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(530) 926-4093 • Fax (530) 926-2118
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TIMBERWORKS

April 29, 2013

John McMillan
California Department of Transportation
Office Engineer
1727 30th Street
Sacramento, CA 95816
Via FAX: (916) 227-6282

Re: Contract 01-0C1304, Request for Hearing and Protest of Non-Responsiveness Letter Issued by Caltrans on this Contract

Hello Mr. McMillan,

I am responding to Caltrans' letter of April 25, 2013, in which Caltrans notifies Timberworks of its determination that Timberworks' bid on contract 01-0C1304 was non-responsive. The grounds for finding our bid nonresponsive are contained in the following two excerpts from that letter:

1. The last sentence of paragraph 1 states "By this letter, Caltrans notifies Timberworks that its bid is nonresponsive because it revised column 2 of the Subcontractor List form by adding a new scope of work on the 24-hour submission of the form."
2. The last sentence of paragraph 3 states "The change in the bid item numbers in column 2 on the 24-hour submission of the Subcontractor List by adding Bid Items 1 and 3 constitutes an improper change to the Subcontractor List form."

The reasons that I believe Caltrans' determination of non-responsiveness is incorrect are the following:

1. Timberworks did not add a new scope of work to CSS in column 2, it merely completed the information in columns 2 and 3 as required by the instructions at the top of the Subcontractor List form,
2. Adding bid item numbers to complete column 2 is not an improper change to the Subcontractor List form, and
3. There appear to be no rules governing the submission of a revised Subcontractor List form that are available to the Bidder that would allow Caltrans to determine that Timberworks' actions constituted an improper change to the Subcontractor List form.

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Given an explanation of these facts as they pertain to this contract, I believe our addition of bid item numbers 1 and 3 to column 2 for CSS is not sufficient to deem our bid non-responsive. I expand on those reasons below.

Completing Column 2 Does Not Change Scope of Work

Caltrans provides 4 columns on the Subcontractor List form. Columns 1 and 4 are required by Section 4104 of the California Public Contract Code. Columns 2 and 3 ask for additional information on the listed subcontractors, which is permitted by Section 4104, but not required. The information in columns 2 and 3 is required only by Caltrans. Section 4104 requires an agency to set a 24 hour deadline for any additional information requested for listed subcontractors, hence the 24 hour period for submission of the information in columns 2 and 3.

One practice commonly followed is for a prime contractor to leave columns 2 and 3 completely blank at submission of the bid package, then fill them out and submit the new form within the 24 hour deadline. The lack of information in column 2 at the time of bid submission does not imply that every listed sub has no scope of work. It is merely an indication that further information is forthcoming, i.e. *that the form is not yet complete*. If changing column 2 was a de facto example of changing a scope of work, then every revised Subcontractor List form would result in a non-responsive bid. Timberworks merely completed columns 2 and 3 as required by the instructions at the top of the Subcontractor List form that state "Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening".

Adding Bid Item Numbers to Column 2 is not an Improper Change

The April 25, 2013 letter states "The change in the bid item numbers in column 2 on the 24-hour submission of the Subcontractor List by adding Bid Items 1 and 3 constitutes an improper change to the Subcontractor List form." I find no rules which support this finding. The only rules available seem to support the opposite. It is only by adding bid item numbers to column 2 that a bidder can complete the Subcontractor List form. The Subcontractor List form that was submitted by Timberworks for contract 01-0C1304 was not complete. No rule requires the Subcontractor List form to be complete at the time of bid package submission and no rule prohibits its partial completion at time of bid package submission. Adding bid item numbers to column 2 is not an improper change since that is exactly what is asked for in the instructions listed at the top of the Subcontractor List form.

Absence of Rules for Submission of Revised Subcontractor List form

Page 23 of the 2010 Standard Specifications is the only location in which any discussion is found regarding the submission of a revised Subcontractor List form. Subsection 2-1.33C, as revised on 10-19-12, is the only area that directly applies. Subsection 2-1.33C allows for 2 options when submitting the information found in columns 2 and 3. One option is to "submit each subcontracted bid item number and corresponding percentage with your bid". Timberworks clearly did not choose this course because no percentages were provided and a revised Subcontractor List form was submitted within the 24 hour deadline. The only other option

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specified in Subsection 2-1.33C is to "fax these numbers and percentages to (916) 227-6282 within 24 hours after bid opening." This is the option that Timberworks chose. Once the information in columns 2 and 3 was completed, the revised form was faxed to Caltrans.

The applicable instructions at the top of the Subcontractor List form state "Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening." Timberworks did exactly that. The information in columns 2 and 3 was completed and submitted per the instructions available to them.

If there are any rules governing the submission of a revised Subcontractor List form, excepting those already discussed in this letter, those rules are not available to Timberworks. The question one asks here is, "On what basis did Caltrans deem Timberworks' actions an improper change to the Subcontractor List form?" Caltrans cannot find a bid non-responsive on the basis of unwritten rules or rules unavailable to the bidder, according to *Monterey Mechanical Co. v. Sacramento Regional County Sanitation District (1996)*. If such rules exist, please provide them and information on how a bidder is expected to be aware of them.

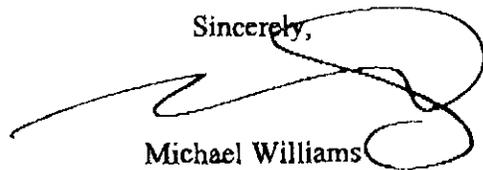
Conclusion

Timberworks' actions in filling out column 2 of the Subcontractor List form may have been non-standard but they did not violate any rules known to Timberworks. Timberworks took action as clearly called out in the Standard Specifications and on the Subcontractor List form. It appears there may be other rules or assumptions that are being used to deem the bid non-responsive but use of such rules is clearly not allowed.

This letter does not address the matter of listing lead compliance plan and traffic control work for CSS in column 2 when column 4 describes the work of "Striping, Reflectors". That issue was not raised by Caltrans in its letter asserting non-responsiveness of the bid. We are prepared to respond to that issue should Caltrans wish to formally raise it.

We kindly request a hearing at which this issue can be heard.

Sincerely,



Michael Williams
Chief Estimator
Timberworks

encl: Copies of Subcontractor List form as submitted with bid package and submitted within 24 hours of bid opening.

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DTS-02-0102L (REV 3/2011)

Bidder Name: Timberworks

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cost Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-8202 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Describe of Subcontracted Work
GENI Oakland, CA	1, 6		Lead Compliance Plan WPCP
Wells Sweeping Sacramento, CA	3		Sweeping
Samborano Traffic Control Wilton, CA	3, 4		TL, PCMS
KRC Safety Visalia, CA	2		CAS
Central Striping Rancho Cordova, CA	7, 8, 13-17		striping, Reflectors

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DEB-06-0102.2 (REV 3/2011)

Bidder Name: Timberworks

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (816) 227-8282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Global Environmental Network, 8390 Capwell Drive, Oakland, CA	6	92	Lead Compliance Plan WPCP
Wells Sweeping 5425 Marmith Ave Sacramento, CA	3	4	sweeping
Sambreno Traffic Control 10057 Collings Rd Wilton, CA	3, 4	17 92	Traffic Control Portable Changeable Message sign
KRC Safety Co. POB 6356 Visalia, CA	2	92	construction Area Signs
Central Striping Service 3489 Luyung Drive Rancho Cordova, CA	11, 3, 7-8, 13-17	53 6 92 92	striping, Reflectors

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