

FELDMAN & ASSOCIATES, INC.

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April 24, 2015

VIA FACSIMILE

Mr. John C. McMillan
Deputy Division Chief
California Department of Transportation
Division of Engineering Services
1727 30th Street
Sacramento, CA 95819-8041

Re: Liberty Maintenance, Inc./Caltrans - Contract No. 03-3F-3404

This firm represents Liberty Maintenance, Inc., with respect to its bid for Caltrans Contract No. 03-3F3404. Liberty received your letter dated April 20, 2015, regarding Caltrans' decision to find Liberty's bid non-responsive because Tri-Valley Striping was listed on Liberty's DBE Commitment Form but not on its Subcontractor List. While Liberty Maintenance, which itself works frequently as a subcontractor, understands and appreciates the overarching goals of the Fair Subletting and Subcontracting Act, it finds Caltrans' exercise of discretion in this instance to be heavy-handed, and urges you to reconsider. Liberty's omission of Tri-Valley was inadvertent, not intentional, and could not result in bid shopping. Under Public Contract Code §4106, a contractor that fails to list a subcontractor in its bid must self-perform the work. Because Caltrans has discretion to waive minor irregularities in the bid process if no advantage is conferred, and no bid shopping could have occurred in this instance, Liberty asks that you reconsider your decision regarding the responsiveness of its bid.

In the alternative, Liberty protests the bids of FD Thomas and Certified Coatings Company, and urges Caltrans to reject all bids for this project.

FD Thomas identified two subcontractors in its DBE commitment form that were required to be listed in its Subcontractor list but not listed therein. Contract Revised Standard Specifications Section 2-1.10, and Public Contract Code §4100 et. seq., require a contractor to list each subcontractor that will perform work in an amount in excess of ½ of one percent of the total bid, or \$10,000, whichever is greater. FD Thomas' total bid was for \$8,984,000, so its listing threshold was \$44,920.

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FD Thomas' DBE Commitment form shows that Gallaway Enterprises, Inc. will be performing bid items 18 and 19 in the amount of \$84,000. FD Thomas did not list Gallaway Enterprises in its Subcontractor list, nor did it identify any other subcontractor that would be performing Bid Items 18 and 19.

Further, FD Thomas' DBE Commitment form shows that S.T. Rhoades Construction will perform work in bid items 5, 10, 11, 12, and 22 in the amount of \$171,370. Like Gallaway Enterprises, S.T. Rhoades is not listed in FD Thomas' subcontractor list even though its subcontract with FD Thomas will exceed ½ of one percent. The DBE confirmation documentation FD Thomas submitted for S.T. Rhoades, which shows a proposal submitted directly by ST. Rhoades to FD Thomas and not to any other subcontractor it identified, further confirms that FD Thomas will contract directly with S.T. Rhoades, and the S.T. Rhoades should have been listed by FD Thomas.

FD Thomas was required to list both Gallaway Enterprises and S.T. Rhoades Construction, but did not do so, and therefore its bid must be found to be non-responsive.

Liberty Maintenance also protests any subsequent award to Certified Coatings Company. Contract Revised Standard Specifications Section 2-1.33 states that bidders must submit DBE Commitment and/or Good Faith Efforts documentation no later than the fourth day after bid. Certified Coatings was the fourth-lowest bidder, but did not submit DBE information as required under 2-1.33. If Caltrans were to permit Certified Coatings to now submit DBE documentation more than one month after the original bid date, Certified Coatings would enjoy a significant benefit not available to the other bidders. Not only would Certified Coatings enjoy the benefit of having six weeks post-bid to solicit DBE participation and prepare its forms, it would also possess an advantage because it has been able to observe the bid process, the protests raised, and the disqualification of two bidders on DBE form-related grounds before submitting its own information.

Because FD Thomas and Certified Coatings' bids are non-responsive, Liberty respectfully requests that Caltrans first reconsider its disqualification of Liberty's bid. In the alternative, Caltrans should reject all bids because after FD Thomas and Certified Coatings are disqualified, the two remaining bidders, Abhe & Svoboda and Techno Coatings, exceed the engineer's estimate for this project by approximately \$750,000 and \$2,000,000, respectively. In the interest of fairness to all bidders, and to ensure the judicious use of taxpayers' funds, rebidding the project is the best alternative if the project is not awarded to Liberty Maintenance.

Sincerely,



Kevin Hannifan
for FELDMAN & ASSOCIATES, INC.

FELDMAN & ASSOCIATES, INC.

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FACSIMILE TRANSMITTAL

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File No: _____

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Telecopy Number:

Mr. John McMillan
Liberty Maintenance

916-227-6282
330-755-1847

From: Kevin M. Hannifan

Total Pages (Including this Cover Page): 3

DESCRIPTION OF DOCUMENT(S) TRANSMITTED:

Further Protest Letter re: Caltrans Contract No. 03-3F3404

MESSAGE:

ORIGINAL WILL BE SENT VIA:

MAIL FEDERAL EXPRESS MESSENGER WILL NOT BE SENT

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