Received Apr 1 2014 01:23pm

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER, MS 43
1727 30th STREET
P. O. BOX 168041
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe

Flex your power!
Be energy efficient!

March 26, 2014

Facsimile: (541) 469-0137

Dave Baldwin, Secretary/Treasurer
Tidewater Contractors, Inc.
903 Highland Avenue
National City, CA 91950

01-0B8404
01-DN-199-T0.0/4.2
B.O. 03/12/2014

Dear Mr. Baldwin:

The Department of Transportation (Caltrans) received the attached bid protest dated March 25, 2014, from Windsor Fuel Co. (Windsor) protesting the Disabled Veterans Business Enterprise (DVBE) Commitment form submitted by Tidewater Contractors, Inc. (Tidewater). Windsor alleges that Tidewater listed Charlie Mike Safety Supply, LLC. to purchase 2 solar Message Centers for $15,750.00 each, for a total of $31,500.00 and on its DVBE Commitment form claimed $18,900, after a 40 percent deduction. Windsor further alleges that the total claimed participation exceeds the bid item cost amount of $9,000.00 and creates the appearance of a Commercially Useful Function issue.

Please provide your response to Windsor's protest no later than April 2, 2014.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

for

JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment

Received Apr 1 2014 01:24pm

TIDEWATER CONTRACTORS, INC.

16156 Hwy 101 South X P.O. Box 1956 X Brookings, Oregon 97415
Phone - (541)469-5341 X Fax - (541)469-5543
Dave Baldwin Jess Fitzhugh
CCB # 29995 CCLB# 456696

March 27, 2014

Department Of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30Th Street
P.O. Box 168041
Sacramento, CA 95816-8041
Phone (916) 227-6299
Fax (916) 227-6282

ATTN: Mr. John McMillan
Deputy Division Chief

Subject: 01-0B8404
01-DN-199-T0.0/4.2
B.O. 03/12/2014
Re: Response to Bid Protest from Windsor Fuel.

Dear Mr. McMillan,

Please consider this letter as a formal response to the protest referenced above by Windsor Fuel Co... Tidewater Contractors, Inc. is the lowest responsive and responsible bidder on the above mentioned project. The bid protest submitted by Windsor holds no merit, the contentions are invalid, and the protest appears to be a futile attempt at discrediting the bid submitted by TWC.

Winsor contends that the claimed participation amount for Charlie Mike Safety Supply is somehow incorrect, and that it creates the appearance of a Commercially Useful Function issue.

The facts are this: Windsor Fuel is incorrect in its assertions. Tidewater is entitled to the full amount of participation listed for Charlie Mike Safety Supply, LLC. In fact, Tidewater is entitled to a higher amount of participation than what we listed. According to Monica C Pogemiller, Contract Evaluation Analyst for Caltrans Office of Business & Economic Opportunity, Tidewater is entitled to claim 100% of Charlie Mike Safety Supply Quote of $31,500.

Charlie Mike Safety Supply is performing a Commercially Useful Function for the above mentioned job. Charlie Mike Safety Supply is approved by the California Department of General Services as a DVBE Supplier. They are listed as a non-Manufacturer as their business type, and further, they are listed in the appropriate, and relevant classifications for supplying PCMS for a project. Those codes being 461615 Traffic Control, or 321518 Safety Control Devices. Please see the attached Supplier Profile for Charlie Mike Safety Supply, LLC.

Charlie Mike Safety Supply, LLC meets the requirements for a CUF. They are providing 2 Message Boards, (Being purchased by Tidewater) that will be used on the project. Tidewater will pay the full amount claimed, $31,500, to Charlie Mike Safety Supply for those boards. Charlie Mike meets the definition for a CUF as listed in the DVBE regulations as they apply to a supplier.
Charlie Mike Safety Supply is in the business of supplying Traffic Control and Work Zone Safety Devices. Any claim by Windsor Fuel that somehow Charlie Mike Safety Supply is not in this type of business, or is not performing a CUF is completely without merit, and not supported by the facts. Nowhere in any definition, regulation, or other document did Tidewater find any connection, or correlation between prime contractor bid pricing, and a CUF for that item as it pertains to a DVBE Supplier.

In summary, the protest brought forth by Windsor Fuel is completely without merit, and not substantiated by the facts in this matter. Tidewater is in fact the lowest responsive and responsible bidder for this project. The facts show that Tidewater will in fact pay to Charlie Mike Safety Supply, a higher dollar amount than what is claimed at the time of the bid, and in fact we have a higher percentage of DVBE participation than what we have claimed.

Charlie Mike Safety Supply, LLC performs a Commercially Useful Function on this project. Charlie Mike has the appropriate Business Type Designation, the appropriate Classification Codes, and the supply of Message Boards is the exact type of business that they specialize in.

Tidewater Contractors, Inc. looks forward to the speedy resolution of this matter, and the expedited award to Tidewater for the above mentioned contract.

Thank you for your prompt attention to this matter, and if you have any questions, or need any further clarification on this matter, please contact me immediately.

Respectfully,

Scott Darger

Scott Darger
General Manager
Tidewater Contractors, Inc.

Charlie Mike Safety Supply, LLC

Fortuna, CA 95540
ph: 707-601-7184
fax: 707-682-6427
alt: 707-601-7236
bill@charliemikesafetysupply.com

- Home
- Services
- About Us
- Contact Us

Home

Charlie Mike Safety Supply specializes in Traffic Control and Work Zone Safety Devices.

We are a 100% owned and operated by military Veterans.

Call or email us today!

Contact Tom Aulman, Sales and Distribution Manager.

480-772-2331

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Web Hosting by Yahoo!

Fortuna, CA 95540
ph: 707-601-7184
fax: 707-682-6427
alt: 707-601-7236
bill@charliemikesafetysupply.com

Charlie Mike Safety Supply, LLC

SBE & DVBE Certified Supplier # 1753953

Attention: Estimating
Regarding: 01-OB8404
Date: March 10, 2014

Bid #	QTY	Description	Unit Price
→	1	Solar Message Center SMC 1000 three line message Center	15,750.00 x 2 = $31,500 x 60% [$18,900]
	1	Solar Message Center SMC 2000 Full Matrix	17,750.00
	1	Solar Message Center SMC 4000 MINI 8'x4' Full Matrix	14,500.00
	1	15 Light Arrowmaster W/ Charger Arrowboard	5,040.00
	1	25 Light Arrowmaster W/ Charger Arrowboard	5,400.00

Prices exclude sales tax and shipping charges. For PDF Spec Sheets go to http://www.precisionsolarcontrols.com/

Prices are good for 6 months
Quoted by:

Tom Aulman, West Coast Sales
Direct # 480-772-2331
Charlie Mike Safety Supply / S.S.R.
DVBE and SBE Certified # 1753953
CA - tom@charliemikesafetysupply.com
AZ - safetysupplyresources@gmail.com

Check out our products at any of the following:
www.otwsafety.com
www.workareaprotection.com
www.precisionsolarcontrols.com

law to enter into contracts on behalf of the State of California.

(e) **Bid** means an offer made in response to a solicitation.

(f) **Broker** or **Agent** means any individual or entity that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department. Any qualifying disabled veteran who does not own 51 percent of the fair market value of the materials and supplies shall be deemed a broker or agent.

(g) **Certification approval** means a business has met certification criteria as determined in §§ 1896.81, 1896.82, and 1896.83.

(h) **Certification denial** means an application was denied.

(i) **Certification notice** means a business was notified, in writing, to provide additional documentation to maintain certification eligibility.

(j) **Certification revocation** means certification was revoked for any of the reasons specified in § 1896.82(l).

(k) **Commensurate** means corresponding in size, amount, degree; or proportion.

(l) **Commercially Useful Function (CUF)** means a DVBE contractor or subcontractor that contributes to the fulfillment of contract requirements as determined by awarding departments in § 1896.71, and does all of, but is not limited to, the following:

(1) Is responsible for the execution of a distinct element of work for the contract;

(2) Carries out contractual obligations by actually performing, managing, or supervising the work involved;

(3) Performs work that is normal for its business services and functions;

(4) Is not further subcontracting a portion of the work that is greater than expected to be subcontracted by normal industry practices;

(5) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and,

(6) Its role is not an extra participant in the transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE participation.

(m) **Complete federal tax return** means copies of all forms, schedules, and attachments as submitted to the Internal Revenue Service.

(n) **Contract** means any agreement to provide labor, services, materials, supplies, information technology, or equipment in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the state. It does not include agreements executed for subvention aid or local assistance. Nor does it include contracts which provide assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation.

(o) **Contractor** means any individual or entity that enters into a contract as defined in § 1898.62(n).

(p) **Control** means the disabled veteran owners and/or disabled veteran managers have expertise specifically in the business's field of operation in controlling the overall destiny and in controlling the day-to-day operations of the business.

(q) **Department** or **DGS** means the Department of General Services.

(r) **Disabled veteran (DV)** means a veteran of the military, naval or air service of the United States, including but not limited to, the Philippine Commonwealth Army, the Regular Scouts ("Old Scouts"), and the Special Philippine Scouts ("New Scouts"), who has at least a ten-percent service-connected disability recognized by the United States Department of Veterans Affairs or United States Department of Defense and who is domiciled in the State of California.

(s) **Disabled Veteran Business Enterprise or DVBE** means any business certified by the OSDS, as determined in § 1896.81.

FACT SHEET

Monitoring DVBE Participation During Construction

May 2013

Role of the Division of Construction

California Department of Transportation (Caltrans) resident engineers and inspectors monitor the contract work to ensure the DVBEs/SBs listed on the DVBE Summary form or Non Small Business Preference form perform the items of work specified at the time of bid opening and that no improper substitutions occur. Monitoring includes documenting the work the DVBEs perform by completing inspection reports. Resident engineers and inspectors ensure that all DVBEs are performing a commercially useful function (CUF).

CUF is a matter of contract compliance that ensures the dollars counted towards the DVBE goal, the DVBE bid incentive, and the SB bid incentive are merited. If CUF is not properly evaluated, there is an increased potential for passing funds through DVBEs and SBs thereby subverting the intention of the respective programs.

The California Military and Veterans Code, Section 999(b)(5) states that a DVBE is deemed to perform a "commercially useful function" if it does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract.
- Carries out the obligation by actually performing, managing, or supervising the work involved.
- Performs work that is normal for its business services and function.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal practices.

A contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation."

To perform a commercially useful function, the DVBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating a price, determining quality and quantity, ordering the material, and installing where applicable and paying for the material itself.

To ensure DVBEs are performing a CUF, the resident engineer or inspector documents the DVBE's work in inspection reports and reviews additional documentation that verifies the DVBE's participation. Some examples of the types of documents are:

- certified payroll records
- paid supplier invoices
- monthly trucking verification reports
- supplier bills of lading or purchase requests
- leases

Service and Architect and Engineering Contracts

Monitoring DVBE participation, including whether a DVBE is performing a CUF, are subject to the same guidelines as stated above.

For further details, please refer to Military and Veterans Code, Section 999 to 999.13

Commercially Useful Function Use and Evaluation

Commercially Useful Function applicability

The PAM, Chapter 3, Topic 2, Infoblock 3.2.5 describes that all California certified SBs and DVBEs contractors, subcontractors and suppliers that bid on or participate in a state contract regardless of the procurement approach or the payment method must perform a Commercially Useful Function (CUF).

The purpose of the CUF requirement is to prevent certified SB/MB/DVBE businesses from acting as a "pass through" or "front" when identified as the prime bidder or when identified as a subcontractor from providing artificial or incidental participation to meet the socio-economic objective of a solicitation or contract. In either case, when CUF is not validated, there is a potential for obtaining unwarranted State preference advantages.

The CUF requirement applies to all departments conducting purchasing activities regardless of the procurement approach for both non-IT and IT purchasing authority(ies).

A business performing a CUF is one that does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract
- Carries out its obligation by actually performing managing or supervising the work involved
- Performs work that is normal for its business, services and function
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

In contrast a contractor, subcontractor or supplier is not considered performing a CUF if the contractor's, subcontractor's or supplier's role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of small business, microbusiness or DVBE participation.

Example:
A certified DVBE contractor that is a prime is not considered to be performing a CUF if it is requiring that the subcontractor perform all aspects of the contract as if the subcontractor had independently bid and been awarded the contract as the prime.

Capturing CUF information

CUF information is obtained when a supplier completes the Bidder Declaration form (GSPD-05-105 Written Version or GSPD-05-106 Verbal Version). Consequently, as described in the Bidder Declaration topic, regardless of procurement approach the Bidder Declaration form as applicable to the solicitation method must be completed..

Continued on next page

Commercially Useful Function Use and Evaluation, Continued

Role of OSDS

As part of its normal certification process OSDS will review applicant information related to performance of a commercially useful function. Businesses determined to not perform a commercially useful function in at least one "business type" will not be certified.

OSDS designates "business types" in four categories:

- Manufacturer (Standard Industrial Classification or SIC codes in a specified range must be provided)
- Non-manufacturer (used for sellers of goods)
- Services
- Construction (requires valid contractors license as designated by the California State Contractors License Board)

For businesses that can be determined at time of certification to perform a commercially useful function, the OSDS website will, below the field designated "AKA Names,":

- Indicate "CUF"
- Specify the element of work associated with the CUF (SIC Codes are also verified in conjunction with CUF)

In some cases, the OSDS may grant certification in more than one business type but not be able to determine CUF in more than one business type. In that case, the website will state "CUF: (*business type*) Buyer to determine."

Note: This feature will become operational in 2007.

OSDS also investigates inappropriate use of certifications, including fraud or intentional misrepresentation related to CUF. Departments are to notify OSDS of suspected unlawful situations.

Click here to access the OSDS web page.

Continued on next page

Commercially Useful Function Use and Evaluation, Continued

Role of OSDS

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Click here to access the OSDS web page.

Continued on next page

Department of
General Services
BUILDING GREEN · BUYING GREEN · WORKING GREEN

Charlie Mike Safety Supply, LLC - #1753953

SUPPLIER PROFILE

Legal Business Name	Charlie Mike Safety Supply, LLC		
Doing Business As	Charlie Mike Safety Supply, LLC		
Address	1732 Blue Jay Ct. FORTUNA, CA 95540	Phone FAX	(707) 601-7184
Email	safetysupplyresources@gmail.com		
Business Types	Non-Manufacturer		
Service Areas	Alameda, Contra Costa, Humboldt, Imperial, Los Angeles, Mendocino, Merced, Riverside, Sacramento, San Bernardino, San Francisco, San Mateo, Santa Clara, Santa Cruz, Yolo,		
Keywords	Traffic control road safety barricades crash cushions cones vests hard hats		
Classifications	312015 - Tape 321518 - Safety control devices 391118 - Lighting accessories 461515 - Crowd control equipment 461615 - Traffic control 461815 - Safety apparel 461817 - Face and head protection		

Active Certifications

TYPE	STATUS	FROM	TO
DVBE	Approved	Jul 16, 2013	Jul 31, 2015
SB (Micro)	Approved	Jul 11, 2013	Jul 31, 2015

Certification History

TYPE	STATUS	FROM	TO
DVBE	Denied		
DVBE	Denied		
SB	Denied		

Award status for 01-0B8404

Bid opening date: 03/12/2014

Processing award for		TIDEWATER CONTRACTORS, INC		
Award recommendation	Requested	03/12/2014	Received	
Civil rights evaluation	Requested	03/18/2014	Received	03/27/2014
Funding certification	Requested	03/13/2014	Received	
	Award date		Approval date	

A note on the Caltrans award process:
We have several major milestones we process when preparing a project for award.

- Bid opening: This is the event that triggers the award process. Once a bid has opened, we immediately begin looking at the results to process the contract award.
- Award recommendation: The district responsible for designing the project will take a look at all the bids submitted and determine whether or not it is in the department's best interest to award the contract, by taking a look at the item prices submitted and the working schedule, if necessary. This can involve calls to the bidders to determine if there were any problems with bids or the contract itsself.
- Civil rights evaluation: Our Office of Business and Economic Opportunity reviews the UDBE or DVBE submittals on all projects to determine if the project goals have been achieved, or if a good faith effort has been obtained.
- Funding certification: Once we have determined a low bidder, we begin an analysis that determines how much of the allocated funding will need to be used to award the contract, and in the case of projects where funding has multiple fund sources, we determine what portion of each allocation will go toward paying for construction.

Once all milestones have been achieved for the bidder we are processing the award for, the contract will be ready to award. We will proceed with the contract award and contract approval. In the event that there is a re-ranking of bidders, both the funding certification and civil rights evaluation will need to be re-processed for the new bidder.

TIDEWATER CONTRACTORS, INC.

P.O BOX 1956 · BROOKINGS, OR 97415

PHONE: (541) 469-5341 · FAX: (541) 469-5543

Redi-Mix · Asphalt · Sand & Gravel · Excavation · Road Building

Jess Fitzhugh CCB# 29995

Dave Baldwin CCLB# 456696

FACSIMILE TRANSMITTAL SHEET

TO: Caltrans

COMPANY:

FAX NUMBER: 916-227-6282

PHONE NUMBER:

FROM: Cassie Fitzhugh

DATE: 4-1-14

TOTAL NO. OF PAGES, INCLUDING COVER: 12

YOUR REFERENCE NUMBER: 01-0B8404

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Tidewater Contractors - Bid Protest Response

Contract # 01-0B8404