



April 10, 2015

VIA FACSIMILE (916) 227-6282

John C. McMillan
Deputy Division Chief
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
P.O. Box 168041
Sacramento, CA 95816-8041

Re: Response to Liberty Maintenance, Inc.'s letter dated April 9, 2015
Contract No. 03-3F3404
Construction On State Highway In Sacramento Near Isleton At Three Mile Slough Bridge
In District 03 On Route 160
03-Sac-160-L7.0
Project ID 0312000219
Federal-Aid Project ACBHNH-P160 (024) E

Dear Mr. McMillan:

F.D. Thomas, Inc. (F.D. Thomas) has reviewed the letter dated April 9th, 2015 provided by Liberty Maintenance Inc. (Liberty), which was in response to F.D. Thomas' Bid Protest Letter dated April 6, 2015. Liberty's response failed to satisfactorily address the issues brought forth in the Bid Protest.

Liberty's bid should be deemed non-responsive for the following reasons:

- Liberty's bid violates California's Subcontractor Listing Laws.
- Liberty's bid does not comply with CalTrans' Disadvantaged Business Enterprise (DBE) requirements.

Furthermore, F.D. Thomas reaffirms its stance that Liberty is not a responsible bidder for the following reason:

- Liberty's bid requires Liberty to self-perform work for which it is not qualified under California Contractor License Laws (Liberty is a "C-33"- Specialty Painting Contractor intending to perform Adjustment and Lift Span Balancing, which should be done by an "A" Licensed General Engineering Contractor).

Liberty's Bid Violates California's Subcontractor Listing Laws

Liberty has acknowledged that they mistakenly failed to include Tri-Valley Striping on their subcontractor list due at the time of bid. In doing so, Liberty concedes that its bid is not responsive. Accordingly, the only question is whether CalTrans can waive the mistake as a minor irregularity. It cannot.



Only inconsequential mistakes in a bid can be waived. *Valley Crest Landscape v. City of Davis*, 41 Cal.App.4th 1432, 1442 (1996). More importantly, it is well-settled that, when a mistake gives the contractor grounds to withdraw its bid under Public Contract Code §5103, it creates an unfair advantage over other bidders and, therefore, cannot be waived. *Id.*

Under section 5103, a contractor can withdraw its bid by demonstrating that it (1) made a mistake in its bid, (2) the mistake materially changed the bid and (3) the mistake was made in filling out the bid and not due to an error in judgment or carelessness in inspecting the site, plans or specifications. Liberty's failure to list Tri-Valley Striping is exactly the type of mistake for which relief is available under section 5103.

First, according to Liberty, because it received Tri-Valley Striping's proposal at the last minute, it made a mistake in its bid, i.e., it forgot to list them as a subcontractor. Second, the mistake clearly made the bid materially different than what Liberty intended because, under Public Contract Code §§4104 and 4106, Liberty must now self-perform all of the bid items that Liberty expected Tri-Valley Striping to perform (i.e., bid item nos. 7, 8, 16, 20, 27, 27, 28, 29, 30 and part of 32). Third, the mistake was not due to an error in judgment or carelessness in inspecting the site or contract documents. Rather, the mistake was due to Liberty's rush to complete its bid when it received Tri-Valley's proposal at the eleventh hour. It is hard to imagine a more clearer example of a contractor having grounds to withdraw a bid under section 5103.

Notably, it is not relevant whether Liberty actually submits a claim for mistake to CalTrans. As stated by the court in *Valley Crest*, the rule requiring rejection applies whether or not the bidder has, in fact, claimed mistake and sought relief. *Valley Crest*, 41 Cal.App.4th at 1442. "[T]he key point is that such relief was available" and, consequently, the contractor had "a benefit not available to other bidders; it could have backed out." *Id.*

Liberty Failed To Comply With CalTrans' DBE Requirements

- Liberty's April 9th response did not even address their failure to properly submit the DBE Commitment Form DES-OE-0102.2B (rev12/2014). Liberty's Form incorrectly states that the "Total Value of all Subcontracts (DBE and Non DBE)" is \$377,244.56. This number does not take into account the information provided on their subcontractor listing where they also listed Peterson Industrial Scaffolding and Bentencourt Bros. Construction for roughly an additional \$670,100.

As discussed in F.D. Thomas' previous letter, the unfair advantage that Liberty gained by not completing the DBE Form was additional time to focus on other issues (i.e., evaluate Tri-Valley's last minute bid, re-calculate its estimates, etc.).

- Although identified on the DBE Commitment Form, Liberty admittedly failed to list Tri-Valley Striping, license # 850528, on its form subcontractor list (CalTrans Form DES-OE-0102.2B) (rev 5/2014). Under Public Contract Code §4104, because Tri-Valley is not listed on the subcontractor listing as a first tier subcontractor, it cannot perform work on this project, lowering the amount of DBE participation by \$54,289.80.



- F.D. Thomas received the same quote from Summit West Environmental, Inc., stating that "SummitWest will be teaming with Sycamore Environmental Consultants, Inc. to provide this field work." This qualification on the quote along with the email confirmation remove all doubt that a non-DBE firm will be performing at-least a portion of the work subcontracted to Summit West. It would not be unreasonable to assume that when Summit West references "this field work" that they are referring to 100 days of on-site biological monitoring for a cost of \$70,000. Unfortunately, Liberty has not provided information regarding which portion of the work is to be performed by the DBE.

Liberty Is Not A Responsible Bidder Because Liberty Is Not Qualified To Perform Bid Item #26 (Special Provisions 78-2 Adjust Lift Span Balance)

Contrary to Liberty's contention, it is irrelevant that the Notice to Bidders states that the Contractor must have either a Class A license or C-33 license. Liberty cannot, with any credibility, argue that this statement allows the Contractor perform any and all work called for in the Contract Documents. For example, Bid Item No. 10 [Temporary Signal System] calls for electrical work that can only be performed by a contractor that holds a C-10 electrical license. Under Liberty's flawed logic, it can self-perform this work with a C-33 license simply because of the language in the Notice to Bidders.

In fact, Liberty's argument directly contradicts California's Business & Professions Code, which provides:

When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor.....
(Cal. Bus. & Prof. Code §7059(b)).

In other words, the fact that the bid documents allow CalTrans to award the Project to a specialty contractor holding a C-33 license does not mean the specialty contractor can perform work that exceeds the scope of the C-33 license.

As discussed in F.D. Thomas' April 6th letter, Liberty did not list a subcontractor to perform Bid Item No. 26 (Adjust and Balance Lift Span) and, as set forth above, Liberty cannot self-perform the work. Therefore, Liberty is not a responsible bidder. F.D. Thomas, on the other hand, holds a Class A-General Engineering License, and has also solicited a specialty contractor to assist with this work.

In closing, Liberty has failed to demonstrate that these errors are more than slight irregularities and should be deemed non-responsive as well as a not responsible bidder.



Respectfully,

Grover Lee
F.D. Thomas VP/Division Manager

P: 541.864.1602
C: 541.840.6276
F: 541.664.1105
E: grover@fdthomas.com



SUMMITWEST

ENVIRONMENTAL, INC

* CBC is registered California DBE certification #38681

Contact: Chez Brungraber, chezziebr@gmail.com; 858.220.5674

Quote	
Date	17-Mar-15
Quote #	1
Customer ID	ACC West Coast, Inc.
Name	Bridge repainting project
Main client:	CalTrans

LABOR			
Name	Quantity	Scope	Total
Species Protection	1	Preconstruction survey, report, resume submittal, client communications	\$2,000
Weekly Monitoring summary	20	Weekly monitoring reports, \$200 each. Estimated 20 weeks for 100 days of monitoring	\$4,000
Final Monitoring Report	1	Report at the end of the project; inclusive of all findings and monitoring	\$3,000
Biological Construction Monitoring	100	Estimated 100 days of on-site, biological monitoring. Additional days over 100 to be billed at \$700.	\$70,000
Total			\$79,000

Additional Costs					
Type	Unit	Cost	Est. Qty	Scope	Total
Reproduction, copies	\$	cost	unknown	Client requests for printing, duplications, reproductions will be billed at cost	
Incidentals	\$	cost	unknown	Additional client requests will be billed at cost	
Additional Construction Monitor	days	\$700	unknown	Additional monitoring days over the estimated 100 days	
Incident Reporting	report	\$500	unknown	Reporting for incidents, unknown quantity, \$500 per incident	
Total unknown					

Notes:

All costs are *inclusive* of mileage, per diem, equipment and other related costs.

This quote does not include any ESA installation, materials, netting, fencing, or other related materials.

SummitWest will be teaming with Sycamore Environmental Consultants, Inc. to provide this field work.

Estimated total	\$79,000
Not to exceed	\$100,000

From: FD THOMAS

Received

541 664 1105

Apr 13 2015 07:59am

04/13/2015 08:08

#066 P.006/011

Second Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE - COMMITMENT
DES-OE-0102100 (REV 12/2014)

CONTRACT NO: 03-3F3404
BID AMOUNT: \$ 8,870,447.20
BID OPENING DATE: MARCH 17, 2015
BIDDER'S NAME: Liberty Maintenance, Inc. DBA Ohio Liberty Maintenance Inc
DBE GOAL FROM CONTRACT %: 4%

DBE PRIME CONTRACTOR CERTIFICATION¹ PRIME IS NOT DBE TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE) 11 (9 subs, 2 suppliers) TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE) 377,244.56*

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	WORK CATEGORY CODES ³	(Must be certified on the date bids are opened. Include Caltrans certification no., DBE address, and phone number. Show 2nd or a lower tier subcontractors)	AMOUNT (\$)
17	14110 Work Area Monitoring	J9510	# 39393 Aero Environ. Cons.	120,551.76
18-19	28564 Species Protection 144001 Biologist	C8700 C8792	# 38681 Summit West Enviro. + 38300	79,000.00
15	130200 Water Pollution	PARA C8852	# 892008 Tully Consulting Grp	20,125.00
11	128652 Port. Change. HSA Signs	C1200	# 41297 Hance Traffic Ctr	6,600.00
7-8, 16	120151 150714 141103 150715 *		# 442645 Tri Valley Contracting	54,289.80
20-21, 27-30	120152 150715 150714 840504 C8406		# 442645 Construction Area Signs	21,880.00
4-6	120090 Const. Area Signs 120100 Traffic Control Sys	TRAFFIC CTRL C1200	Additional INFO Listed	\$377,446.56

Show all DBE firms being claimed for credit, regardless of tier. Attach written certification 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.

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).

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

²If 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.

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

Total Claimed Participation
See Page 3 of 19 | 4.25%

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

x [Signature]
Signature of Bidder
Date: 3/18/15 (Area Code) Tel No: 330-755-7711

Emmanuel Frangos
Person to Contact (Please Type or Print)

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1733, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-69, Sacramento, CA 95814.

* NON-DBE'S NOT ~~INCLUDED~~ FROM SUBCONTRACTOR LISTING

Liberty Maintenance Inc DBA Ohio Liberty Maintenance Inc.
 Contract 03-3F3404
 DBE COMMITMENT
 PAGE 1 Continued, Document DES-OE-0102.11A

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	CATEGORY CODES	NAME OF DBE'S ADDRESS, TEL NO., CERTIFICATION NO.	AMOUNT \$
22	590116, Fuel for Equipment required to Clean and Paint Steel Structure 60 % (\$100,000 of fuel purchases are estimated)	CO624	First Fuel Inc. 14 Bolivar St. n New Port Beach, CA 92663 Tel: (949) 861-0284 Certification # 36185	60,000.00
22	Misc. Materials needed to complete items. 590116, Clean & Paint Structural Steel (Existing Bridge) 60 % (\$25,000 of material purchase are estimated)	G1000	Double G's Supply Inc. 1080 Caragh St., Roseville, CA 95661 Tel: (530) 902-3058 Certification # 41416	15,000.00
Supplemental information from Page 1, due limited amount of space on form.				
37	14110 Work Area Monitoring	9510	Aero Environmental Consulting 599 Lopez Avenue, Seaside CA 93955 Tel: (831) 394-1191 Certification # 35995	120,553.76
19	28564 Species Protection	CB700	Summit West Environmental, Inc.	75,000.00
18	146001 Contractor Supply Biologist (Day)	CB792	2683 NW Rainbow Ridge Dr, Bend OR 97701 Certification #38681	
15	130200 Prepare Water Pollution Control Program	C8852	Tully Consulting Group 180 S. First St, Suite 9, Dixon CA 95260 Tel: (707) 693-1926 Certification #35300	20,125.00
11	128652 Portable Changeable Message Sign	C1200	Maneri Traffic Control 47423 Rainbow Canyon, Temecula, CA 92252 Tel: (951) 695-5104 Certification # 892008	6,600.00
7-8	120151 Temp Traffic Stripe, 120152 Temp Pavement Marker	CB406	Tri-Valley Striping	54,289.80
16	141103 Remove Yellow Thermoplastic Stripe (Hazardous Waste)		25 Charles Hill Circle, Orinda CA 94563 Tel: (925) 787-1003 Certification # 41297	
20-21	150714 Remove Thermoplastic Stripe, 150715 Remove Thermo Pavement Marker			
27-28	840504 4" Thermo Traffic Stripe, 840515 Thermoplastic Pavement Marking			
29-30	840523 4" Thermo Traffic Stripe (Broken), 850111 Pavement Marker (Retroreflective)			
37	999990 Mobilization <i>-partial item 32- Tri-Valley included \$3000 for mobilization in their proposal. This amount was included in Liberty Maintenance's mobilization bid price.</i>			
4	120090 Construction Area Signs	C1201	Construction Area Signs	21,880.00
5	120100 Traffic Control Systems <i>-partial item - #5 CAS will be providing traffic control services prior to and during the installation and dismantling of the temporary signal system.</i>		215 Taylor Road, Newcastle CA 95658 Tel: (516) 663-1858 Certification # 442545	
6	120120 Traffic Control Barricade			

Total Claimed Participation

377,446.56
4.255%

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 03-3F3404 Project ID: 0312000219

Bidder Name:Liberty Maintenance, Inc. DBA Ohio LiberBidder ID:VC1500003283

List this sub? Yes

2) Business NameBentancourt Bros. Construction
Location CityLivermore, StateCA
California Contractor License Number (a) 854851
Description of Portion of Work

Temporary Signal System, Building Work

Bid Item Numbers

10

Percentage of Bid Item Subcontracted

83.3

Bid Item Numbers

31

Percentage of Bid Item Subcontracted

83.3

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

List this sub? Yes

3) Business NameAero Environmental Consulting
Location CityMonterey StateCA
California Contractor License Number (a) N/a
Description of Portion of Work

Air Monitoring

Bid Item Numbers

17

Percentage of Bid Item Subcontracted

33.3

Bid Item Numbers

Percentage of Bid Item Subcontracted

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 03-3F3404 Project ID: 0312000219

Bidder Name:Liberty Maintenance, Inc. DBA Ohio LiberBidder ID:VC1500003283

List this sub? Yes

4) Business NameFirst Fuel Incorporated
 Location CityNewport Beach StateCA
 California Contractor License Number (a) N/a
 Description of Portion of Work

Fuel Delivery and Supply

Bid Item Numbers

22

Percentage of Bid Item Subcontracted

1.48

Bid Item Numbers

Percentage of Bid Item Subcontracted

List this sub? Yes

5) Business NameSummit West Environmental
 Location CityBend StateOR
 California Contractor License Number (a) 38681
 Description of Portion of Work

Enviromental Biologist and species protection

Bid Item Numbers

18

Percentage of Bid Item Subcontracted

83.3

Bid Item Numbers

19

Percentage of Bid Item Subcontracted

83.3

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

From:FD THOMAS

Received

541 664 1105

Apr 13 2015 08:00am

04/13/2015 08:09

#066 P.011/011



Fax

To: Caltrans Office of the Engineer	From: Grover Lee
Fax: 916-227-6282	Pages: 11 including cover sheet
Phone:	Date: 4/13/2015
Re: Contract #03-3F3404	CC:
Email:	Attn: John C. McMillan
<input checked="" type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input checked="" type="checkbox"/> Please Reply	

Please find attached, F.D. Thomas response to our bid protest on Contract #03-3F304.

Respectfully,

Grover Lee
 F.D. Thomas, Inc.
 (541) 664-3010 Office
