

**BORTOLUSSI & WATKIN, INC.**General Landscape Contractors

77 LARKSPUR ST SAN RAFAEL, CA 94901-4886 Lic # 962905

Phone 415-453-4675 415-453-2978 Fax

14 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 #02  
CT#: 01-262064 (04/28/2015)

Dear John C. McMillan:

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

This bid protest is submitted on the basis that Empire, the apparent low bidder, has not met the Disadvantaged Business Enterprise (DBE) goal per bid document requirements. Empire's bid should be deemed non-responsive as they have incorrectly given credit to Double G's Supply (Double G) for DBE commitment, therefore failing to reach the 6% DBE goal.

Empire listed Double G as a DBE on their DBE Commitment form for Erosion vegetation control and irrigation materials for \$247,602.56, totaling for \$148,561.54 at 60% credit towards commitment. Empire failed to provide the appropriate Work Category Codes for Double G on their DBE commitment form. B&W identified Double G work category codes; G1000 NON-STORE WHOLESALE MERCHANT; G1001 DROP-SHIPPER, (See attachment A). The amount listed by Double G is incorrect and should not be credited towards the DBE goal on the basis that Double G is a non-store wholesale drop ship merchant and should only receive DBE goal credit as shown below.

Special Provisions Section 2-1.12B(1): Credit for materials or supplies you purchase from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

Item 1: 100 percent if the materials or supplies are obtained from a DBE manufacturer.

Item 2: 60 percent if the materials or supplies are obtained from a DBE regular dealer.

Item 3: Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer".

Additionally Section 2-1.12B(1) states: Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)-(4). Under 49 CFR 26.55(c)(1)-(4), the DBE

*must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work. (See Attachment B)*

Empire has Incorrectly utilized Double G for 60% DBE credit as they would from a "regular dealer," however Double G is neither a manufacturer nor a regular dealer of this material. Double G is consistent with Item 3 of Special Provisions Section 2-1.12B(1), and should only receive credit for fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies. In this instance Double G has a direct Mark Up of 5%, or \$11,790.60, as the commission fee for brokering the sale. (See attachment C). Empire should only receive credit for \$11,790.60 towards the DBE commitment

Double G is not performing as a commercially useful function for this project as they are merely operating as a pass-through entity for the erosion and irrigating materials. This is not in compliance with Caltrans DBE requirements, specifications, or under 49 CFR 26.55. Empire chose to utilize a DBE whom does not provide a commercially useful function.

The total DBE commitment submitted by Empire is incorrect and should be revised and corrected as follows:

- ITEM 4: TULLY CONSTRUCTION: \$2,600.00 @ 60% = \$1,560.00
- ITEM 7: TULLY CONSTRUCTION: \$3,000.00 @ 60% = \$1,800.00
- ITEM 30: THE WATERSHED NURSERY: \$ 259,721.29 @ 60% = \$155,832.77
- MATERIAL: DOUBLE G'S SUPPLY: 5% Commission Mark-up only = \$11,790.60

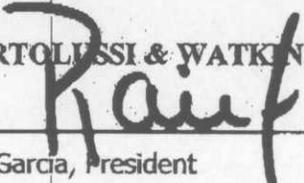
**TOTAL COMMITMENT = \$170,983.37 or 4.09%**

Furthermore, Empire has failed to specify what item number Double G's materials are being provided for and has merely listed them as "Materials" under the column that clearly requires BID ITEM NO. (See attachment D). Empire describes the items as Erosion vegetation control and irrigation materials however there is not an item for Erosion vegetation control and irrigation materials. What items of work is Double G supplying materials for?

Not only has Empire failed to meet the contract goal of 6% DBE commitment but Empire could have easily achieved the goal by utilizing a DBE subcontractor. Subcontractors, such as J&M Land Restoration (J&M) & Green Valley Consulting Engineers (GVCE), could have been utilized at an assumed higher cost than Double G to meet the goal. Empire has attempted to attain a competitive advantage by utilizing a work around material drop-shipper, at a minimal cost of 5% or \$11,790.60, instead of listing subcontractors whose cost to utilize may have been significantly higher.

In conclusion, Empire's bid should be deemed non-responsive on the basis that they have failed to reach the DBE commitment goal of 6% and the contract should be awarded to the next responsive bidder.

Sincerely,

**BORTOLUSSI & WATKIN, INC.**  
  
 \_\_\_\_\_  
 Raul Garcia, President

5/14/2015

Unified Certification Program

[Back To Query Form](#)

Attachment A

**Search Returned 1 Records**

Thu May 14 12:11:22 PDT 2015

**Query Criteria**

Firm/DBA Name: double g's supply, inc.  
Firm Type: DBE

<b>Firm ID</b>	41416
<b>Firm/DBA Name</b>	DOUBLE G'S SUPPLY, INC.
<b>Address Line1</b>	1060 CARAGH STREET
<b>Address Line2</b>	
<b>City</b>	ROSEVILLE
<b>State</b>	CA
<b>Zip Code1</b>	95747
<b>Zip Code2</b>	
<b>Mailing Address Line1</b>	1079 SUNRISE AVENUE
<b>Mailing Address Line2</b>	SUITE B #22
<b>Mailing City</b>	ROSEVILLE
<b>Mailing State</b>	CA
<b>Mailing Zip Code1</b>	95661
<b>Mailing Zip Code2</b>	
<b>Certification Type</b>	DBE
<b>E-Mail</b>	ggullory@doublegsupply.com
<b>Contact Name</b>	GRACE LORRAINE GUILLORY
<b>Area Code</b>	( 530 )
<b>Phone Number</b>	902-3068
<b>Fax Area Code</b>	( 866 )
<b>Fax Phone Number</b>	878-2769
<b>Agency Name</b>	DEPARTMENT OF TRANSPORTATION
<b>Counties</b>	01; 03; 04; 06; 07; 09; 10; 11; 12; 15; 19; 20; 21; 22; 23; 24; 27; 28; 30; 31; 32; 33; 34; 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; 46; 47; 48; 49; 50; 51; 54; 57; 58;
<b>Districts</b>	01; 02; 03; 04; 05; 06; 07; 08; 10; 11; 12;
<b>DBE NAICS</b>	425120;

**ACDBE NAICS**

<b>Work Codes</b>		G1000 NON-STORE WHOLESALE MERCHANT; G1001 DROP-SHIPPER;
<b>Licenses</b>		
<b>Trucks</b>		
<b>Gender</b>		F
<b>Ethnicity</b>		BLACK
<b>Firm Type</b>		DBE

[Back To Query Form](#)

Attachment B

02-27-15

**2-1.10 SUBCONTRACTOR LIST**

On the Subcontractor List form, list each subcontractor to perform 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.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. Portion of work it will perform. Show the portion of the work by:
  - 4.1. Bid item numbers for the subcontracted work
  - 4.2. Percentage of the subcontracted work for each bid item listed
  - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

02-21-14

**2-1.11 RESERVED**

01-23-15

**2-1.12 DISADVANTAGED BUSINESS ENTERPRISES**

**2-1.12A General**

Section 2-1.12 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

Include this assurance in each subcontract you sign with a subcontractor.

**2-1.12B Disadvantaged Business Enterprise Goal**

**2-1.12B(1) General**

Section 2-1.12B applies if a DBE goal is shown on the *Notice to Bidders*.

The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Make work available to DBEs and select work parts consistent with available DBEs, including subcontractors, suppliers, service providers, and truckers.

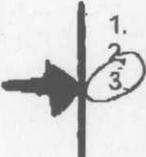
Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract.

→ Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)-(4). Under 49 CFR 26.55(c)(1)-(4), the DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.

All DBE participation will count toward the Department's federally-mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs will be evaluated on a contract-by-contract basis and counts toward the goal in the following manner:

- 
1. 100 percent if the materials or supplies are obtained from a DBE manufacturer.
  2. 60 percent if the materials or supplies are obtained from a DBE regular dealer.
  3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit toward the goal if you employ a DBE trucking company that is performing a commercially useful function. The Department uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

[49 Fed Reg 59595 (10/2/14) (to be codified at 49 CFR 26.55(d))]

**2-1.12B(2) DBE Commitment Submittal**

Submit DBE information under section 2-1.33.

Submit written confirmation from each DBE shown on the DBE Commitment form stating that it will be participating in the Contract in the type and amount of work shown on the form. If a DBE is participating as a joint venture partner, submit a copy of the joint venture agreement.

**2-1.12B(3) DBE Good Faith Efforts Submittal**

You can meet the DBE requirements by either documenting commitments to DBEs to meet the Contract goal or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal.

If you have not met the DBE goal, complete and submit the DBE Good Faith Efforts Documentation form under section 2-1.33 showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered.

Submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the DBE goal has not been met.

Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.

Attachment C



1079 Sunrise Avenue  
Ste B-23  
Roseville, CA 95661



**ESTIMATE**

Date	Estimate #
4/27/2015	01-262064

License # 046113  
WMBE #13060115  
SBE #1770891  
DBE.WBE.MBE  
#41416

(P) 620.902.8068  
(F) 866.878.2769

NAME / ADDRESS
ESTIMATORS
ATTENTION: Empire Landscapes

Project
CalTrans 01-262064

Description	Qty	Rate	Total
Norwesco 10000 Gallon Water Tank 141" Diameter X 160" Height W/2 Poly Tank FTG	6	7,082.353	42,494.12
DELIVER/ FREIGHT CHARGE	2	1,300.00	2,600.00
8X25 Rice Straw Waste Biodegradeable Earthsa	600	21.472	12,883.20
1'x1'x24' Wood Stakes	3,500	0.295	1,032.50
Sch- 40 2" PVC Pipe Be	3,900	0.688	2,683.20
15' X 300' 180N Non-Woven Fabric	1	650.00	650.00
Node 100 Controller With Valve	150	84.595	12,689.25T
Mp 1000 Rotator 90-210 Degree Hunt	1	4.623	4.62
SDR-21 3/4" PVC 200# Pipe Be	8,000	0.125	1,000.00
Sch- 40 1" PVC Pipe Be	6,000	0.324	1,944.00
Xerf-Bug Emister Blue Rainbird	290,000	0.278	80,620.00
6 Plastic Stake NDS	290,000	0.12	34,800.00
160 X 700 Poly Drip Tubing 1000' Roll	75,000	0.085	6,375.00
Sod Staple/Tie Down Rounded End 6"	2,500	0.053	132.50
160 X 220 Poly Drip Tubing 1000' Roll	750,000	0.028	21,000.00
Propagator Pro 30 Gallon Drum	6	1,059.50	6,357.00
Spreader Rideon 2011 Triumph with Centri Hopper	1	8,546.57	8,546.57
Mark Up 5%		11,790.60	11,790.60T

\$11,790.60

towards goal?

www.DoubleGsupply.com / Gsupply@doublegsupply.com

It is the contractors responsibility to ensure the qty of all materials is accurate, all materials meet the plans and specs, and submittals are approved prior to order delivery. Double G's Supply, Inc. is not responsible for materials that do not meet the plans and specs.

Pricing will vary due to size, quantity, and specs. Delivery charge subject to quantity order and location.

DBE mark up subject to quantity ordered. Some items are special order. Freight is not included.

This quote is valid for 30 days from this dated estimate

Subtotal \$247,602.56

Sales Tax (0.0%) \$0.00

Total \$247,602.56

Thank you! We appreciate your business !!!

Attachment D

# Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
DBE - COMMITMENT  
DES-05-0102100 (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<sup>1</sup>: 3 TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)

TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE): \$ 512,923<sup>85</sup>

DBE ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	WORK CATEGORY CODES <sup>3</sup>	NAME OF DBE (Must be certified on the date bids are opened. Include California's certification no., DBE address, and phone number. Show 2nd and lower tier for subcontractors.)	AMOUNT (\$)
4	Prepara SWPPP	TCG		\$ 2600
7	Storm water annual report		DBE # 38300	\$ 3000
30	Contractor Supplied Nursery		The water shed Nur DBE # 38770	\$ 259,921 <sup>29</sup>
	Erosion vegetation control		Double G's Supply	\$ 247,602 <sup>58</sup>
	and irrigation materials		DBE # 44616	

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

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

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.

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

<sup>3</sup>Use Work Category Codes from the California Unified Certification Program database.

Total Claimed Participation:  $\frac{512,923}{1060} \rightarrow 307,853$

733

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

Signature of Bidder: A. C.

Date: 4-28-15 (Area Code) Tel. No. 530-400-3947

Person to Contact: Ahmet Gulcu (Please Type or Print)

no item # 70

Materials

Page 1.2.3 all

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
DBE - COMMITMENT  
DES-06-0102-100 (REV 12/2014)

CONTRACT NO: 01-262064

BID AMOUNT: \$ 4,176,090

BID OPENING DATE: 4-28-15

BIDDER'S NAME: Empire Landscaping Inc

DBE GOAL FROM CONTRACT %: 6

DBE PRIME CONTRACTOR CERTIFICATION: 3 TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)

TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE): \$ 512,923<sup>58</sup>

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED*	WORK CATEGORY CODES <sup>2</sup>	NAME OF DBE: <small>Must be certified on the state bid file and include Caltrans' certification no., DBE address, and phone number. Show 2nd and 3rd party subcontractors.</small>	AMOUNT (\$)
		7 6		
	Materials Erosion, vegetation control and irrigation materials		Double G Supply 1079 Sunrise Ave Roseville CA 95661 530-902-3058 DBE # 41416	\$ 247,602 <sup>56</sup>
	(see attached list)			

no item # ?

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

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

\*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

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

<sup>2</sup>Use Work Category Codes from the California Unified Certification Program database

Total Claimed Participation \$ 247,602<sup>56</sup>

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

A. C.  
Signature of Bidder

4-28-15  
Date

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

Ahmet Gulcu  
Person in Contact

Gulcu  
(Please Type or Print)

Page (3)