



# City of Marco Island

---

**October 12, 2020**

**North Water Treatment Plant (NWTP) Membrane Filtration Module Replacement  
(ITB # 2020-028)**

## **NOTICE OF DISQUALIFICATION / REJECTION OF THE BID SUBMITTED BY:**

**Toray Membrane USA, Inc.  
13435 Danielson Street  
Poway, CA 92064**

**Sec. 2-258 (6) of the City of Marco Island Purchasing Ordinance (#11-01)** outlines that *contracts may be awarded to the lowest and most responsible bidder, as determined on the basis of the entire bid and the investigations into the bidder by the city manager and purchasing/contracts manager.*

City has completed the review and has determined that the above referenced bid submittal is non-responsible and therefore is being rejected as outlined in **Sec. 2-260 (10) of the City of Marco Island Purchasing Ordinance (#11-01)** *the bidder does not appear to have the expertise, financial capability or other ability to meet the requirements of the contract to be awarded, or is otherwise shown not to be responsible.*

Please see Exhibit "A" for additional details.

Lina Upham, CPPB  
Purchasing and Risk Manager  
Deputy City Clerk  
Tel: (239) 389-5011  
Email: [LUpham@cityofmarcoisland.com](mailto:LUpham@cityofmarcoisland.com)

## Exhibit "A"

### NWTP Membrane Filtration Module Replacement ITB 2020-028

**BID EVALUATION October 7, 2020**

**Toray Membrane USA, Inc**

As part of the evaluation of the public bids for ITB 2020-028, the City requested clarifications from the bidders on September 28, 2020.

Toray Membrane USA responded to the request on October 1, 2020. Most of the requests were clarified satisfactorily. However, the City determined that the clarifications to two (2) of the requests do not meet the requirements stipulated in the bid. Below is a summary of the City's requests, the bidder's clarifications, and the City's determination regarding the clarifications

---

#### **City's request #7:**

*"Please specify whether the proposed modules will be fabricated using 'centrifugal potting' or 'static potting' method."*

#### **Toray's Clarification:**

*"Toray's potting method is unique to Toray and is considered highly confidential and cannot be disclosed in a public document. Toray's potting failure rate for modules sold is extremely low. We would request any additional potting information be provided in a private setting that is protected by NDA to prevent release of our highly confidential potting method. If the City requires additional information, we will be happy to provide this privately to protect our intellectual property. Potting failure is also covered under the provided 10-year warranty."*

#### **City's Determination:**

The City does not have enough information to confirm that the potting method used by Toray is centrifugal as required in the ITB. The City hereby determines that the response does not meet the potting requirements since the information is missing and is not available at the time of bid evaluation.

---

#### **City's request #10:**

*"Toray provided a list of USA installations but did not indicate the model number and contact information of facility operators as indicated in the ITB. Please provide a list of installations only for the proposed module and for facilities greater than 2 MGD that have at least 10 years of experience."*

#### **Toray's Clarification:**

*"The reference list provided all use the same fiber, potting, and packing density: however, there are multiple part numbers due to slight changes in housing over the years. Performance characteristics are identical between all modules listed on the reference list we provided, and thus we view these references as technically compatible. If the city desires to contact two of our longer references that are both around 10 years old, we suggest the following:*

*Four Bears (2.00 MGD) – Our customer was Wigen Water, please feel free to contact Michael Bourke – michael.bourke@wigen.com*

*North Burleigh (2.2 MGD)- Our customer was H2O Innovations, please feel free to contact David Faber – David.Faber@h2oinnovations.com"*

**City's Determination:**

The City requested a list from the bidder of membrane model numbers of twenty (20) successful installations operating at least ten (10) years in service for the proposed membranes for facilities greater than two (2) MGD. Toray's list does not include model numbers and does not include any successful installations having at least ten (10) years of service. All the startup dates listed in Toray's list are less than ten years.

The requirements for number of successful installations and years in service were clearly stipulated in the ITB. Toray's response demonstrates that it does not meet these requirements.

---

The City has determined that the bid submitted by Toray for ITB 2020-28 does not meet all of the requirements in the ITB and must therefore be disqualified.



Justin Martin, P.E.  
Manager of Engineering and Operations  
City of Marco Island Water and Sewer Department

**Sec. 2-262. - Dispute resolution and protest procedure.**

- (a) Any unresolved dispute pertaining to:
  - (1) Unadvertised or noncompetitive purchases made under this section shall be submitted to the city manager for resolution and/or final determination.
  - (2) Unresolved disputes pertaining to protests by bidders on advertised solicitations for purchases greater than \$25,000.00 shall follow the following bid/proposal protest procedure.
- (b) Bid/proposal protest procedure. Any firm that has submitted a formal bid/proposal to the City of Marco Island and who is adversely affected by an intended decision with respect to the award of the formal bid/proposal, shall file a written "notice of protest" with the purchasing/contracts manager within three days of either the bidder's receipt of the notice of disqualification of its bid, or receipt of a notice of intent to recommend award from the purchasing/contracts manager. Failure to submit the notice of protest as outlined in the Code shall constitute a waiver of proceedings.
  - (1) The "notice of protest" shall identify the solicitation and specify the basis for the protest. The "notice of protest" must be received by the city clerk and time stamped no later than 4:00 p.m. on the third working day following the posting date of the recommended award.
  - (2) The protesting party must then file a formal written protest within five calendar days after the receipt of the notice of protest. The protesting party shall post a bond (bond, cashier's check, or letter of credit) in an amount equal to five percent of the firm's total bid/proposal or \$10,000.00, whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the city council, if the protest is deemed by the council to be a frivolous protest.
- (3) The formal written protest shall contain the following:
  - a. Bid/proposal (RFB, RFP, or RFQ) identification number and title.
  - b. Name and address of the affected party and the title or position of the person submitting the protest.
  - c. A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the formal written protest must so indicate.
  - d. A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.
  - e. All information, documents, other materials, calculations and any statutory or case law authority in support of the ground for the protest.
  - f. A statement indicating the relief sought by the affected (protesting) party.
  - g. Any other relevant information that the affected party deems to be material to the protest.
- (4) Upon receipt of a timely filed notice of protest, the purchasing/contracts manager will abate the award of the formal bid/proposal as appropriate until the protest is heard pursuant to the informal hearing process as further outlined below, except and unless the city manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding by the city manager, the city manager may authorize an expedited protest hearing and may void the requirement for a formal written protest and bond.
- (5) A dispute committee, comprised of the city manager or designee, finance director or designee, public works director or designee and, as deemed appropriate, the city attorney to provide legal counsel, but not as a voting member, will convene a meeting within seven working days from receipt of the formal written protest with the protesting firm to attempt to resolve the protest. The hearing is to (1) review the basis of the protest; (2) to evaluate the facts and merits of the

protest; and (3) to make a determination whether to accept or reject the protest. If at all possible, the parties will resolve the protest at this first meeting.

- (6) If a resolution to the satisfaction of the dispute committee and the protesting firm cannot be accomplished during the meeting, the dispute committee, with respect to the merits of the protest, shall place the protest on the city council agenda with the staff recommendation and relevant background information.
- (7) City council shall conduct a hearing on the matter at the regularly scheduled city council meeting. Following presentations by the affected parties, the council shall render its decision on the merits of the protest.
- (8) If the council's decision upholds the recommendation by the dispute committee in denial of the protest regarding the award and further finds that the protest was either frivolous and/or lacked merit, the council, at its discretion, may assess costs, charges or damages associated with any delay of the award and any costs incurred with regard to the protest. The bond posted by the party filing the protest may be applied by city council at its discretion to pay in whole or in part said costs, charges, or damages.
- (9) If the council's decision upholds the position of the party filing the protest, the purchasing/contracts manager will cancel any prior award and award the contract to the party filing the protest in the amount of that party's original bid/proposal.

(Ord. No. 11-3, § 3, 2-22-2011)