

AFSAR LAW GROUP

78-000 Fred Waring, Suite 203
Palm Desert, CA 92211
Ph: 760.345.3110
Fax: 760.345.3220
www.afsarlaw.com

September 6, 2013

VIA FACSIMILE & U.S. MAIL

John C. McMillan
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
P.O. Box 168041
Sacramento, California 95816-8041

Re: Contract No. 01-^{0B1004}~~081004~~
Low Bidder's Response to Bid Protest

Dear Mr. McMillan:

As you may know, this office represents the legal interests of Desert Concepts Construction, Inc. (hereinafter "Desert Concepts") and provide this correspondence in response to the Bid Protest submitted by Dirt & Aggregate Interchange, Inc. (hereinafter "D&A") dated August 28, 2013. The contentions contained in the protest submitted by D&A are false, inaccurate, and do not render the bid submitted by Desert Concepts non-responsive.

The central issue allegation made in D&A's protest is that Desert Concepts has listed John James Transportation (hereinafter "John James") as a subcontractor for Bid Item 7 but John James will be providing work beyond the scope of said Bid Item. This allegation is false. Desert Concepts requested a bid for various facets of the project from John James. While John James provided a bid encompassing the various facets as requested, the only portion of the project awarded to subcontractor John James is the Bid Item 7 tasks only. Desert Concepts circled/initialed the portion of the work to be completed by John James on the bid provided before submitting it as part of their bid. With the remaining items for which a bid was provided not being contracted to John James, there is no need to review the remaining portions of the John James bid or believe work beyond the scope of Bid Item 7 will be completed by John James. As a result, there is no error in the Subcontractor List, the John James supporting bid, or the correlating DBE commitment.

As a secondary matter, D&A claims Desert Concept's bid must be rejected since column two of the DBE commitment form was not completed in full. However, as you may be aware, Desert Concepts provided said information within the 24 hour window as allowed by law. While D&A may not have been provided the information necessary to augment the DBE commitment form, CalTrans did and, therefore, the Desert Concepts bid should not be rejected.

Next, D&A claims John James is to provide services for which they are unlicensed and, when removed for that reason, Desert Concepts fails to meet the stated DBE Goal. As

September 6, 2013
Page 2 of 2

stated above, however, John James will only be providing services as needed by Bid Item 7 only. Contrary to D&A's contentions, John James will not be providing any services for which it is not licensed including water quality/testing or SWPPP work. These facts are exactly what Desert Concepts bid states. It is only D&A's assumption that John James will perform work beyond the scope of line item 7 that would create concern. However, as stated herein, John James will only perform the work for which it is licensed, the work needed to complete Bid Item 7, and nothing more. As a result, the properly committed DBE participation remains 10.2% as submitted by Desert Concepts and in excess of the stated DBE Goal.

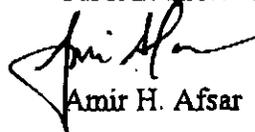
Finally, D&A alleges Desert Concepts has failed to act in "good faith" claiming Desert Concepts somehow did not properly solicit bid items and, when it did solicit them, solicited parties unable to perform the work requested or meet the requirements listed. This allegation is unfounded and speculation of this nature is unsupported by the true facts. Desert Concepts hired an outside firm to handle the solicitations and created the best bid based on the responses received. To claim Desert Concepts did not solicit or solicited with the intent to solicit only those who could not perform is disingenuous – especially in light of the fact it was handled by an outside agency. Desert Concepts has acted in good faith in the preparation of this bid and will continue to do so in all bids submitted. More importantly, the number of solicitations and responses received are inconsequential. What matters is DBE participation and Desert Concepts' bid meets and exceeds the stated goal.

While Desert Concepts can appreciate the concerns raised by the D&A bid protest, the allegations contained therein are simply not accurate. Desert Concepts properly solicited and obtained bids, compiled said information and submitted their bid for the project, provided an accurate Subcontractor List, met the stated DBE Goal, and has been deemed the Lowest Responsible Bidder. Nothing in the D&A letter changes these facts. As a result of the foregoing, Desert Concepts respectfully requests it bid remain in consideration and that it be awarded this project as the Lowest Responsible Bidder.

We appreciate the time spent in reviewing the bids, protests, and responses thereto. If we can provide further assistance with regard to this project, please contact this office or Desert Concepts Construction, Inc. at your convenience.

Very truly yours,

AFSAR LAW GROUP, A.P.C.


Amir H. Afsar

cc: Client
AHA/jl
L090613.BidProtestResponse.doc



78-000 Fred Waring, Suite 203
Palm Desert, California 92211
Telephone (760) 345-3110 Facsimile (760) 345-3220

September 6, 2013

Total Number of Pages 3 (Including This Cover Letter)

Please deliver the attached pages to:

Company: State of California Department of Transportation/Caltrans
Office Engineer
Name: John C. McMillan
Recipient's Fax No.: (916) 227-6282

From: Afsar Law Group, A.P.C.
Transmitted From: (760) 345-3220

**Re: Contract Number 01-081004
Low Bidder's Response to Bid Protest**

Please see the attached correspondence.

If you have any additional questions, please don't hesitate to contact this office.

Thank you

Original Sent By U.S. Mail: Yes No

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL. SAID INFORMATION MAY BE ATTORNEY/CLIENT PRIVILEGED, MAY CONSTITUTE INSIDE INFORMATION AND IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. UNAUTHORIZED USE, DISCLOSURE OR COPYING IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY AFSAR LAW GROUP IMMEDIATELY AT (760) 345-3110. THANK YOU FOR YOUR ANTICIPATED COOPERATION.

Visit us on the web at:
www.AfsarLaw.com