

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
1727 30th STREET, MS 43
SACRAMENTO, CA 95816-8041
PHONE (916) 227-6299
FAX (916) 227-6282
www.dot.ca.gov/hq/esc/oe



*Flex your power!
Be energy efficient!*

September 20, 2013

Facsimile: (503) 669-1192

Henry H. Pelfrey, President
Dirt and Aggregate Interchange, Inc.
20905 NE Sandy Boulevard
Fairview, OR 97024

01-0B1004
01-Hum-101-86.3/87.8
B.O. 07/30/2013

Dear Mr. Pelfrey:

The Department of Transportation (Caltrans) received the attached letter dated August 29, 2013 from Dirt & Aggregate Interchange, Inc. (Dirt & Aggregate), protesting the bid submitted by Desert Concepts Construction, Inc. (Desert Concepts). The protest alleges that Desert Concepts' Subcontractor List form identified Bid Item 7 Job Site Management as worked to be completed by James Transportation Group (JTG). However, Desert Concepts' quote encompasses Bid Items 7 through 11. Dirt & Aggregate requests that Caltrans find the bid submitted by Desert Concepts nonresponsive.

Caltrans conducted a review of the bid documents as well as the protest and determined that although Desert Concepts listed JTG for credit for the Disadvantaged Business Enterprise (DBE) goal, JTG's participation was disallowed. The Office of Business and Economic Opportunities, Contract Evaluation Unit staff further determined that Desert Concepts did demonstrate a good faith effort towards meeting the DBE participation goal for this contract.

Based on the above, Caltrans finds Dirt & Aggregate's protest lacks merit and will proceed to award the contract to the lowest responsible bidder provided that all requirements are met.

If you have any questions, please contact Nicole Butler, Contract Awards Analyst, at (916) 227-6292.

Sincerely,


JOHN C. McMILLAN
for Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment



DIRT & AGGREGATE
INTERCHANGE, INC.

August 28, 2013

Via Facsimile—1-916-227-6282
And
Certified Return Receipt Requested

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

Re: Caltrans Contract No. 01-0B1004
Bid Opening 07/30/2013
Notice of Protest Against Apparent Low Bidder

Dear Mr. McMillan:

Dirt and Aggregate Interchange, Inc. ("D&A") protests any attempt by Caltrans to award the above referenced Caltrans Contract No. 01-0B1004 to Desert Concepts Construction, Inc.(DCCI). DCCI's bid, consisting of the Bid Book, Subcontractor List, Caltrans Bidder DBE Commitment Form, and accompanying good faith efforts documentation, evidences that it neither met the DBE Goal of 8% established for this Contract nor exercised good faith efforts, as that phrase has been defined both by Caltrans Standard Specification and USDOT regulations. Having met neither the DBE Goal of 8% nor established good faith efforts, its bid is non-responsive and must be rejected.

1. D&A HAS STANDING TO BRING THIS PROTEST.

D&A has standing to pursue this protest, as it timely submitted the lowest responsive and responsible bid to Caltrans and has executed bid extensions, agreeing to extend the time under which Caltrans has to accept its bid.

Mr. John C. McMillan

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2. DCCI FAILED TO SUBMIT A PROPER SUBCONTRACTOR LIST AND ITS BID IS THEREFORE NON-RESPONSIVE AND MUST BE REJECTED.

On the day following the bid, DCCI submitted its Subcontractor List. That document identified 3 subcontractors, Appian, KRC Safety, and John James Transportation, and the pertinent section of that form is set out below:

Received
JUL/31/2013/WED 01:07 PM Desert Concepts

Jul 21 2013 01:21pm
FAX Nr. 760 200 9014

P. 003

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
DBE-CB-002.1 (REV 03/07)

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 Cost 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 No.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Appian 8750 Gillet Rd. 88 Delwood, Ca 94023	1	100 %	Lead Plan
KRC Safety P.O. Box 8288 Visalia, Ca, 93294 (559) 738-6288	2	100 %	Const. Area Signs
	3	100 %	Traffic Control
John James Transportation 1139 Iron Point Palmdale, Ca, 93550 (818) 658-7888	7	25.1 %	Job Site Management

It is clear from its subcontractor list that John James Transportation is listed as performing only 25.1% or \$25,000, of Bid Item 7—Job Site Management. However, the inquiry cannot and must not stop there, because, as part of its DBE compliance, DCCI submitted to Caltrans the actual quote or bid which DCCI received from James Transportation Group ("JTG"), which details the work that James Transportation Group offered to perform. Based upon DCCI's own submittal to Caltrans, the JTG group bid of \$25,000 to DCCI encompasses not a single Contract Item, as represented by DCCI, but rather, 5 separate Contract Items. The narrative of the scope of work being bid by JTG for \$25,000, the amount listed on DCCI's Commitment Form and the percent of Item 7 listed on the Subcontractor List as Item 7—Job Site Management actually encompasses all or part of each of the following Contract Items:

Item No.	Item Description
7	Job Site Management
8	Prepare Storm Water Pollution Prevention Plan
9	Rain Event Action Plan
10	Storm Water Sampling and Analysis Day
11	Storm Water Annual Report

Mr. John C. McMillan

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The JTG bid or quote which DCCI submitted to Caltrans as evidence of its DBE Commitment to JTG for the stated sum of \$25,000 was as follows:

JAMES TRANSPORTATION GROUP

RE: Caltrans contract 01-0B1004

JAMES TRANSPORTATION GROUP, a certified DBE is pleased to submit the following quotes. JTG is certified under the Caltrans Unified certification Program and the California Department of General Services. Our DBE certification number is 38778.

JTG staff meets the new construction permit requirements and holds the following certifications:

- QSD & QSP
- Certified Erosion, Sediment and Storm Water Inspector
- Caltrans 24-hour SWPPP certification

[Redacted section with handwritten "CSB" and a circled "25,000.00"]

Document management (System) per week.....\$3,000.00
 Lead Biologist \$180/hour.....\$
 Labor Compliance program management - per hour.....\$150.00
 ... \$180 per person

- Prices good until bid awarded.
- JTG has Caltrans required level of insurance and workmen's comp in place
- Subject to receiving pro-rata share of mobilization

[Signature]

John C. James
President

Julie Lloyd - Project Coordinator - Southwest America (510) 595-1018 jllloyd@jamestrans.com
John James - jjames@jamestrans.com (916) 608-4800
July 28, 2013

The SWPPP will comply with NPDES General Permit for "Storm Water Discharges Associated with Construction and Land Disturbance Activities" (Order No. 2009-0009-DWQ, NPDES No. CAS000002)

1. Prepare Storm Water Pollution Prevention Plan. SWPPP preparation includes obtaining SWPPP approval, amending the SWPPP, preparing a CBMP and a SAP. Construction Site Management includes monitoring and inspecting WPC practices at the job site.
2. Storm Water Annual Report. Storm Water Annual Report preparation includes certifications, monitoring and inspection results, and obtaining Storm Water Annual Report acceptance.
3. Storm Water Sampling and Analysis Day. Storm Water Sampling and Analysis Day includes reporting of storm

1120 Iron Point Road, Suite 130
Polson, CA 95630

www.jamestrans.com

(916) 608-4900
FAX (916) 608-4990

It is clear that DCCI failed to comply with Public Contracting Code 4104, when it listed JTG as a subcontractor solely for Item 7, when, in fact, the quote encompasses Items 7, 8, 9, 10, and 11.

Mr. John C. McMillan

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August 29, 2013

subcontractor to perform that work on its Subcontract List. This is just further indicia that DCCI'S Subcontract List is wholly inadequate to meet its statutory obligations, and its bid is therefore non-responsive and must be rejected.

3. DCCI ALSO FAILED TO PROPERLY COMPLETE ITS CALTRANS BIDDER DBE COMMITMENT FORM, WHEN IT LISTED THE ENTIRE \$25,000 COMMITTEED AMOUNT AS PERTAINING SOLELY TO ITEM 7 AND FAILED TO LIST THE SPECIFIC ITEMS OF WORK SINCE ITEM 7 WAS A PARTIAL ITEM.

Pursuant to Page 1 of the Notice to Bidders, an 8% DBE Goal was established for this Project. Under the Bid Specifications, specifically SS 2-1.12B(2), as modified by Special Provision, provided as follows:

2-1.12B(2) DBE Commitment Submittal

Submit DBE information on the *Caltrans Bidder - DBE - Commitment* form (DBE commitment form) included in the *Bid* book. If the form is not submitted with the bid, remove the form from the *Bid* book before submitting your bid.

If the DBE commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the form to the Office Engineer. The DBE commitment form must be received by the Office Engineer no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders are not required to submit the DBE commitment form unless the Department requests it. If the Department requests a DBE commitment form from you, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE shown on the form stating that it will be participating in the Contract. Include confirmation with the DBE commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE will be participating in the Contract.

If you do not submit the DBE commitment form by the specified time, your bid is nonresponsive.

SS 2-1.12B(2) (emphasis added). The bid specifications required the low bidder to submit the Caltrans Bidder DBE Commitment Form ("Commitment Form"). Implicit in the bid requirement that the Commitment Form be submitted, is that it must also be fully completed, with all of the required information. The form itself makes clear that the "Failure to submit the required DBE information will be grounds for finding the bid non-responsive." The Commitment Form also instructs that if 100% of the

Mr. John C. McMillan
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item shown is not being performed by the listed DBE, the bidder must "describe exact portion of item to be performed or furnished." As evidenced below, the Commitment Form submitted by DCCI provided Item Numbers only. DCCI left the second column where a written description of what item of work or service has been subcontracted. This was true even for JTG, who was listed as only partially performing Item 7.

Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - DBE - COMMITMENT
SEP-08-2010 (REVISED)

Contract No: 07-429004

DBE Commitment: 510,000

Contract Title: 720013

Contractor: Robert Knapton Construction, Inc.

Reference Contract No: 0

Contract Description: DBE

NO. ITEM	THE APPROXIMATE DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR SUPPLIED BY DBE	THE CONTRACTING DATE	NAME OF FIRM (Should include the firm name, address, telephone number and state. Also include the DBE classification and the date of certification.)	DOLLAR AMOUNT
1			Appian 99807	1900
2			VALID KRC 00041	6389
3			KRC 00041	50,200
7			John James - 99729 Tolson	25,000

510,000
1921

916-608
4900

ADA Notice: For information with respect to accessibility, see alternative methods shown below. For information and more details see ADAAG or 28 CFR 119.11-119.12 or 28 CFR 119.11-119.12.

Because DCCI failed to accurately list the actual DBE commitment to JTG and attributed the entire \$25,000 quote covering 5 separate items as a single item, renders the listing of JTG improper. As a result, DCCI is not entitled to include any portion of the JTG in its DBE commitment percentage. With the JTG commitment, its DBE Participation falls from 10.2% as listed on its Commitment Form to 7.5%, no longer meeting the established DBE Goal for this Contract. As detailed in Section 5, a review of what DCCI turned in as evidence of "Good Faith Efforts" falls woefully short of what is required by Caltrans and USDOT Regulation.

Mr. John C. McMillan

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4. DCCI IS ALSO PRECLUDED FORM INCLUDING ANY AMOUNTS COMMITTED TO JTG BECAUSE THE NARRATIVE INCLUDED IN THE BID DCCI SUBMITTED IN SUPPORT OF ITS DBE COMMITMENT EVIDENCES SUBCONTRACT WORK FOR WHICH JTG IS NOT CERTIFIED AS A DBE TO PERFORM.

D&A ran a California DBE Database Inquiry for JTG to determine the specific types of work for which DBE participation is available. The search results were as follows:

azero United Certification Program

[Back To Query Form](#)

Search Returned 1 Records Thu Aug 29 08:48:11 PDT 2013

Query Criteria
 Firm/DBA Name: James Transportation
 Firm Type: DBE

Firm ID	33770
Firm/DBA Name	JAMES TRANSPORTATION GROUP LLC
Address Line1	1128 IRON POINT ROAD
Address Line2	SUITE 100
City	POLSON
State	CA
Zip Code1	95763
Zip Code2	2195
Mailing Address Line1	
Mailing Address Line2	
Mailing City	
Mailing State	
Mailing Zip Code1	
Mailing Zip Code2	
Certification Type	DBE
Client	
Contact Name	JOHN C JAMES II
Area Code	(916)
Phone Number	908-4980
Fax Area Code	(916)
Fax Phone Number	888-4980
Agency Name	YOLO COUNTY TRANSPORTATION DISTRICT
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; 46; 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	220000; 841340; 841510; 841810;

ACDSE NAICS

Work Codes: C1790 CONSULTANT WORK ENGINEERING; C1791 BUSINESS ADMINISTRATION; C1792 MANAGEMENT INFORMATION SYSTEMS; C1793 CONTRACTS; C1794 BUSINESS & PUBLIC RELATIONS;

Licensee
Trustee
Gender M
Ethnicity BLACK
Firm Type DBE

[Back To Query Form](#)

The approved Work Codes for JTG do not include either C8794—Environmental-Water Quality or C8852 SWPPP Planning, the very work JTG offered to perform as a subcontractor. None of JTG's approved Work Codes include engineering, water quality/testing or SWPPP work. In fact, the only "consultant" work code JTG is approved for specifically notes it is "non-engineering." It is clearly evident that DCCI has listed JTG and attempted to obtain DBE participation through JTG, when, in fact, the work which would be subcontracted to JTG is not within its DBE approved work codes. As a result, DCCI is not

Mr. John C. McMillan

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entitled to count the participation of JTG and as noted above, its actual properly committed DBE participation is only 7.5%, which fails to meet the DBE Goal on this Contract.

5. DCCI'S DBE DOCUMENTATION EVIDENCES THE ACTIONS IT TOOK WERE INSUFFICIENT TO BE CONSIDERED "GOOD FAITH"

First, DCCI limited its DBE advertising and solicitation to only 6 bid items, with an estimated subcontract value of only \$112,000, which was less than 13% of DCCI's Bid Amount. DCCI's decision to limit the categories of work available for prospective DBE's to less than 13% of its overall Bid Amount, in attempting to obtain 8% DBE participation was patently unreasonable. That should have been obvious to DCCI given that of the 60 firms it directly solicited not a single firm—0—submitted a bid. The situation gets worse when you look closely at the DBE status of the 60 firms it did directly solicit. Of those 60, 28 firms, or 46%, were not even certified DBEs. It appears there was neither rhyme nor reason in DCCI's selection process. It was as if DCCI was simply sending letters because that was what was required rather than in an attempt to actually obtain DBE participation.

One of the items which DCCI says it does not perform was Metal Guard Railing. Of the 60 firms solicited, only 2, Specialty Traffic Systems and KRC Supply, are qualified for Guardrail, and neither is an installer. Certainly if you are not directly soliciting a DBE guardrail installer, there is little likelihood that you will obtain a DBE subcontractor to perform that work. It doesn't appear they solicited a single DBE performing Street Sweeping work, even though they listed that as an item available to DBEs. The USDOT Regulation is clear. Good faith efforts are more than merely perfunctory steps to be taken. Appendix A to 49 CFR Part 26, includes examples of Good Faith Efforts. One of the examples discusses making work available for DBE's. The USDOT states:

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

It seems clear that DCCI chose to limit the work available for DBEs to only that work which DCCI did not self-perform. The USDOT regulations make it clear that you must do more, as you cannot insure DBE participation when you severely limit the categories of work for which you will allow DBE's to participate.

Finally, the Federal regulations are also clear that in evaluating whether the bidder used good faith efforts, it is appropriate to look at whether the other bidders were able to meet the goal. In this case, both D&A and the third bidder, Coral met and exceeded the assigned DBE Goal.

Mr. John C. McMillan

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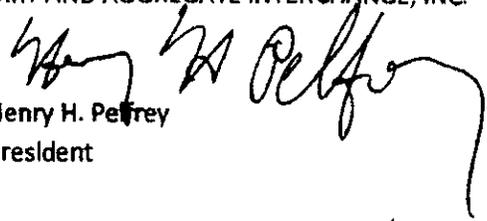
August 29, 2013

In short, as has been the case in prior solicitations, DCCI's "good faith efforts" were nothing more than proceeding lock step through the motions, without any real attempt to tailor its actions to achieve DBE participation. The simple fact that not a single firm out of 60 that were directly solicited, responded with a bid for any portion of the Project tells the real story about the efforts that DCCI took to attempt to meet the assigned DBE goal.

Based upon the foregoing, it is evident that DCCI failed to submit a responsive bid to Caltrans. It failed to properly submit its Subcontractor List, failed to properly submit its Commitment Form, failed to confirm that its DBE was approved to perform the work it intended to subcontract to the DBE, and failed to use good faith efforts toward meeting the assigned DBE goal. D&A urges Caltrans to reject the bid of DCCI as non-responsive, and proceed to a review and award of the Contract to D&A, the lowest responsive and responsible bidder.

Sincerely,

DIRT AND AGGREGATE INTERCHANGE, INC.


Henry H. Peffrey
President



DIRT & AGGREGATE INTERCHANGE, INC.

Date: 8/29/13

OUR FAX NO. (503) 669-1192

TO: Dept. of Transportation
Division of Engineering Services FAX NO. 916-227-6282

ATTN: Mr. John McMillan

This is a FAX transmittal consisting of 10 pages including this cover sheet. Please advise if you do not receive this transmittal complete.

RE: Notice of Protest

- | | |
|---|--|
| <input type="checkbox"/> Certifications | <input type="checkbox"/> For Approval |
| <input type="checkbox"/> Insurance Certs. | <input type="checkbox"/> For Your Use |
| <input type="checkbox"/> Purchase Order | <input type="checkbox"/> As Requested |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Approved as Submitted |
| <input type="checkbox"/> Quotation | <input type="checkbox"/> Approved as Noted |
| <input type="checkbox"/> Other | |

COMMENTS: _____

Thank you for your consideration.

DIRT & AGGREGATE INTERCHANGE, INC.

Signed: Henry Pelfrey
CC: _____

**** Transmit Conf. Report ****

P.1
CALTRANS CONTR AWARDS Fax 916-227-6282

Sep 20 2013 03:55pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
915036691192	Normal	20:03:52pm	2'56"	10	* 0 K	

STATE OF CALIFORNIA - CALIFORNIA TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
OFFICE ENGINEER
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20905 NE Sandy Boulevard
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01-0B1004
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Dear Mr. Pelfrey:

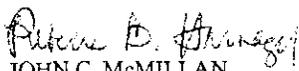
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Sincerely,


JOHN C. McMILLAN
Deputy Division Chief
Office Engineer
Division of Engineering Services

Attachment