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**BEFORE THE ADMINISTRATIVE HEARING OFFICER
FOR THE CITY OF SACRAMENTO**

IN RE:

G&G's PROTEST re BIDS SUBMITTED
BY ESCOBEDO CONCRETE AND
DEMOLITION, FRANKLIN T.
GASSAWAY AND SONS, AND
GASSAWAY CONCRETE, INC,

FINDINGS OF FACT AND STATEMENT OF
DECISION OF THE ADMINISTRATIVE
HEARING OFFICER

Hearing Officer: Jamaar M. Boyd-Weatherby
Date: August 27, 2025
Time: 10:00 a.m.

1. This matter involves G&G Concrete, Inc.'s ("G&G") protest of the bids submitted by Escobedo Concrete & Demolition ("Escobedo"), Franklin T. Gassaway & Sons ("FTG"), and Gassaway Concrete, Inc. ("GCI"). Jamaar M. Boyd-Weatherby ("Hearing Officer"), sitting as the Hearing Officer, heard this matter on August 27, 2025 at 10:00 a.m. (the "Hearing"). The Hearing Officer is a licensed attorney in the State of California and serves as Hearing Officer under contract with the City of Sacramento.

2. City is a municipal corporation existing under the laws of the State of California. The City of Sacramento was represented at the Hearing by Harveen Gill, Escobedo Concrete was represented by Ulises Pizano-Diaz, G&G Concrete, Inc. was represented by John Klotche, Franklin T. Gasaway & Sons was represented by William Pannier, Gassaway Concrete Inc. was represented by Adrian Hoppes.

3. G&G Concrete, Inc. ("G&G") appeared in protest of the bids submitted by Escobedo Concrete & Demolition ("Escobedo"), Franklin T. Gassaway & Sons ("FTG"), and Gassaway Concrete, Inc. ("GCI").

4. The Hearing Officer considered the testimony of all witnesses at the hearing and all documents made part of the administrative record. The mere fact that a witness's testimony or document may not be specifically referred to below does not and shall not be construed to mean that said testimony or document was not considered.

5. Pursuant to the Administrative Procedures and practices for the City of Sacramento, the hearing was digitally recorded.

6. The documents presented to the Hearing Officer during the hearing are the administrative record of the hearing.

ISSUES

- 1) Whether Escobedo's bid should be disqualified as an unresponsive bidder?
- 2) Whether Escobedo's bid should be disqualified as a non-responsible bidder?
- 3) Whether Gassaway Concrete, Inc. and Franklin Gassaway & Sons should be disqualified because they share a common economic interest?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Escobedo

G&G Concrete submitted a bid protest which alleged that Escobedo Concrete & Demolition omitted mandatory information such as their (1) State Tax Identification Number, and (2) their City Business Operation Tax Certificate Number rendering their bid non-responsive as the bids are required to include this information on its Bid Signature Page. In addition, on April 15, 2025, the City issued a "Notice of Bid Update" changing Bid Item No. 206A from linear feet ("LF") to square feet ("SF"). Escobedo Concrete and Demolition nevertheless incorrectly used LF for Bid Item 206A giving them an unfair advantage as it allowed Escobedo Concrete and Demolition to withdraw its bid without forfeiting its bid bond under Public Contract Code §§5101 and 5103.

G&G also indicated that Escobedo Concrete and Demolition's pricing falls outside the competitive range and is economically infeasible. Its total bid price is 31.5% lower than its own 2022 pricing for the same bid items despite the California Construction Cost Index ("CCCI") confirming a 16.6% increase in construction costs during that period. They claimed that Escobedo Concrete and Demolition's pricing reflect many red flags for bid rigging and other forms of anti-competitive conduct that subverts the bidding process, as identified by the U.S. Department of Justice and Office of the Inspector General such as, (1) a bidder's prices are much lower than all other bidders without any relation to industry costs, (2) a bidder submits a bid it is incapable of successfully performing, (3) a conspicuous gap between a bid and those of all other bidders, (4) a bidder submitted different prices for the same bid items on different contracts within a close timeframe and (5) the pricing shows a significant increase (or decrease) compared to a prior bid, despite costs rising (or falling) statewide. Based upon these issues, G&G determined that Escobedo Concrete and Demolition's was artificially low, outside the competitive range, and economically infeasible.

Harveen Gill presented evidence and argument on behalf of the City of Sacramento. Gill presented evidence that there has been a review of the Escobedo bid and that the City determined that the irregularities were not sufficient to cause the city to disqualify the bid. She emphasized that the

City is a charter city which gives it the ability to regulate its own affairs. She pointed out that the City's review did not disclose any information that would disqualify any of the bids involved in the Bid Protest Hearing, including Escobedo's bid.

Escobedo Concrete was represented by Ulises Pizano-Diaz. Escobedo presented evidence that it currently provides the service for the City. As such, it is aware of what the service will actually cost in order to continue to perform. They emphasized that G&G's analysis was primarily driven by conjecture regarding what was, in fact, economically feasible for Escobedo. They indicated that there was not sufficient showing to determine that the Escobedo could not, in fact, perform the services that were listed in the bid.

Analysis

G&G argued that the Bid was non-responsive due to the fact that a bid that does not strictly conform to the public agency's specifications is non-responsive. *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904. However, the City of Sacramento is a charter city. As such, it is provided with the discretion for the regulation of municipal affairs. While it is true that the City could have rejected the bid due to the alleged irregularities, a public agency is under no obligation to reject a bid for irregularity if it determines the irregularities to be minor and insignificant. See, *MCM Const., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359, 376 (A city's power to waive immaterial deviations is permissive, not mandatory). As presented by Ms. Gill, the City has determined that the irregularities were non-material and that the City has waived the irregularities. Due to the fact that the City of Sacramento has the ability to make the determination on when and/or if it will waive irregularities, it cannot be said that the irregularities of the bid were fatal to the bid. Further, the City re-reviewed the bid to ensure that the issues were immaterial, and it still opted to award the contract to Escobedo. It must also be noted that the Hearing Officer was not able to find any legal support for the proposition that the linear feet issue could not be waived by the City. As such, there was an insufficient showing that Escobedo's bid should be disqualified.

Further, Escobedo is an experienced contractor. It is also experienced in providing services to the City of Sacramento. Escobedo has been providing the services for the City for a number of years. The fact that Escobedo has made the pricing determination on what it believes that it can economically feasibly provide should be given significant deference because it is currently providing the service for the City. As such, Escobedo has the greatest chance of providing an accurate cost estimate on what it will cost for Escobedo to provide the service. While other contractors may not be willing or able to provide the services listed in the bid for the amounts that Escobedo proposed, the lack of willingness does not mean that Escobedo cannot provide the service for the listed amounts. G&G's presentation focused on why G&G could not provide the services for Escobedo's proposed amount. However, there was insufficient evidence to establish that Escobedo and G&G had the same overhead costs for issues like equipment and cost for rent. It would be inappropriate to make an assumption that the two companies' costs are the same without additional details about Escobedo's operations. Based upon the evidence that was presented, there was insufficient evidence to say that Escobedo's bid was economically infeasible. As such, the bid protest is DENIED.

Gassaway Concrete, Inc and Franklin Gassaway & Sons

G&G also argued that Gassaway Concrete, Inc. and Franklin Gassaway & Sons shared a common economic interest. They pointed out that until March 3, 2025 that Michael Gassaway simultaneously served as CEO and CFO for both Franklin T. Gassaway & Sons and Gassaway Concrete, Inc. It was controlled by the same top officer as Franklin T. Gassaway & Sons. It was asserted that Michael Gassaway exercised direct, overlapping control of both entities just a month before bids were prepared and submitted. He served as the CFO and CEO of both companies as the bids were prepared.

Adrian Hoppes presented evidence on behalf of Gassaway, Inc. She indicated that there were significant procedural defects with the bid protest. She pointed out that the bid protest did not include, among other things, the department that the bid originated from and the contact information associated with the protestor. She also pointed out that the bid had been improperly served on the city clerk. She emphasized that the protest was purely speculative in that it just documented that there were familial ties between two of the bidders. There was no evidence of actual or implied collusion between the bidders. She pointed out that Michael Gassaway is no longer listed on the Secretary of State website as having any association with Gassaway & Sons. She emphasized that the lag by the secretary of state is not proof of concurrent operation. She also emphasized that the similarities in the bidding was not proof of collusion. Michael Gassaway testified that he worked with the City of Sacramento and he also had experience working on the previous bids for his father's company. He indicated that he opted to leave Gassaway & Sons based on the fact that his father decided to continue to operate Gassaway & Sons. He started his company after obtaining the license to perform the work. Once he obtained the license, he stopped working for his father's company. Further, he pointed out that the items that were listed as a "nominal bid" within his proposal to the City were infrequently performed tasks based upon his background, training and experience. When these infrequently performed tasks were performed, it took less than a minute to install the prefabricated ramps that were provided by the city. He emphasized that the bid amount was accurate due to the minimal work that had to be done.

William Pannier presented evidence and argument on behalf of Gassaway & Sons. He indicated that G&G's allegations were based on speculation and conjecture. Mr. Gassaway also testified that the similarities in bids existed between all of the bids that were submitted to the City. Further, he emphasized that the nominal bids were based on work that was rarely done. He indicated that when they were done that it took minimal effort and staff time due to the fact that the ramps were prefabricated. He also pointed out that the company name is a reflection of his father's reference to his children working with his father 50 years ago. He emphasized that it was not a reference to Michael Gassaway.

Analysis

The City code prohibits any bidder from, "[k]nowingly be[ing] interested in more than one bid." See Sac. City Code §3.56.130. Therefore, Franklin T. Gassaway and Sons and Gassaway Concrete Inc. violated City Code §3.56.130 by having a shared interest. The core allegation against

Gassaway & Sons and Gassaway Concrete, Inc is that Michael Gassaway served as an officer of both companies and that there were similarities between the bids. Based on these issues, the protest alleged that there was collusion and financial interest between the two companies. While it is undisputed that Michael Gassaway served as an officer of his father's company, there was no evidence presented that could establish that he has an ongoing financial interest in the Gassaway & Sons company. Without specific facts that could establish actual ownership interest, the family ties and the previous employment by Gassaway is insufficient to establish actual ownership interest. While it was not directly argued, it must be emphasized that the potential for ownership is also insufficient to establish financial interest between two bidders. If potential future financial interest was the standard, all future and present bidders could potentially have ownership interest in another company due to mergers and potential working relationships. The possibility of ownership interest should not be confused with actual ownership. Further, the bid protest requires more than possibility. As such, there is insufficient evidence to invalidate the bid on this basis.

There was also evidence presented that there was bid collusion due to the similarities between the bids. The bids of particular concerns were the nominal bids that were similar between Gassaway & Sons and Gassaway Inc. It is undisputed that there were similarities between the approaches that were taken between the bids. However, both companies indicated that experience in performing the work caused them to bid the project in that manner. However, the experience for Gassaway and Gassaway & Sons was, functionally, the same due to Michael Gassaway's experience working for his family business. City Code §3.56.130 prohibits bidders from "submitting any bid ... not ... arrived at independently without consultation, communication, or agreement with any other bidder ... for the purpose of restricting competition." See Sac. City Code §3.56.130. However, it must be emphasized that pre-existing knowledge or shared knowledge is not the same as "consultation, communication, or agreement with any other bidder."

Michael Gassaway should not and is not expected to do away with the experience and philosophy that he obtained while working at his father's company. Shared experience cannot be said to be collusion without additional information and facts to suggest some level of meeting of the minds. As such, the shared experience in performing the work serves as a plausible explanation for the similarities between the bids. However, there was insufficient evidence that there was actual collusion. As such, the bid protest is DENIED.

DECISION AND ORDER

1. There was insufficient evidence that Escobedo Concrete & Demolition's ("Escobedo") bid is nonresponsive, artificially low, and/or economically infeasible.
2. There was insufficient evidence that Franklin T. Gassaway & Sons ("FTG") and Gassaway Concrete, Inc. ("GCI") violated City Code § 3.56.130 by having a shared interest and coordinating their bid prices.

3. The City of Sacramento, as a Charter City, has the right and the ability to waive minor irregularities on the evaluation of bids. The City of Sacramento did not identify any significant irregularity with Escobedo, Gassaway Concrete, Inc. and/or Franklin T. Gassaway & Sons' bids.

4. G&G's protest against Escobedo's bid is DENIED.

5. G&G's protest against Gassaway Concrete, Inc. is DENIED.

6. G&G's protest against Franklin T. Gassaway & Sons is DENIED.

Dated: October 14, 2025



Jamaar M. Boyd-Weatherby
Hearing Examiner