

**SULLY-MILLER CONTRACTING CO.**

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March 10, 2016

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

Department of Transportation
Division of Engineering Services
P.O. Box 168041, MS-43
Sacramento, CA 95816-8041
Attention: Office Engineer

Re: Sully-Miller Contracting Company's Protest of Bid Submitted by Griffith Company on Caltrans Contract Number 08-0G9004

Dear Office Engineer:

Sully-Miller Contracting Company ("Sully-Miller") hereby submits its formal protest of the apparent low bid submitted by Griffith Company ("Griffith") on the above-referenced California Department of Transportation ("Caltrans") project.

Caltrans opened bids for the project on February 24, 2016. Griffith submitted the apparent low bid in the amount of \$9,285,582, and Sully-Miller submitted the apparent second low bid in the amount of \$9,618,000, or 3% higher than Griffith's bid. For the reasons stated herein, Griffith's bid should be declared non-responsive and the contract should be awarded to Sully-Miller, the actual lowest responsive bidder.

1. **Griffith's Bid Establishes That Griffith Will Not Be Performing At Least 30% of The Work As Required By Section 5-1.13A Of The Caltrans Specifications**

Caltrans Standard Specification Section 5, Control of the Work, paragraph 5-1.13A requires the prime contractor to perform at least 30% of the work with its own employees and with equipment it owns or rents. The purpose of this requirement is to ensure that the prime contractor is sufficiently involved with the work to enable it to control and guarantee the progress and quality of the work. In other words, the provisions of Section 5 are meant to exclude "paper contractors" - those that assign all work to subcontractors and simply administer the contract.

On its face, and without any further analysis, Griffith's bid shows that it intends to subcontract more than 76% of the contract work, leaving less than 24% to be performed by Griffith. Specifically, the total value of the bid items that will be performed by Griffith's listed subcontractors is \$7,018,175, which is 76% of Griffith's total bid price of \$9,285,582.

A. Griffith listed subcontractors for 90% or 95% of bid items when it appears that those subcontractors will be performing all of the work under those bid items.

Griffith's indicates in the "description of work subcontracted" section of its proposal that each listed subcontractor will perform 90% or 95% of each bid item. However, Griffith's bid does not identify the portion of work that is being subcontracted, or the portion that Griffith will self-performed. Sully-Miller submits that Griffith can only establish that it is performing at least 30% of the work by proving that it will actually perform, with its own employees and equipment, a portion of the work that is being subcontracted.

A review of the scope of the subcontracted bid items and the subcontractor proposals Griffith submitted with its DBE submission reveals that Griffith's subcontractors will be performing 100% of the bid items for which they were listed, and the total value of Griffith's subcontracted work is 72% of Griffith's bid price. Copies of Griffith's subcontractors' proposals are attached hereto as **Exhibit A**.

For example, Griffith listed Match Corporation as performing 90% of Bid Item 40, Hot Mix Asphalt. It is clear that Match Corporation is performing 100% of the hot mix asphalt work on the project, and there is no evidence, or even reason to believe, that there is any other work associated with this bid item that Griffith would perform with its own labor and equipment. Rather, given the nature of this work, and the absence of any description of a discreet portion of such work, it is logical to conclude that 100% of the actual work associated with Bid Item 40 will be performed by the subcontractor. Furthermore, Match's proposal to Griffith reveals that Match will perform all of the work associated with placing 33,900 tons of Hot Mix Asphalt Type A under Bid Item 40, just as it will be performing all of the work required for the other three bid items it quoted. In other words, Match didn't submit a proposal to Griffith to perform only 90% of these bid items, it proposed to perform each of the bid items in their entirety.

Another example is Cal Stripe, which Griffith listed for Bid Items 1, 15 and 17. Cal Stripe's proposal to Griffith confirms that Cal Stripe quoted entire bid items, consisting entirely of removing pavement markings. There is no other work under these bid items which Griffith could self-perform. Perhaps the best example is Fine Grade Equipment, which Griffith listed to perform 90% of Bid Item 30, Roadway Excavation. Griffith's price for Bid Item 30 is \$781,300. However, Fine Grade Equipment's proposal to Griffith to perform this entire bid item is \$961,600, more than Griffith's bid price. Therefore, it is *impossible* for Griffith to self-perform any of this bid item. The proposals of Griffith's other listed subcontractors also reveal that they are performing all of the work associated with the listed bid items (see Exhibit A).

In summary, the proposals submitted by Griffith's listed subcontractors establish that they will be performing 100% of the work required under the bid items for which they were listed, notwithstanding the fact that Griffith's bid represents that they will be performing only 90% or 95% of such work. As such, Griffith will not be self-performing 30% of the work, as required by Section 5.1-13A.

B. The total value of the proposals submitted by Griffith's listed subcontractors represents at least 72% of Griffith's total bid price

Griffith's bid listed Match Corporation, Pavement Recycling Systems, DC Hubbs, Cal Stripes and Fine Grade Equipment, Inc. as subcontractors who will perform work on the project. According to the proposals these subcontractors submitted to Griffith at bid time, the total value of the work they will perform is \$6,723,065.10, which represents 72% of Griffith's bid price. Based on these proposals alone, Griffith cannot meet the 30% self-performance requirement of Section 5-1.13A.

In addition to its listed subcontractors, Griffith submitted additional subcontractor proposals with its DBE submission, including KRC Safety Co., Inc., Acacia Environmental, and A.C. Dike. The total value of the work to be performed by these subcontractors is \$50,722.45 and, when added to Griffith's listed subcontractors, increases the amount of subcontracted work to 73% of Griffith's bid price. Copies of these additional proposals are attached hereto as **Exhibit B**.

Finally, because Griffith was not required to list subcontractors who will perform work with a value of less than $\frac{1}{2}$ of 1 percent of the bid price (\$46,427.91 in this case), there may be additional work which Griffith intends to subcontract which will reduce even further the percentage of work Griffith will self-perform on this project.

An analysis of Griffith's bid and the subcontractor proposals submitted with Griffith's DBE documentation compels the conclusion that Griffith will not self-perform at least 30% of the work, and will effectively relinquish the performance and control of the work to its subcontractors, in violation of 5-1.13A. Thus, because Griffith will fail to fulfill the control and performance requirements of the contract, its bid should be declared non-responsive.

C. When time-related overhead and mobilization are excluded, Griffith is only self-performing 16% of the actual project work

For purposes of interpreting and applying Section 5-1.13A, which is appropriately entitled "Control of Work" and is based on *performance* of work, time-related overhead and mobilization should not be considered part of the work. Time-related overhead is intended to encompass field and home office overhead expenses, which typically relate to the costs incurred to administer the contract, not to perform that work (See Standard Specification Section 9-1.11). Similarly, mobilization costs refer to preparatory actions that must be undertaken, or costs incurred, before starting actual work on the project (See Public Contract Code §10104). As such, time-related overhead and mobilization are only tenuously connected to the work of the project, and do not constitute performance of the work itself.

Griffith's prices for Bid Item 2, Time Related Overhead, and Bid Item 57, Mobilization, total \$888,447. When these administrative and overhead items are removed from Griffith's bid, the value of the actual work to be performed under the contract becomes \$8,397,135. The value of the work being performed by Griffith's listed subcontractors is \$7,018,175.00, or 84% of the actual work to be performed, and the work being performed by Griffith is only \$1,378,960, or 16%. In other words, the actual work of the contract will be performed almost exclusively by

subcontractors, while Griffith will be responsible for contract administration, overhead, and profit.

D. Griffith's DBE submission attempts to change the scope of work of a listed subcontractor

Griffith listed Fine Grade Equipment, Inc. as performing 90% of Bid Item 37, Class 2 Aggregate Base. Griffith's price for Bid Item 37 is \$734,400, making the value of Fine Grade Equipment's work \$660,960. Fine Grade Equipment's proposal to Griffith at bid time included a price of \$694,440 for Bid Item 37. However, Griffith's DBE submission to Caltrans changes Fine Grade Equipment's scope of work and the value of its subcontract. Specifically, Griffith's DBE submission does not list Fine Grade Equipment for Bid Item 37. Rather, it refers to bid item "Alt 37" and includes a price of only \$265,680. Additionally, Griffith has reduced Fine Grade Equipment's proposal price from \$2,014,140 to \$1,585,380. The proposal price for Bid Item 37 has been crossed out and replaced with "Alt 37," with a price of \$265,680.

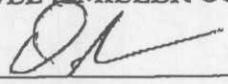
Based on these post-bid revisions, it appears that, after the bid was submitted, Griffith eliminated the Class 2 Aggregate Base material from Fine Grade Equipment's scope of work. This is problematic in two ways. First, if Griffith is permitted to make such a post-bid revision to a listed subcontractor's scope of work Griffith would gain an advantage that other bidders did not have. Second, it renders Griffith's bid incorrect in that Fine Grade Equipment is not performing 90% of Bid Item 37, as Griffith's bid represented. Rather, Fine Grade Equipment is performing only 36% of this bid item.

2. Conclusion

Griffith's bid fails to comply with Section 5-1.13A, which requires that the prime contractor *perform* at least 30% of the work with its own employees and equipment. Additionally, in an attempt to create more self-performed work, Griffith's post bid DBE submission improperly revises the scope or work and subcontract value of one of its listed subcontractors. As a result, Griffith's bid should be declared non-responsive, and the contract should be awarded to Sully-Miller. Thank you in advance for your prompt attention to this matter.

Respectfully Submitted,

SULLY-MILLER CONTRACTING CO.



Dennis Gansen
Vice President

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To: Mr. John C. McMillan, Deputy Division Chief **From: Dennis Gansen, Vice President- Operations**

State of California, Dept. of Transportation Division of **Sully Miller Contracting**

Engineering Services

Fax: 916-227-6282 **Pages: 1 of 5**

Phone: **Date: 3/11/16**

Bid Protest of Caltrans Contract Number 08-0G9004

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Attached please find the following bid protest for Caltrans contract number 08-0G9004.

Respectfully,

Dennis Gansen