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05-21-159P039139FM

May 19, 2015

VIA U.S. MAIL and EMAIL - [John.McMillan@dot.ca.gov](mailto:John.McMillan@dot.ca.gov)

John McMillan  
Office Engineer  
State of California, Department of Transportation  
1727 30<sup>th</sup> Street, MSC43  
Sacramento, California 95816

Re: *Protest of the rejection of Mercer-Fraser's bid on Contract No. 01-493704*  
Our File No. 3216-000

Dear Mr. McMillan:

I am writing on behalf of my client, Mercer-Fraser Company ("Mercer-Fraser"), to protest the Department of Transportation's ("CalTrans") rejection of Mercer-Fraser's bid for Contract 01-493704 ("Contract"). CalTrans found Mercer-Fraser's bid non-responsive to the requirement on the DBE Commitment form that the "names of the 1st tier DBE Subcontractors and items of work must be consistent with the Subcontractor List." The work on Mercer-Fraser's DBE Commitment form actually is consistent with that list, as the list must be interpreted by law, so Mercer-Fraser is responsive to the requirement.

In preparing its bid, Mercer-Fraser had two different subcontractors – Apex Fence Co. and S.T. Rhoades Construction – bid on item 68, Vegetation Control (Minor Concrete). Mercer-Fraser did not realize the duplication, and listed both subcontractors to perform that work. See **Exhibit A** hereto. As required by Public Contract Code section 4106, if a prime contractor lists more than one subcontractor for a portion of work, the prime contractor must perform that work itself. CalTrans has enforced that provision in other instances in which bidders have listed two subcontractors for the same portion of work. Mercer-Fraser must and will perform Vegetation Control (Minor Concrete) itself.

Mercer-Fraser discovered the duplication when it was preparing its DBE Commitment form, which is not submitted until after the bid. Upon realizing that it could not, **as a matter of law**, use S.T. Rhoades for item 68, Mercer-Fraser did not list S.T. Rhoades for that work on the DBE Commitment form, and omitted the cost of that work from its claimed DBE percentage. See **Exhibit B** hereto. Thus, its DBE Commitment form is accurate and is consistent with its subcontractor list.

Mercer-Fraser's DBE Commitment form is consistent with its subcontractor listing, as that list must be interpreted under Public Contract Code section 4106. As a result,

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Mercer-Fraser's bid is responsive to the requirement that names of DBE Subcontractors and items of work "be consistent with the Subcontractor List (Pub. Cont. Code § 4100 et seq.)." Mercer-Fraser respectfully requests that CalTrans reconsider its decision to reject Mercer-Fraser's bid as non-responsive and award the Contract to Mercer-Fraser as the lowest responsive, responsible bidder.

Thank you for your consideration of these matters.

Very truly yours,

DIEPENBROCK ELKIN LLP



Jennifer L. Dauer

JLD/sa

Enclosures

cc: Charlie Anderson ([canderson@mercerfraser.com](mailto:canderson@mercerfraser.com) )

Exhibit A

Bidding Firm: Mercer-Fraser Company

List this sub? Yes

→ 1) Business Name APEX FENCE CO.  
Location City ANDERSON State CA  
California Contractor License Number 269127  
CA Department of Industrial Relations' Registration Number 1000007379  
Portion of Work Subcontracted:

Item %	Description
17 100	TREATED WOOD WASTE
19 100	REMOVE GUARDRAIL
23 100	RECONSTRUCT GUARDRAIL
39 46	RAIL ELEMENT WALL
68 90	VEGETATION CONTROL MINOR CONCRETE

List this sub? Yes

2) Business Name APEX FENCE CO.  
Location City ANDERSON State CA  
California Contractor License Number 269127  
CA Department of Industrial Relations' Registration Number 1000007379  
Portion of Work Subcontracted:

Item %	Description
70 100	TRANSITION RAILING TYPE WB-SPECIAL
71 100	ALTERNATIVE IN-LINE TERMINAL SYSTEM

List this sub? Yes

3) Business Name INDEPENDENT STRUCTURES  
Location City REDDING State CA  
California Contractor License Number 951126  
CA Department of Industrial Relations' Registration Number 1000008422  
Portion of Work Subcontracted:

Item %	Description
2 100	CONSTRUCTION AREA SIGNS
20 100	REMOVE ROADSIDE SIGNS
42 100	FURNISH SINGLE SHEET ALUMINUM SIGN
43 100	ROADSIDE SIGN-ONE POST
44 100	ROADSIDE SIGN-TWO POST

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
Contract No.: 01-493704 Project ID: 0100000478  
Bidder Name: Mercer-Fraser Company Bidder ID: VC0000003985  
DES-OE-0102.2B (REV 5/2014)

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Bidding Firm: Mercer-Fraser Company

List this sub? Yes

13) Business Name S.T. RHOADES CONSTRUCTION  
Location City REDDING State CA  
California Contractor License Number 930684  
CA Department of Industrial Relations' Registration Number 1000008025  
Portion of Work Subcontracted:

Item	%	Description
57	100	15" CONCRETE FLARED END SECTION
58	100	17"X13" FLARED END PIPE ARCH SECTION
59	100	36" PRECAST CONCRETE PIPE INLET
60	100	MINOR CONCRETE (CURB)
62	100	MISC IRON & STEEL

List this sub? Yes

→ 14) Business Name S.T. RHOADES CONSTRUCTION  
Location City REDDING State CA  
California Contractor License Number 930684  
CA Department of Industrial Relations' Registration Number 1000008025  
Portion of Work Subcontracted:

Item	%	Description
68	100	VEGETATION CONTROL (MINOR CONCRETE)
69	100	CONCRETE BARRIER

Exhibit B

# Low Bidder

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**DBE - COMMITMENT**  
 DES-OE-0102 10D (REV 12/2014)

CONTRACT NO: 01-493704

BID AMOUNT: \$ 325,125.00

BID OPENING DATE: 4/7/2015

BIDDER'S NAME: Mercer-Fraser Company

DBE GOAL FROM CONTRACT % 12%

04-13-15 P12:07 IN

DBE PRIME CONTRACTOR CERTIFICATION <sup>1</sup> :	TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE)	TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)
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BID 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 DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors)	AMOUNT (\$)
10, 30, 31	Hydroseed, Wood Mulch, Temp Hydroseed		M&S Environmental Landscapes Inc 12192 Mac's Rd Redding, CA 96003 530-241-1418 DBE - 030736	\$18,123.00
18, 21, 22, 24, 27, 37, 40, 41, 50-60, 62, 69	Drainage, Concrete		S.T. Rhoades Construction Inc 8585 Commercial Way Redding, CA 96002 530-223-9322 DBE - 37693	\$272,999.00 ←
29, 34, 35	Trucking		Frank Zabel Trucking PO Box 6236 Eureka, CA 95502 707-443-4277 DBE -4823	\$26,400.00

<p>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.</p> <p>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.)</p> <p><sup>1</sup>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.</p> <p><sup>2</sup>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.</p> <p><sup>3</sup>Use Work Category Codes from the California Unified Certification Program database.</p>	<p>Total Claimed Participation</p> <p>\$ 317,522.00</p> <p>16.78%</p>
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The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

*Charlie Anderson*  
 Signature of Bidder

4/7/2015 Date  
 707-443-6371 (Area Code) Tel. No.

Charlie Anderson Person to Contact  
 (Please Type or Print)

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# S.T. RHOADES CONSTRUCTION INC.

8585 COMMERCIAL WAY, REDDING, CA 96002  
 P.O. BOX 494520, REDDING, CA., 96049  
 530-223-9322, Fax 530-223-9222, License # 930684  
 MBE/SBE- 1247344,U/DBE-37693, UNIONS-OPERATORS, LABORERS  
 DIR # 1000008025



## PROPOSAL

To: General Contractors

Attn:

Project: CT 01-493704

Date:

4/7/2015

Bid date:

4/7/2015

Item	Description	Quantity	UM	Unit Price	Amount
18	Abandon Culvert	390	lf	\$ 32.00	\$ 12,480.00
21	Remove Inlet	5	ea	\$ 1,550.00	\$ 7,750.00
22	Remove Headwall	6	ea	\$ 1,075.00	\$ 6,450.00
24	Adjust Inlet	3	ea	\$ 1,500.00	\$ 4,500.00
27	Sand Backfill	13	cy	\$ 200.00	\$ 2,600.00
37	Place Hot Mix Asphalt (miscellaneous area)	180	sqyd	\$ 140.00	\$ 25,200.00
40	Minor Concrete (minor structure)	7	cy	\$ 2,400.00	\$ 16,800.00
41	Minor Concrete Backfill	6	cy	\$ 300.00	\$ 1,800.00
50	18" Plastic Pipe	6	lf	\$ 331.00	\$ 1,986.00
51	12" Reinforced Concrete Pipe	140	lf	\$ 209.00	\$ 29,260.00
52	15" Reinforced Concrete Pipe	13	lf	\$ 215.00	\$ 2,795.00
53	18" CSP	65	lf	\$ 315.00	\$ 20,475.00
54	17" x 13" Corrugated Steel Pipe Arch	7	lf	\$ 279.00	\$ 1,953.00
55	18" Flared End Section	6	ea	\$ 150.00	\$ 900.00
56	12" Concrete Flared End Section	6	ea	\$ 900.00	\$ 5,400.00
57	15' Concrete Flared End Section	1	ea	\$ 920.00	\$ 920.00
58	17" x 13" Flared End Pipe Arch Section	1	ea	\$ 125.00	\$ 125.00
59	36" Precast Concrete Pipe Inlet	13	lf	\$ 500.00	\$ 6,500.00
60	Minor Concrete (Curb) (lf)	1660	lf	\$ 44.00	\$ 73,040.00
62	Miscellaneous Iron and Steel	2165	lb	\$ 3.00	\$ 6,495.00
68	Vegetation Control (minor concrete)	330	sqyd	\$ 58.00	\$ 19,140.00
69	Concrete Barrier (special)	47	lf	\$ 810.00	\$ 38,070.00
81	Mobilization (partial)	1	ls	\$ 7,500.00	\$ 7,500.00
				Total:	\$ 292,139.00

- Notes
- Proposal valid for 30 days, Allow 10 days for scheduling
  - Payment to be made 15 days after work is completed
  - Price includes furnishing and installation unless otherwise noted.
  - All Work to be available upon mobilization to site and performed consecutively
  - 1 Mobilization included for our work
  - Quote is non seperable.
  - Excludes Traffic Control
  - Item 69 and 81 include for form/pour/strip

- Exc.
- Bonds
  - Permits
  - Raising/Lowering Iron

0001/002

Apr 7 2015 12:44pm

ST Rhoades Const Inc Fax:530-223-9222