Received Feb 25 2015 07:11am

Lee's
PAVING, INC.
1212 N. Plaza Dr. • Visalia, CA 93291
Phone 559/651-1337 • Fax 559/651-2335

Via Facsimile (916) 227-6282

February 25, 2015

State of California
Department of Transportation
1727 30th Street, MS 43
Sacramento, CA 95816

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Re: Contract #06-432604, Bid Protest

Mr. McMillan:

Please consider this letter to be a formal protest of the bids submitted by Myers & Sons Construction, LP and Viking Construction Company, the first and second low bidders, respectively, in connection with Contract #06-432604.

Myers & Sons expanded the scope of a listed subcontractor after the bid:

Myers & Sons identified subcontractor item numbers after the bid which expanded the subcontractor's scope of work, given the descriptions of work submitted with their bid, as follows:

Papich Construction Company was listed for "LCP, Street Sweeping, Underground, Cold Plane, HMA, AC Dike, Tack Coat, RSP" on the day of the bid. The next day Myers & Sons identified Item 11 Temporary Crash Cushion Module, Item 34, Clearing & Grubbing, Item 35, Roadway Excavation, and Item 43 Class 2 Aggregate Base, as items to be performed by Papich Construction. Items 11, 34, 35 and 43 are clearly not related to the description "LCP, Street Sweeping, Underground, Cold Plane, HMA, AC Dike, Tack Coat, RSP" and, therefore, Myers & Sons expanded the scope of Papich Construction's work after the bid. The value of the expanded work items amount to $206,345.00. Additionally, the day after the bid Myers & Sons took the listed LCP work away from Papich Construction since they failed to identify Item 1, Lead Compliance Plan.

Viking Construction's DBE Commitment Form is not consistent with their subcontractor listing:

Viking Construction identified KRC Safety on the subcontractor listing for Items 2,6,10,11,66 and 67. KRC Safety's price for these items total approximately $77,800. Viking Construction's DBE Commitment form commits Viking Construction to use KRC Safety for only Item #2,66,67 valued at only $3,420. The inconsistency between Viking Construction's subcontractor listing of KRC Safety and their DBE commitment to KRC Safety makes Viking Construction's bid non-responsive, as Caltrans has consistently determined on numerous past bids. Caltrans non-responsive bid notice letters in these cases always quote the instructions on the DBE Commitment form which state in part "...DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable, with the names and items of work in the " Subcontractor List" submitted with your bid."

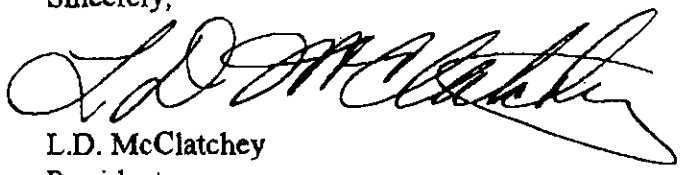
Summary:

Caltrans has consistently found bidders non-responsive on contracts too numerous to list for expanding the scope of listed subcontractors by identifying bid numbers after the bid for items not consistent with the listed description of work as well as for submitting DBE Commitment forms that are not consistent with the Subcontractor Listing.

Given all the above, Caltrans should find the bids of Myers & Sons Construction, LP and Viking Construction Company non-responsive and award this contract to Lee's Paving, Inc.

Please contact the undersigned, should you have any questions or comments.

Sincerely,



L.D. McClatchey
President

Attachments - 7 Pages

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

SUBCONTRACTOR LIST

DES-OE-0102.20 (REV 6/2014)

Bidding Firm: Myers and Sons Construction, LP

Under Public Contract Code § 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening, the bid item numbers with percentages of the portion of work subcontracted.

Business Name and Location	California Contractor License Number [a]	Description of Portion of Work	Bid Items Numbers	Percentage of Bid Item Subcontracted
* Papich Construction Pismo Beach, CA	767055	LCP, Street Sweeping, Underground, Cold Plane, HMA, AC Dike, Tack Coat, RSP	11 17 30-32, 34-35, 43-48, 57-64	50% 50% All 100% All 100%
Dywidag Systems International Long Beach, CA	273710	Prestressing CIP Concrete	51	95%
Harris Rebar Fresno, CA	695035	Rebar	55 56 72	100% 100% 12%
Tipco Engineering Gardena, CA	928364	Furnish/Drive CISS Pile	49 50	100% 92%
KCI Environmental San Luis Obispo, CA	813844	Erosion Control	38-42	All 100%
W.C. Maloney Stockton, CA	718243	Remove Sheet Pile, Bridge Removal	26-33	All 100%
Roadway Engineering Works Ceres, CA	845536	Temp Signal System, Weather Info System	8, 76	All 100%
Safety Striping Service Goshen, CA	308669	LCP, Remove/Place Striping and Markers	1 4-5, 7, 22, 28-29, 73-75	50% All 100% All 100%
KBC Safety Visalia, CA	507950	CAS, K-Rail, Channelizer, Object Marker, Temp Crash Cushion, Special Marker	2, 6, 10-11, 66-67	All 100% All 100%
Safeguard Fence Corona, CA	849895	Treat Wood Waste, MBGR, Remove/Place Fence	23-25, 27, 65, 68, 70-71	All 100% All 100%

[a] Not required on contracts with Federal-Aid.

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STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 06-432604 Project ID: 0600020388
Bidder Name:Myers and Sons Construction, LP Bidder ID:VC0000106329
SUBCONTRACTOR LIST
DES-OE-0102.2B(REV 5/2014)

Bidding Firm: Myers and Sons Construction, LP

Under Public Contract Code ♦ 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of work subcontracted.

a Not required on contracts with Federal-Aid.

List this sub? Yes
1) Business NamePapich Construction Company
Location CityPismo Beach StateCA
California Contractor License Number (a) 767055
Description of Portion of Work
LCP, Street Sweeping, Underground, Cold Plane, HMA, AC Dike, Tack Coat, RSP
Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 06-432604 Project ID: 0600020388
Bidder Name:Myers and Sons Construction, LP Bidder ID:VC0000106329

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity	Unit of Measure	Unit Price	Item Total
1	070030	LEAD COMPLIANCE PLAN	LUMP SUM	LS	LUMP SUM	3,000.00
2	120090	CONSTRUCTION AREA SIGNS	LUMP SUM	LS	LUMP SUM	3,000.00
3	120100	TRAFFIC CONTROL SYSTEM	LUMP SUM	LS	LUMP SUM	75,000.00
4	120151	TEMPORARY TRAFFIC STRIPE (TAPE)	12,000.0	LF	1.50	18,000.00
5	120152	TEMPORARY PAVEMENT MARKING (TAPE)	24.0	SQFT	5.00	120.00
6	120165	CHANNELIZER (SURFACE MOUNTED)	90.0	EA	30.00	2,700.00
7	120300	TEMPORARY PAVEMENT MARKER	270.0	EA	3.50	945.00
8	128601	TEMPORARY SIGNAL SYSTEM	LUMP SUM	LS	LUMP SUM	150,000.00
9	128652	PORTABLE CHANGEABLE MESSAGE SIGN (LS)	LUMP SUM	LS	LUMP SUM	30,000.00
10	129000	TEMPORARY RAILING (TYPE K)	4,360.0	LF	13.00	56,680.00
11 *	129100	TEMPORARY CRASH CUSHION MODULE	120.0	EA	125.00	15,000.00
12	130100	JOB SITE MANAGEMENT	LUMP SUM	LS	LUMP SUM	45,079.10

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 06-432604 Project ID: 0600020388
Bidder Name:Myers and Sons Construction, LP Bidder ID:VC0000106329

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity	Unit of Measure	Unit Price	Item Total
24	150606	REMOVE FENCE (TYPE BW)	870.0	LF	4.40	3,828.00
25	150607	REMOVE FENCE (TYPE WM)	320.0	LF	5.20	1,664.00
26	028101	REMOVE SHEET PILE WALL	LUMP SUM	LS	LUMP SUM	5,500.00
27	150661	REMOVE GUARDRAIL	710.0	LF	5.50	3,905.00
28	150714	REMOVE THERMOPLASTIC TRAFFIC STRIPE	2,110.0	LF	0.40	844.00
29	150722	REMOVE PAVEMENT MARKER	110.0	EA	0.50	55.00
30	150814	REMOVE DOWNDRAIN (EA)	1.0	EA	1,250.00	1,250.00
31	152469	ADJUST UTILITY COVER TO GRADE	3.0	EA	1,575.00	4,725.00
32	153103	COLD PLANE ASPHALT CONCRETE PAVEMENT	130.0	SQYD	40.50	5,265.00
33	157550	BRIDGE REMOVAL	LUMP SUM	LS	LUMP SUM	175,000.00
34	160102	CLEARING AND GRUBBING (LS)	LUMP SUM	LS	LUMP SUM	40,000.00
35	190101	ROADWAY EXCAVATION	4,870.0	CY	16.00	77,920.00

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 06-432604 Project ID: 0600020388
Bidder Name:Myers and Sons Construction, LP Bidder ID:VC0000106329

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity	Unit of Measure	Unit Price	Item Total
36(F)	192003	STRUCTURE EXCAVATION (BRIDGE)	870.0	CY	75.00	65,250.00
37(F)	193003	STRUCTURE BACKFILL (BRIDGE)	423.0	CY	90.00	38,070.00
38	210270	ROLLED EROSION CONTROL PRODUCT (NETTING)	60,000.0	SQFT	0.38	22,800.00
39	210300	HYDROMULCH	60,000.0	SQFT	0.04	2,400.00
40	210350	FIBER ROLLS	3,400.0	LF	4.00	13,600.00
41	210430	HYDROSEED	60,000.0	SQFT	0.05	3,000.00
42	210600	COMPOST	60,000.0	SQFT	0.20	12,000.00
43	260203	CLASS 2 AGGREGATE BASE (CY)	1,650.0	CY	44.50	73,425.00
44	390132	HOT MIX ASPHALT (TYPE A)	1,670.0	TON	85.00	141,950.00
45	394074	PLACE HOT MIX ASPHALT DIKE (TYPE C)	260.0	LF	13.00	3,380.00
46	394077	PLACE HOT MIX ASPHALT DIKE (TYPE F)	240.0	LF	13.00	3,120.00
47	394090	PLACE HOT MIX ASPHALT (MISCELLANEOUS AREA)	7.0	SQYD	500.00	3,500.00

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
Contract No.: 06-432604 Project ID: 0600020388
Bidder Name:Viking Construction Company Bidder ID:VC0000014625
SUBCONTRACTOR LIST
DES-OE-0102.2B(REV 5/2014)

Bidding Firm: Viking Construction Company

Under Public Contract Code § 4100 et seq., the Bidder must set forth in the bid the name, the location of the place of business, the California contractor license number, and the portion of work of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater.

The Bidder must submit within 24 hours of the bid opening the bid item numbers with percentages of the portion of work subcontracted.

a Not required on contracts with Federal-Aid.

List this sub? Yes
1) Business NameKRC Safety Co., Inc.
Location CityVisalia StateCA
California Contractor License Number (a) 507950
Description of Portion of Work
Construction Signs, Object/Special Markers, Channelizers, Krail, Crash Cushions
Bid Item Numbers 2,6,10,11,66,67

Percentage of Bid Item Subcontracted 100 *

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

Bid Item Numbers

Percentage of Bid Item Subcontracted

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STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

CALTRANS BIDDER - DBE - COMMITMENT

DES-OE-0102.10C (NEW 06/2012)

This information may be submitted with your bid proposal. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in section 2 of the specifications. Failure to submit the required DBE information will be grounds for finding the bid nonresponsive.

CONTRACT NO: 06-432604

BID AMOUNT: $3,983,825.00

$

BID OPENING DATE: November 6th, 2014

BIDDER'S NAME: Viking Construction Company, Inc.

DBE GOAL FROM CONTRACT, %: 10%

DBE PRIME CONTRACTOR CERTIFICATION[1]:

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED[2]	FOR CALTRANS USE ONLY	NAME OF DBEs (Must be certified on the date bids are opened - include Caltrans certification #, DBE address and phone number) (Indicate 2nd and lower tier subcontractors)	DOLLAR AMOUNT DBE[3]
23,27,68,70,71	Tr. Wood Waste, Rem. MBGR, Midwest GRS, Trans Rail, Alt Flare TS		PC&N Construction DBE# 39218	$42,624.00
15,21,38-42	Fiber rolls, temp. fence, REP, hydromulch, hydroseed, compost		J&M Land Restoration DBE# 32481	$82,505.90
2,66,67	Const. Signs, Markers		KRC Safety Co., Inc. DBE# 447	$3,420.00

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective items(s) of work listed above must be consistent, where applicable, with the names and items of work in the "Subcontractor List" submitted with your bid. Copies of the DBE quotes are required.

Total Claimed Participation $ %

1. DBE prime contractors must enter their certification number and indicate all work to be performed by DBEs including work performed by its own forces.
2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished.
3. See section 2-1.12 of the specifications to determine the credit allowed for DBE firms.

Brett McCo

Signature of Bidder

1/14/15 (916) 852-5530

Date (Area Code) Tel. No.

BRETT MCCOLLOCH

Person to Contact (Please Type or Print)

Submit to:

MSC 43
OFFICE ENGINEER
DEPARTMENT OF TRANSPORTATION
1727 30TH STREET
SACRAMENTO, CA 95816-7006

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Phone 559/651-1337 • Fax 559/651-2335

Fax Cover Sheet

To: John McMillan
From: Lee McClatchey
Fax: 916-227-6282
Date: 2-25-15
Phone:
Pages: 10
Re: Protest of Contract #06-432604
CC:

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