

May 28, 2010

San Luis Obispo County Board of Supervisors  
Attn: Mr. Frank Mecham  
Chairperson SLO Board of Supervisors  
Room D-430 County Government Center  
San Luis Obispo, CA. 93408

Subject: **Mr. Ogrens' comments April 27, 2010 SLO Board of Supervisors Meeting**

Honorable Mr. Mecham:

Thank you for taking the time to consider this response. During the April 27<sup>th</sup> BOS meeting, the record reflects the following exchange between yourself and Mr. Ogren:

**Chairman Mecham:** *“What would be the cost to re-start the Design Build process?”*

**Paavo Ogren:** *“Well, um if we were to re-issue the RFP that we’ve already issued that would be a relatively nominal cost. My concern would be how would the contractors who are currently involved in the DB respond; um what would be our reason for restarting DB?”*

*I’ll point out that the single firm that did, that did propose on the STEP system never appealed on the decisions, the actual interviews and everything we always treated as relatively confidential so we haven’t gone out there and explained why they weren’t shortlisted, but again the contractor never appealed it, so that’s some evidence at least, and I will say the cost estimates that that particular contractor provided don’t resemble anything of what some of the individuals in the public are throwing out there. In fact their cost estimates for a STEP system were slightly higher than our cost estimates for a STEP system.”*

A few points I would like to emphasize regarding Mr. Ogrens’ comments<sup>1</sup>:

1. There is no mechanism in the Request for Qualification (RFQ) to eliminate STEP as a viable project alternative.
2. The tight interrelation between eliminating STEP and the WM Lyles Design Build (DB) team is suspect, especially when the expressed reasons fall outside of the RFQ evaluation criteria.
3. The evidence surrounding the short-listing process insinuates impropriety.

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<sup>1</sup> Please note I am speaking as a team member, not for WM Lyles.



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4. Even if the Lyles team won the appeal, a DB team cannot function with an unwilling partner that misrepresented that STEP technology was both a viable collection alternative AND an acceptable alternative to SLO County
5. So far, the consequence of removing innovation from the DB process is ongoing civil unrest and DB administrative cost overruns in excess of \$5 million. Both of which have the potential to escalate from this point forward.
6. Design Build Institute of America (DBIA) warns of these consequences when a Design Build process is adulterated.

*Excerpts from Mr. Ogrens' comments:*

- **“the actual interviews and everything we always treated as relatively confidential so we haven’t gone out there and explained why they weren’t shortlisted” –**

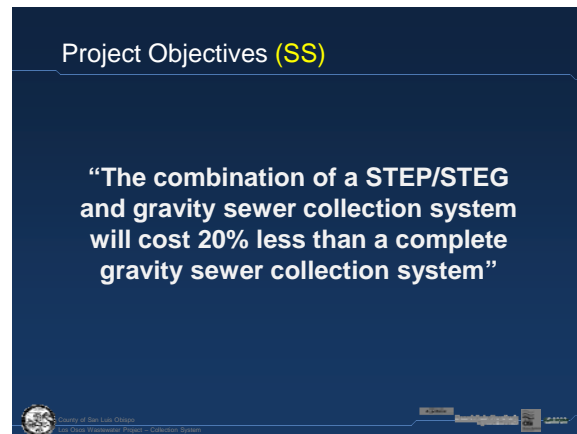
A: This is incorrect, staff put out a press release on the day of the announced shortlist, dated 3/27/2009, containing 7 reasons why STEP was not shortlisted (see attached). Important note; this date also represents the first day of the appeal period. When examined closely you will note that most of staff’s 7 reasons fall outside of the scope of the RFQ evaluation and ranking criteria: (see attached Orenco rebuttal document to the 7 reasons why STEP was eliminated).

Design-Build RFQ	
Evaluation and Ranking Criteria	Weight
Pre-qualification Questionnaire Score	15%
Utilization of Local Contractors and Consultants	5%
Technical Approach and Team Expertise	30%
Understanding of Process, Goals, and Objectives	20%
Design and Construction Experience	30%

The RFQ was clear that STEP was a viable project alternative, but the press release evidenced that staff had rendered STEP unviable for reasons that had little to do with the review of our DB’s team statement of qualifications.

- **“In fact their cost estimates for a STEP system were slightly higher than our cost estimates for a STEP system.”**

A: Cost was not a weighted RFQ evaluation criterion, and I believe our team demonstrated the importance of affordability during our interview with the following slide.



Note: This was one of the first slides in the WM Lyles interview team presentation. The interview team went on to explain **that the on-site cost for STEP was included** in the estimate and **the onsite cost for gravity was NOT included** in the comparative cost (this condition was set forth by the County's RFQ project scoping criteria). The County cost for gravity, without onsite cost, would have **been** estimated at \$69.6 to \$75.7 million using the Fine Screening Analysis cost estimates. Using the RFQ comparison the Lyles team 20% number places STEP in the range of 30% to 45% lower than gravity. The cost presented by WM Lyles was a Hybrid gravity/STEP system that utilized a gravity installation in areas where it was cost effective. If the system was all STEP, the capital cost would have been less. The interview panel knew this, yet STEP was not advanced.

**The WM Lyles team also proposed a guaranteed maximum price. Had a STEP design been allowed to advance, it was obvious that these favored costs would have sealed the fate of a gravity sewer system.**

- *“I’ll point out that the single firm that did, that did propose on the STEP system never appealed on the decisions”-*

A: During the DB interview, the Lyles team provided a detailed discussion about the stakeholders, in a DB project, and how a successful DB project requires ongoing participation of all the stakeholders. The owner (SLO County), as one of the important stakeholders, sent a clear message that SLO County would not be a cooperative partner on a “STEP” design build team with the following actions;

1. STEP and therefore the Lyles team was eliminated for reasons that fell outside the RFQ evaluation criteria.
2. Montgomery Watson Harza was favored with their own outdated (2004) gravity sewer design, even with an apparent violation of California Public Contract Code 20133, that specifically states, **“Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.”** Stated in black and white on Carollo’s SLO County contract are the MWH line items that contain verbiage about determining Viable Project Alternatives. Not only is “Determining Project Specific Alternatives” specific, but it gives the appearance that MWH was involved in steering the project alternatives selection.

3. And on 3/27/09 the day of the shortlist announcement, the first day of the appeal process, the chair of the appeal committee, Paavo Ogren, sent out the press release stating that STEP (and thereby the *only* STEP DB team) was not welcome.

So why was there no appeal? A STEP team cannot function when the main team player, SLO County, is unwilling.<sup>2</sup> Design Build can only be successful when the primary parties are working in a trusting partnership.

- *“the single firm that did, that did propose on the STEP”*

A: WM Lyles was the only team that proposed a project using STEP technology. Following is a quote from the Engineers 218 report titled, Engineer’s Report for the San Luis Obispo County Water Assessment District No. 1 August 28<sup>th</sup>, 2007 (page 4, first paragraph):

*“In the current project selection strategy, the STEP and gravity alternatives would compete through the construction bidding phase using a competitive bid, design/build, and/or build/own/operate/transfer process.”*

**Based on the above statement alone WM Lyles should have been shortlisted, because it was the only team to propose STEP technology and according to official documents STEP was supposed to be taken through the RFP construction bid stage.** The next sentence in the report states;

*“If gravity system bids are received near the high end of the cost range, it is unlikely that gravity will compete with STEP.”*

And there you have the crux of the problem. Notwithstanding the fact that the STEP alternative would likely beat any gravity sewer proposal on cost and that the WM Lyles team represented the most qualified team to deliver the most sustainable solution, the RFQ evaluation committee did not include the WM Lyles STEP alternative on the shortlist. The only logical explanation to this suggests impropriety and a pre-determined outcome of the RFQ process.

Mr. Mecham, we tried very hard to be a part of a sustainable solution for Los Osos, evidenced by the fact Orenco introduced DB to Los Osos in October, 2006. Why? Because if done correctly the DB project delivery method performed in an open, fair, and equitable manner can bridge all socio-economic barriers. And if Orenco lost in that type of process, that would be OK, because Los Osos would benefit, which is the ultimate goal. Unfortunately actions by staff and the appearance of impropriety with MWH have severely damaged the Los Osos WWTP DB process, attested by the fact that the socio-economic unrest still exists, and administrative cost overruns exceeding \$5 million. DBIA warns that if the DB process is adulterated, the benefits of DB will be stripped away.

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<sup>2</sup> Mr. Ogren understands this as he went through the Design Build Institute of America Boot Camp training at Cal Poly, SLO.

It's not too late. Going back to your original question, you may wish to re-phrase it like this: **How much money can we save by re-starting the DB process?** The answer is easy, tens of millions of dollars. However, the following actions should be taken into consideration:

- The reason to re-start would be to wipe away the appearance of impropriety and re-institute trust.
- Hire a DB consultant team that can coach the County and Los Osos through a successful project. To avoid another appearance of impropriety exclude engineering firms. **Lee Evey the ex-president of DBIA has said he would make his team available to move this project through Design Build successfully. He has also communicated this to County staff.**
- This coaching includes properly structuring the RFQ (request for qualifications DB team short listing, RFP (request for proposal), final DB team selection, and possibly facilitation of the Design Build process through final design and construction.
- The RFP should include project goals that drive solution oriented decisions. The DB teams are then allowed the flexibility to use technical innovations in their proposals to achieve project goals.
- Simplify the project by combining the collection and treatment RFQ/RFP's into one. That will save \$500,000+ in stipends to the losing DB teams. It will also allow for expanded innovation which can lead to greater project cost savings.

Had the current DB process gone down this path we'd already be in construction. And if a re-start were declared, construction of a sustainable wastewater solution could feasibly begin in a shorter timeframe than even the current project.

I'm sure there may be objections to this, but I would encourage you to recall that staff's reasoning for the current process appear to be tightly tied to the so called advantages of the already designed MWH gravity sewer. Ask yourself, have you seen these advantages manifested? Costs? escalating, nope. Time? 3+ years and counting, nope. Ease of permitting? Project is in de novo, nope. Social acceptance? You be the judge. And just to re-iterate the Design Build Institute of America training attended by county staff, warns this will happen whenever the design build process is adulterated.

Thanks for taking the time to consider these comments. You can reach me (800.718.4046) or Mike Saunders (866.914.9454) anytime.

Sincerely,



William Cagle  
Program Leader, National Accounts