

# AFSAR LAW GROUP

78-000 Fred Waring, Suite 203  
Palm Desert, CA 92211  
Ph: 760.345.3110  
Fax: 760.345.3220  
www.afsarlaw.com

October 21, 2014

**VIA FACSIMILE & U.S. MAIL ONLY**

State of California Department of Transportation/Caltrans  
Division of Engineering Services  
Office Engineer  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816

**Re: Bid Protest – Contract No. 06-0P8104**

To Whom It May Concern:

This office represents the legal interests of Desert Concepts Construction, Inc. It is my client's understanding that Griffith Company (hereinafter "Griffith") has been deemed the "Low Bidder". This correspondence is provided as a formal bid protest to the bid submitted by Griffith.

This protest is submitted on the bases that Griffith's bid is nonresponsive and must be rejected. More specifically, Griffith's submitted Bid Item List includes the listing of Subcontractor Austin Enterprises for Bid Item Number 19 only at a percentage of 8% of that bid item. However, when reviewing the Griffith DBE-Commitment form it shows Austin Enterprises as a DBE assigned to a portion of Bid Item Number 18 and 19. Griffith made an error in their submitted bid by failing to include Austin Enterprises as a subcontractor for Bid Item 18 as well.

A similar error can also be found with regard to subcontractor Super Seal & Stripe (hereinafter "Super Seal"). While the Griffith's submitted Bid Item List includes Bid Item Numbers 1, 13, 32, 33, and 37 their correlating DBE-Commitment form shows Super Seal assigned to 1, a portion of 3, 11, 13, 32, 33, and a portion of 37. The inclusion of bid items 3 and 11 once again highlight the error in Griffith's submitted bid.

California courts have held that a mistake with regard to the percentage of work to be completed by a subcontractor is a mistake which provides the public entity no choice but to reject the bid. The court in Valley Crest Landscape, Inc. v. City Council of the City of Davis ((1996) 41 Cal.App.4th 1432) held "[m]isstating the correct percentage of work to be done by a subcontractor is in the nature of a typographical or arithmetical error. It makes the bid materially different and is a mistake in filling out the bid." While the error may appear small on its face, California courts have also held that a bid that deviates from bid requirements must be rejected as nonresponsive, explaining bidders "were entitled to expect bids which did

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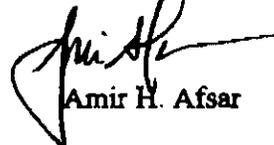
not meet the specifications would be rejected in favor of those which did or the contract would be rebid." (Konica Business Machines v. Regents of the University of California (1988) 206 Cal.App.3d 449, 457.) Moreover, the purpose of strict compliance is to eliminate favoritism, fraud, corruption, and the misuse of public funds. The court continued by stating, "[b]ecause of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside.... The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements." (Id. at 456-457.)

As prior bid protests have highlighted, a discrepancy between the submitted bid and the DBE-Commitment form creates a revised "Subcontractor List" and is in violation of the Subletting and Subcontracting Fair Practices Act of the Public Contract Code. As a result, the bid submitted by Griffith should be deemed nonresponsive and the award should be made to the next lowest bidder, Desert Concepts Construction, Inc.

We appreciate your time in reviewing the bids referenced herein. If we can provide any further assistance with regard to this project, please contact this office or Desert Concepts Construction, Inc. at your earliest opportunity.

Very truly yours,

AFSAR LAW GROUP, A.P.C.



Amir H. Afsar

cc: Client  
AHA/jbl  
L102014.BidProtest.doc



78-000 Fred Waring, Suite 203  
Palm Desert, California 92211  
Telephone (760) 345-3110 Facsimile (760) 345-3220

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Total Number of Pages 3 (Including This Cover Letter)

Please deliver the attached pages to:

Company: State of California Department of Transportation/Caltrans  
Office Engineer

Recipient's Fax No.: (916) 227-6282

From: Afsar Law Group, A.P.C.

Transmitted From: (760) 345-3220

Re: Contract Number 06-0P8104

Please see the attached correspondence.

If you have any additional questions, please don't hesitate to contact this office.

Thank you

Original Sent By U.S. Mail:  Yes [ ] No

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