: OSHA DART Incident Rate
  - Industry DART Incident Rate
  - Industry Field and Code
    - This information is required so that staff will know which Industry Field and Code each bidder reports to OSHA and the corresponding Industry DART Incident Rate. Not all bidders use the same Industry Field and Code. Staff is unable to evaluate the bidder's DART Incident Rate without this information.
- Section 2: Experience Modification Rate (EMR)
  - Industry Field and Code
    - As with the previous item, staff is unable to evaluate the bidder's EMR without knowing what specific Industry Field and Code the bidder reports to OSHA.
- Section 3: OSHA Specific Questions
    - You answered 'yes' to the question 3b, "Has the bidder experienced any work-related fatalities within the last five years?" If you answer 'yes' to this question you are required to provide a list of the numbers of fatalities and a documented explanation of the fatalities. A list of the numbers and the documented explanation of the fatalities was not included in your safety record information. As a result staff is unable to evaluate the numbers and the circumstances of the fatalities that you reported.

- Section 5: Required Written Explanation of Safety Record
  - Because you answered 'yes' to two (2) of the OSHA Specific Questions, you are required to provide a detailed written explanation of your safety record and the reasons why such safety history is not representative of your future performance and what specific actions you have taken to improve your overall safety record. The only written explanation included in your safety record information attempted to address the history of your DART Incident Rate. No detailed written explanation was provided to explain the serious, willful, and/or repeat violations or the work-related fatalities. There was no detailed written explanation of the specific actions you have taken to improve your overall safety record. Without this information staff is unable to determine if your safety history is, or is not, representative of your future performance.

The directions on the Contract Safety Record Information form clearly state, "Failure to provide the requested information and documentation may result in rejection of your bid as non-responsive." The safety record information missing from your bid made it impossible for staff to evaluate your safety record. For this reason, your bid was deemed non-responsive.

Your letter requests an administrative hearing. The City of Durham bid process does not allow for an administrative hearing for bidders that are deemed non-responsive. However, City Council will review the administration's recommendation to award the contract at a Work Session Meeting scheduled for 1:00 PM, August 9, 2012. You may request to appear before Council at this meeting. Should you have any questions, please contact me at (919) 560-4326, ext, 30246 or Dana.Hornkohl@DurhamNC.gov.

Sincerely,

Dana Hornkohl, Stormwater Services Division
Civil Engineer

Enclosures

c: Ann-Marie Sharpe, Risk Manager
Marvin G. Williams, Public Works Director
Paul Wiebke, Assistant Stormwater Manager

COPY

## Contract Safety Record Information

The Contractor's safety record shall be reviewed and evaluated in addition to other quality and performance criteria as part of bid evaluation process. Failure to provide the requested information and documentation may result in rejection of your bid as non-responsive. Accordingly, all bidders must submit the following information regarding their safety record.

The following definitions shall apply to this section:

"DART incident rate" – Acronym for "Days Away, Restrictions and Transfers". The DART incident rate may be used to show the relative level of injuries and illnesses within a firm compared to the industry. It is based only on those injuries and illnesses severe enough to warrant "Days Away, Restrictions and Transfers". The DART incident rate is calculated using OSHA's Form 300 and the following formula:

((Number of entries in column H (days away from work) + column I (job transfer or restriction) x 200,000) / (Number of hours worked by all employees) = DART Incident rate.

"EMR" – Acronym for "Experience Modification Rate," is an indicator of a contractor's past safety performance, widely used by the insurance industry as an equitable means of determining premiums for workers' compensation insurance. The rating system considers the average workers' compensation losses for a given firm's type of work and amount of payroll and predicts the dollar amount of expected losses to be paid by that employer in a designated rating period, usually three years. The rating is based on comparison of firms doing similar types of work, and the employer is rated against the average expected performance in each work classification. Losses incurred by the employer for the rating period are then compared to the expected losses to develop an experience rating.

"OSHA" – Acronym for the Federal Occupational Health and Safety Administration. The term "OSHA" as used in this Policy also refers to any state or local agency having jurisdictional authorization to enforce worker safety requirements and assess fines or warnings for violation of worker safety standards.

1. OSHA DART Incident Rate. Provide the bidder's DART Incident Rate calculated from OSHA's Form 300 for the last three years and the other required information shown in the example table below. *The bidder must attach all supporting documentation and calculations including certified OSHA forms.*

| YEAR | CONTRACTOR **DART** INCIDENT RATE | INDUSTRY **DART** INCIDENT RATE | INDUSTRY FIELD AND CODE |
|---|---|---|---|
| 2011 | 11.34 | [redacted] | [redacted] |
| 2010 | 13.38 | [redacted] | [redacted] |
| 2009 | 0 | [redacted] | [redacted] |

2. Experience Modification Rate (EMR). Provide the bidder's most recent Experience Modification Rate (EMR) based on insurance claims history. *The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR.*

| YEAR | CONTRACTOR **EMR** | INDUSTRY FIELD AND CODE | NAME AND CONTACT INFO FOR **EMR** INFORMATION |
|---|---|---|---|
| 2011 | 1.05 | [redacted] | Mary Ellen Rudzinski<br>248-539-6638 |

3. Answer the following OSHA Specific Questions:

(a) Within the last 2 years, has the bidder received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?

Yes x No _____

If yes, attach a copy of each such citation and violation.

(b) Has the bidder experienced any work-related fatalities within the last five years?

Yes x No _____

(c) Has the bidder had any citations issued by OSHA as a result of work related fatalities within the past 5 years?

Yes _____ No x

(d) Is the bidder under investigation for any work-related fatalities?

Yes _____ No x

(e) If your answer is "yes" to 3(b), (c) or (d), provide a copy of the citation(s), list of number(s) of fatalities and documented explanation of the fatality.

4. Safety Plan:

(a) Does the company have a written safety program that includes responsibility for all aspects of safety management?

Yes x No _____

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing employees?

Yes x No _____

(c) Does the company have documented evidence of safety training that they have conducted?

Yes x No _____

(d) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?

Yes x No _____

(e) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30 hour OSHA construction safety training)?

Yes x No _____

(f) Do employees have documented basic OSHA 10 hour construction safety training?

Yes x No _____

(g) Does the company have a documented Hazard Communication Program?

Yes x No _____

5. Required Written Explanation of Safety Record. If the bidder has any of the following: (a) DART incident rate greater than its industry average, (b) an EMR greater than 1.0, (c) answered "yes" to any of the OSHA Specific Question above, or (d) answered "no" to any of the Safety Plan questions, the bidder shall provide the City, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may be deemed as non-responsive by the City. See attached

# Dart Rate

DART Rate circumstances:

2010: During 2010 DeVere was awarded a project in Houston, Pennsylvania that extended into the winter months of 2011. On this project DeVere experienced a high rate of recordable injuries due to two primary factors that were beyond DeVere's control.

The first factor that affected this project was an unseasonable amount of freezing rain which led to very icy conditions onsite. DeVere instituted several measures to try and remediate the icy conditions by salting / sanding walkways and other areas where our employees / subcontractors were working. DeVere requested that the employee parking lot which was maintained by the Owner, be salted or sanded to ensure employee safety. To further help combat the severely icy conditions DeVere provided employees with ice treads to wear on the bottom of their work boots.

The second factor involved site drainage. The site and site drainage were controlled by the Owner and they did not have a drainage plan in place and therefore the construction site continuously held water. A site properly graded for drainage was requested by DeVere early in the project but was never received. After multiple requests by DeVere the Owner hired a contractor to completely revise the grading near the end of the project and then had gravel installed throughout the site. The poorly drained site aggravated the icy conditions when it was very cold and made for very slippery conditions during wet periods of the project due to the clay content of the soils.

Further safety measures included added site safety walks by both the Owner and DeVere to try to identify and mitigate icy areas as they formed. An additional safety officer was added by the Owner as another set of eyes to find icy areas, and additional precautions were discussed in each morning's toolbox safety talks.

Based on the impact of this single project to our OSHA 300A log, our DART rate would have been 5.25 without this single project.

2008: In September of 2008, one of our employees was involved in a serious auto accident during the course of his work day. An elderly lady turned the wrong way onto a divided highway and hit our employee head on. Unfortunately he suffered serious injuries and has had to be off work for an extended period of time, which reflects 104 days on our OSHA log for 2008.
Because this happened during the course of his work, we are obligated to show this injury on the OSHA log which makes our incident rates look worse. The accident was not work site safety related and was not the fault of our employee. There was nothing he could have done to avoid the collision. Without this accident our recordable incident rate for 2008 would be 2.92.

DeVere

Year 2011

| Job Location | Inspection # | ID # | Type | Standard | Issuance |
|---|---|---|---|---|---|
| Harrisburg, NC | 315324798 | 1001 | Other | 19260095 A | 3/1/2011 |

Violation: Employee was not wearing eye protection

Response: The employee was instructed to immediately put on his PPE.

| | | | | |
|---|---|---|---|---|
| 315324798 | 1002 | Serious | 1926404 B01 II | 3/1/2011 |

Violation: A ground fault circuit interrupter was not found on a generator.

Response: CFCI was installed

| | | | | |
|---|---|---|---|---|
| 315324798 | 1003A | Serious | 19260652 G01 III | 3/1/2011 |

Violation: A trench box was too high in the trench.

Response: Trench box was lowered 2 inches to respond to the investigator.

| | | | | |
|---|---|---|---|---|
| 315324798 | 1003B | Serious | 19260651 C02 | 3/1/2011 |

Violation: There was no egress ladder in the trench.

Response: A ladder was placed in the trench for egress

| | | | | |
|---|---|---|---|---|
| 315324798 | 1004 | Other | 19260652 G02 | 3/1/2011 |

Violation: The employee was lowering a power tool by the cord.

Response: The employee was reprimanded and instructed in the proper manner to had tools to lower/higher elevations.

| | | | | | |
|---|---|---|---|---|---|
| Christiansburg, VA | 315432500 | 1001 | Serious | 19260502 B01 | 3/30/2011 |

Violation: Toprail (wire rope) an midrail deflection were greater than OSHA standard requirements

Response: A company representative tightened the rope to meet the standard requirements.

DeVere

Year 2010

| Job Location | Inspection # | ID # | Type | Standard | Issuance |
|---|---|---|---|---|---|
| Durham, NC | 308900638 | 1003 | Serious | 19260501 | 8/6/2009 |
| Violation: Guardrails were missing from scaffolding. Response: Guardrails were put in place to meet OSHA requirements. | | | | | |
| Sault Ste. Marie, MI | 313312357 | 1001 | Other | 19260502 B02 | 6/18/2010 |
| Violation: No mid rail on the guardrail system Response: A mid rail was installed to meet OSHA standard requirements. | | | | | |
| | 313312357 | 1002 | Other | 19260501 B04 | 6/18/2010 |
| Violation: A hole in the floor was not properly covered. Response: A cover marked "HOLE" was put in place and affixed. | | | | | |
| | 313312357 | 2001 | Other | 19260502 I03 | 6/18/2010 |
| Violation: All covers of holes shall be secured. Response: The cover in question was secured | | | | | |
| | 313312357 | 2002 | Other | 19260502 I04 | 6/18/2010 |
| Violation: All covers over holes shall be appropriately labeled. Response: Hole not marked were marked "HOLE" with paint. | | | | | |
| Christiansburg, VA | 314988015 | 1001 | Other | RVSG0030 | 10/5/2010 |
| Violation: Response: | | | | | |
| West Branch, MI | 313271009 | 1001 | Other | 19100134 K06 | 11/23/2010 |

Violation: The employee was wearing a respiratory without proper instructions as to its application.
Response: When wearing on a voluntary basis, the employer must instruct the employee on its application and how to property wear.

DeVere

**Year 2010**

| Job Location | Inspection # | ID # | Type | Standard | Issuance |
|---|---|---|---|---|---|
| West Branch, MI | 313271009 | 1002 | Other | 40841012A1 | 11/23/2010 |

Violation: An annual inspection form was not readily available on the crane.
Response: An annual inspection form was made by the company's crane inspector.

| | | | | |
|---|---|---|---|---|
| 313271009 | 1003 | Other | 40841024A5 | 11/23/2010 |

Violation: The crane had a cracked window.
Response: Company mechanic replaced the window.

| | | | | |
|---|---|---|---|---|
| 313271009 | 1004 | Other | 4084172508 | 11/23/2010 |

Violation: An extension cord was unprotected in the driveway.

Response: a wooden channel was constructed to protect the cord

| | | | | |
|---|---|---|---|---|
| 313271009 | 1005 | Other | 4084186705 | 11/23/2010 |

Violation: Fuel tank liner drain plug was not in place.

Response: Replaced the lost drain plug.