BORTOLUSSI & WATKIN, INC.
General Landscape Contractors
77 LARKSPUR ST SAN RAFAEL, CA 94901-4886 Lic # 262905
Phone 415-453-4675 415-453-2978 Fax

8 May 2015

State of California, Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1726 30th Street
PO Box 168041
Sacramento, CA 95816-8041
Fax 916.227.6282

RE: BID PROTEST #01
CT#: 01-262064 (05/08/2015)

Dear John C. McMillan:

Bortolussi & Watkin, Inc. (B&W) formally protest the bid submitted by Empire Landscape Inc. (Empire).

This bid protest is submitted on the basis that Empire, the apparent low bidder, has submitted a nonresponsive bid. The bid should be deemed nonresponsive due to the inconsistent Subcontractor's List form and the Disadvantaged Business Enterprise (DBE) Commitment form, therefore awarding the contract to the next lowest responsive bidder.

The Subcontractor List submitted by Empire lists Tully Consulting Group (TCG) for Bid Item #6 at 100% and Bid Item #7 at 100%. Empire's DBE Commitment form, however, shows TCG being utilized for Bid Items #4 and #7. The work listed is inconsistent between the subcontractors list and the DBE commitment forms because the bid item has been revised from #6 to #4 in the DBE commitment listing.

The DBE Commitment form specifically states, *"IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid. Copies of DBE quotes are required."* Caltrans has stated that any discrepancy between the items of work listed for the subcontractors on the Subcontractor List and the items of work listed for the same subcontractors on the DBE Commitment form is grounds to find the bid nonresponsive.

Furthermore, the amount claimed for DBE credit is inconsistent with Empire's bid and subcontractor listing. Empire listed TCG for 100% of items 6 & 7, however, the DBE breakdown does not reflect the amounts listed on the subcontractor listing. See breakdowns below and Attachment A.

Empire's Bid & Subcontractor Listing Breakdown for TCG (Attachment A):

DESCRIPTION	ITEM #	QUAN	UNIT	UNIT COST	ITEM TOTAL
STORM WATER SAMPLING	6	320	EA	200.00	64,000.00
STORM WATER ANNUAL REPORT	7	6	EA	2,000.00	12,000.00

The total amount listed for TCG by Empire, submitted with the bid, for items #6 & #7 is $76,000.00

The dollar amount claimed for DBE credit is inconsistent with Empire's bid and subcontractor listing. The bid item has been revised to #4 in the DBE commitment listing. See breakdown below and Attachment B.

Empire's DBE Submittal Breakdown for TCG (Attachment B):

DESCRIPTION	ITEM #	QUAN	UNIT	UNIT COST	ITEM TOTAL
PREPARE SWPPP	4				2,600.00
STORM WATER ANNUAL REPORT	7				3,000.00

The total DBE utilization listed for TCG by Empire is $5,600.00

In addition, the DBE commitment quote submitted for TCG is also inconsistent with both the DBE commitment form and the subcontractors listing. See breakdown below and Attachment C.

Empire's DBE Quote Breakdown for TCG (Attachment C):

DESCRIPTION	ITEM #	QUAN	UNIT	UNIT COST	ITEM TOTAL
PREPARE SWPPP					2,600.00
STORM WATER ANNUAL REPORT		6	EA	3,000.00	12,000.00

The total DBE QUOTE from TCG submitted by Empire is $14,600.00

In conclusion, Empire was in clear violation by not providing a DBE Commitment Form that was consistent to the Subcontractor List, B&W respectfully requests that Caltrans reject Empire's bid as nonresponsive and award the contract to next lowest responsive bidder.

Sincerely,

BORTOLUSSI & WATKIN, INC.

Raul Garcia, President

Attachment A

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 01-262064 Project ID: 0115000012
Bidder Name:Empire Landscaping Inc Bidder ID:VC0000106209
DES-OE-0102.2B(REV 5/2014)

Bidding Firm: Empire Landscaping Inc

List this sub? Yes

1) Business Name Watershed Nursery
Location City Richmond State CA
California Contractor License Number .
CA Department of Industrial Relations' Registration Number .
Portion of Work Subcontracted:

Item	%	Description
30	33	(Seeds)93,729 liners grown for 2016 year planting

List this sub? Yes

2) Business Name Tully Consulting Grub
Location City Dixon State CA
California Contractor License Number .
CA Department of Industrial Relations' Registration Number .
Portion of Work Subcontracted:

Item	%	Description	
6	100	Prepare SWPPP	$64,000.00
7	100	Storm Water Annual Report	$12,000.00
		total:	$76,000.00

Attachment B

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
DES-OE-0102.190 (REV 12/2014)

CONTRACT NO.: 01-262064
BID AMOUNT: $ 4,176,090
BID OPENING DATE: 4-28-2015
BIDDER'S NAME: Empire Landscaping Inc.
DBE GOAL FROM CONTRACT %: 6

DBE PRIME CONTRACTOR CERTIFICATION[1]	TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)	TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)
	3	$512,923.83

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED[2]	WORK CATEGORY CODES[3]	NAME OF DBEs (Must be certified on the date bids are opened. Include California certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors)	AMOUNT ($)
4	Prepare SWPPP		TCG	$2,600
7	Storm water annual report		180 S First st Dixon CA 95620 707-693-1926 DBE # 38300	$3,000

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE shown, stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

Total Claimed Participation: $ 5,600 %

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.).

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

[1]Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

[2]If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

[3]Use Work Category Codes from the California Unified Certification Program database.

Signature of Bidder

4-28-15 Date

530-400-3943 (Area Code) Tel. No.

Ahmet Gulcu
Person to Contact (Please Type or Print)

Page (8)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment C

TCG

Civil Engineering and Stormwater Solutions

April 24, 2015

RE: Proposal for SWPPP for Caltrans 01-262964, Bids 4/28/15

Dear Prime Contractor:

Thank you for the opportunity to provide a bid for this work. We provide civil and stormwater engineering services.

Scope of Work:

A. Prepare Stormwater Pollution Prevention Plan (SWPPP).
   I. Prepare SWPPP per State and contract requirements. Include Rain Event Action Plan (REAP) template, Construction Site Monitoring Plan and Sampling and Analysis Plan where required.
   II. Prepare Water Pollution Control Drawings as part of the SWPPP.
   III. Excluded: Installation and implementation of water pollution practices, providing a WPC Manager, conducting training, and monitoring, inspection and correcting water pollution control practices are excluded. A WPC Manager, training, monitoring and inspection are available as an additional service upon request.

B. Storm Water Annual Report
   I. Prepare Stormwater Annual Report in accordance with SWRCB and Caltrans requirements.
   II. Report will be prepared by a Qualified SWPPP Developer (QSD).

Fee:

The SWPPP will be prepared for a Fixed Fee of the following, with fees billed monthly based upon percent completion:

A. Prepare SWPPP (Part of Bid Item No. 4) [redacted]

B. Storm Water Annual Report ($500 EA x 6, Bid Item No. 7) [redacted]

total: $14,600.00

Fees will be due within 30 days of client receipt of invoice. Late payments beyond 30 days past due can be subject to a 1.5% per month interest charge. Payment arrangements can be made to coincide with any owner to contractor payment installments.

Timing and deliverables:

The SWPPP will be provided within 3 weeks of authorization to proceed. The document will be provided in hard copy (4 copies) and electronic PDF format.

Sincerely,

AUTHORIZATION TO PROCEED

Robin Tully

Robin Tully, PE, QSD, President
Prof. Civil Engineering License #. C64554

Name: Date:

[redacted] Exp. 2/4/2016, SBE (Micro) #60919, Exp. 1/31/2016
Annual Revenue Under $1 Million, In Business Since 2007
Taxpayer Identification Number (TIN) 83-0499875; DIR Registration Number: 1000001830

TULLY CONSULTING GROUP
180 S. FIRST ST, SUITE 2 - DIXON, CA - 95620
PHONE: 707-693-1926 - FAX 707-471-0318 - ROBIN@TULLYGROUP.COM