

Robert L. Leslie
Leslie@oles.com

March 10, 2015

Via U. S. Mail and Facsimile
(916) 227-6282

California Department of Transportation
Attention: John C. McMillan
Office Engineer
1727 3th Street, MS-43
P.O. Box 168041
Sacramento, California 95816-8041

Re: Bid Protest of Contract No. 04-013524
Bid Opening Date: March 4, 2015

Dear Mr. McMillan:

Golden State Bridge, Inc./Obayashi Corporation, Joint Venture, protests award of this contract to California Engineering Contractors, Inc./Silverado Contractors, Inc., a Joint Venture, on the grounds it did not submit a valid bid and it did not make necessary and reasonable steps to ensure that DVBES had an opportunity to participate in the contract.

California Engineering Contractors, Inc./Silverado Contractors, Inc., a Joint Venture, did not submit a valid bid.

A bid must be signed by the bidder to be a valid bid. In addition, Caltrans 2010 Standard Specifications Section 2-1.33 "Bid Document Completion" provides: "If an agent other than the authorized corporation officer or partnership member signs the bid", the bidder must "file a Power of Attorney with the Department either before opening bids or with the bid. Otherwise the bid may be nonresponsive."

California Engineering Contractors, Inc./Silverado Contractors, Inc., a Joint Venture ("CEC/Silverado") was the bidder, but it did not sign the bid or provide a "power of attorney" for its purported agent, Wahid Tadros, who did sign the bid as the agent (president) of the joint venture. Accordingly, its bid is not responsive.

CEC/Silverado's bid on page 1 of 2 says the bidder is "California Engineering Contractors, Inc./Silverado Contractors, Inc. a Joint Venture." The signature on page 2 of 2 says only "Wahid A. Tadros" "President."

CEC/Silverado's bid form "California Company Preference", bid page 7, says "I am a California company which has its principle place of business in California." "I certify under penalty of

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perjury under the laws of the State of California that the foregoing is true and correct. Signature of bidder:" with what appears to be a signature of Mr. Tadros.

CEC/Silverado's Bid Bond, bid page 8, is signed by "Wahid A. Tadros" "President." In none of the above signatures did Wahid Tadros identify the organization on whose behalf he was signing as president.

The only place on the bid which identifies which entity Mr. Tadros was signing as "president" is CEC/Silverado's Noncollusion Certification, bid page 12, where "Wahid Tadros" declares under oath that he is "President" of "California Engineering Contractors, Inc./Silverado Contractors, Inc. a Joint Venture." Thus, Mr. Tadros did not sign in his individual capacity or as a "joint venture partner." Mr. Tadros signed as an agent (president) of the joint venture.

Since the joint venture is a partnership, and no partner signed, CEC/Silverado was required by Standard Specification 2-1.33 to submit a power of attorney evidencing Mr. Tadros' authority, as president of the joint venture, had the authority to bind the joint venture to this contract.

CEC/Silverado did not have on file with Caltrans, or submit with its bid, a power of attorney giving Mr. Tadros authority to sign on behalf of CEC/Silverado, CEC/Silverado did not comply with Standard Specification Section 2-1.33, and its bid is not a valid bid, nor responsive.

In fact, it appears that no one is bound by CEC/Silverado's bid. Mr. Tadros did not sign in his individual capacity, and did not sign as president of either joint venturer. If Mr. Tadros is not the authorized agent to sign on behalf of the joint venture, no one is bound by CEC/Silverado's bid.

The authority of presidents of corporations is statutory. (Cal. Corp. Code, § 313.) However, absent such a statute, at common law, the authority of an officer to enter into contracts has to be proven. (*Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 780.) Presumably, that is why Caltrans' bid solicitation, Standard Specifications, Section 2-1.33, required a power of attorney showing that the person signing, if not an authorized corporate officer or partner, has authority to bind the joint venture.

Here, there is no statutory basis for Caltrans to assume that Mr. Tadros had authority to bind CEC/Silverado to the bid, and CEC/Silverado failed to comply with Standard Specification 2-1.33, which would have provided that authority. CEC/Silverado's bid is not responsive.

Caltrans cannot waive CEC/Silverado's failure to submit a valid signed bid. Because neither CEC/Silverado nor any of its partners signed the bid or the bid bond, CEC/Silverado was not bound to either one. If CEC/Silverado did not want to be bound by the bid, all it had to do was to later tell Caltrans and Liberty Mutual that Mr. Tadros had no actual authority to sign the bid or the bid bond on behalf of the joint venture. Likewise, if CEC/Silverado wanted to be bound to its bid, it could later provide a power of attorney.

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When a bidder can be bound by or withdraw its bid at its own election, after bids are open, without being liable on its bid or its bid bond, a bidder obtains an unfair competitive advantage and its failure to submit a responsive bid cannot be waived. *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1442.

California Engineering Contractors, Inc./Silverado Contractors, Inc., a Joint Venture, did not make reasonable efforts to obtain DBEs

Standard Specifications (as Revised), Section 2-1.15A, requires each bidder to "Take necessary and reasonable steps to ensure that DVBEs have opportunity to participate in the Contract." CEC/Silverado did not take necessary and reasonable steps to ensure DVBE participation per section 2-1.15 for a non-federal aid project as it did not advertise on the Caltrans website which is a requisite reasonable step to ensure DVBE participation.

Even though the contract did not have goals – CEC/Silverado still had to comply with the California Military and Veterans Code § 999, et seq. and the bidding requirements to take necessary and reasonable steps to ensure that DVBEs have an opportunity to participate in the contract.

For each of these reasons, Caltrans should reject CEC/Silverado's bid and award the contract to Golden State Bridge, Inc./Obayashi Corporation, Joint Venture.

Sincerely,



Robert L. Leslie