

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

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www.dot.ca.go

*Serious drought.  
Help save water!*

May 14, 2015

Facsimile: (707) 8251769

Hugh M. McCullough Jr., President  
McCullough Construction Inc.  
57 Alder Grove Road  
Arcata, CA 95521

01-493704  
01-Hum-96-11.0/R13.2  
B.O. 4/7/2015

Dear Mr. McCullough:

The Department of Transportation (Caltrans) received a protest dated April 23, 2015, and from McCullough Construction Inc. (McCullough) and May 4, 2015 from Sara H. Kornblatt of Gibbs Giden Locher Turner Senet & Wittbrodt LLP on behalf of McCullough, protesting the bid documents submitted by Mercer-Fraser Company (Mercer-Fraser) for the above contract. The protest alleges that Mercer-Fraser submitted an incomplete Disadvantaged Business Enterprise (DBE) Commitment form that excluded information, specifically, the total number of all subcontracts (DBE & Non DBE), and the total value of all subcontracts (DBE & Non DBE). In addition, the protest alleges that the total dollar amounts listed for S.T. Rhoades Construction, Inc. (S.T. Rhoades) are inconsistent. The protest further alleges that Mercer-Fraser provided information in its DBE Good Faith Effort documentation that indicated that McCullough Construction was only bidding as a prime contractor. McCullough requests Caltrans find Mercer-Fraser's bid nonresponsive.

As the protest relates to Mercer-Fraser's DBE Commitment form, although the exclusion of these items may be characterized as a deviation in the bidding documents, Caltrans has determined that this is an immaterial deviation, as it does not affect the bid amount. It is therefore, within Caltrans' discretion to waive the immaterial deviation.

As the protest relates to the inconsistency in the total dollar amount for S.T. Rhoades, the total amount listed for each bid item, is not a one for with the total amount listed on the DBE participation form.

The Caltrans Bidder-DBE-Commitment form states in part... "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 "Subcontractors List" submitted with your bid."

Mercer-Fraser on bid day listed ST. Rhoades to perform bid items, 18, 21, 22, 24, 27, 37, 40, 41, 50-60, 62, 68, 69. On the DBE Commitment form, Mercer-Fraser listed these same bid items, but excluded bid item 68, Vegetation Control (Minor Concrete). Since the bid items of work listed for S.T. Rhoades on the Subcontractor List are different from the bid items of work on the DBE Commitment Form, the bid submitted by Mercer-Fraser is nonresponsive.

Mr. H. McCullough  
May 14, 2015  
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Based on the above, Caltrans finds McCullough's protest has merit and will proceed to award the contract to the lowest responsive and responsible bidder, provided all requirements have been met.

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

Sincerely,



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

cc: S. Kornblatt  
File 4575.008  
[Skornblatt@GibbsGiden.Com](mailto:Skornblatt@GibbsGiden.Com)  
Fax (310) 552-0805

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

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CALTRANS CONTR AWARDS Fax 916-227-6282

May 15 2015 05:05pm

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

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