



July 16, 2013

John McMillian
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816-8041

Re: Contract Number 12-0L3804
Bid Opening Date: June 27, 2013
Bid Protest – Desert Concepts Construction (Apparent 1st Low Bidder)

Dear Mr. McMillian:

We hereby protest the award of the above-mentioned contract to the 1st apparent low bidder Desert Concepts Construction (DCC) for the following reasons:

Failure to List Subcontractor Public Contract Code 4106:

Desert Concepts Construction (DCC) failed to list a subcontractor for Item #49 “Modify Signal” and does not hold a C-10 license to perform this type of work nor does DCC have the expertise to perform this type of specialty work by their own forces. Information obtained from the Contractors State License Board lists Silvano Castro as an RME for DCC who holds a C-10 license that would qualify DCC to self-perform this type of specialty work. However, Silvano Castro “dissociated” himself and his C10 license from DCC on January 1, 2013 (see attachment 1A-1C). As such, DCC no longer can claim qualification to self-perform the electrical work with its own forces without the C-10 license and DCC did not list a subcontractor to perform this item, which is contrary to Public Contract Code 4106.

Public Contract Code Section 4106 states, in pertinent part, that

*If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is **fully qualified** to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.*

There were six other prime contractors who bid on this project; five of the six prime contractors listed a subcontractor to perform the specialty work for Item #49. Additionally, DCC has only been awarded four other contracts for Caltrans. Two of the contracts specified the same type of electrical work as this particular project (electrical/modify signal). DCC listed subcontractors in both of their prior contracts to perform the specified electrical work on contract #s 11-296714 & 09-352304 (see attachments 2A-2B & 3A-3B). By listing an electrical subcontractor for the prior awarded contracts, further demonstrates that DCC is not qualified to not self-perform this type of electrical work and DCC is not licensed to perform the work specified in Item #49. Therefore DCC's bid should be rejected for the failure to list a subcontractor for Item #49.

Unbalanced Bid – Item #49:

DDC's bid for Item #49 is completely unbalanced and the work could not be performed for the amount of \$160,000.00. If Caltrans were to compare this specific item to the other six other prime contractors bids for Item #49 it could be determined that DCC simply "plugged" in a cost for this work in order to submit a completed bid to Caltrans without clearly establishing the specific scope of the specialized work involved for bid Item #49. Title 23 Code of Federal Regulation, Section 635.102 provides that "*a bid is mathematically unbalanced if the bid item contains lump sum or unit bid prices which do not reflect reasonable costs or proportionate share of the bidder's anticipated profit, overhead costs and other direct costs.*" If Caltrans were to perform even the slightest bit of research with regards to this particular bid item, it would find that the materials alone could not be purchased for the bid amount of \$160,000.00.

DBE Goal:

DCC has failed to meet the required DBE Goal and a portion of the claimed participation shown in DCC's Bidder Commitment is not qualified to perform work for which they are listed.

DCC has claimed participation in the amount of \$13,600.00 from the DBE subcontractor Cre8ive Engineering. The name "Cre8ive Engineering" (CRE8IVE) is interesting by itself, since this "pro forma" company appears to have been creatively engineered by DCC themselves in order circumvent the DBE goal requirement in order to falsely claim DBE participation on Caltrans' projects.

It looks as if, on the face of it, this business, CRE8IVE, is a stand-alone company that is owned by a Hispanic male. However, a search at the CSLB returned zero results for licensing under the name of CRE8IVE and it seems that the individual, Regina Castro, is titled President of CRE8IVE and may be a qualifying participant for its DBE certification. A careful review of the contractor's license number listed on CRE8IVE's quote submitted to DCC for DBE participation reveals that they possess the same contractor's license (#849837) as DCC (see attachment 4). A search of the personnel listing of this contractor's license number indicates Regina Castro as Vice President of DCC and Julio Castro RME/RMO/President. The appearance of impropriety is suspicious at the very least and fraudulent at the very worst.

Additionally, should Caltrans choose to ignore these suspicious facts regarding CRE8IVE, as stand-alone company, CRE8IVE does not hold an independent contractor's license to perform the said work on a State contract, which would automatically disqualify them to perform the work for Item #22. Additionally, CRE8IVE is not certified with the proper DBE work codes for the work that they are listed to perform, Item #22 "Remove Inlet, Frame & Grate."

As indicated in CRE8IVE's DBE Certification (#40634), CRE8IVE's work codes are C3910 Paving Asphalt, C9850 Plumbing and C9851 Fire Protection Contractor which disqualifies DCC's claim for CRE8IVE's participation on Item #22 (see attachment 5).

By disallowing the claimed amount of \$13,600.00 for Item #22, thereby, reduces the total claimed participation by DCC to \$155,780.10 and thus reduces DCC's DBE commitment to 9.4%, which does not meet the stated goal of the contract.

DBE Good Faith Effort:

DCC's Good Faith Effort (GFE) has numerous deficiencies for which Caltrans should not rely on in order to award the contract to DCC.

For example:

- DCC claims that they solicited 54 viable DBE companies to participate in this particular contract. However, according to DCC's GFE of work made available to DBE's for this contract, only a mere 14% of the entire work project was made available to the said DBEs. This small amount of work made available to reach a 10% participation goal is insufficient to meet a proper GFE.

- Another interesting or perhaps deceiving aspect of DCC's GFE is the fact that of the alleged 54 viable DBE companies that work was made available to only 28 of the listed companies are actually certified DBE firms. The rest of these firms are not even certified and this fact can be verified by a simple search of the UCP database, which is a requirement by the contract's specifications.
- DCC's phone log indicates that follow ups were made, but the fails to lists a name of one person to confirm the follow up. DCC also fails to list the times, of the alleged follow up calls. Coincidentally, it appears that all of the firms contacted were either not interested in bidding or there was no response for participation on the project.

It is clear by all of the aforementioned facts, with regards to DCC's Failure to List a Subcontractor, unbalanced cost for Item #49, the failure to meet the DBE goal, due to unqualified DBE (CRE8IVE), and DCC's unsatisfactory GFE, which is nothing more than voluminous amounts of paperwork to create an illusion of a proper GFE, Caltrans has no other option but to determine DCC's proposal "non-responsive" and award this contract to the next lowest responsive and responsible bidder.

Lastly, according to the latest update in contract award status, it appears that Caltrans has already determined The Sun Group (TSG) who is the 2nd Apparent Lowest Bidder as "non-responsive." As such, this determination of TSG and the disqualification of DCC's bid, due to the aforementioned mentioned reasons, would make HighLand Construction, Inc. the next apparent lowest bidder and eligible for award of this contract.

Due to the above-mentioned reasons, we hereby request award of Contract #12-0L3804 as the lowest most responsive and responsible bidder.

If you have any further questions, please do not hesitate to contact our office. Thank you.

Respectfully,



Kristi Stelle
VP of Operations

KS:er
Attachments (9)
VIA: FAX & GSO



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board**Contractor's License Detail - License # 849837**

▲ DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

- » CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.
- » Per [B&P 7071.17](#), only construction related civil judgments reported to the CSLB are disclosed.
- » Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- » Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	849837	Extract Date 7/10/2013
	DESERT CONCEPTS CONSTRUCTION INC A CALIFORNIA CORPORATION	
Business Information	Business Phone Number: (760) 200-9007	
	77-770 COUNTRY CLUB CRIVE PALM DESERT, CA 92211	
Entity	Corporation	
Issue Date	11/08/2004	
Expire Date	11/30/2014	
License Status	ACTIVE	
	This license is current and active. All information below should be reviewed.	
	CLASS	DESCRIPTION
	A	<u>GENERAL ENGINEERING CONTRACTOR</u>
Classifications	C36	<u>PLUMBING</u>
	C16	<u>FIRE PROTECTION CONTRACTOR</u>
	C27	<u>LANDSCAPING</u>
Bonding	CONTRACTOR'S BOND	
	This license filed a Contractor's Bond with <u>AMERICAN CONTRACTORS INDEMNITY COMPANY.</u>	
	Bond Number: 234714	
	Bond Amount: \$12,500	
	Effective Date: 01/01/2007	
	<u>Contractor's Bond History</u>	
	BOND OF QUALIFYING INDIVIDUAL	
	1.	

ATTACHMENT #1A

The Responsible Managing Officer (RMO) CASTRO JULIO certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.

Effective Date: 09/03/2010

BQI's Bond History

- 2. This license filed Bond of Qualifying Individual number 5169312 for CASTILLO MARIO in the amount of \$12,500 with SURETEC INSURANCE COMPANY.

Effective Date: 04/03/2013

WORKERS' COMPENSATION

This license has workers compensation insurance with DEPARTMENT OF INDUSTRIAL RELATIONS

Policy Number: 4503-133

Effective Date: 04/01/2007

Expire Date: None

Workers' Compensation History

Workers' Compensation

Personnel listed on this license (current or disassociated) are listed on other licenses.

Personnel List	Other Licenses
----------------	----------------

Conditions of Use | Privacy Policy
Copyright © 2010 State of California



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail (Personnel List)

Contractor License #: 849837

Contractor Name: DESERT CONCEPTS CONSTRUCTION INC A CALIFORNIA CORPORATION

Click on the person's name to see a more detailed page of information on that person

NAME	TITLE	ASSOCIATION DATE	DISASSOCIATION DATE	CLASS	MORE CLASS
SILVIANO CASTRO	RME	11/08/2004	01/01/2013	C27	More
JULIO CASTRO	RMO/CEO/PRES	11/08/2004		A	More
REGINA CASTRO	OFFICER	11/08/2004			
CHISTABEL CASTRO	OFFICER	11/08/2004			
MARIO CASTILLO	RME	04/04/2013		C27	

[Conditions of Use](#) | [Privacy Policy](#)
 Copyright © 2010 State of California

C1

SUBCONTRACTED
TO SELECT ELECTRIC

Item No.	Item Code	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Item Total
21	568001	INSTALL SIGN (STRAP AND SADDLE BRACKET METHOD)	EA	1	500	500
22	731501	MINOR CONCRETE (CURB)	LF	37	27	999
23	731502	MINOR CONCRETE (MISCELLANEOUS CONSTRUCTION)	CY	580	345	200,100
24	021499	MINOR CONCRETE (RAPID STRENGTH CONCRETE)	CY	130	385	50,050
25	833088	TUBULAR HANDRAILING	LF	80	150	12,000
26	860090	MAINTAINING EXISTING TRAFFIC MANAGEMENT SYSTEM ELEMENTS DURING CONSTRUCTION	LS	LUMP SUM	LUMP SUM	1,000
27	860301	SIGNAL AND LIGHTING	LS	LUMP SUM	LUMP SUM	31,093
28	861503	MODIFY LIGHTING	LS	LUMP SUM	LUMP SUM	4,500
29	869040	PULL BOX	EA	17	550	9,350
30	999990	MOBILIZATION	LS	LUMP SUM	LUMP SUM	234,097

TOTAL BID:

TMT

\$ 765,000.00

Contract No. 11-296714

4

ATTACHMENT #2A

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DES-OE-0102.2 (REV 3/2011)

Bidder Name: Desert Concepts Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Select Electric #297034 P.O. BOX 1457 Spring Valley, CA 91977 PH. (619) 460-6060	26	100%	Maintain Ext. Traffic Management
	27	100%	Signal & Lighting
	28	100%	Modify Lighting
	29	100%	Pull Box

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-8410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Contract No. 11-296714
 5

TMT

ATTACHMENT #2B

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DES-OE-0102.2 (REV 3/2011)

Bidder Name: Desert Concepts Construction, Inc.

The bidder must identify each subcontractor performing work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.). Complete columns 1 and 4 and submit with the bid. Complete columns 2 and 3 and submit with the bid or fax to (916) 227-6282 within 24 hours after the bid opening. Failure to provide complete information in columns 1 through 4 within the time specified will result in a nonresponsive bid.

Column 1: Business Name and Location	Column 2: Bid Item Nos.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
LGM CONSTRUCTION P.O. BOX JACKSON, CA 95642 (209) 217-6303	22	32.43%	METAL BLDG.
APPIAN SWPPP 5780 OLINDA RD. EL SOBRANTE, CA 94803	2	100%	PREPARE WATER POLLUTION CONTROL PROGRAM
* ONE WAY ELECTRIC INC. DBA INTEGRITY ELECTRIC 3381 GOLD COUNTRY DR. EL DORADO, CA 95623	22	10.84%	<u>ELECTRICAL</u>

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 864-6410 or TDD (916) 864-3660 or write Records and Forms Management, 1129 N Street, MS-80, Sacramento, CA 95814.

Contract No. 09-352304

A2

Item No.	Item Code	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Item Total
21	860090	MAINTAINING EXISTING TRAFFIC MANAGEMENT SYSTEM ELEMENTS DURING CONSTRUCTION	LS	LUMP SUM	LUMP SUM	1,000. ⁰⁰
* 22	994650	BUILDING WORK ELECTRICAL	LS	LUMP SUM	LUMP SUM	784,431. ³¹

TOTAL BID:

\$ 925,692.²²

Contract No. 09-352304

4

ATTACHMENT #3B



P: 760.200.8889
 F: 760.200.1116
 77-770 Country Club Dr. Ste D
 Palm Desert, CA 92211

Proposal Submitted To: Desert Concepts Construction, Inc. 77-770 Country Club Dr, Ste D. Palm Desert, CA. 92211	Date 6/27/13		Reference No: GF1308
	Job No: Bid No. 12-0L3804		
	Job Location: Orange County		
Contact:	Date of Plans:	Phone:	Fax:
We propose to furnish materials and labor—complete in accordance with specifications below for the sum of: Thirteen Thousand Six Hundred and 00/100*****\$13,600.00			
UPON COMPLETION OF JOB			
<small>All material is guaranteed to be as specified. All Work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our employees are fully covered by Workman's Compensation Insurance. This proposal may be withdrawn by us if not accepted within 90 Days. Authorized Signature</small>			

We hereby submit specifications and estimates for: **DBE Certification #40634**

- Item #22
- Remove inlet frame and grate 68 at \$200.00 each. **\$13,600.00**

TOTAL COST OF JOB: \$13,600.00

Acceptance of Proposal—the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Accepted By: _____ Date: _____

[Back To Query Form](#)

Search Returned 1 Records

Mon Jul 15 11:49:31 PDT 2013

Query Criteria

Firm/DBA Name: cre8

Firm Type: DBE

Firm ID	40634
Firm/DBA Name	CRE8IVE ENGINEERING INC
Address Line1	77-770 COUNTRY CLUB DR., SUITE D
Address Line2	
City	PALM DESERT
State	CA
Zip Code1	92211
Zip Code2	
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
EMail	cre8iveEngineering@gmail.com
Contact Name	REGINA CASTRO
Area Code	(760)
Phone Number	200-8889
Fax Area Code	(760)
Fax Phone Number	200-1116
Agency Name	DEPARTMENT OF TRANSPORTATION
Counties	01; 02; 03; 04; 05; 06; 07; 08; 09; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; 48; 47; 48; 49; 50; 51; 52; 53; 54; 55; 56; 57; 58;
Districts	01; 02; 03; 04; 05; 06; 07; 08; 09; 10; 11; 12;
DBE NAICS	237110; 237310; 238910;

ACDBE NAICS

Work Codes	 <u>C3910 PAVING ASPHALT (ASPHALT CONCRETE); C9850 PLUMBING; C9851 FIRE PROTECTION</u>
Licenses	<u>CONTRACTOR;</u>
Trucks	A General Engineering Contractor; C16 Fire Protection Contractor; C36 Plumbing Contractor;
Gender	M
Ethnicity	HISPANIC
Firm Type	DBE

[Back To Query Form](#)