

## PTM GENERAL ENGINEERING SERVICES, INC.

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November 26, 2014

By Fax, Email, &amp; Overnight Courier

Fax # 951.227.6282

Department of Transportation  
Division of Engineering Services – Office Engineer  
1727 30th Street – MS-43  
Sacramento, CA 95816

Reference: Caltrans Contract No. 07-3X9204  
Subject: Protest of the rejection of bid dated November 24, 2014

Attention: Mulissa Smith, Office Engineer – Contract Awards

Ms. Smith:

On October 30, 2104, PTM Engineering, Inc. ("PTM") submitted, as a General Contractor, a bid proposal in response to the advertisement by the California Department of Transportation ("Caltrans") identified as Caltrans Contract No. 07-3X9204 (the "Project"). PTM was the second low bidder with a bid of \$6,747,047.00. The low bidder was determined by Caltrans to be non-responsive. Caltrans subsequently contended that PTM's bid was non-responsive based on a late submission of PTM's subcontractor list. As discussed below, PTM submitted its list within the "48 hour" timeframe it was instructed to comply with by Caltrans' personnel, and only 16 minutes late under the "24 hour" requirement contained in Caltrans' bid documents. The delay was minor and inconsequential. As discussed below, PTM is the lowest responsive and responsible bidder on the Project.

This letter is intended to be: (1) a protest against any award of this contract to a bidder other than PTM; (2) a request under Government Code section 54954.1 for mailed notice of all meetings of Caltrans or other governing body at which any issues pertaining to the award of this contract are on the agenda for the meeting. If there is any fee for this service, please provide this information to us immediately so we can properly pay such fees; (3) a request to be informed by telephone or facsimile as soon as any staff reports or recommendations concerning any issue pertaining to the award of the contract is available to the public so that we can immediately inspect such reports or recommendations; (4) request to address Caltrans' board or other governing body during which consideration of any issues pertaining to the award of this contract; and (5) a request for copies of any and all documents, including notices of all meetings, agenda, as well as staff reports or recommendations concerning any issues pertaining to the bids or award of the contract.

### PTM IS THE UNDISPUTED LOW BIDDER

An award of this contract to any bidder other than PTM violates the laws, standards, and practices applicable to competitive bidding on public works projects in California. The lowest bid price submitted by Crosstown Electrical was deemed non-responsive. Thus, PTM submitted the lowest priced responsive bid, as reflected below:

Rank	Bidder	Bid Amount
1 <sup>st</sup> Apparent Low Bidder	Crosstown Electrical & Data Inc.	6,417,396.50
2 <sup>nd</sup> Apparent Low Bidder	PTM General Engineering Services Inc.	6,747,047.00
3 <sup>rd</sup> Apparent Low Bidder	Dynaelectric	7,151,777.00
4 <sup>th</sup> Apparent Low Bidder	Yakar	8,114,354.50

California law is clear that competitive bidding requirements and the letting of public contracts "are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and tax payers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest." *Ghilotti Construction Inc. v. City of Richmond* (1996) 45 Cal.App.4th 897, 909. It would constitute a great disservice to the California taxpayers if Caltrans awarded this contract to anyone other than PTM.

The *Ghilotti* court cautioned public agencies that their competitive bidding requirements should not be applied too strictly if it would defeat these objects of ensuring economy and excluding favoritism and corruption. [*Id.* at 909.] As our California Supreme Court emphasized in *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173, public agencies must take a pragmatic approach, placing the public interests above the interests of the bidders. PTM has given Caltrans the lowest price to perform work on this project. An award to anybody other than PTM could cost taxpayers hundreds of thousands of dollars more.

### PTM FOLLOWED CALTRANS' DIRECTIONS

Admittedly, this was PTM's first bid using the electronic bidding system. PTM is a small business enterprise. On October 17, 2014, PTM's Ms. Brittany Coulter contacted Ms. Irene Becham of Caltrans, in order to ensure the proper and timely post bid submission of the necessary documents. The discussion involved the post bid timeline for submission of subcontractor listing and the DBE documents.

1. PTM was informed that the DBE information was due within 4 days of the bid. PTM submitted the required DBE documents timely and exceeded the DBE goals.
2. During the same conversation, PTM was informed that the subcontractor information does not have to be included in the ebid, and may be sent in by fax 48 hours after the opening of the ebid.

On October 31, 2014, I worked on the required subcontractor and DBE documents for submission to Caltrans. Since we received the instruction from Caltrans allowing 48 hours to fax the subcontractor information, PTM believed that the Subcontractor documentation was not due until Monday. However, upon completion of the forms, I immediately faxed the Subcontractor forms from several fax machines to ensure receipt by Caltrans. The verified acknowledgement was posted at 14:16 PM on October 31, 2014. Based on the requirement of submission of the Subcontractor Listing within 24 hours of the bid opening, as stated in Caltrans November 24, 2014 correspondence, this minor defect of 16 minutes should not be considered fatal and must be waived as a minor irregularity.

PTM was further led to believe the subcontractor listing was not due within the 24 hours because of a statement found on page 6 of the bid documents specifically the subcontractor listing where it states "a Not required on the contracts with Federal Aid." This statement is found between the 24 hour submission statement and the area where the first subcontractor to be included. This only confirmed to PTM what the Cal Trans associate relayed to our verbally. Cal Trans project no. 07-3X9204 bid date 10.30.2014 is federally aided project ACNHP-X037(174)E.

PTM's bid was reasonable, responsive, and responsible. The minor delay in submission was due in part to receiving incorrect instruction from the Caltrans representative. Additionally, it is not in the best interest of the public to spend approximately \$1,400,000 in excess of PTM's reasonable and responsive bid proposal.

### CALTRANS CAN AND SHOULD WAIVE ANY MINOR DEFECTS

The fact that PTM may have experienced a minor delay in submission of the Subcontractor information (a post-bid submission), such delay is, at worst, a minor defect, or an inconsequential irregularity that can and should be waived by Caltrans. Indeed, Caltrans typically reserves the right to waive any irregularities in its bid proposal.

It is well established that a bid which substantially conforms to a call for bids may, although it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an unfair advantage not allowed by other bidders. *Konica Business Machines USA v. Regents of University of California* (1998) 206 Cal.App.3d 449, 454. Determining whether a bid for a public works project varied substantially from the bid specifications is a question of fact – and courts will generally defer to the public agency if its finding is supported by substantial evidence. *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368.

"These considerations must be evaluated from a practical rather than hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interests, rather than the private interests of a disappointed bidder." *Ghilotti Construction, supra*, 45 Cal.App.4th at 908.

The issue to be decided by Caltrans in this protest is whether the minor delay in submission of the Subcontractor Listing (16 minutes) was a material deviation or a waivable error. PTM submits that it is a waivable error in light of the circumstances.

In *Ghilotti*, the court upheld a city council's deviation from contract specifications was inconsequential in part because "there was no evidence showing [the low bidder] would have submitted a higher bid had it complied with the specification restricting the use of subcontractors." *Id.* at 906. Similarly, it cannot be shown here that PTM's bid would have been higher had it simply submitted the Subcontractor information in a timely manner. Caltrans must take a pragmatic look at the evidence and factual circumstances surrounding PTM's bid and post bid submissions.

Waiver of any irregularity in a bid is also generally allowed as long as it would not give that bidder an unfair advantage by allowing it to withdraw its bid without forfeiting its bid bond. In light of the evidence, it would have been impossible for PTM to withdraw its bid strictly because of its slight delay in submission of its Subcontractor materials.

#### **CALTRANS REQUESTED AN EXTENSION OF PTM'S BID PROPOSAL**

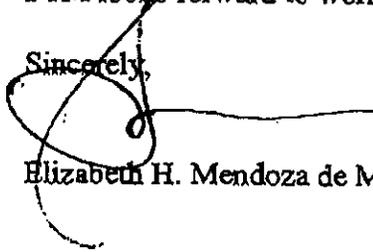
On November 25, 2014, PTM received a fax from Caltrans requesting an extension of PTM's bid proposal to allow additional time for evaluation and completion of administrative requirements. PTM concurred and extended its bid on the contract until December 30, 2014. Obviously, Caltrans must believe PTM's late Subcontractor list submittal it was a minor irregularity or waivable defect.

#### **CONCLUSION**

PTM's minor post bid irregularity is merely a matter of form and not of substance. Caltrans has the power to award the contract to PTM because the irregularity did not materially affect the amount of PTM's bid nor give PTM any competitive advantage. Caltrans should exercise its discretion and properly waive the minor delay, omission or variance. No other bidder will be prejudiced by the waiver of this minor defect, and it is most certainly in the best interest of Caltrans and the taxpayers of this State to award the contract to the lowest bidder – that is PTM.

PTM looks forward to working with Caltrans on this Project.

Sincerely,



Elizabeth H. Mendoza de McRae, President/CFO

cc: Mr. Ken Curtis, Esq.

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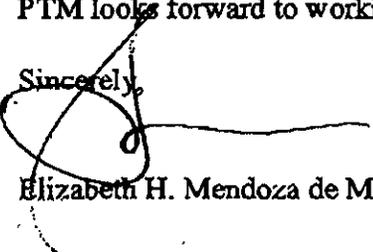
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