

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

Yes

No

14. Has your firm been assessed penalties for violation of public works prevailing wage requirements in California, in an aggregate amount for the past three years of \$50,000 or more?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

VERIFICATION AND SIGNATURE

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at SACRAMENTO, CA, on 10/29/08.
(Location) (Date)

Signature: Martin Jenkins

Print name: MARTIN JENKINS

Title: PROJECT MANAGER

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

DRUG-FREE WORKPLACE POLICY AND AFFIDAVIT

BID PROPOSAL MAY BE DECLARED NONRESPONSIVE IF THIS FORM (COMPLETED) IS NOT ATTACHED.
Pursuant to City Council Resolution CC90-498 dated 6/26/90 the following is required.

The undersigned contractor certifies that it and all subcontractors performing under this Agreement will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establishing a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace.
 - b. The contractor's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance program.
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Notify employees that as a condition of employment under this Agreement, employees will be expected to:
 - a. Abide by the terms of the statement.
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.
4. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
 - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

EXCEPTION: _____

Date	Violation Type	Place of Occurrence
------	----------------	---------------------

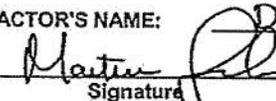
If additional space is required use back of this form.

* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

IN THE EVENT THIS COMPANY, CORPORATION, OR BUSINESS IS AWARDED THIS CONSTRUCTION AGREEMENT, AS A RESULT OF THIS BID; THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.

The Representations Made Herein On This Document Are Made Under Penalty Of Perjury.

CONTRACTOR'S NAME: D7 ROOFING SERVICES, INC.

BY:  Project Manager Date: 10/29/08

Signature Title

Effects of violations: a. Suspension of payments under the Agreement. b. Suspension or termination of the Agreement. c. Suspension or debarment of the contractor from receiving any Agreement from the City of Sacramento for a period not to exceed five years.

THE LAW OFFICES OF
DEON R. STEIN

885 UNIVERSITY AVENUE
SACRAMENTO • CALIFORNIA 95825
TEL • (916) 640-0102
FAX • (916) 640-0103
dstein@deonstein.com

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

2008 NOV 14 P 3:45

November 14, 2008

By Hand Delivery

City Clerk
City of Sacramento
915 I Street, Room 304
Sacramento, CA 95814

**Re: Sacramento Memorial Auditorium Roof Repair (B09-17001111-001)
Bid Protest - Madsen Roof Company, Inc.**

I represent Madsen Roof Company, Inc. ("Madsen"). I have been asked to contact the City of Sacramento (the "City") with respect to proposed award of the contract for the above-referenced project (the "Project") to D7 Roofing Services ("D7"). Please direct all correspondence regarding this matter to my office.

This correspondence constitutes Madsen's formal protest of the Preliminary Recommendation of Contract Award¹ for the Project. This protest is made pursuant to Sacramento City Code (the "Code") Section 3.60.460 et seq. and the project manual for the Project (the "Project Manual"). A check for the required \$750.00 protest fee as designated in the Project Manual is enclosed. Pursuant to Code Section 3.60.480, the following specific identifying information is provided:

Name: Sacramento Memorial Auditorium Roof Repair
Contract Number: B09-17001111-001
Bid Date: October 29, 2008
City Department: Department of Convention, Culture and Leisure

¹ A copy of this document, which is incorrectly dated November 7, 2009 is enclosed for your reference.

Protesting Bidder: Madsen Roof Company, Inc.
Address: 5960 Bradshaw Road
Sacramento, CA 95829
Telephone: (916) 361-3327
Telecopier: (916) 361-3370

SUMMARY OF FACTS

The City solicited bids for the Project in October 2008. Madsen was one of four bidders who submitted bids on or before the deadline of October 29, 2008 at 2:00 p.m. The bids were publicly opened immediately following the submission deadline, with the following results:

D7 Roofing Services	\$492,661.00
Madsen Roof Company, Inc.	\$519,883.00
King's Roofing	\$558,377.00
Hester Roofing	\$613,828.00

At the public bid opening, City staff was requested to identify the subcontractors listed by D7. City staff disclosed that Champion Industrial was listed as a subcontractor and SF&A was listed as a materials supplier. City staff declined to elaborate further on the subject, instead referring additional inquiries to department staff.

As instructed at the bid opening, Madsen requested a copy of D7's bid, which was provided by e-mail on November 13, 2008.² A review of the form FM 440 submitted as a part of D7's bid indicates that Champion Industrial was designated as a non-ESBE³ engaged to perform sheet metal work and that SF&A, Inc. appears to have been

² A copy of D7's bid and the e-mail from the Department of Convention, Culture and Leisure transmitting the same is enclosed.

³ The City recognizes "small business enterprises" certified by the State of California and "emerging business enterprises" certified by the City. For the purposes of Madsen's protest, any reference to an "ESBE" includes either or both designations.

a part of D7's bid indicates that Champion Industrial was designated as a non-ESBE³ engaged to perform sheet metal work and that SF&A, Inc. appears to have been designated as an ESBE engaged as a material supplier providing \$100,000 in materials for the Project.⁴ D7 failed to indicate the total bid amount and the location of the subcontractors as required by form FM 440. Finally, because they were not included in the copy of D7's bid as provided to Madsen, Madsen assumes that D7 failed to submit SF&A's ESBE certification statement within two days after bid opening as required by form FM 440.

Since neither D7 nor Champion Industrial are ESBEs, D7 could meet the City's emerging and small business enterprise participation goal (the "ESBE Goal") of at least 20% participation by ESBEs only through reliance on its commitment to purchase materials from SF&A.⁵ The ESBE Requirements specifically state that "to receive credit for participation, a[n] ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry its responsibility by actually performing, managing, or supervising the work."⁶ The ESBE Requirements make meeting the ESBE Goal mandatory, stating that "no bidder on the contract shall be considered a responsive bidder unless it meets the minimum ESBE participation level required by the bid specifications."⁷

³ The City recognizes "small business enterprises" certified by the State of California and "emerging business enterprises" certified by the City. For the purposes of Madsen's protest, any reference to an "ESBE" includes either or both designations.

⁴ D7's bid is unclear on this point. Form FM 440 requires that bidders indicate whether a subcontractor is an "EBE" or "SBE". D7 indicated that SF&A is a "SDVE". Madsen is unaware of any such designation, nor is such designation one of the choices specified on form FM 440.

⁵ See Section I. of the ESBE Requirements portion of the Project Manual. A copy of the ESBE Requirements is enclosed.

⁶ See Section III.B. of the ESBE Requirements.

⁷ See Section I. of the ESBE Requirements.

contractor" and as providing "engineering services" and "management consulting services".⁸ Significantly, SF&A is not registered as a supplier of roofing materials.⁹

BASIS OF PROTEST

I. D7 Failed to Submit a Properly Completed Form FM 440 as Required by the Project Manual. Form FM 440 was a part of the required bid documents for the Project. As indicated above, D7 failed properly complete and submit form FM 440. In the first instance, D7 failed to specify the location of its subcontractors. In accordance with California Public Contract Code Section 4104(a)(1), bidders were required to state "the name and location of the place of business of each subcontractor" in their bid submittals. City form FM 440 specifically sets forth this requirement in compliance with California law. Nevertheless, D7 failed to meet this requirement.

Further, D7's submittal of form FM 440 was deficient in other aspects. D7 failed to indicate the bid amount on the form where indicated. In addition, D7 failed to indicate whether SF&A was designated as an "EBE" or a "SBE" as required by form FM 440, instead listing SF&A as an "SDVE", a term not among the two options and which is not a recognized designation.

Simply put, D7 failed to properly complete and submit form FM 440. Accordingly, D7 was not a responsive bidder and its bid should be rejected.

II. D7 Failed to Submit an ESBE Certification Statement for SF&A as Required by Form FM 440. Form FM 440 specifically required that bidders submit ESBE certification statements by "the close of business two days after bid opening." This requirement was clearly set forth in capitalized, bold-face type on form FM 440. As indicated above, the copy of D7's bid received from City staff did not include any such

⁸ Standard Industrial Classification (SIC) designations of 8711, 8742 and B respectively. A copy of the firm detail is enclosed.

⁹ SIC 5033.

certification with respect to SF&A. Accordingly, it appears that D7 failed to meet this requirement, rendering its bid non-responsive.

III. D7 Did Not Meet the ESBE Goal. D7's bid submittal relies on its engagement of SF&A as its sole basis for satisfying the ESBE Goal. However, D7 is not entitled to credit for participation by SF&A. In the first instance, it is essential to recognize that SF&A is not registered as a supplier of roofing materials (or any other materials) with the State of California's Department of General Services. Accordingly, SF&A is not an ESBE with regard to such activity.

D7 cannot be legitimately credited for SF&A's participation since SF&A is not an ESBE for this purpose. To conclude otherwise would mean that mere registration as an ESBE in any classification would entitle an entity so-registered to act as an ESBE for all purposes regardless of classification. Such a result would be illogical and render meaningless the entire classification process.

Even if SF&A was properly registered as a supplier of roofing materials, D7 would not be entitled to credit for its participation because SF&A would not be performing a "commercially useful function" as required by Section III. of the ESBE Requirements. Material pricing for the Project was provided to all bidders by the designated Tremco Incorporated representative in his October 23, 2008 memorandum to the City.¹⁰ Significantly, this memorandum instructs bidders to contact Tremco's office to obtain a freight cost quote for the delivery of the materials. Accordingly, Tremco is to supply the materials directly to the successful bidder. No intermediary participation is anticipated.

All of which demonstrates that D7's attempt to use SF&A as its purported "materials supplier" for just over the minimum necessary to achieve the ESBE Goal is nothing more than a sham designed to qualify what would otherwise be a non-responsive bid. The ESBE Requirements clearly and specifically state that an ESBE subcontractor

¹⁰ Tremco Incorporated is the manufacturer of the roofing materials designated for the Project. A copy of the memorandum is enclosed.

must perform a commercially "useful" function.¹¹ The intent of this requirement is obvious. The designated ESBE must actually add value to the Project.

Because Tremco will supply the roofing materials directly to the successful contractor, SF&A's participation as an intermediary serves no useful, beneficial or otherwise advantageous function whatsoever, save for its purportedly making responsive what would otherwise be D7's non-responsive bid. While that may well be useful and beneficial to D7, it certainly is of no use or advantage in promoting the development and growth of ESBE's as contemplated by the City's ESBE Requirements and adds no value whatsoever to the Project itself.

D7's bid was non-responsive because it failed to meet the ESBE Goal. Any other finding would severely undermine the City's Emerging and Small Business Development program's goal of providing "enhanced opportunities for the participation of [ESBEs] in the City's contracting and procurement activities."¹² As a non-responsive bidder, D7's bid should be rejected as required by Section I. of the ESBE Requirements.

CONCLUSION

D7 failed to properly complete form FM 440 as required by California law and the City's bid requirements, failed to timely submit the ESBE certification required by form FM 440, and most significantly, failed to meet the ESBE Goal. For these significant and compelling reasons, D7's bid was non-responsive and should be rejected as such by the City. Any other result would be unfair to the other bidders who participated in the competitive bid process and complied with the bid requirements.

Thank you for your consideration of this protest. Madsen looks forward receiving the City's written response to its bid protest pursuant to Code Section 3.60.510. Madsen

¹¹ "Useful" is defined in the Webster's New World Dictionary, Third College Edition as "that can be used to advantage; serviceable; helpful; beneficial; often having practical utility."

¹² See Section I. of the ESBE Requirements.

City Clerk
City of Sacramento
November 14, 2008
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remains ready, willing and able to provide additional information as requested by the City in its investigation of this protest.

Very truly yours,

THE LAW OFFICES OF DEON R. STEIN

Deon R. Stein

Deon R. Stein

Enclosures
7023.01 / 00698

cc by hand delivery:

Ms. Rebecca Bitter
Project Manager
City of Sacramento
1030 15th Street, Suite 250
Sacramento, CA 95814

Mr. Dan Goodwater
Operations Manager
Sacramento Convention Center
1030 15th Street, Suite 100
Sacramento, CA 95814

THE LAW OFFICES OF
DEON R. STEIN

000007
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DEPARTMENT OF
CONVENTION, CULTURE
AND LEISURE

BARBARA E. BONEBRAKE
DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA

1030 15TH STREET
SUITE 250
SACRAMENTO, CA
95814-4009
PH: 916-808-8225
FAX: 916-808-7279

November 7, 2009

To: All Bidders - Sacramento Memorial Auditorium Roof Repair (B091700111011)

From: Rebecca Bitter
Program Manager

RE: Preliminary Recommendation of Contract Award

This serves as notice to all bidders for the Sacramento Memorial Auditorium Roof Repair project (B091700111011) of the City's Preliminary Recommendation of Contract Award to the following vendor:

D7 Roofing Services, Inc., in the amount of \$492,661

Any questions related to the above referenced project should be directed to Melanie Medina, Staff Aide, 808-7048.

Michael Woodbury

From: Melanie Medina [mmedina@cityofsacramento.org]
Sent: Thursday, November 13, 2008 3:49 PM
To: Michael Woodbury
Cc: Rebecca Bitter; Tina McCarty
Subject: Memorial Auditorium Roof Bid

Attachments: D7 Roofing Services Roof Bid.pdf



D7 Roofing Services
Roof Bid.p...

Good afternoon! Per your request, please find attached the Memorial Auditorium Roof Bid from 'D7 Roofing'.

Feel free to contact me with any questions.

Thanks!

Melanie A. Medina
Administration
Sacramento Convention Center / Memorial Auditorium Community Center Theater
Direct: (916) 808-7048
Fax: (916) 808-7687
www.sacramentoconventioncenter.com

CONTRACTOR NAME: D7 ROOFING SERVICES, INC.

TO THE HONORABLE CITY COUNCIL
SACRAMENTO, CALIFORNIA:

In compliance with the Contract Documents, the undersigned hereby proposes to furnish all required labor, materials, supervision, transportation, equipment, services, taxes and incidentals required for:

**SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR
(B09-17001111-001)**

in the City and County of Sacramento, California.

The Work is to be done in strict conformity with the Contract Documents now on file in the Office of the City Clerk, for the following sum:

Item No.	Item	Estimated Quantity	Unit	Unit Price	Total
1.	Roof Repair	1	LS	\$	\$ 492,661

CONTRACTOR NAME: D7 ROOFING SERVICES, INC. TOTAL \$ 492,661

If awarded the Agreement, the undersigned agrees to sign said Agreement and furnish the necessary surety bonds and insurance certificates within ten (10) days after receipt of the notice of award of Agreement, and to begin work within fifteen (15) days after receipt of the Notice to Proceed by the City.

It is understood that this Bid Proposal is based upon completion of the Work within a period of **SIXTY (60) CALENDAR DAYS**. The Contractor shall coordinate activities with the Convention Center staff prior to start of work. It may be necessary for the Contractor to schedule elements of the work around existing booked events in the Auditorium. A schedule of booked events is located in Section A of the Specifications.

The City's order of preference will be as follows: base bid first, followed by additive alternates in chronological order, based on funds available.

In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication, and division that appear obvious on the face of the Proposal. When such a mathematical error appears on the face of the Proposal, the City shall have the right to correct such error and to compute the total amount bid by said bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Proposal, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the Engineer's estimate of the quantity of work to be performed for said item, the item price shall

L:\Convention Center\Bid Documents 9-27-07\I-Bid Proposal.doc

Bid Bond Security

Properly Signed Improperly Signed
 Not Included Not Required

Type of Deposit

Bid Bond Cashier/Certified Check
Other _____

Initial: V.F.

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prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the policy of the bidding procedure. The total paid for each such item of work shall be based upon the item price and not the total price. Should the Proposal contain only total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by the Engineer's estimate of the estimated quantities of work to be performed as items of work.

If the Proposal contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Proposal shall be disregarded.

The undersigned has examined the location of the proposed Work, the local conditions at the place where the Work is to be done, is familiar with the Contract Documents and is familiar and expressly agrees to the liquidated damages provision of the Contract Documents. The undersigned has checked carefully all of the foregoing figures and understands that the City of Sacramento will not be responsible for any errors or omissions on the part of the undersigned in making up this Bid Proposal.

Enclosed is Bid Proposal Guarantee, as required, consisting of a bidder's bond or other acceptable security for not less than ten percent (10%) of the amount Bid Proposal.

The undersigned agrees that all addenda received and acknowledged herein shall become a part of and be included in this Bid Proposal. This Bid Proposal includes the following addenda:

Add. #	<u> 1 </u>	DATE	<u> 10/23/08 </u>
Add. #	<u> </u>	DATE	<u> </u>
Add. #	<u> </u>	DATE	<u> </u>

NOTE: State whether your concern is a corporation, a co-partnership, private individual, or individuals doing business under a firm name.

If the Bidder is a corporation, the Bid Proposal must be executed in the name of the corporation and must be signed by a duly authorized officer of the corporation.

If the Bidder is a partnership, the Bid Proposal must be executed in the name of the partnership and one of the partners must subscribe their signature thereto as the authorized representative of the partnership.

AMOUNT OF BID PROPOSAL GUARANTEE ENCLOSED:

(\$) not less than ten percent (10%) of amount Bid Proposal

<u> </u>	CERTIFIED CHECK
<u> </u>	CASHIER'S CHECK
<u> X </u>	BID BOND
<u> </u>	MONEY ORDER
<u> </u>	OTHER SECURITY

CONTRACTOR:
By Martin J. [Signature]
(Signature)

MARTIN JENKINS
(Print or Type)
Title PROJECT MANAGER
Address 205 23RD ST
SACRAMENTO, CA 95816
Telephone No. 447-2175
Fax No. 447-2176
EMAIL ADDRESS _____
Date 10/29/08

Contractor's License No. 746471 Type C-39
Expiration Date 3/31/10
Tax I.D. Nos.- Fed. 94-3288937 State CALIF
City of Sacramento Business Operation Tax Certificate No. 104100
(City will not award contract if Certificate Number is missing.)

MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening to be considered responsible. On June 8, 2004, the City Council adopted Resolution No. 2004-433 establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. 2004-433 by completing all of the questions contained in this questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a responsible bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a responsible bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for purposes of verification and investigation; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

Minimum Qualifications Questionnaire
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QUESTIONNAIRE

NOTICE: All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years.

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. Classification & Expiration Date(s) of California Contractor's License Number(s) held by firm:
746471 C-39 3/31/10

2. Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?
 Yes No

3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?
 Yes No

4. At the time of submitting this minimum qualifications questionnaire, is your firm Ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?
 Yes No

5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?
 Yes No

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

6. Answer either subsection A or B, as applicable:

A. Your firm has completed three or more government construction contracts In Sacramento County within the last five years: Within those five years, has your firm been assessed liquidated damages on three or more government construction contracts In Sacramento County for failure to complete contract work on time?

NOTE: If there is a pending administrative or court action challenging the assessment of liquidated damages on a government contract within the last five years, you need not include that contract in responding to this question.

Yes

No

Not applicable

OR

B. Your firm has not completed at least three government construction contracts In Sacramento County within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

NOTE: If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.

Yes

No

Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

NOTE: If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.

Yes

No

8. Has CAL OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation occurring on construction projects performed in Sacramento County at any time within the last three years?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

9. Answer either subsection A or B, as preferred:

A. In the last three years has your firm had a three year average Workers' Compensation experience modification rate exceeding 1.1?

Yes

No

OR

B. In the last three years has your firm had a three-year average incident rate for total lost workday cases exceeding 10?

NOTE: Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as: $(N/EH) \times 200,000$, where

N = number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)

EH = total hours worked by all employees during the calendar year

200,000 = base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

Yes

No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

Yes

No

14. Has your firm been assessed penalties for violation of public works prevailing wage requirements in California, in an aggregate amount for the past three years of \$50,000 or more?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes

No

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

VERIFICATION AND SIGNATURE

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at SACRAMENTO, CA, on 10/29/08.
(Location) (Date)

Signature: Martin Jenkins

Print name: MARTIN JENKINS

Title: PROJECT MANAGER

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

DRUG-FREE WORKPLACE POLICY AND AFFIDAVIT

BID PROPOSAL MAY BE DECLARED NONRESPONSIVE IF THIS FORM (COMPLETED) IS NOT ATTACHED.
Pursuant to City Council Resolution CC90-498 dated 6/26/90 the following is required.

The undersigned contractor certifies that it and all subcontractors performing under this Agreement will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establishing a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace.
 - b. The contractor's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance program.
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Notify employees that as a condition of employment under this Agreement, employees will be expected to:
 - a. Abide by the terms of the statement.
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.
4. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
 - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

EXCEPTION:

Date	Violation Type	Place of Occurrence
------	----------------	---------------------

If additional space is required use back of this form.

* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

IN THE EVENT THIS COMPANY, CORPORATION, OR BUSINESS IS AWARDED THIS CONSTRUCTION AGREEMENT, AS A RESULT OF THIS BID; THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.

The Representations Made Herein On This Document Are Made Under Penalty Of Perjury.

CONTRACTOR'S NAME: D7 ROOFING SERVICES, INC.

BY: Martin [Signature] Project Manager Date: 10/29/08

Signature

Title

Effects of violations: a. Suspension of payments under the Agreement. b. Suspension or termination of the Agreement. c. Suspension or debarment of the contractor from receiving any Agreement from the City of Sacramento for a period not to exceed five years.

ESBE REQUIREMENTS
(City Contracts no Federal Funds Used)

I. ESBE PROGRAM REQUIREMENTS

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. The ESBD program establishes an annual emerging and small business enterprise (ESBE) participation goal for the City's contracts, and authorizes City departments to require minimum ESBE participation levels in individual contracts so that the annual ESBE participation goal can be met. Under City Code Section 3.60.270, when the bid specifications for a City contract establishes a minimum participation level for ESBEs, **no bidder on the contract shall be considered a responsive bidder unless its bid meets the minimum ESBE participation level required by the bid specifications.**

The City has established a minimum 20% participation level for ESBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered a responsive bidder unless its bid meets or exceeds this minimum participation level.

Bidders shall include copies of their Certification as a SBE or EBE and the SBE or EBE Certifications for each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted with the sealed proposal. **Failure to submit the required ESBE information by the close of business two days after bid opening will be grounds for finding the bid non-responsive.**

II. ESBE CERTIFICATION

- A. An SBE designated in the bid must be certified as such by the State of California or by the City, as defined herein, prior to the time bids are received.
- B. An EBE designated in the bid must be certified as such by the City, as defined herein, prior to the time bids are received.

III. DETERMINATION OF ESBE PARTICIPATION LEVEL

- A. The percent of ESBE participation shall be determined based on the dollar amount of the work to be performed by a certified ESBEs as that dollar amount is specifically stated on the **SUBCONTRACTOR and ESBE PARTICIPATION VERIFICATION FORM (FM 440)** in the bid package, relative to the total dollar amount of the bid, except as provided other wise below.
- B. To receive credit for participation, a ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry its responsibility by actually performing, managing, or supervising the work.
- C. Suppliers: Credit for supplies by ESBEs will be 100 percent.
- D. Truckers: Credit for trucking by ESBEs will be 100 percent.

IV. ESBE REQUIREMENTS OF SUCCESSFUL BID/PROPOSAL

- A. ESBE RECORDS - The Contractor shall maintain records of all subcontracts with certified ESBE subcontractors and records of materials purchased from certified ESBE vendors/suppliers for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each ESBE subcontractor or vendor/supplier and the total dollar amount actually paid each ESBE subcontractor or vendor/supplier.

Upon completion of the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide such other information, records, reports, certifications, or other documents as may be required by City, to determine compliance with any provision of the ESBD program or these specifications.

- B. REPORTING REQUIREMENTS AND SANCTIONS - Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications shall be considered noncompliance with the contract. If the Contractor fails to correct a deficiency within fifteen (15) days after notification, a deduction may be made from the contract amount. The deduction shall be ten (10) percent of the estimated value of the work done during the month, not to be less than \$1,000 nor exceed \$10,000 and shall be deducted from the next progress payment.

- C. PERFORMANCE OF ESBE SUBCONTRACTORS AND SUPPLIERS - The ESBEs listed by the Contractor shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the material from other sources. Reasons for requesting such authorization would include:

1. The listed ESBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
2. The listed ESBE becomes bankrupt or insolvent.
3. The listed ESBE subcontractor fails to meet the bond requirements of the Contractor.
4. The work performed by the listed subcontractor is unsatisfactory and/or is not in accordance with the plans and specifications, or the subcontractor fails to perform his/her obligations under the subcontractor contract.
5. It would be in the best interest of the City. The Contractor shall not be entitled to any payment for such work or materials unless it is performed or supplied by the listed SBE or EBE or other forces (including those of the Contractor) authorized in writing, by the City.

- D. SUBCONTRACTOR SUBSTITUTION - No substitution of an ESBE subcontractor shall be made at any time without compliance with the Subcontracting Listing Law and the written consent of the City. If a ESBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original ESBE subcontractor with another certified ESBE subcontractor. The new ESBE subcontractor must be certified at the time of substitution.

V. DEFINITIONS

A. Emerging Business Enterprise (EBE)

The City shall certify EBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources, that were in effect on December 1, 1998, provided that the size standard, industry by industry, shall be set at 50% of the State small business certification criteria and standards that were in effect on December 1, 1998.

B. Small Business Enterprise (SBE)

The City shall certify SBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources. The City will also accept State certified SBEs.

C. CONTRACTOR

The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the City of Sacramento.

D. SUBCONTRACTOR

The individual, partnership, corporation, or other legal entity entering into a contract with the prime contractor to perform a portion of the work.



Procurement **DGS**

Firm Detail

SALINAS AND FARIAS & ASSOCIATES
 7508 S LAND PARK DR
 SACRAMENTO, CA 95831
 Email: efarias@sfassociates.net
 Web Page: www.sfassociates.net

OSDS Ref# 38616
 Phone: (916) 743-8612
 FAX: (916) 391-3505

AKA Names

SALINAS AND FARIAS & ASSOCIATES - SACRAMENTO

SF&A

SF & ASSOCIATES

SALINAS MOSCARIELLO FARIAS & ASSOC (FORMER LLC)

Service Area(s): STATEWIDE

Keywords:

Services - FACILITIES PLANNING FACILITIES DESIGN FACILITIES CONSTRUCTION FACILITIES
 MANAGEMENT GENERAL CONTRACTING PROJECT MANAGEMENT PROJECT CONSULTING PROGRAM
 AUDITS PROJECT AUDITING ENGINEERING

Construction - GENERAL CONSTRUCTION

Current Certification Status

This Firm is Certified Microbusiness (MB)

Business Type	Certification Type	Status	From Date	To Date
CONSTRUCTION	SMALL BUSINESS	Approved	8/24/2007 12:00:00 AM	1/31/2009 12:00:00 AM
SERVICE	SMALL BUSINESS	Approved	8/24/2007 12:00:00 AM	1/31/2009 12:00:00 AM
CONSTRUCTION	DVBE	Approved	1/2/2008 12:00:00 AM	1/31/2009 12:00:00 AM
SERVICE	DVBE	Approved	1/2/2008 12:00:00 AM	1/31/2009 12:00:00 AM

Standard Industrial Classifications (SIC) registered by this firm

SIC Code	SIC Description
8711	Engineering services
8742	Management consulting services
B	General Building Contractor

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Christian KB Madsen

From: William Burke [3plycold@sbcglobal.net]
Sent: Thursday, October 23, 2008 9:18 AM
To: Nolan Burke
Subject: Memorial Auditorium Pricing

Attachments: Pricing.doc



Pricing.doc (203 KB)

Please see the attached pricing for Memorial Auditorium. Please note that I am quoting the insulation and Dens Deck as well. All roof sections (beside tile) will be warranted by Tremco, so please figure these into your warranty price. The base sheet under the tile is not in the attached pricing sheet, it is priced at \$130.65/2 square roll. I did not quote ELS or other repair materials for BUR repairs prior to coating, because it is so minimal. I will be holding the coating (wall and roof) prices until May 15, 2009.

Thanks for your help with this job!

Please call with questions.

Thanks,

Bill
916-990-5859 cell



TO:	City of Sacramento – Memorial Auditorium
FROM:	Bill Burke / Tremco Roofing Division
DATE:	October 23, 2008
RE:	Pricing

Material Prices for Tremco TPA Single Ply and Accessories

Wall-tite Coating	5 gal pail	\$271.75
TPA 60 Mil Field Sheet	78" X 90' Roll	\$1,490.95
60 Mil Perimeter Sheet	39" X 90' Roll	\$746.90
TPA 55 Mil Unreinforced	24" X 30'	\$343.05
Small Boots 1-4 in O.D.	10 / Case	\$440.90
Large Boots 4-8 in O.D.	10 / Case	\$502.25
Universal Corners	20 / Case	\$210.80
TPA Coated Metal	4' X 10' Sheet	\$275.55
TPA Cover Strip	6" X 108' Roll	\$151.50
High Build Coating	53 gal drum	\$2,361.15
TPA Walkway Roll	3' X 60'	\$613.05
SP Primer	5 gallon	\$114.00
Sheeting Bond Adhesive	5 Gallon	\$238.50

Freight: Call Vernon Facility at (800) 282-4343 for freight quote.

Warranty Charge: \$0.10 per square foot (this includes all roof areas that are getting roofed or coated).

Inspections: 10 days at \$600/day

Insulation: \$64.50/square - 1.5" Trisotech polyisocyanurate insulation
 \$36.00/square - ¼" Dens Deck

Fasteners:

FASTENER 1211 LINE 1-5/8"SCREW-1000/CASE	54.20	CS
FASTENER 1211 LINE 2-1/4"SCREW-1000/CASE	60.70	CS
FASTENER 1211 LINE 2-7/8"SCREW-1000/CASE	70.40	CS
FASTENER 1211 LINE 3-3/4"SCREW-1000/CASE	109.35	CS
FASTENER 1211 LINE 4-1/2"SCREW-1000 CASE	126.45	CS
FASTENER 1211 LINE 5" SCREW-1000/CASE	158.30	CS
FASTENER 1211 LINE 6" SCREW-1000/CASE	193.15	CS
FASTENER 1211 LINE 7" SCREWS-1000/CASE	283.25	CS
FASTENER 1211 LINE 8" SCREWS-1000/CASE	322.75	CS
FASTENER 1410 LINE 1-1/4"SCREW-1000/CASE	58.00	CS
FASTENER 1410 LINE 1-3/4"SCREW-1000/CASE	77.95	CS
FASTENER 1410 LINE 2" CREW-1000/CASE	83.85	CS
FASTENER 1410 LINE 3" SCREW-1000/CASE	104.60	CS
FASTENER 1410 LINE 4" SCREW-1000/CASE	136.40	CS
FASTENER 1410 LINE 5" SCREW-500/CASE	101.15	CS
FASTENER 1410 LINE 6" SCREW-500/CASE	121.65	CS
FASTENER 1410 LINE 7" SCREW-500/CASE	171.35	CS
FASTENER 1410 LINE 8" SCREW-500/CASE	183.05	CS
FASTENER 1410 LINE 9" SCREW-500/CASE	242.30	CS
FASTENER 1410 LINE 10" SCREW-500/CASE	303.60	CS
FASTENER 1410 LINE 12" SCREW-250/CASE	165.10	CS
DISC 3" STEEL - 1,000/CASE	85.00	CS
DISC 3" PLASTIC - 1,000/CASE #PLL03	76.40	CS
DISC 2" STEEL - 1,000/CASE	72.30	CS
FASTENER 1211 LINE 3-1/4"SCREW-1000 CASE	92.20	CS
ANCHORS,LEAD MASONARY 1/4"X1"-1000/CASE	94.85	CS
ANCHORS,LEAD MASONARY 1/4"X1-1/4"-1000CS	104.30	CS
ANCHORS,LEAD MASONARY 1/4"X1-1/2"-1000CS	111.95	CS
ANCHORS,LEAD MASONARY 1/4"X2"-1000/CASE	148.00	CS
FASTENER NEOPRENE WASHER W/METAL -1000CS	79.10	CS
DISCS -EXTRA HVY DUTY 228 GALV PLT BARB	129.20	CS

Please call me with any questions or concerns.

Thanks for your help on this project!

Bill Burke
Tremco Roofing Division
Field Advisor

From: Rebecca Bitter
To: "Marty Jenkins" <marty@d7roofing.com>
CC: Casagrande, Angela; Goodwater, Dan; McCarty, Tina
Date: 11/20/2008 2:22 PM
Subject: Memorial Auditorium Roof Repair protest

Hi Marty,

Regarding the Memorial Auditorium Roof Repair bid protest please see the following:

Please provide a written response to each of the bases for Madsen Roof Company's bid protest. In addition, please identify the materials to be provided by SF&A and the manufacturer(s) of these materials, along with all quotes provided to D7 from SF&A prior to October 29, 2008 in connection with this contract. Please provide this information no later than the close of business on November 25, 2008.

Please let me know if you have any questions.

Thanks,

Rebecca Bitter, AICP
Program Manager
Convention, Culture and Leisure
916-808-5047
rbitter@cityofsacramento.org

**SPOUL
TROST**REAL ESTATE & CORPORATE
ATTORNEYS AT LAW

A LIMITED LIABILITY PARTNERSHIP

Gregory L. Maxim
gmaxim@sproullaw.com

December 4, 2008

*Via Overnight Mail and Facsimile*Rebecca Bitter, AICP
City of Sacramento
915 I Street, Room 304
Sacramento, CA 95814**Re: Sacramento Memorial Auditorium Roof Repair
Madsen Roof Company, Inc. Bid Protest**

Dear Ms. Bitter:

Pursuant to the Sacramento City Code Section 3.60.510 I am submitting this letter on behalf of our client, D7 Roofing Services ("D7"), in response to Madsen Roof Company, Inc.'s ("Madsen") November 14, 2008 bid protest in relation to contract number B09-17001111-001 for the Sacramento Memorial Auditorium Roof Repair. As set forth in greater detail below, we respectfully request the City reject Madsen's bid protest on the basis that Madsen has failed to offer any evidence that D7 received any competitive advantage from its alleged bid proposal disparities as required by law. Because this information should have been set forth as part of Madsen's initial bid protest, any additional new evidence from Madsen in support of these claims should not be permitted for consideration by the hearing examiner as it would unfairly prejudice D7's rights and constitute a violation of Sacramento City Code Section 3.60.480's requirement that all factual and legal grounds and written materials to be considered be submitted as part of the original bid protest.

LEGAL STANDARDS AND JURISDICTION: In determining the validity of Madsen's challenge, Madsen has ignored the legal standard governing the City's decision to approve D7's bid proposal for the roof repair for the Sacramento Memorial Auditorium. Under Sacramento City Code Section 3.60.020, the City's competitive bidding for public contracts provides that the award of the contract shall go to the lowest responsible bidder that meets the minimum qualifications for the public project. This section further provides that, notwithstanding the standard minimum qualifications, the City possesses the authority to "(i) review information contained in a bid, and additional relevant information, and determine whether the bidder is a

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12/04/2008 THU 10:05 [TX/RX NO 7119]

EXHIBIT E
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