



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. 01-081004
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. 01-081004 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.

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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 FAX No. 760 200 9014 P. 003

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR LIST
 DCS-CB-002.2 (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 § 4.103 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) 227-6252 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: Subcontractor Name and Location	Column 2: Bid Item No.	Column 3: Percentage of Bid Item Subcontracted	Column 4: Description of Subcontracted Work
Appian 8750 Oildale Rd. 8750 Oildale Rd., CA 94602	1	99.9%	Lead Plan
KRC Safety P.O. Box 8288 Visalia, Ca. 93291 (580) 738-6383	2	99.9%	Control Area Signs
	3	100%	Traffic Control
John James Transportation 1128 Iron Point Polson, Ca. 95930 (916) 638-1808	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

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DCCI certainly understood its obligation to break the subcontract quote down into Contract Bid Items, as is evidenced by its DBE Commitment Form on Caltrans Contract No. 12-0L3804, which broke the JTG work down by Item as follows:

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
CALTRANS BIDDER - DBE - COMMITMENT
DBS-05-0102.110C (NEW BIDDING)

Low Bidder

Information on this bid is subject to your bid proposal. If you are not, and you accept agreement low bidder or the lowest awarded low bidder, must be submitted and recorded in accordance with section 2 of the specifications. Failure to submit the required DBE information will be grounds for having your bid unresponsive.

DBE COMMITMENT PERCENTAGE: _____

BID AMOUNT: 1,657,046.40

BID OPERATOR ID: 0087713

BIDDER NAME: _____

DBE BOLD FROM CONTRACT, %: 00

DBE PRIME CONTRACTOR OBTENTION: NO

BD ITEM NO.	TYPE OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	PCE CALTRANS DBE ONLY	NAME OF DBE (Must be certified by the State before award - include business certificate #, DBE address and phone number) (Include Bid and lower for subcontractor)	DOLLAR AMOUNT DBE
1	Prepare Lead Completion Plan		Applian DBE 0087713 1700 Collins Road Bakersfield, CA 93302 Phone 805-375-7827 Fax 805-375-7827	\$1,800.00
2	_____		_____	\$0.00
3	Traffic Control		Cecilias Safety Service P.O. Box 970 Sandy Beach, CA CA 92083 PH: 858-713-4415	\$6,000.00

IMPORTANT: Identity of DBE firms being utilized is a vital component of the process of the First Tier DBE Subcontractors and their respective amounts of work listed above must be submitted, where applicable, with the name and name of each to the "Subcontractor List" included with your bid. Copies of the DBE quotes are required.

1. DBE price estimates must state their certification number and indicate all work to be performed by DBE in boldface type, performed by its own firm.

2. If 100% of work is to be performed or furnished by DBE, describe the work.

Total Contract
Amount: _____
[Signature]

Although certainly required, both for the Subcontractor List and the Commitment Form, DCCI wholly neglected to properly complete these two forms on this Contract, even though it knew it was required to do so. Likewise, DCCI certainly knew it was required to properly complete all of the columns on the Subcontract List, given Caltrans' April 16, 2013, letter finding DCCI's bid on Contract No. 03-3F4204 non-responsive for failing to complete column 3 for one of its subcontractors. Here, the percentage of the Item 7 that has been subcontracted to JTG is significantly overstated, given that the total bid of \$25,000 encompassed 4 other bid items. Simply put, DCCI failed to comply with Public Contracting Code Section 4104, failed to properly complete the Subcontract List and as a result, its bid is non-responsive.

As discussed in Section 3 below, DCCI's Good Faith Efforts Documentation—DBE Form listed Metal Guard Railing, at \$18,000, as work that bidder did not self-perform, yet DCCI failed to list a

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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 COMMITTED 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

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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 BIDDING - DBE - COMMITMENT
888-0842140 (REVISED)

Administrative use only. Do not include in your bid proposal. If you are a contractor, you must submit this form to the contractor's DBE administrator. It must be submitted and retained in specific order as of the specifications. Failure to submit this form will result in your bid being rejected for being non-compliant.

CONTRACT NO: 06-000004

MOVEMENT: 510 DRC

SHOWING DATE: 7/26/13

REFERENCE: Project Complete Construction, Inc.

DBE PARTICIPATION CATEGORY: B

SEE THESE CONDITIONS AND SPECIFICATIONS, IF ANY.

NO. ITEM NO.	NAME OF UNPAID RECEIPT OR SERVICE TO BE PROVIDED OR MATERIALS TO BE PROVIDED	DBE CONTRACTOR OR DBE	DATE OF BIDDING (Indicate the date the bid was opened. Include the date and time when the bid was opened. Subject to the contract terms.)	DOLLAR AMOUNT BID
1		Applica 3984		1900
2		VALIA KRC 00041		6389
3		KRC 00041		59,200
7		John James 30719 Polan		25,000

APPROVED: [Signature] Date: 7/26/13

510-395 1027

916-608 4900

MECAN OFFICE MANAGER
DEPARTMENT OF TRANSPORTATION
DEPARTMENT OF TRANSPORTATION
SACRAMENTO, CALIFORNIA 95833

ADA Notice: For information only. This document is available in alternate formats. For information call (916) 669-1192 or visit the State and Federal Department of Transportation, TCEM, 15015, Sacramento, CA 95833.

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.

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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:

02993 United Certification Program

[Back To Query Form](#)

Search Returned 1 Records Thu Aug 29 06:48:11 PDT 2013

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

Firm ID	33779
Firm/DBA Name	JAMES TRANSPORTATION GROUP LLC
Address Line1	1129 IRON POINT ROAD
Address Line2	SUITE 130
City	POLSBOM
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
EMail	
Contact Name	JOHN C JAMES II
Area Code	(916)
Phone Number	986-4980
Fax Area Code	(916)
Fax Phone Number	986-4980
Agency Names	YOLO COUNTY TRANSPORTATION DISTRICT
Countries	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	228990; 841340; 841510; 841010;
ACORE NAICS	
Work Codes	CB790 CONSULTANT NON ENGINEERING; CB701 BUSINESS ADMINISTRATION; CB702 MANAGEMENT INFORMATION SYSTEMS; CB706 DRAFTING; CB740 MANAGEMENT & PUBLIC RELATIONS;
Licenses	
Tracts	
Gender	M
Ethnicity	BLACK
Firm Type	DBE

[Back To Query Form](#)

The approved Work Codes for JTG do not include either CB794—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

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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.

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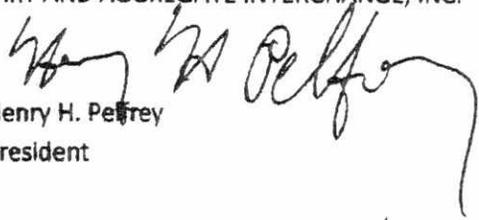
In short, as has been the case in prior solicitations, DCCI's "good faith efforts" were nothing more than proceeding lock step through the motions, without any real attempt to tailor its actions to achieve DBE participation. The simple fact that not a single firm out of 60 that were directly solicited, 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: _____