

FELDMAN & ASSOCIATES, INC.

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May 18, 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. 03-3F3404

This firm represents Liberty Maintenance, Inc., with respect to its bid for Caltrans Contract No. 03-3F3404. Liberty received the Department of Transportation's (Caltrans) letter dated May 15, 2015 regarding Liberty Maintenance's protest of FD Thomas, Inc., and Certified Coatings Company.

Liberty Maintenance's previous protest of Certified Coatings bid related to Certified Coatings' failure to submit DBE participation or good faith efforts documentation within four days after the bid opening on March 17, 2015. Contract Revised Standard Specifications Section 2-1.33 states unequivocally that all bidders are required to submit DBE participation and/or good faith efforts documentation within 4 days after the bid, and does not exclude a bidder based on their rank. It is unclear from Caltrans' response what specification provision or other authority excuses a bidder from submitting DBE forms or permits Caltrans to request and accept DBE forms outside of the specified window, as DBE documents are a mandatory and material component of the bid. Liberty Maintenance therefore reiterates its protest that Certified Coatings' bid must be found to be non-responsive based on its failure to submit DBE documentation. Further, by being permitted to submit its DBE forms nearly six weeks after bid opening, Certified Coatings has enjoyed a significant advantage not available to the other five bidders, who all submitted their DBE documents within four days after bid opening as required by the Contract Specifications.

Liberty Maintenance further protests Certified Coatings' bid on grounds that the participation rate it achieved, when compared to the participation rates achieved by the other five bidders, indicates that Certified Coatings' good faith efforts were not sufficient.

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Contract Specification Section 2-1.12B(3) states that Caltrans "considers the DBE commitments of other bidders in determining whether the low bidder [Certified Coatings] made good faith efforts to meet the DBE goal." The other five bidders for this project all achieved DBE participation that exceeded the 4% called for in the Contract Specifications, while Certified Coatings was only able to achieve 0.88% participation despite the six additional weeks it enjoyed. The disparity in outcomes compels the conclusion that Certified Coatings' efforts were not sufficient, and that its bid should therefore be rejected as non-responsive.

Liberty Maintenance respectfully requests that Caltrans first reconsider its disqualification of Liberty's Maintenance's bid. In the alternative, Caltrans should reject Certified Coatings' bid as non-responsive based on its failure to achieve the required DBE participation rate, and because the good faith efforts demonstrated are not sufficient in light of the other bidders' DBE participation rates. Further, Caltrans should reject all bids because 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 available alternative.

Sincerely,



Kevin Hannifan
for FELDMAN & ASSOCIATES, INC.

cc: Mark Feldman
Client

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May 18, 2015

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File Name: Liberty Maintenance/Caltrans

Sent To:

Telecopy Number:

Mr. John McMillan
Liberty Maintenance

916-227-6282
330-755-1847

From: Kevin M. Hannifan

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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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