



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, D.C. 20314-1000

DEC 20 2019

The Honorable Elizabeth Warren  
United States Senate  
309 Hart Senate Office Building  
Washington, DC 20510-2105

Dear Senator Warren:

This is in response to your letter, dated December 5, 2019, concerning the U.S. Army Corps of Engineers (USACE) recent contract award for Yuma Project 3 in support of the Department of Homeland Security, Customs and Border Protection (CBP). The enclosure to this letter contains responses to the eight questions specified in your inquiry.

Thank you for your interest in USACE's support to CBP's Border Infrastructure Program. Please contact me, or your staff may contact Ms. Jill E. Stiglich, Director of Contracting, at (202) 761-8642, if you have any additional questions or concerns.

Sincerely,

Todd T. Semonite  
Lieutenant General, U.S. Army  
Commanding General  
U.S. Army Corps of Engineers

OUR INTENT  
IS TO ANSWER  
AS MANY OF YOUR  
QUESTIONS AS POSSIBLE  
WITHIN THE "FAR"  
LIMITATIONS OF THE ASSISTANCE,  
IF YOU NEED MORE ASSISTANCE,  
DON'T HESITATE TO CONTACT  
US.

Enclosure

**Question 1: Please provide a complete, detailed timeline of the award process that culminated in [Fisher Sand and Gravel] (FSG) receiving the \$400 million contract earlier this month.**

Answer 1:

- |  |                   |
|--|-------------------|
| a. Prequalification of Sources List (PQSL) #3 Established  | June 20, 2019     |
| b. Issued Notice of Intent to Advertise Yuma Project 3<br>Primary Barrier to PQSL #3 Contractors | October 9, 2019   |
| c. Issued Request for Proposal (RFP) to<br>PQSL #3 Contractors                                   | October 22, 2019  |
| d. Conducted Site Visit with PQSL #3 Contractors   | October 28, 2019  |
| e. Proposals Accepted  | November 13, 2019 |
| f. Source Selection Evaluations Completed  | November 25, 2019 |
| g. Contract Awarded  | December 2, 2019  |

The PQSL #3 was established in advance of, and separate and apart from, the Yuma requirement. It was advertised full and open to provide for maximum competition in identifying qualified sources that were capable of designing and building large horizontal construction projects. The PQSL #3 requirement is the third prequalified sources list established since 2017 seeking to expand the competitive base interested in competing for border infrastructure projects. The PQSL #3 solicitation/evaluation process was completed on June 12, 2019 and resulted in the identification of five contractors that were determined to be prequalified to compete for border infrastructure requirements in the 2019 to 2020 time period.

In October 2019, the Yuma Project 3 requirement was solicited to all the PQSL #3 contractors. The Government may solicit to only those firms on the prequalified list; no public notice is required. Firms on the PQSL indicate their interest in receiving the RFP, in this case all five firms indicated their interest. The RFP/solicitation was sent to all five firms. The RFP evaluation methodology was established as Lowest Price/Technically Acceptable (LPTA). Upon receipt of proposals, the Government first evaluates each offer against the evaluation criteria identified in the solicitation to determine acceptability (an offer that meets the minimum requirements of the solicitation). Only those offers found to be acceptable are then considered in the price evaluation. The lowest priced offer of those offers found to be acceptable is selected for award, subject to the Contracting Officer's determination of contractor responsibility and price reasonableness.

**Question 2: According to the Defense Department's contract announcement, "[f]ive bids were solicited with three bids received." Which companies bid on the project? When did USACE solicit bids from each of these companies?**

**Answer 2:**

- a. The identities of unsuccessful offerors are source selection sensitive information and not releasable without a request from the appropriate Senate committee chairperson. When such a request is made through the appropriate Senate committee chairperson, certain measures are undertaken to prevent the further disclosure of source selection sensitive information.
- b. The solicitation (RFP) was issued on October 22, 2019. All five PQSL #3 contractors were provided an opportunity to submit a proposal. The five PQSL contractors are: BFBC, LLC; Fisher Sand and Gravel Co.; Rust Border Infrastructure; SLSCO, Ltd., and Southwest Valley Constructors Co.

**Question 3: Which companies were selected for final consideration in the bidding process? When did USACE add each of these companies to the pool of final competitors?**

**Answer 3:**

- a. All five PQSL #3 contractors were sent the Request for Proposal (RFP) solicitation. Three contractors, out of the five, submitted proposals. These three proposals were evaluated in accordance with the process established in the RFP solicitation.
- b. The five PQSL contractors were approved on June 12, 2019, and the PQSL was established on June 20, 2019. (See above explanation on the establishment of the PQSL #3.)

**Question 4: Was FSG "added to [the] pool of competitors after the Army Corps came under pressure from the White House"?**

**Answer 4:**

FSG was included in the prequalified list of contractors in June 2019 by following federal procurement laws and regulations. The PQSL #3 process established minimum criteria that contractors had to meet or exceed prior to being placed on the list. FSG exceeded these criteria as did four other contractors who responded to the full and open solicitation.

**Question 5: What specific criteria were used to determine the winning bid? How did USACE score these criteria to determine that FSG should be awarded the contract? How did FSG rank in each of these criteria, and in the final compilation of criteria used to determine the award?**

Answer 5:

- a. This solicitation's evaluation methodology was established as Lowest Price/Technically Acceptable in accordance with Federal Acquisition Regulation (FAR) Part 15.101-2. Under this process, upon receipt of proposals, the Government first evaluates each offer against the evaluation criteria identified in the solicitation to determine acceptability (an offer that meets the minimum requirements of the solicitation). Only those offers found to be acceptable are then considered in the price evaluation. The lowest priced offer of those offers found to be acceptable is selected for award, subject to the Contracting Officer's determination of contractor responsibility and price reasonableness.
- b. The evaluation criteria are source selection sensitive information and not releasable without a request from the appropriate Senate committee chairperson.

**Question 6: Please describe any and all contact, direct or indirect, between USACE officials and FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.**

Answer 6:

- a. A Project Engineer and a Civil Engineer from the USACE Los Angeles District, and a Research Mathematician from the USACE Engineer Research and Development Center (ERDC), attended a Fisher demonstration at Coolidge, AZ on March 16, 2019.
- b. On August 9, 2019, BG Glenn Goddard, National Program Manager for the Southwest Border Barrier; Mr. Lloyd C Caldwell, Director, Military Programs; and the USACE Deputy Chief, Interagency and International Services Division, met in the Military Programs Conference Room at HQUSACE with Mr. Tommy Fisher (President-CEO), Mr. Ryan Fisher, (Fisher Sand and Gravel Company), and Mr. Norman Bessler (Senior Project Manager) of Fisher Industries, a subsidiary of Fisher Sand & Gravel Co., Tempe, AZ. The meeting was a follow-up to the USACE response to an unsolicited proposal from Fisher to construct a barrier to secure the entire southern border. USACE replied to the proposal by letter dated May 17, 2019, and offered the meeting. During the meeting, attendees from USACE explained the rationale for why the unsolicited proposal could not be

accepted. Mr. Fisher talked at length about his commitment to help along the border and reviewed his success on other projects. Mr. Fisher was told that he should ensure that future proposals are submitted in compliance with Requests for Proposals (RFPs) and was encouraged to seek work on other non-border barrier projects.

- c. The Deputy Commander for the USACE Southwest Division and a Branch Chief from the USACE Fort Worth District, met with Senator Cramer in El Paso, TX on August 26, 2019. During this trip these individuals, along with the USACE Southwestern Division Executive Officer, met with U.S. Customs and Border Protection personnel and Senator Cramer at the Anapra project site, the location of an FY15 authorized project that was completed in the fall of 2017. At the request of Senator Cramer, the USACE Fort Worth District Branch Chief and the USACE Southwestern Division Executive Officer then visited the "We Build the Wall Construction Site" where Mr. Tommy Fisher met the group to observe the construction of the privately funded border barrier.
- d. FSG attended a "Stakeholders Meeting" on October 10, 2019 from 0800 to 1130 MST. This meeting was open to all contractors holding a Western Multiple Award Task Order Contract (MATOC) and all contractors included on PQSL #3. Attendees from FSG were Grant Fisher, Todd Mack, and Norman Bessler. The meeting included a program overview and a discussion of technical standards, and USACE provided an opportunity for all participants to ask questions related to the program.
- e. USACE conducted a site visit for the Yuma 3 project on October 28, 2019. All interested PQSL #3 contractors were present at the pre-proposal site visit, to include Grant Fisher and Todd Mack of FSG. This is a routine contact in which the Government allows potential offerors to inspect the site prior to submitting proposals.
- f. Among others, USACE received four proposal requests for clarifications on the Yuma 3 solicitation from Emily Young of FSG. This is a routine contact in which the Government accepts questions from potential offerors prior to submitting proposals. All inquiries, including FSG's, were answered and closed by November 5, 2019.

**Question 7: Please describe any and all contact, direct or indirect, between White House officials or other officials with the Executive Office of the President and USACE officials related to this contract and to FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.**

Answer 7:

While USACE can continue to assist you in understanding the contracting process to date, the content and details of any communications with the President of the United States or his staff are confidential.

**Question 8: Please describe any and all contact, direct or indirect, between USACE officials and any other Administration officials related to this contract and to FSG. Please describe the timing and nature of all such communications, and the identity of the individuals involved.**

Answer 8:

While USACE can continue to assist you in understanding the contracting process to date, the content and details of any communications with the President of the United States or his staff are confidential.