

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

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www.dot.ca.gov

*Serious drought.
Help save water!*

June 17, 2015

Facsimile: (530) 757-1355

Ahmet Gulcu
Empire Landscaping, Inc.
118 Hicklory Lane
Davis, CA 95616

01-262064
01-MEN-101-45.0/50.8
B.O. 04/28/2015
Revised B.O. Date

Dear Mr. Gulcu:

The Department of Transportation (Caltrans) received a bid from Empire Landscaping, Inc. (Empire) for project 01-262064 on *April 28, 2015*, at which time, Empire was the apparent low bidder. The Department received two protests from Bortolussi & Watkins, Inc. (Bortolussi & Watkins), dated May 8 and 14, 2015 and a protest from Pacific Parks Landscaping, Inc. (Pacific), dated May 22, 2015. The protests from Bortolussi & Watkins alleges that Empire listed Tully Consulting Group (TCG) on its Subcontractor List form to perform work described as bid items 6 and 7, Storm Water Sampling and Analysis, and Storm Water Annual Report, however; on the Disadvantaged Business Enterprise (DBE) Commitment form, Empire revised the work to be performed by TCG to include bid item 4, Prepare Storm Water Pollution Plan. Additionally, the protest further alleges that the amounts claimed towards the DBE participation are inconsistent with the amounts listed in the bid.

In a second protest received from Bortolussi & Watkins, the protest alleges that Empire listed Double G's Supply for erosion vegetation control and irrigation materials totaling \$247,602.56, however; Double G's is not performing a commercially useful function.

Caltrans reviewed the bid documents, as well as the protest and determined that on the Subcontractors List form, Empire identified Tully Consulting Group (TCG) as performing bid items 6 and 7, and provided the description of work as Prepare Storm Water Pollution Prevention Plan (SWPPP) and Storm Water Annual Report. However, based on the description of work provided by Empire, the correct bid item number for SWPPP is 4, rather than 6. Caltrans finds that Empire erred in listing item 6 and per the requirements of the DBE submittal, did submit a quote from TCG which correctly identifies bid item 4. Caltrans agreed to accept the bid on the basis that this was a clerical error and the error did not materially change the bid and can therefore be waived by Caltrans.

Mr. A. Gulcu
June 17, 2015
Page 2

The protest received from Pacific alleges that the bid submitted by Empire for bid items 2, 3 and 29, Time-Related Overhead, Job Site Management Develop Water Supply, was mathematically unbalanced and does not accurately reflect the contractor's reasonable costs nor a reasonable proportionate share of the bidder's anticipated profit, overhead costs and other costs.

As you are aware, Caltrans receives many bids in response to its highway construction needs and strives to ensure the integrity of the competitive bidding process. Caltrans evaluates each bid to determine whether a bid meets the requirements of both the State/Federal contract approval process.

In this case, Caltrans evaluated the bid documents submitted by Empire and concluded that with respect to unbalancing, the bid appears to be both mathematical and materially unbalanced. Caltrans contacted Empire for an explanation on the bid items that appeared unbalanced. With regard to bid item 2, Time-Related Overhead, Empire provided an explanation that the reason for the low bid price for this item, is that the costs were placed in the overhead costs in bid item 31, Mobilization. This is an inappropriate allocation of costs, as costs for overhead should be tracked in the Time-Related Overhead item, not in the Mobilization item. Pursuant to Section 9-1.16D, Mobilization of the Standard Specifications; and under Public Contract Code 10264, mobilization is paid as follows;

50 percent of the mobilization item is paid upon completion of 5-9 percent of the contract work,
75 percent of the mobilization item is paid upon completion of 10-19 percent of the contract work and 100 percent of the mobilization item is paid upon completion of 50 percent of the contract work.

In addition, with respect to bid item 3, Empire inflated the cost of this item to cover the field overhead costs and administrative costs to oversee craft workers in the field. However, this is also an inappropriate allocation of costs, since Job Site Management is intended to cover the costs related to Storm Water Pollution Control management practices.

With respect to bid item 29, Develop Water Supply. The bidder did not anticipate the need to have an irrigation system. However, in order to successfully meet the mitigation requirements from the regulatory agencies, a water supply is necessary to ensure plant survival.

Based on the above responses from Empire, the Department has determined that Empire did not comply with the Contract Standard Specification Section 2-1.30, Job Site and Document Examination prior to the submission of its bid.

Mr. A. Gulcu
June 17, 2015
Page 3

As this protest relates to unbalancing, a bid is materially unbalanced when it is based on prices significantly less than the cost of some work and reflects prices which are significantly over stated in relation to the cost of other work, and generates a reasonable doubt that award to the bidder submitting such a bid would result in the lowest ultimate cost to the state.

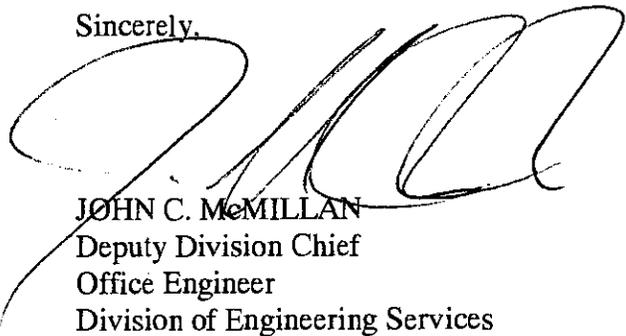
The Federal Highway Administration (FHWA) defines a materially unbalanced as a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest cost to the State. In addition, the FHWA further defines a mathematically unbalanced bid as a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs. (23 CFR 635.102)

The District Engineers reviewed the Engineer's Estimate, along with the bid submitted by Empire and find that the bid is both mathematical and materially unbalanced, and as a result have reservations concerning Empire's ability to be responsible, and consequently, anticipate complications related to contract administration of this bid. Furthermore, the Department has reasonable doubt that an award to Empire will result in the lowest cost to the State. Therefore, the Department rejects the bid submitted by Empire.

Based on the above, Caltrans will proceed to award this contract to the lowest responsible and responsive bidder.

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

Sincerely,



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

**** Transmit Conf. Report ****

P. 1
CALTRANS CONTR AWARDS Fax 916-227-6282

Jun 17 2015 04:09pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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 DIVISION OF ENGINEERING SERVICES
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