

PAPICH CONSTRUCTION CO., INC.

INFRASTRUCTURE • RENEWABLES • OIL & GAS

May 28, 2015

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

RE: Contract 05-1G3404
Bids opened: April 23, 2015
Bid Protest of Telfer Highway Technologies

Dear Mr. McMillan,

We reviewed Mr. Fain's response to our protest letter and would like to take this opportunity to reply.

As a threshold matter, we think that it is important to keep in mind that past adherence to a procedure that has since changed does not excuse continued non-compliance with the changed procedure. Thus, while there may be examples of submitted DBE commitment forms that do not comply with the requirements we set forth in our protest letter, Telfer is not excused from complying with the practices in place at the time they submitted their DBE compliant forms.

That said, one of the examples that Telfer produced is illustrative of the very issue that we are protesting. The example DBE Commitment form for Contract No. 04-2J2804 clearly indicates that Dragon Material Transport is a "2nd Tier Supplier to County Quarry Asphalt." This tells a clear story that Dragon Material Transport is working for County Quarry Asphalt who is working for Bay Cities Paving & Grading, Inc.

Telfer, on the other hand, failed to indicate that LMS Transport was a second tier subcontractor to Cal Portland. There is no connection between LMS Transport and Telfer on the DBE Commitment form. This connection is clearly important, as Caltrans has issued non-responsive bid letters for this exact same violation. Furthermore, ensuring that this connection exists is so important that Caltrans has since changed the system to require the bidding entity to prove the connection by additional proof from the DBE subcontractors after the bid has been submitted.

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Telfer's DBE commitment form clearly does not comply with the accepted practices in place at the time that they submitted the bid, and for this reason alone, the bid should be deemed non-responsive.

Telfer's other responses either mischaracterizes our argument or are irrelevant. We are not saying that the "Total Number of All Subcontracts (DBE & Non-DBE)" should only indicate DBE contractors. Our point is that Telfer claimed 27 total subcontractors for the job, yet only listed 3 total at the time of the bid. Where are the other 24?

Finally, it is irrelevant that Telfer submitted documentation showing that LMS is qualified for six other types of work. The point of the DBE Commitment form is to show which jobs that the DBE is committed to perform on behalf of the bidder. The point is not to show which types of work the subcontractor is qualified for, but the types of work that the subcontractor will actually be performing. Telfer only listed the one work code for LMS Transport, indicating that LMS Transport would be providing only that one service. Telfer cannot now claim that LMS Transport is going to perform work besides the work related to the work codes that Telfer indicated on the DBE Commitment form simply because LMS Transport is qualified to perform other work.

Despite Telfer's arguments to the contrary, they did not properly fill out the DBE Commitment form. There is no way to know what work LMS Transport will be performing or even for whom. Telfer's bid is therefore non-responsive and should be dismissed as such. Thank you for your time in reviewing this matter.

Sincerely

David Cruce
Vice President – Business Development and Estimating
Papich Construction Company, Inc.

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Mr. John McMillan	David Cruce
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