



Lic. #743775

November 14, 2014

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

Re: Contract Number 12-0L92U4
Bid Opening Date: 10/30/2014
Response to Bid Protest by Dream Builder

Dear Mr. McMillan:

Reference is made to the frivolous and meritless bid protest submitted by Dream Builder (DREMR) regarding the above-mentioned contract.

HighLand Construction, Inc.'s (HCI) Subcontractor Listing fully complies with Caltrans' requirements and the Subletting Act, Section 4100 et al.

DREMR alleges that HCI "listed Orange County Striping for Striping (partial) for Item #19 "only." It should be noted that Bid item #19, as alleged by DREMR, is not referenced anywhere in HCI's Subcontractor Listing or in our bidder's proposal to be subcontracted to Orange County Striping. DREMR further alleges that HCI "revised" our Subcontractor Listing by "adding" Item #1 and Item #11.

First, HCI's submitted bidder's proposal and Subcontractor Listing appropriately designated Orange County Striping as the subcontractor for Striping "partial" as the scope of work to be subcontracted. The appropriate bid item numbers that represent "striping" are Item #1, Item #11 and Item #29. Items #11 and #29 respectively, are an obvious designation of striping work. Item #11, (striping removal) requires the submission of a Lead Compliance Plan for the said work and in accordance with Section 15-2.02C(2) "Remove Traffic Stripes and Pavement Markings Containing Lead." As such, a portion of Item #1 is included of the "striping portion" of the subcontracted work.

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The designation of "striping" is a common practice in this industry by prime contractors who contract with public entities. Column 4 of the Subcontractor List requires a "description of subcontracted work." The term "striping" is a complete description of the work that Orange County Striping is performing as designated on HCI's Subcontractor Listing, it fulfills the listing obligation.

Second, the inclusion of Item #1 is simply demonstrating to Caltrans that a portion of the work for Item #1 is being subcontracted to Orange County Striping as it is a part of the striping work. The inclusion of Bid Item #1 is not required to be listed per the Subletting Act since the amount is less than one-half percent of the total bid or \$10,000.00, whichever is greater.

The second part of DREMR's moronic protest alleges that because HCI procured material quotes, in an effort to increase DBE participation after the bid opening date, HCI's bid must be found nonresponsive. It is unfortunate that DREMR is frequently a disgruntled high bidder and as such, maintains a standard practice of protesting all bids for which they are not low.

DREMR's allegation has no legal foundation or authority. There is nothing in Caltrans' Specifications, this specific contract, the Code of Federal Regulations, Part 26 or Caltrans' DBE Commitment Form (DES-OE-0102.10B) stating that securing material suppliers and/or rental quotes, after the bid opening date, in an effort obtain the highest DBE participation, is prohibited. Further, none of these authorities dictate to the contractor that DBE material supply quotes must be dated on or before bid opening in order to be counted towards participation or the contractor will be found nonresponsive.

A prime contractor will continue to procure materials from suppliers and/or rental companies all the way through the entire construction of the project. More importantly, a prime contractor will continue to try to increase DBE participation throughout the length of the project and submit the added DBE participation in its Final Utilization Report. We suppose the DREMR would want Caltrans to reject the said participation as well since it was not secured at bid time? As stated previously the protest is absurd and any effort by Caltrans to deny legitimate DBE participation based on DREMR's allegation would not be substantiated by law.

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DREMR, in another ineffective attempt to support their position, declares that HCI "terminated" "subcontractor" Adanta Inc.'s (who quoted work at the time of bid) and selected Premiere Environmental instead after the bid opening. First, neither one of these firms are required to be listed as subcontractors, since their costs are well below the listing threshold. Second, both are Certified DBE firms. Third, they are not a subcontractor, they provide consultant work in the development of the lead plans. Premiere Environmental develops 99% of HCI's Lead Compliance Plans (LCP). As such, we have firsthand knowledge of Premiere's cost to HCI. We simply selected the lower of the two DBE bids for the said work. As stated previously, there are no grounds for DREMR's protest.

Finally, DREMR's last futile attempt at protest contends that since ACE Fence Company (ACE) is not listed as a subcontractor, HCI's is inconsistent and should be declared nonresponsive. Apparently, DREMR lacks the experience and knowledge of the Subcontractor Listing requirement. We know Caltrans is well aware of this requirement and will find that ACE's work falls below the listing threshold.

HighLand Construction, Inc.'s bid is responsive and we look forward to being awarded the said contract.

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

Respectfully,



Kristi Stelle
VP of Operations

KS:er
VIA: FAX & MAIL